

Taking Stock

**A Review of the
First Five Years of
Implementing
the
Nunavut Land Claims Agreement**



Nunavut Tunngavik Incorporated
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Taking Stock: The Purpose of This Report

On July 9, 1993, the Nunavut Land Claims Agreement (NLCA) was signed into law as the most comprehensive land claim agreement in Canadian history. The NLCA requires that periodic reviews be carried out to ensure the Agreement is implemented in a way that honours both its letter and its spirit. The mandatory review is a pioneering feature in Canadian land claims, and one which Nunavut Tunngavik Incorporated (NTI) believes reflects the commitment of the partners to an ongoing, successful process.

Taking Stock is offered by NTI to contribute to the independent five-year review being conducted by Avery, Cooper Consulting of Yellowknife. Having completed interviews with significant numbers of persons associated with NTI, the Government of Canada, the Territorial Governments and other persons having an interest in the Agreement, Avery, Cooper will incorporate its findings into a final report with recommendations for changes and improvements.

In *Taking Stock*, NTI documents and analyzes implementation progress from 1993 to the present. It is not an annual report, addressing progress on internal processes, but instead focuses on the achievement or lack of achievement of major implementation responsibilities outlined in the NLCA. NTI details the great successes of the NLCA, such as the cooperative process which created the new territory and government, and the great disappointments, such as the resort to litigation to claim negotiated benefits. NTI believes that addressing such issues early in the implementation process is crucial to continued success in the coming years and, to that end, incorporates numerous recommendations in the form of Statements of Position.

In Part I, the principles, goals and objectives which guide the land claim are outlined and examined. In Part II, NTI raises ten points of major concern which it believes must be addressed to ensure that the successful implementation of the NLCA is not jeopardized. In Part III, an Article by Article analysis of particular implementation issues is provided.

Nothing in this document constitutes a definitive pronouncement by NTI on the substance or scope of Inuit rights under the Nunavut Land Claims Agreement or as derived from any other source. Further, neither this document nor, NTI believes, Avery, Cooper's review, is an exhaustive treatment of implementation issues. This document is without prejudice to NTI and the Inuit of Nunavut in the assertion of Inuit rights and in the securing of any legal remedy that may flow from such an assertion.

NTI reaffirms its commitment to working with the Government of Canada and the Government of Nunavut over the coming years to ensure the successful implementation of the Nunavut Land Claims Agreement.

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Part 1: Setting the Context

Section 1.1: Introduction

The Nunavut Land Claims Agreement (NLCA, or officially the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada*) stipulates that an Implementation Panel made up of representatives of the Inuit of Nunavut and of the federal and territorial governments shall, among other things,

... monitor the implementation of the Implementation Plan, determining whether the ongoing and time limited obligations, specific activities, and projects have been and are being carried out in accordance with the Plan and in the context of the Agreement and shall for that purpose, without duplicating other independent reviews, arrange for an independent review at five year intervals unless otherwise agreed by the Panel.
(emphasis added) Section 37.3.3

The NLCA was signed by representatives of the Inuit of Nunavut and the Government of Canada (binding both the GOC and the Government of the Northwest Territories) on May 25, 1993. Legislation was enacted by Parliament the following month and the NLCA became law on July 9, 1993.

The Implementation Panel required under Article 37 of the NLCA was formed shortly after the ratification of the Agreement by the Canadian Parliament. As the fifth anniversary of the NLCA approached, Panel members began discussing arrangements to be made for the conduct of the first independent review of the implementation of the Agreement. Those arrangements were finalized in late 1998 and early 1999 by creating the terms of reference for the work and selecting the management consulting firm of Avery, Cooper Consulting as the independent contractor. Avery, Cooper is now in the process of completing its review, following a work plan developed by the contractor in February 1999.

Section 1.2: The Purposes of this Report

The first independent review of the implementation of the NLCA provides an appropriate occasion to look at implementation efforts to date, to evaluate results against expectations, and to identify specific steps to overcome problems and achieve better results in the next five years. As the Inuit organization with overall responsibility to safeguard Inuit rights and benefits under the NLCA, Nunavut Tunngavik Incorporated (NTI) believes that the five-year review is one occasion -- albeit a very important one -- in a long list of implementation efforts. For NTI, this must include, among other things, regularly reporting to Inuit enrolled under the NLCA about what is happening as it should and what is not. With those considerations in mind, the purposes of this report are as follows:

- to inform the Inuit of Nunavut about the state of implementation activities and results to date;
- to inform the Government of Canada and the Government of Nunavut and the citizens of Nunavut and Canadian of NTI's assessment of implementation activities and results to date;
- to identify, for the benefit of the Inuit of Nunavut, the Government of Canada, the Government of Nunavut, and the citizens of Nunavut and Canadian, what needs to be done to improve implementation results over the next five years; and
- in so doing, to assist Avery, Cooper Consulting in carrying out its five year review.

Section 1.3: Situating the NLCA

Any useful assessment of the implementation of the NLCA must necessarily start with a clear understanding of what the NLCA is. It must recognize that the Agreement has many dimensions, and that these dimensions reinforce, rather than compete, with each other. These key dimensions will be described in the balance of this section.

1.3.1 There is a Special Relationship between the Inuit of Nunavut and the Crown.

It is an established principle of Canadian law that a special “fiduciary” relationship exists between the aboriginal peoples of Canada and the Crown. In law, a fiduciary is a person or organization (in this case, the Government of Canada) who manages the affairs of another person or organization. The Inuit of Nunavut and other aboriginal peoples have this special relationship because, historically, the Crown has asserted that they have the responsibility to govern over pre-existing societies, whether or not this is recognized by those societies. The existence of a special relationship imposes legal obligations on the Crown, requiring the Crown to conduct its relations in a honourable and conscionable fashion. Canadian courts have not determined the precise scope of fiduciary obligations owed by the Crown to aboriginal peoples. However, it is interesting to note that in private law, a fiduciary has obligations of the following kind:

- a fiduciary must act with utmost good faith;
- a fiduciary owes a beneficiary a duty of care;
- a fiduciary must avoid a conflict of interest; and
- a fiduciary must adhere to instructions.

1.3.2 The Special Relationship Between the Inuit of Nunavut and the Crown is Open-Ended in its Duration.

The special relationship between the Inuit of Nunavut and the Crown, is not a temporary or transitional relationship. It is an enduring and abiding one. The existence of this special relationship does not end upon the conclusion of a land claim agreement or other form of treaty. Rather, such an agreement shows the Crown’s acceptance of the distinct societal status and integrity of the aboriginal party. Given this special relationship, the importance of resolving short term problems should be seen in the context of strengthening long term partnerships as well as overcoming immediate problems.

1.3.3 The NLCA is an Important Part but only Part of the Special Relationship between the Inuit of Nunavut and the Crown.

The NLCA is at the core of the special relationship, of a fiduciary nature, that connects the Inuit of Nunavut and the Crown. But the NLCA does not fully define this relationship, either in its contemporary or future forms. For example, while the NLCA contains a commitment to the creation of the Nunavut territory and government, it does not purport to provide a comprehensive definition of the Inuit right to self-government. This omission was understandable. Among other reasons, the challenges associated with the early operations of the Government of Nunavut meant that a search for such a definition would not likely have been useful at the start of 1990s. Nor would such a search be useful in the immediate future. By way of further example, the NLCA deals only lightly with issues surrounding Inuit language and culture. Yet, these issues will no doubt be of growing importance in the political life of Nunavut.

1.3.4 The NLCA is Open-Ended in its Duration.

Like the broader special relationship that connects the Inuit of Nunavut and the Crown, the NLCA is of indefinite duration. It forms a permanent structure to the public and private affairs of Canada and Nunavut. Requirements for its proper implementation are a permanent claim on the attentions, energies and resources of the governments of Canada and Nunavut.

1.3.5 The NLCA Creates Constitutionally Protected Treaty Rights.

The NLCA is a land claims agreement and, accordingly, the rights of Inuit under the Agreement are treaty rights within the meaning of section 35 of the *Constitution Act, 1982*. This gives Inuit rights under the NLCA a high legal and political status. Among the treaty rights created under the NLCA, Inuit can insist that the governments implement the NLCA in full and on time.

1.3.6 The NLCA is a Part of the Public Law of Canada and Nunavut.

The interpretive and other provisions of the NLCA, supported by legislation, make the NLCA part of the public law of Canada and Nunavut. Subsection 4(3) of the *Nunavut Land Claims Agreement Act* stipulates:

... any person or body on which the Agreement confers a right, privilege, benefit or power or imposes a duty or liability may exercise the right, privilege, benefit or power, shall perform the duty or is subject to the liability, to the extent provided for by the Agreement.

This means that obligations owed by the Crown to Inuit is more than a matter of honouring their fiduciary relationship. It is also a matter of upholding the law.

1.3.7 The Statutory Force of the NLCA Prevails against all Other Laws.

According to the interpretive provisions for Article 2 of the NLCA, the *Nunavut Land Claims Agreement Act* stipulates:

6. (1) In the event of any inconsistency or conflict between the Agreement and any law, including this Act, the Agreement prevails to the extent of the inconsistency or conflict.

6. (2) In the event of any inconsistency or conflict between this Act and any other law, this Act prevails to the extent of the inconsistency or conflict.

This means all laws of the Government of Canada and the Government of Nunavut have to be read against the NLCA. This creates an obvious need to revise some general laws for such things as land and resource management in Nunavut. This must be done to avoid the appearance of any inconsistencies or conflicts.

1.3.8 The NLCA is the Foundation and Guarantee of the Nunavut Territory and Government.

Over many years, and in the face of stated federal government policy, the Inuit of Nunavut made the creation of the Nunavut territory and government a pre-condition to the conclusion of a land claims agreement. Inuit insisted on this point and won. The necessary provisions were written into the NLCA as Article 4. The NLCA, accordingly,

serves as the foundation and, given the Constitutionally protected status of rights obtained under land claims agreements, the guarantee of the Nunavut Territory and Government. The successful establishment and operation of the Nunavut Territory and Government are parts of the implementation of the NLCA.

1.3.9 The NLCA Determines the Basic Institutions of Land and Resource Management in Nunavut.

The NLCA establishes and mandates a set of special purpose land and resource bodies in Nunavut. These bodies are referred to as “institutions of public government” because they have powers usually found in government. In Nunavut, there are five institutes of public government: the Nunavut Wildlife Management Board (NWMB); the Nunavut Planning Commission (NPC); the Nunavut Impact Review Board (NIRB); the Nunavut Water Board (NWB); and the Nunavut Surface Rights Tribunal (SRT).

The functions carried out by these institutions of public government are permanent parts of the system of land and resource management in Nunavut. There is, accordingly, a strong need for these bodies, both individually and together, to carry out their functions effectively.

1.3.10 The NLCA is a Source of Some Ground Rules on the Operations of Government in Nunavut.

In addition to establishing and mandating land and resource management bodies in Nunavut, the NLCA provides some ground rules for the operations of the federal and territorial governments in other respects. Specifically, the two levels of government must take steps to ensure a representative level of Inuit employees in their work forces in Nunavut (Article 23). They must provide Inuit firms with fair access to government contracts for in Nunavut (Article 24). These two Articles are an important part of implementing the Agreement.

1.3.11 The NLCA is an Entrenched Set of Inuit Proprietary Rights.

The NLCA has an impact on the operating rules of government institutions in Nunavut. It also provides Inuit with proprietary rights. For example, the ownership of fee simple estates in lands, wildlife harvesting rights, and entitlement to a portion of revenue derived from resource extraction are proprietary rights. These rights come from the Agreement and may be used by Inuit to pursue tangible economic goals. Unlike some other forms of proprietary rights, they have been so they will be an enduring part of the Nunavut economic landscape.

1.3.12 The NLCA Must Be Seen as a “Living Tree”.

Political theorists and judges often believe that the Constitutions must be understood to be “living trees”. They mean Constitutions are growing, changing, fruitful things, not stunted or sterile ones. As a Constitutionally-protected instrument for defining and delivering commitments about relations between Inuit and other Canadians, the NLCA must also be understood as a “living tree”. Its implementation must be addressed with that perspective fully in mind.

Section 1.4: Objectives of the NLCA

1.4.1 Contextual Objectives: *Gathering Strength – Canada’s Aboriginal Action Plan*

The NLCA and its implementation must be approached in ways that respect its context. More particularly, implementation of the Agreement must be approached in ways that advance “first-order policy objectives” -- that is, basic and enduring objectives -- that are embraced by both the Inuit of Nunavut and the Crown.

The Government of Canada has committed, on its own, to a number of key objectives in its 1997 policy paper, *Gathering Strength – Canada's Aboriginal Action Plan*:

I: Renewing the Partnerships

An important objective for the Government of Canada during its last mandate was to build a partnership with Aboriginal people, other levels of government and the private sector.

... A vision for the future should build on recognition of the rights of Aboriginal people and the treaty relationship.

... The Government of Canada therefore invites other governments to give priority to the establishment and strengthening of forums that will identify areas for immediate co-operation and create the basis for more substantial change over the longer term.

II: Strengthening Aboriginal Governance

The Royal Commission took the view that the right of self-government is vested in Aboriginal nations and noted that the exercise of extensive jurisdictions by local communities may not always lead to effective or sustainable governments in the long term. The federal government supports the concept of self-government being exercised by Aboriginal nations or other larger groups of Aboriginal peoples. It recognizes the need to work closely with Aboriginal people, institutions and organizations on initiatives that move in this direction and to ensure that the perspectives of Aboriginal women are considered in these discussions.

III: Developing a New Fiscal Relationship

The Government of Canada will work in partnership with Aboriginal governments and organizations to develop a new fiscal relationship which provides more stable and predictable financing, is accountable, and which maximizes the internal generation of own-source revenues.

IV: Supporting Strong Communities, People and Economies

Supporting healthy, sustainable Aboriginal communities means finding new ways to empower individuals and their communities. The Royal Commission on Aboriginal Peoples spoke of a circle of well-being in which self-government, economic self reliance, healing and a partnership of mutual respect are the key building blocks.

These first-order policy objectives are now part of the Government of Canada's policy objectives in its overall relations with aboriginal peoples in Canada. It is appropriate to take them into account when evaluating implementation efforts of the NLCA.

1.4.2 Contextual Objectives: NTI's Corporate Objects

The policy objectives of the Government of Canada set out in *Gathering Strength* are not inconsistent with the corporate objects established for NTI in 1993. This was when NTI was created from its predecessor, the Tungavik Federation of Nunavut. The objects article of NTI's consolidated by-laws reads as follows:

2.1 The object of the Nunavut Tunngavik Incorporated is to constitute an open and accountable forum, organized to represent Inuit of all the regions and communities of Nunavut in a fair and democratic way, that will safeguard, administer and advance the rights and benefits that belong to the Inuit of Nunavut as an aboriginal people, so as to promote their economic, social and cultural well being through succeeding generations. Without limiting that object, the Nunavut Tunngavik Incorporated shall

(a) serve as the Inuit party to implement the terms of any land claims agreements (as defined by the Constitution of Canada), including any collateral agreements, entered into on behalf of the Inuit of Nunavut and, specifically, to carry out those functions described for it in the Nunavut Land Claims Agreement;

(b) ensure that the rights and benefits flowing to Inuit through any land claims agreements are secured and defended in law;

(c) represent the Inuit of Nunavut in the negotiation and conclusion of any amendments to any land claims agreements;

(d) hold and manage rights and benefits flowing to the Inuit of Nunavut through aboriginal title, statutory recognition, land claims agreements, and any other means; and

(e) seek, on its own initiative, or in concert with other like-minded organizations:

(i) to promote the enhancement of the rights, benefits and opportunities of the Inuit of Nunavut as an aboriginal people through whatever avenues and mechanisms are available at the international, national and regional levels,

(ii) to encourage and support the development of policies for Nunavut that will contribute to Inuit economic self-sufficiency while nurturing environmental values,

(iii) to facilitate the preservation and strengthening of Inuit language, traditions and beliefs, and

(iv) to build on the rich regional and community diversities among the Inuit of Nunavut, while fostering the unity of all Inuit.

NTI's corporate objects are not confined to the implementation of the NLCA. Rather, they put land claims rights in a broader set of political, economic and cultural objectives.

In this respect, NTI's corporate objects and the Government of Canada's first-order policy objectives from in *Gathering Strength* show a common concern: short-term actions contribute to long-term results.

1.4.3 Contextual Objectives: Common Ground

The Inuit of Nunavut and representatives of the Crown have not formally agreed to a single set of first-order policy objectives. However, some policy objectives have been agreed to. The 1992 Nunavut Political Accord, dealing with the creation of the Nunavut Territory and Government, and the 1993 NLCA itself are important examples. However, none of these initiatives has pretended to include a comprehensive set of shared objectives.

Despite this, an analysis of *Gathering Strength* and NTI's corporate objects makes it possible to identify many shared objectives. Admittedly, an informal list of shared objectives cannot capture the first-order policy objectives of the Government of Nunavut, because it is only months old. However, it is not unreasonable to hope that the Government of Nunavut will be open to objectives from the common ground found in *Gathering Strength* and NTI's corporate objects.

An analysis along these lines suggests the Inuit of Nunavut and the Crown share the following first-order policy objectives:

- to build up and actively use a permanent three-way partnership, involving the Inuit of Nunavut, the Government of Canada, and the Government of Nunavut, based on mutual respect and with a broad mandate to address all those issues of public policy relevant to advancing the interests and well-being of the Inuit of Nunavut;
- to supply to the Inuit of Nunavut, in practical, the benefits and responsibilities of self-government;
- to strengthen, in material and sustainable ways, the economic self-reliance and social well-being of the Inuit of Nunavut; and

- to preserve and promote the cultural distinctiveness and richness of the Inuit of Nunavut, recognizing the diversity of regions and communities.

Undoubtedly, there are alternate ways of stating the common ground between *Gathering Strength* and NTI's corporate objects. There are large overlaps between the areas of social well-being, cultural continuity and identity. The lines between economic, social or cultural issues are often blurred or artificial. However, the above list represents a workable summary of shared first-order policy objectives.

1.4.4 Direct Objectives of the NLCA

Direct objectives of the NLCA, relating to the entire Agreement, are set out in its early sections:

... AND WHEREAS the Parties have negotiated this land claims Agreement based on and reflecting the following objectives:

to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore;

to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife;

to provide Inuit with financial compensation and means of participating in economic opportunities;

to encourage self-reliance and the cultural and social well-being of Inuit;...

In addition, the NLCA identifies more specific objectives in two ways.

First, in some sections, objectives tell how Articles will happen in real terms. For example, section 5.1.3 of the Agreement describes the creation of a system of harvesting rights and a system of wildlife management. Another example is the Article that deals with Inuit employment within government:

PART 2: Objective

- 23.2.1 *The objective of this Article is to increase Inuit participation in government employment in the Nunavut Settlement Area to a representative level. It is recognized that achievement of this objective will require initiatives by Inuit and by Government.*

The second way is through Article 37. Section 37.1.1 gives principles to guide the implementation of the Agreement. These are reflected in the Implementation Plan. The Plan (officially, *A Contract Relating to the Implementation of the Nunavut Final Agreement*, May 25, 1993, but better known as the *Implementation Contract*) sets out detailed obligations, activities and projects with respect to specific provisions of the Agreement.

Section 1.5: Defining Success in the Implementation of the NLCA

Any definition of success in relation to the implementation of the NLCA must depend on an honest and open analysis and evaluation of two things:

- progress or lack of progress in meeting the contextual objectives which are relevant to the special relationship between the Inuit of Nunavut and the Crown in right of Canada; and
- progress or lack of progress in meeting direct objectives of the NLCA.

These two sets of objectives overlap in many ways. For example, it is impossible to imagine that a mutually respectful and productive special relationship can exist if the Crown doesn't live up to its obligations in the NLCA. Equally, it is hard to imagine how the Crown's implementation efforts could be called successful relations between the Inuit of Nunavut and the Crown show frustration or bitterness. In truth, progress must be made in ways that are reinforce each other. The identification of a pragmatic set of first-order policy objectives, endorsed by all, will make it easier to sort out problems that surface in the details of implementation. Similarly, good working relations and results

can only serve to foster an atmosphere of cooperation and constructiveness in working out a common set of policy assumptions and goals.

The overlapping nature of these two sets of objectives is clearly recognized in the text of the NLCA; indeed, much of the Agreement would not make sense in any other light. An obvious example of how the Agreement deals with first-order policy objectives as well as more detailed commitments is Article 4 of the Agreement; in one page, Article 4 serves as the Constitutional foundation and guarantee of the Nunavut Territory and Government. A further example is apparent in the broad language employed in the fourth objective identified in the recitals to the Agreement:

... to encourage self-reliance and the cultural and social well-being of Inuit ...

Concepts such as self-reliance and cultural and social well-being must necessarily be understood as broad and far-ranging.

Section 1.6: Assessing Progress to Date

Based on the approach to defining success set out in the preceding section, an assessment of progress to date must address both contextual objectives and direct objectives of the Agreement.

1.6.1 Progress on Contextual Objectives

a.) Three-Way Partnership

The first major contextual objective described above is:

... the building up and active use of a permanent three-way partnership, involving the Inuit of Nunavut, the Government of Canada, and the Government of Nunavut, based on mutual respect and with a broad mandate to address all those issues of public policy relevant to advancing the interests and well-being of the Inuit of Nunavut ...

In general terms, what progress has been made in this respect?

In October, 1992, the Government of Canada, the Government of Northwest Territories, and the Tungavik Federation of Nunavut (NTI's corporate predecessor) concluded the *Nunavut Political Accord*. This Accord did not deal with all the first-order policy issues that are of common concern to the Inuit of Nunavut and the federal and territorial governments. However, it did define a reliable approach to three-party cooperation on centrally important matters surrounding the empowerment, funding, design, and establishment of the Government of Nunavut. It served its purpose, in creating the government and territory and came to an end on June 30, 1999.

While the successful conclusion and application of the Accord should be a source of collective pride for all three parties to the Accord, there is a troubling absence of anything in the wings to build on the positive precedent set by the Accord. There is an obvious need to institutionalize collaboration in first-order policy making after the expiry of the Accord.

Apart from the activities flowing from the Accord, there has been one other forum where NTI has met directly and regularly with representatives of the federal and territorial governments. The Nunavut Implementation Panel was established under Article 37 of the NLCA. NTI's assessment of the work of the Panel is offered later in this report.

b.) Benefits and Responsibilities of Self-Government

The second major contextual objective described above is:

... to supply to the Inuit of Nunavut, in a practical and pragmatic way, the benefits and responsibilities of self-government

In general, what progress has been made with respect to this second contextual objective?

For more than 20 years, the preferred option for the Inuit of Nunavut for securing a greater share of the benefits and responsibilities of self-government has been the creation of a Nunavut Territory and Government. With the coming into effect on April 1, 1999, of the substantive portions of the *Nunavut Act*, a great milestone has been passed. The successful start-up of the Government of Nunavut, in conformity with the process set

forth in Article 4 of the NLCA, arguably represents the most significant implementation measure achieved in the almost six years of implementation efforts that have followed the coming into force of the NLCA.

The Nunavut Territory and Government are now up and running. Priority of effort must now turn to those practical things that will assist in the effective operation of that Government.

c.) Economic Self-Reliance and Social Well-Being

The third major contextual objective described above is:

... to strengthen, in material, measurable and sustainable ways, the economic self-reliance and social well-being of the Inuit of Nunavut

In general, what progress has been made with respect to this third contextual objective?

Since the coming into force of the NLCA, a number of initiatives have been taken that have made positive contributions to the pursuit of this objective. Chief among them have been:

- the start-up of the Government of Nunavut with its attendant infrastructure and training expenditures, expansion of the public sector base in Nunavut, and delivery of important legislative, regulatory and administrative levers over economic policy making and decision making in Nunavut;
- the creation of the Nunavut Construction Company, controlled by the four Inuit-owned development companies in Nunavut, and the contracting to the company of the main construction activities associated with supply of new Government of Nunavut infrastructure; and
- the prudent investment of the capital transfers paid to the Nunavut Trust under the terms of the NLCA, and the use of revenues generated by those investments to strengthen the administrative capacity of NTI and the three regional Inuit associations, to provide working capital to the four Inuit-owned development companies, and to initiate programs for hunter support, elder support, and training of Inuit youth.

Balanced against these positive initiatives is the reality that Inuit and other residents of Nunavut continue to struggle with some of the most difficult socio-economic conditions in Canada. This is shown in statistics revealing such things as low income levels, high unemployment and underemployment levels, lack of affordable housing, problems in the health care and education systems, and family and personal stress. For reasons such as demographic pressures and cutbacks in government budgets, some problems -- such as a severe shortage of adequate and affordable housing -- have no doubt become worse since 1993. The lack of a complete, quantitatively reliable picture of Nunavut society is itself a major obstacle to more informed and insightful policy making and the better use of public resources.

The concentration of energies needed to create the Government of Nunavut has been perhaps the most dominant feature of the political landscape in the eastern and central Arctic since 1993. This concentration of energies, necessary though it has been, has resulted in less attention to the redesign of economic and social policies than might otherwise have been the case. In addition, locating and analyzing trends and patterns in the economic self-reliance and social well-being of Inuit and other residents is more difficult. This is because the impact of preparations for Nunavut (infrastructure, training, employment, and business climate) distort the picture.

In the period between now and the next five-year review of the NLCA, it should be much easier to gauge progress -- or lack of progress -- in securing improvements in the economic self-reliance and social well-being of the Inuit and other residents of Nunavut. The establishment of realistic targets to measure progress of this kind, and a commitment to appropriate mechanisms to gauge results, are clearly needed. It should be noted that, in setting targets, there are grounds for optimism as well as concern. For example, there appears to have been a much faster rate of job creation, private sector as well as public sector, in the Nunavut area in the 1990s than was experienced nationally.

A further point with respect to developing a more complete picture of the socio-economic dynamics of Nunavut society flows from section 12.7.6 of the NLCA. This section

stipulates that the Nunavut Planning Commission should be involved with the federal and territorial governments in the creation of a general monitoring system to collect and analyse information on the long-term state and health of the ecosystemic and socio-economic environment in the Nunavut Settlement Area. While a general monitoring system of the kind contemplated in section 12.7.6 is not in place, section 12.7.6 serves both to make the creation of such a system an obligation owed by the Crown and to require that the Nunavut Planning Commission play a role in the discharge of that obligation.

Finally, it should be noted that Statistics Canada carried out an Aboriginal Peoples Survey in association with the 1991 national census, and intends to carry out a second such survey in association with the 2001 census. Lessons that have been learned with respect to that effort could be of considerable assistance in the design and administration of a Nunavut Survey.

d.) Preservation and Promotion of Cultural Distinctiveness

The fourth major contextual objective described above is

... to preserve and promote the cultural distinctiveness and richness of the Inuit of Nunavut, recognizing the diversity of regions and communities

In general, what progress has been made with respect to this fourth contextual objective?

Some progress has been realized, perhaps most notably the establishment of a stand-alone Department of Culture, Language, Elders and Youth in the design of the Government of Nunavut. Also welcome has been the early decision of the Nunavut Cabinet that Inuktitut will be used as its working language. Much work needs to be done. Particularly important is work in the following areas:

- the development of a comprehensive set of language policies, addressing such issues as the teaching of languages in the schools, access by members of the public to programs and services in their language of choice, and the practical challenges and implications of expanding the use of Inuktitut in the public sector work force;

- clarifying and strengthening the role of the Nunavut Social Development Council, within the term of the NLCA, with respect to social and cultural matters; and
- the development of stronger cultural institutions in Nunavut, including adequate scientific and research capacity, museum facilities and an enhanced Inuit Heritage Trust.

1.6.2 Progress on Direct Objectives

To a great extent, progress in pursuit of the direct objectives of the NLCA has to be judged against the detailed commitments set out in the provisions of the Agreement. This requires two things: the identification of a number of major areas of concern that impede progress on commitments made in a number of Articles; and, an article-by-article assessment with respect to the various discrete topics addressed by each. While these are dealt with further on in this report, it is useful to offer some general comments with respect to progress made --or not made -- in all the Articles of the NLCA.

a.) Certainty and Clarity of Rights

The recitals to the NLCA identify the following direct objective:

... to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore ...

In general, what progress has been made in this regard?

With respect to certainty and clarity of proprietary rights over lands in Nunavut, there has been considerable success. Fee simple title to lands owned by Inuit outside the Nunavut Settlement Area in the Contwoyto Lake area has been conveyed. Title to about 75% of lands committed to municipalities has been transferred. This is a significant gap. NTI and regional Inuit associations have put into place a system of land administration for Inuit Owned Lands that allows for the orderly creation of lesser interests in Inuit Owned Lands for mineral development and other purposes.

Some progress has also been made with respect to the rights of Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore. The key institutions of public government established and mandated under the NLCA for these purposes -- the Nunavut Wildlife Management Board, the Nunavut Planning Commission, the Nunavut Impact Review Board, the Nunavut Water Board, and the Surface Rights Tribunal -- are in operation as required, albeit late, with their activities funded in conformity with the *Implementation Contract*. One management body, the Nunavut Marine Council, has yet to come into existence. Unlike the other management bodies, however, the Council is intended to carry out a purely advisory role, not a decision-making one. Its absence has not made the resource management regime in Nunavut unworkable.

There have been two notable failures with respect to the resources management features of the NLCA:

- the extraordinarily frustrating and unproductive process that has been followed for the development of stand-alone pieces of federal legislation, as contemplated by Article 10 of the NLCA, to supply each of the key resource management bodies (other than the Nunavut Wildlife Management Board) with more precise descriptions of their roles and activities; and,
- notwithstanding the almost six years that have elapsed since the coming into force of the NLCA, the unamended state of laws of general application dealing with subject matters that are dealt with in a quite different way under the provisions of the NLCA. The most notable examples of this point are found in unamended laws of general application dealing with wildlife, both wildlife under territorial jurisdiction (*i.e.*, game) and wildlife under federal jurisdiction (*i.e.*, marine mammals).

In addition to these failures, there have been a number of other disappointments with respect to the implementation of those portions of the NLCA dealing with resource management. These failures and disappointments of the NLCA are addressed in more detail in later parts of this report.

b.) Inuit Wildlife Harvesting Rights and Participation in Wildlife Decision-Making

The recitals to the NLCA identify the following direct objective:

... to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife ...

In general, what progress has been made in this regard?

There have been a number of positive developments. Noteworthy have been:

- the establishment and operation of the Nunavut Wildlife Management Board;
- the harmonization of the by-laws of regional and wildlife organizations and hunters and trappers associations with the provisions of the Agreement;
- the expansion of commercial fishing ventures in Nunavut;
- the revival of the bowhead whale hunt; and
- the beginning of a modest hunter support program.

There have also been major disappointments. Perhaps most graphic has been the failure of the federal Department of Fisheries and Oceans to respect the rights of Inuit and the role of the Nunavut Wildlife Management Board in regards to the allocation of commercial turbot stocks off Baffin Island, forcing NTI to resort to litigation to obtain relief. Other major disappointments have been:

- notwithstanding a modest amount of progress in the hunter support program initiated by NTI, the lack of a comprehensive income support program making it economically viable for all those who want to pursue a hunting way of life to continue to do so and, by doing so, to contribute to the overall well-being of their families and communities; and
- as noted above, the conflict between unamended laws of general application and provisions of the NLCA.

c.) Financial Compensation and Economic Opportunities

The recitals to the NLCA identify the following direct objective:

... to provide Inuit with financial compensation and means of participating in economic opportunities ...

The greatest shortfalls with respect to progress towards this objective have occurred in the implementation of those Articles of the NLCA that deal with Inuit employment in government and with the awarding of government contracts (Articles 23 and 24). These shortfalls are described in the other parts of this document.

d.) Self-Reliance and Cultural and Social Well-Being

The recitals to the NLCA identify the following direct objective:

...to encourage self-reliance and the cultural and social well-being of Inuit...

An assessment of what progress has been made in this regard is provided in Section 1.6.1.

Section 1.7: Achieving Future Results

Under the provisions of Article 37, review of progress made under the NLCA shall take place at five year intervals. This first five-year review is breaking new ground. It is also offering an opportunity to reflect on how implementation of the NLCA must be viewed in a larger policy context and to identify those deficiencies of information and analysis that impede the special relationship that connects the Inuit of Nunavut with the federal and territorial governments.

The lessons learned from implementation activities so far, and the focus created by this five-year review, should bring general recommendations that could ensure a much more rapid and far-reaching amount of concrete progress before the completion of the five-year review scheduled for 2003.

Part 1
Setting the Context

Statements of Position

NTI Statement of Position 1.1

The Government of Canada (GOC), the Government of Nunavut (GN), and NTI should enter into a three party Nunavut Partnership Agreement. Flowing from the special relationship that exists between the Crown and the Inuit of Nunavut, acknowledging the different jurisdictional roles of the federal and territorial governments, and building on the positive precedent of the 1992 Nunavut Political Accord, this Partnership Agreement should, among other things:

- recognize the distinct and overlapping responsibilities of the three parties;
- commit the parties to a high level of open communication and cooperation;
- identify matters of shared priority;
- establish practical objectives with respect to the pursuit of priorities; and
- establish such working groups and other mechanisms as may be useful in achieving progress with respect to those priorities.

NTI Statement of Position 1.2

The obligations and activities associated with the implementation of the Nunavut Land Claims Agreement (NLCA) should be appropriately referenced in the Nunavut Partnership Agreement.

NTI Statement of Position 1.3

The undertakings and activities that result from the Nunavut Partnership Agreement should include the carrying out of a comprehensive, methodologically rigorous Nunavut Survey. The Nunavut Survey would review the following:

- demographic trends in Nunavut;
- the socio-economic circumstances and conditions of the Inuit and other residents of Nunavut;
- the state of official languages in Nunavut; and
- patterns in public expenditures allocated to improve socio-economic conditions in Nunavut and with respect to official languages.

The Survey should form part of the general monitoring obligations that flow from section 12.7.6 of the NLCA and the Nunavut Planning Commission should be involved in the development and management of the Survey. The design and carrying out of the Survey should take advantage of the work of Statistics Canada with respect to the 1991 and 2001 Aboriginal Peoples Surveys.

NTI Statement of Position 1.4

The first Nunavut Survey should be organized so as to be completed in 2001 and, in any event, at least one year before the next five-year review of the NLCA scheduled for 2003. The Survey should be conducted at two-year intervals thereafter, unless otherwise decided by the parties to the Nunavut Partnership Agreement.

NTI Statement of Position 1.5

The Nunavut Partnership Agreement should provide additional assurances to NTI as to its full and meaningful role in the development of any new legislative proposals affecting the rights of the Inuit of Nunavut. Assurances given through a Partnership Agreement should not detract from the urgent need to create a new approach to the development of legislation pursuant to Article 10 of the NLCA (*see* NTI Statements of Position 2.2, Legislation for Institutions of Public Government, below).

Part 2: Major Specific Areas of Concern

Section 2.1: Tools of Implementation

2.1.1: Overview

Five years of experience with the implementation provisions of Article 37 illustrates that a great deal more attention is required to determine how to coordinate the monitoring and direction necessary to ensure claim implementation and compliance.

The Tungavik Federation of Nunavut negotiators were aware of the need to write provisions to guide implementation into the NLCA itself. The negotiations in this area were given more attention than in other comparable land claim settlements. In the end, a number of implementation “tools” were created.

These tools include an Implementation Plan (in the form of a contract), which identifies agreed-upon levels of implementation funding for the initial planning (10-year) period. It also includes an Implementation Panel to oversee the implementation process, and detailed provisions relating to training. This includes the creation of an Implementation Training Trust.

The implementation provisions of Article 37 are important and potentially effective in ensuring certain claim processes will be established, for example claim implementation monitoring. Unfortunately, the successful and effective implementation of Article 37 itself is in question.

Of particular concern to NTI has been the failure to create an effective Implementation Panel. After nearly six years, the Panel is still grappling with its mandate and lacks essential procedures for carrying out its responsibilities. Rather than an objective, creative forum, the Panel remains little more than the sum of its constituent parts. Panel

members find themselves unable or unwilling to depart from the positions of their respective organizations. This results in a largely debilitated Panel.

As a result of delays in the completion of the Implementation Training Study and Training Plan, a comprehensive Training Plan is not yet fully implemented. Leaving aside that significant fact, NTI has some concerns with the draft Training Plan in its current form. Some of these concerns have been addressed by the Implementation Panel. For example, the Panel has indicated to the Nunavut Implementation Training Committee (NITC) that the Training Plan must assess training initiatives in light of training objectives and targets. A more specific concern for NTI relates to the training needs of DIOs. NITC expects DIOs to undertake their own evaluation, project management and delivery of training. While training initiatives and funding under the NLCA should not be used to justify reductions in government training programs generally or under Article 23 of the NLCA, all parties would benefit from a greater collaboration on training efforts.

2.1.2: Background

a) The Implementation Contract

The NLCA contains detailed provisions relating to implementation of the Agreement. This includes a set of principles to guide the implementation of the NLCA. These principles should be reflected in the Implementation Plan. The Implementation Plan is set out in a companion document, *A Contract Relating to the Implementation of the Nunavut Final Agreement* (or better known as the *Implementation Contract*).

The *Implementation Contract* describes the specific activities and projects required to implement obligations under the NLCA. It identifies the responsible authorities, levels and sources of implementation funding during the initial funding period, relevant time frames, planning assumptions and communication and education strategies related to implementation.

b) The Implementation Panel

The Implementation Panel is composed of four members: one senior official representing the Government of Canada, one senior official representing the Territorial Government and two representatives of the DIO (NTI). Pursuant to section 37.3.3 the Implementation Panel is mandated to:

- (a) *oversee and provide direction on the implementation of the Agreement;*
- (b) *monitor the implementation of the Implementation Plan, determining whether the ongoing and time-limited obligations, specific activities, and projects have been and are being carried out in accordance with the Plan and in the context of the Agreement and shall for that purpose, without duplicating other independent reviews, arrange for an independent review at five-year intervals unless otherwise agreed by the Panel;*
- (c) *monitor the development of the Implementation Training Plan;*
- (d) *accept or reject, with direction as appropriate, the Implementation Training Plan and monitor its operation when accepted;*
- (e) *attempt to resolve any dispute that arises between the DIO and Government regarding the implementation of the Agreement, without in any way limiting the opportunities for arbitration under Article 38 or legal remedies otherwise available;*
- (f) *when it deems it necessary, revise the schedule of implementation activities and the allocation of resources in the Implementation Plan, obtaining consent of the parties to the Plan where such revision requires an amendment to the Plan;*
- (g) *make recommendations to the parties to the Implementation Plan respecting the identification of funding levels for implementing the Agreement for multi-year periods beyond the initial ten-year period; and*
- (h) *prepare and submit an annual public report on the implementation of the Agreement including any concerns of any of the Panel members, (i) to the Leader of the Territorial Government for tabling in the Legislative Assembly, (ii) to the Minister of Indian Affairs and Northern Development for tabling in the House of Commons, and (iii) to the DIO.*

The costs of the Implementation Panel, with the exception of the costs of the members themselves, are the responsibility of the Government of Canada. Decisions of the Panel are by unanimous agreement of all members.

c) Implementation Funding

Implementation funding is provided for in the NLCA and the *Implementation Contract*. An Inuit Implementation Fund of \$4 million, is held by the Nunavut Trust and administered by NTI. The Inuit Implementation Fund is used to assist NTI in

establishing the DIO responsibilities required for Inuit to carry out their responsibilities under the NLCA and to assist Inuit to take advantage of the economic and other opportunities arising from the NLCA. Training under the NLCA is funded in part by an Implementation Training Trust of \$13 million. Certain other one-time costs are provided for under the NLCA and *Implementation Contract* – for example, the Wildlife Research Fund, Inuit Bowhead Knowledge Study and funding for the Interim Enrollment and initial Appeals Committees.

The ongoing costs of implementation of the NLCA, including those of NTI, the Inuit Heritage Trust and the Nunavut Social Development Council, are primarily funded by interest earned on investment by the Nunavut Trust of compensation monies received by Inuit under the NLCA.

The ongoing costs of the IPGs, Arbitration Board and the implementation obligations of the Territorial Government are funded by the Government of Canada. Levels of funding for the initial planning period (10 years) are set out in the schedules to the *Implementation Contract*. Funding levels for the IPGs and Arbitration Board were negotiated by the parties to the Contract. Funding levels for the Territorial Government were determined by Canada, in consultation with the Government of the Northwest Territories but without the participation of TFN. Implementation costs for the Government of Canada were not disclosed to TFN or to the GNWT and are not reflected in the *Implementation Contract*. Implementation funding levels in the *Implementation Contract* are normalized for the fiscal year and adjusted annually for inflation.

d) Implementation Training

Article 37 provides for the appointment of the Nunavut Implementation Training Committee (NITC) and the Implementation Training Trust. The NITC is responsible for, among other things, administering the Implementation Training Trust, directing the Inuit Implementation Training Study (“Training Study”) and developing and overseeing the fulfillment of the Implementation Training Plan (“Training Plan”).

The Training Study is required to have been started within three months of ratification and completed within six months. Section 37.6.4 requires that the Training Study identify:

- (i) *positions likely to be required to implement the NLCA, including positions within the IPGs and positions within the DIOs required for Inuit to carry out their implementation responsibilities, including those that assist Inuit in taking advantage of the economic opportunities arising from the NLCA;*
- (ii) *the necessary skills and qualifications required for those positions; and*
- (iii) *the implementation training requirements for Inuit respecting those positions, in the short and long term.*

The Training Plan is intended to address the implementation requirements identified in the Training Study. Fulfillment of the Training Plan's requirements is expected to be met by training initiatives funded in part by existing Government training programs and in part by the Implementation Training Trust.

2.1.3: Implementation Contract

The *Implementation Contract* contains an additional set of legal obligations intended to assist implementation of the NLCA. As such, it is a useful document. As a planning tool, however, the *Implementation Contract* is somewhat deficient. This may be because Inuit insisted that the Implementation Plan was to have contractual force. It may be because of a reluctance to enter into commitments with unknown financial implications, government negotiators refused to agree to the level of detail in Schedule 1 of the *Implementation Contract* that would normally be found in a planning document. Thus, Schedule 1 often merely restates the obligation as set out in the NLCA, giving little guidance to the parties as to the specific steps needed to implement a specific obligation. Filling out the Contract with greater detail, either through revisions to Schedule 1 or through a separate planning document would help to avoid disputes and provide greater direction to those responsible for implementation. Where a party has already developed more detailed plans in relation to its own responsibilities, such plans should, where possible, be shared with the other parties.

2.1.4 Nunavut Implementation Panel

The Nunavut Implementation Panel has a pivotal role in the implementation process. Given the importance of that role, the history of the Panel's accomplishments to date has been particularly disappointing, both in the terms of the Panel's failure to assist the implementation process, and in what it reveals about the relationship among the parties.

The Panel is not perceived by NTI and other implementation organizations as an effective body. Rather, the Panel appears to be in danger of becoming irrelevant to the implementation process. In NTI's view, the Panel's ineffectiveness reflects fundamental structural problems as well as unwillingness on the part of the Government of Canada to properly implement the Panel's existing mandate.

a.) Built-in conflicts in make-up of Panel

The structure and make-up of the Panel contain built-in conflicts, which fatally undermine the Panel's effectiveness. Individual members of the Panel are appointed by the parties to "represent" their respective party on the Panel. Article 37 further requires that the government members be "senior officials" within the Government of Canada and the Territorial Government. To date, the government Panel members have been officials from within the Claims Implementation sections of the Territorial Government's Department of Executive and Intergovernmental Affairs (IAA) and the federal Department of Indian Affairs and Northern Development (DIAND). While the NLCA does not require that Panel members appointed by NTI be officials of the DIO, the practice to date has been for the NTI Director of Implementation to be appointed as one of its members.

The appointment to the Panel of government and NTI officials, particularly officials directly involved in implementation activities in their respective organizations, and the requirement that the members represent the parties on the Panel, effectively prevents the Panel from being able to function as an independent, cohesive, objective forum. The same individuals who are responsible for implementation within their respective

organizations are expected as Panel members to make unanimous decisions. In reality, there is a tendency for Panel members to adopt negotiating positions and conduct themselves as adversaries. More often than, this leads to stalemate, rather than creative solutions. For example, on questions of funding and other matters that fall within the mandate of DIAND the Panel finds itself disadvantaged, outweighed by information held exclusively by DIAND.

The situation is compounded by the fact that, while the federal Panel member sits on the Panel as a representative of the entire Government of Canada (as stated in the NLCA) that member is appointed by the Minister of DIAND. This person has traditionally portrayed himself or herself as being accountable only to the Minister of DIAND and with no authority to speak for or give direction to other federal departments. Whether real or self-imposed, the lack of authority over other federal departments severely limits the federal Panel member's ability to deal with matters before the Panel affecting other federal departments.

In NTI's view, unless the Panel has a greater degree of independence from the parties it will continue to be largely ineffective. As discussed below, this includes providing the Panel with its own staff and resources.

b.) Lack of consensus over role and mandate of Panel

From the Panel's inception, the parties have disagreed over the correct interpretation of the role and mandate of the Panel. Over the years, efforts made by NTI and GNWT Panel members to resolve differences with the Government of Canada concerning the proper interpretation of the Panel's mandate and to improve the effectiveness of the Panel have been steadily resisted. The lack of progress in resolving differences among the parties over the scope of the Panel's mandate has contributed to a significant loss of confidence in the Panel as a useful and effective forum.

In NTI's view, the provisions of Article 37 require the Panel to be much more proactive than it has been to date. Contrary to the position taken by the federal government, the

obligations to “oversee” and “provide direction” and to “monitor” do not all mean the same thing, i.e., “to monitor.” The obligations to oversee and to provide direction on the implementation of the NLCA require that the Panel actively supervise the implementation process, obtaining and providing information to the parties as needed.

The Panel has been particularly ineffective in its dispute resolution role. NTI perceives that there is also a general reluctance on the part of government Panel members to actively get involved in and deal with disputes among the Parties.

c.) Lack of formalized Panel operational rules and procedures

NTI and GNWT Panel members have attempted over the years to introduce draft Panel procedures, processes, workplans and budgets. The Panel continues to operate without adequate, effective and predictable rules and procedures in relation to the most important aspects of the Panel’s mandate: oversight and provision of direction, monitoring and dispute resolution. The absence of Panel rules and procedures promotes an “ad hoc” response to matters before the Panel, keeps the Panel in a “reactive” rather than a “proactive” mode, and creates uncertainty for persons and bodies dealing with the Panel.

In order to properly perform its monitoring function, the Panel must have its own capacity to monitor implementation of the NLCA and *Implementation Contract* and the Implementation Training Plan. It is not enough simply to rely on the individual parties, departments and claims created bodies to provide reports to the Panel. The Panel needs to take the lead in identifying potential problems and assisting the parties in working out solutions before a breach of the NLCA occurs.

The Panel has, at various times, discussed the need for, but never implemented, an effective tool for carrying out its monitoring function. Various proposals have included GANT charts and an electronic monitoring system that could be used by all of the parties. NTI believes that such a tool is critical to enable the Panel members to share an umbrella perspective on implementation and to assist the Panel in identifying and dealing with potential problems and resourcing needs. This would help in developing a more efficient

and coordinated approach to implementation. The sharing and pooling of information on implementation matters through the Panel would achieve other efficiencies as well. It would assist NTI and other DIOs and claims created bodies in the often difficult, and costly exercise of trying to track down information from within government. It would also relieve NTI of some of the burden of monitoring which it has had to assume by default.

d.) Panel requires dedicated staff and resources

In order to carry out its important mandate, the Panel needs to be equipped with its own staff and resources. At present, the Panel relies upon DIAND staff for administrative support. As a result, although the DIAND staff perform functions on behalf of the whole Panel, they are accountable only to the federal Panel member. In addition, these staff persons may also report to the DIAND Panel members in their day-to-day DIAND functions. Dependence on DIAND for administrative support disadvantages NTI and the Territorial Government, in terms of achieving fair and objective implementation.

Similarly, without an adequate, known budget, the Panel members are dependent upon the federal government representative for approval of Panel activities.

Finally, the Panel needs a greater time commitment from the Government of Canada than the current allocation of four meetings a year. As NTI has consistently maintained, quarterly meetings do not provide the Panel with sufficient time to properly carry out its duties in accordance with the spirit and intent of the NLCA.

The low priority given to the work of the Panel by the Government of Canada has been recently illustrated in the replacement of the federal government member with a less senior official who promptly went on French training for “an indefinite period of time”.

Equipping the Panel with its own discrete budget, and a small, but dedicated staff, would assist the Panel in adopting a more independent, even-handed and proactive approach in carrying out its mandate.

e.) Inadequate communications from Panel on implementation

Although a draft communication strategy was prepared by GNWT and NTI Panel members in the early days of the Panel, the Panel has never adopted a formal communications strategy. With the exception of the annual report and any circulation of minutes of Panel meetings by Panel members to their respective parties, the Panel does not engage in regular communication on its activities or on implementation matters generally. As a result, there is little awareness in Nunavut about the Panel and its role. Persons and bodies that do appear before the Panel are uncertain and confused about the Panel's mandate, procedures and expectations. The Panel needs to ensure that the Nunavut public and other interested bodies are properly informed about the role and work of the Panel and kept up to date on the progress of implementation.

In summary, Should the Panel be replaced by an independent Commission? Should the Panel be made to be clearly independent in make up?

NTI is not stating a definitive recommendation here on this but believes that the Panel needs to thoroughly develop a clear mandate and role in claim implementation and monitoring to be effective. If that entails re-shaping the Panel to the extent that it is a very different looking and acting body to satisfy that requirement than that is what should happen since, to NTI effective claim implementation and monitoring is the most important priority.

2.1.5 Implementation Funding

a.) Disclosure of Bilateral Funding Arrangements

All Nunavut Implementation Panel members are not in an equal position to understand the current financial circumstances and past financial performance of the various IPGs. Specifically, the Government of Canada's bilateral financial arrangements with the IPGs, and its reluctance to share the details of those arrangements with NTI and the territorial government, have placed NTI and the territorial Panel members at a tangible

disadvantage. Requests for increases in funding, or for reallocation of funds have come before the Panel, and only the federal panel member has adequate information to assess the reallocation needs of the IPGs, a distinct Panel function.

The Government of Canada should reexamine its reluctance to share with other Panel members the details of its bilateral financial arrangements with the IPGs and should develop, with NTI and the Government of Nunavut, a common understanding as to the sharing of such information.

b.) Determination of present and future implementation funding needs

In addition to problems related to the funding mechanism, IPGs have questioned the adequacy of overall funding for the purpose of properly carrying out their duties. The adequacy of funding for specific items such as honoraria rates for board members has also been questioned. Also, as noted elsewhere in this Review, questions concerning funding requirements for matters that may not have been considered in the determination of funding for the initial planning period -- costs of negotiation of IIBAs, intervenor funding for public hearings, *etc.* -- need to be addressed.

NTI believes that an independent assessment of implementation funding requirements is both timely and necessary. The assessment, which could be conducted under the direction of the Implementation Panel, would provide the Parties with an objective analysis in preparation for entering into funding negotiations for the next planning period.

A process and timetable for negotiations of implementation funding for the next planning period should be developed and agreed to, with negotiations commencing no later than July, 2000.

2.1.6 Nunavut Implementation Training Committee

By August 1994, the NITC had produced the Training Study required under section 37.6.4 of the NLCA. Two years then elapsed before the acceptance by the Implementation Panel of the Training Plan under section 37.7.4 of the NLCA. Even then,

acceptance of the Training Plan by the Panel was qualified. The Panel's approval of the Training Plan was conditional upon NITC submitting a workplan each year for Panel review.

The Panel's initial qualifications have continued to be relevant to the Panel's assessment of the Training Plan. The Panel has made recommendations for changes to the NITC's annual workplan and to the Training Plan itself. Panel recommendations have included:

- the completion of protocol agreements with DIOs and other Inuit organizations receiving funding for training;
- an increase in focus on training for Hunters and Trappers Organizations and Regional Wildlife Organizations;
- identification of existing government training programs; and,
- the important component that NITC Workplans and the Training Plan repeatedly failed to include, precisely:

...a procedure to assess the effectiveness and appropriateness of training initiatives undertaken that will measure the degree to which the objectives, goals and planning assumptions have been realized in each fiscal year of operation.

At an August 1998 Panel meeting in Ottawa, the Panel reviewed an April 27, 1998 report from the NITC. This report was supposed to contain responses to these recommendations. It was evident that the NITC had failed to incorporate these recommendations in its 1998-99 Workplan, but it did make efforts to implement them.

At its December 1998 meeting, the Panel continued to be reluctant to give unqualified support to the Training Plan. At that time, the Panel sought assurance from the NITC that provisions to assess training initiatives against training objectives -- a crucial component of any effective training plan -- would be incorporated into the Training Plan.

Related to this point, the Panel has concluded that it is inappropriate for the NITC to allocate funds from the Training Trust to, for example, purchase seats for trainees in training courses and workshops pursuant to a workplan without first specifying how these

training initiatives will be assessed against training objectives. In that regard, an overall system to determine the effectiveness of the training initiatives in fulfilling the requirements and objectives of the Training Plan is critical. Such a system is needed to determine whether training initiatives meet specific training objectives directly linked to skills and qualifications for targeted positions required to implement the NLCA. The Panel considered this problem to be as fundamental as the fact that both the Training Plan itself and the annual workplans were lacking in training objectives and training targets.

Notwithstanding the Panel's willingness to offer only qualified approval of the NITC's work, the Panel has recently observed material progress being made in some areas. At the December 1998, meeting of the Panel, the NITC provided a very thorough update, indicating that NITC is now pursuing a number of promising training initiatives and is incorporating Panel recommendations into its work as well.

For its part, NTI accepts the point made by NITC that "... [NITC] has neither the mandate nor the resources to act as a 'training department' for all Nunavut organizations." NTI notes that, in accordance with the Panel's recommendation, NITC will be negotiating training protocols with Inuit organizations to include a comprehensive list covering assessment and evaluation methodology to be undertaken by the respective organizations when using NITC funding for training initiatives.

NTI supports this approach but cautions that Inuit organizations have a completely separate mandate from training. It may be unrealistic to expect Inuit organizations to undertake all of the work required to ensure that an assessment has been undertaken for each training event. For example, it is perhaps not appropriate to expect that, for a specific training event for one or more employees, an Inuit organization will establish the administrative infrastructure necessary to manage and run that training. In short, NTI believes that the NITC's expectations with respect to the level of participation of Inuit organizations in evaluation, project management and delivery may need to be reassessed.

Section 2.1

Tools of Implementation

Statement of Position

NTI Statement of Position 2.1-1

Role of the Nunavut Implementation Panel or Replacement Body

The Panel must adopt a more pro-active or assertive approach when soliciting claim implementation problems from claim bodies if it is to fulfil this general mandate of providing direction on implementation of the Agreement.

It is acknowledged that these two options may overlap in whole or in part.

A joint review of the role and terms of reference of the Nunavut Implementation Panel should be conducted by the Parties as a top priority. The object of the review should be to reach agreement on either the role of the Panel and the scope of its mandate or, alternatively, on a body to replace the Panel. A review of the Panel's role and mandate should include the following options:

1. confirmation that the Panel is to play a "hands on" role in implementation and identification of ways to clarify and strengthen that role, including, but not limited to:
 - (i) changing how appointments are made to overcome the Panel's history of internal conflicts;
 - (ii) providing the Panel with its own budget and staff;
 - (iii) requiring the Panel to develop, in consultation with the Parties, a comprehensive set of Panel operating rules, procedures and processes designed to facilitate the proper fulfillment of all aspects of its mandate;
 - (iv) ensuring the production of implementation reports from time to time written by the Panel and at five year intervals to be disseminated to the public and claim bodies. The reports should include recommendations by the Panel on all of those obligations, specific activities, and projects that have not been carried out in accordance with the Panel's views;
 - (v) making inquiries to the claim bodies regarding obligations not carried out to determine why the obligation has not been carried out on time and determine with the bodies how to get the obligation(s) carried out to completion; and
 - (vi) requiring the Panel to develop and implement a communication strategy for the purpose of informing interested persons and bodies on the work of the Panel and a procedure for bringing matters before the Panel and providing regular updates on implementation matters;

2. agreement that the Panel's role should be more focused on problem-solving and identifying ways to strengthen that role;
3. agreement that Panel key discussions revolve around clearly stated tasks/activities instead of on differences in interpretation of what is to be done about such issues as above; and
4. agreement that the Panel should be replaced by an independent, corporate implementation body.

NTI Statements of Position 2.1-2

Improved Detail and Predictability in the Implementation Contract

The implementation activities set out in Schedule 1 of the *Implementation Contract* should be supplemented with more specific details, either through revisions to Schedule 1 or through a separate planning document, to assist in avoiding disputes between the Parties and to provide greater direction to those responsible for implementation and/or monitoring implementation. Where a Party has already developed more detailed plans in relation to its own responsibilities, such plans should, where possible, be shared with the other Parties.

NTI Statements of Position 2.1-3

Funding of Institutions of Public Government (IPGs)

1. Not all Nunavut Implementation Panel members are in an equal position to understand the current financial circumstances and past financial performance of the various IPGs. This places NTI and territorial Panel members at a tangible disadvantage in assessing reallocation needs of the IPGs. The GOC should re-examine its reluctance to share with other Panel members the details of its bilateral financial arrangements with the IPGs and should develop, with NTI and the GN, a common understanding as to the sharing of such information.
2. Individual IPGs have raised questions regarding the adequacy of overall funding for the purpose of carrying out their duties. Other IPGs have substantial surpluses. The Nunavut Implementation Panel should be provided with adequate resources to conduct independent analyses of the workplans, financial performance and projected needs of IPGs.

NTI Statements of Position 2.1-4

Funding Negotiations for the Second Planning Period

An independent assessment of implementation funding requirements, should be undertaken by the Panel.

1. The Panel should undertake a study to determine current funding issues and to provide an independent analysis for the purpose of negotiating funding for the second planning period.
2. A process and timetable for negotiation of implementation funding for the second planning period should be developed and agreed to, with preliminary negotiations commencing at least two years before the completion of the first ten year period.
3. Sufficiently in advance of negotiation of implementation for the next planning period, NTI should be supplied with an accounting as to the fate of monies allocated in the *Implementation Contract* to the Territorial Government for implementation responsibilities.

NTI Statements of Position 2.1-5

Nunavut Implementation Training Committee (NITC)

1. All training initiatives funded through the NITC should be tied to specific implementation training requirements respecting positions required to implement the NLCA under the Implementation Training Plan. A system should be in place to determine the effectiveness of the training initiatives in fulfilling the requirements and objectives of the Implementation Training Plan, *i.e.*, to determine whether they meet specific training objectives directly linked to skills and qualifications needed for targeted positions.
2. All training initiatives must be funded in accordance with section 37.7.2 of the NLCA. Specifically, the Implementation Training Plan must identify existing Government training programs which meet Inuit implementation training requirements in the Plan. Training initiatives may be funded out of the Implementation Training Trust only where training requirements cannot be met under Government training programs.
3. A joint effort should be made by NITC, the GN and GOC to co-ordinate their training efforts within and across their respective responsibilities.
4. NTI supports the general proposition that Inuit organizations should be involved in the planning, design and execution of training initiatives under

the Implementation Training Plan. Inuit organizations should not, however, take all responsibility for ensuring and assessing the success of such efforts. NTI supports the development of training protocols between NITC and Inuit organizations with the goal of reaching a mutual understanding of Inuit organizations' participation in project management, delivery and evaluation of training initiatives. NITC should identify how it will support Inuit organizations, in ways beyond providing financial support, to assess training efforts and results.

5. NTI notes that NITC expects Inuit organizations to build the capacity to offer training in-house, thereby avoiding or minimizing the need for outside consultants. NTI believes that Inuit organizations will need further assistance from NITC in order to achieve this result.
6. The capital of the Implementation Training Trust should be preserved for the benefit of Inuit in the future.

Section 2.2: Legislation to Set Forth Substantive Powers, Functions and Objectives of s. 10.1.1 Institutions (NLCA s. 10.2.1)

2.2.1: Summary

NTI has endured five years of frustration in its consultation with the Government of Canada on implementation legislation under Article 10 of the NLCA. Huge amounts of financial and human resources have been invested in what, in NTI's view, is a badly flawed process. Despite these efforts, no legislation has been enacted under Article 10. A *Nunavut Water Board and Nunavut Surface Rights Tribunal Act*, which NTI opposes, received first reading in the House of Commons, but has since died on the order paper. The parties have not begun consultation on NIRB and NPC legislation.

NTI attributes this state of affairs to DIAND officials' unwillingness to fully implement the spirit, intent and words of the NLCA in this legislation. The Government of Canada's approach has typically been adversarial, with an apparent goal of obtaining concessions from Inuit that it did not obtain during the negotiations of the NLCA. The Government has failed to treat NTI as a party to the treaty that the proposed legislation is intended to further implement. Instead, it has acted as if NTI were an interest group with which it is obliged to meet while pursuing its own policy objectives. These objectives appear largely to be to maintain the *status quo* in the regulatory regime. This amounts to a failure on the part of the Government to fulfil its fiduciary duties to Inuit, and its Constitutional obligation to consult closely with Inuit on this legislation.

Specifically, the Government of Canada's consultation process under Article 10, described in detail below, has been plagued by the following types of conduct, among others:

- tabling draft text that reflects (usually unstated) government policy or administrative objectives, to the detriment of consistency with the substantive text of the NLCA;
- tabling draft text that conflicts or is inconsistent with the spirit and intent of the NLCA;

- long periods of inactivity or silence followed by demands for NTI's response to drafts within extremely short time frames;
- tabling new draft text that departs from the text or spirit and intent of the NLCA, without warning, adequate explanation, or, often, sufficient time to respond;
- failure to provide adequate explanation or justification for draft text that departs from the NLCA;
- repeated rejection of NTI proposals that reflect provisions of the NLCA without adequate explanation;
- promotion of the position that, since the NLCA prevails over inconsistent legislation, it should not matter if legislation is inconsistent; and
- terminating consultation before its conclusion.

Notably, this conduct contrasts sharply with the process that surrounded the legislation to implement Article 4 of the NLCA. The legislation that emerged from that effort was a mature product of a collaborative effort among the federal and territorial Departments of Justice, the Office of the Interim Commissioner and NTI. Central to this effort was an effective, consensus-oriented tripartite legislative working group, which reviewed and agreed on drafting instructions, background to drafting instructions, and legislative language. The result was a complex package of legislation, including detailed amendments to the *Nunavut Act* and the *Constitution Act*, legislative changes to establish a single level trial court in Nunavut, and changes to territorial legislation.

NTI is calling for a new approach to the remaining implementation legislation under Article 10. The main attribute of this new approach is for the parties to engage in a genuine partnership in the development of legislation as parties to the treaty that is being further implemented by the legislation. Such a role would, of course, not undermine the role of the sponsoring Minister, who must approve the bill, or of Parliament, as the bill would be subject to the usual legislative process and scrutiny.

2.2.2: Background

The Government of Canada made a solemn undertaking in section 10.1.1 of the NLCA to establish four institutions of public government in accordance with the Agreement within a specified period of time, specifically, the Nunavut Surface Rights Tribunal (SRT), by January 9, 1994, and the Nunavut Water Board (NWB), Nunavut Impact Review Board

(NIRB) and Nunavut Planning Commission (NPC), by July 9, 1995. The Government is required to set out the substantive powers, functions, objectives and duties of these institutions in statute (s.10.2.1).

Since 1995, the Government of Canada has been in breach of its obligations under section 10.2.1. At the end of two years following ratification of the NLCA, only the drafting of the SRT bill, which was still the subject of disagreement on numerous issues, had been completed. Fortunately, Inuit negotiators foresaw the need to provide a set of remedies in the event of a breach of the commitment to pass the legislation within the established time frame. Thus, section 10.10.1, effectively a default provision, provides that the institutions shall be established by the terms of the NLCA within one year from the date legislation was to have been passed, and that they "shall be considered to have, for the purposes of law, all the powers and duties described in the Agreement."

Appointments were not made to the SRT until April 25, 1996, over two years late. Appointments were made to the NWB, NIRB and the NPC on July 9, 1996. Since their establishment, these institutions have been carrying out their functions under the NLCA without specific legislation. The absence of legislation, however, creates a public perception of uncertainty with respect to resource management in Nunavut, which the settlement of land claims had promised to eliminate. Such a perception can be traced directly to the Government of Canada's breaches of its constitutional obligations, which seriously damages the integrity of the NLCA.

a.) Consultation Requirements

Section 2.6.1 of the NLCA states that:

2.6.1 Government shall consult closely with a DIO in the preparation of any legislation proposed to implement the Agreement, including any amendments to implementing legislation.

The process by which the Government of Canada consults with Inuit in preparing implementing legislation must satisfy judicial pronouncements on the issue. In addition, it must satisfy fiduciary obligations owed to Inuit, particularly where there are differences

of interpretation of provisions of the NLCA on which the legislation is to be based. In NTI's view, the Government of Canada's process has not met its legal and fiduciary obligations to Inuit.

2.2.3 Discussion

An in-depth analysis of the development of Bill C-62, the draft *Nunavut Water Board and Surface Rights Tribunal Act*, reveals layers of breaches of the Government of Canada's constitutional obligations, both in terms of its consultation duties, and the substance of the Bill. Below, NTI reviews the consultation process, identifies some major substantive issues, and makes specific proposals to bring the consultation process in line with the Government of Canada's obligations.

a.) SRT Legislation Consultation

Prior to the settlement of the NLCA, TFN participated with government in drafting guidelines for a *Nunavut Surface Rights Tribunal Act*. On September 9, 1993, NTI received a copy of the first draft of the bill, and shortly thereafter participated in the first meeting of a legislative working group to develop legislation in relation to the institutions created under the NLCA.

The draft Act departed from the NLCA in serious and fundamental ways. From the first working group meeting, NTI maintained that the NLCA must be the point of departure for giving legislative definition to the objects, powers and operations of the institutions under the NLCA. Specific provisions of the draft Act not only contradicted the NLCA, but the general tone of the draft distorted its spirit and intent. It did this by subtly reversing the language of the NLCA to give emphasis to the rights of developers, tipping the balance away from Inuit rights as land owners. For example, it omitted key provisions of the NLCA that are essential to an understanding of the context in which the SRT, a land rights dispute tribunal, operates. This included a general prohibition to access to Inuit Owned Lands without the consent of Inuit. As a result, the draft Act was unfaithful to the balance of competing interests achieved by the NLCA.

Although changes were made to the draft Act as a result of NTI's input, successive drafts continued to suffer from major defects. In NTI's view, the failure to achieve significant changes stems not from any weakness in NTI's position, but, rather, from the approach of the Government of Canada's officials. The NLCA represents the culmination of 20 years of negotiations. Rather than engaging in a good faith effort to achieve legislation that reflected the language, spirit and intent of the negotiated document, government officials seemed bent on codifying the Government of Canada's negotiating positions. As stated in a letter dated April 19, 1994 by then-Implementation Director Paul Okalik:

... I wish to express my disappointment at the process to date. Nunavut Tunngavik has made it quite clear from the beginning of our discussions that any draft bill must in no way deviate from or compromise the complex web of obligations and responsibilities that constitute the Nunavut Agreement. Yet, when we have repeatedly emphasized objections based on our commitment to preserve the integrity of the Nunavut Agreement, we have received a series of largely unaltered drafts. The current draft, like previous ones, is not acceptable to Nunavut Tunngavik in its present form; the prospects for further meetings on draft surface rights legislation is dependant on whether your Department is prepared to develop a draft that is truly neutral to the twenty years of negotiations encapsulated and given the force of law in the Nunavut Agreement.

NTI's concerns went unaddressed, resulting in a February 21, 1995, letter from NTI President Jose Kusugak:

*... NTI has on several occasions voiced its objections to the substantive provisions of the Bill and the process of consultation with Inuit. **This process has been marked with confrontation and a refusal on Canada's part to engage in a meaningful discussion of the issues which NTI has identified. The latest proposed revisions. . . clearly demonstrate Canada's complete unwillingness to take seriously its responsibilities to implement provisions of the Nunavut Agreement, in close consultation with Inuit, in a manner consistent with Canada's fiduciary duties.***

... Throughout these discussions, NTI has maintained the view that the draft Bill departs in fundamental ways from the Nunavut Agreement and has raised serious concerns over the way in which NTI's views on these matters have been treated. In spite of these concerns, NTI has continued to participate in the process and to invest enormous amounts of time and effort to ensure that the draft legislation accurately and effectively implements provisions of the Nunavut Agreement. [emphasis added]

The expenditure of these resources has only paid off for Inuit in small ways over long periods of time. In June 1995, ADM John Rayner finally advised Mr. Kusugak that the Government of Canada would recognize in the SRT bill that Inuit control access to Inuit Owned Lands. Not until the November 1994 draft did the Government of Canada concede the SRT having limited jurisdiction on Crown lands in Nunavut, and, finally, the

May 14, 1996 draft extended its jurisdiction to all lands in Nunavut. These are typical of the efforts NTI has had to engage in to make small gains reflective of the NLCA.

During 1995 and 1996, communication on the bill was sporadic. On November 6, 1996, NTI wrote to the Government of Canada detailing its outstanding concerns with the draft Act. On April 4, 1997, the Government of Canada responded with a revised draft bill and letter noting certain changes made and not made. (A number of NTI's stated concerns were not noted.) Government of Canada officials did not communicate in writing with NTI regarding SRT issues after that date. The record is clear, however, that both parties considered this consultation ongoing, albeit delayed. On October 2, 1997, NTI wrote to DIAND, stating that

...there a number of unresolved issues with respect to the draft SRT Bill that require discussions between us. We would appreciate your advice as to any intention on DIAND's part to introduce that Bill.

On February 20, 1998, the Minister wrote to Mr. Kusugak of the Government of Canada's intention to introduce a combined SRT-Waters bill some time in the spring session. Then, with no further consultation, on March 4, an official telephoned NTI's counsel informing him that NTI had only until the end of the day on March 6 to comment on the combined bill.

In sum, the parties had exchanged written positions 11 months previously. At this time, the Government of Canada informed NTI that it had effectively terminated the consultation and would introduce this treaty implementation legislation immediately. This is contrary to the stated assumptions of their representatives in the interim, and came without previous notice. It is important to note that this consultation was terminated, not successfully completed. The Government of Canada did not assert that the process was complete, but rather stated, by February 27 letter, that "[i]n order to meet a spring deadline, we need to conclude the consultation process."

b.) SRT Legislation — Substantive Issues

Following are some examples of how issues raised by NTI have been addressed by the Government of Canada.

(i) Prohibition on Access to Inuit Owned Lands and SRT Jurisdiction. It took over one and one-half years to obtain recognition of Inuit control to access to Inuit Owned Lands in the SRT bill, and two and one-half years to achieve SRT jurisdiction over all lands in Nunavut. These processes are described in the previous section.

(ii) Limitation on Developer's Liability. The September 1993 draft SRT bill had an arbitrary limit of \$1 million on a developer's liability in the event of a catastrophe such as a tanker spill in Lancaster Sound. The Government of Canada provided no expert analysis substantiating this figure, which, under the NLCA, must be sufficient to cover *reasonably foreseeable damages*. Following NTI's continuing objections, this limit was removed a year later in November 1994, and then an equally arbitrary \$10 million limit was inserted almost two years later in May 1996. In October 1996, the limit was increased to \$20 million. This time, DIAND provided a document entitled "*Limits of Liability under Nunavut Surface Rights Tribunal Bill*," from its Resource Policy and Transfers Directorate. In November 1996, NTI wrote DIAND with four pages of concerns regarding its document, which NTI found to be "quickly presented and not based on solid research and effort." In its April 1997 response, the Government of Canada defended its limit, without analysis, stating that wildlife loss or damage "could be satisfied with a liability limit of less than \$1 million," and that the \$20 million cap was introduced to ensure "a generous margin of error."

DIAND never responded to NTI's specific concerns with DIAND's analysis. Finally, in August 1998, NTI commissioned and provided to DIAND, at its own expense, an expert analysis of the limits of developers' liability from specialists in oil spill damage analysis. That report demonstrated that the current proposed ceiling of \$20 million is low by at least 100%.

- (iii) Inuit Collective Right to Compensation.** Section 6.1.1 of the NLCA states that a “claimant” for the purposes of Article 6 “means Inuit or an Inuk”. This provision entitles Inuit to seek compensation for damage to wildlife on a collective basis, a clear, substantive right of the NLCA, which recognizes the collective basis on which all aboriginal treaties are negotiated. Government of Canada officials proposed to deny Inuit their right to collectively claim compensation by eliminating one-half of the NLCA definition and defining a claimant as “an Inuk.” Officials defended this rewrite on the ground that “Inuit” should be interpreted only to mean the plural of individuals, in disregard of constitutionally recognized collective rights. After two officials’ meetings failed to change the Government of Canada’s position, NTI had to take this matter to the Minister before this provision was finally changed to reflect the NLCA in the November 13, 1998 draft.

c.) NWB Legislation Consultation

(i) Initial Government Delay. Officials of the Government of Canada, the GNWT and NTI first met in September 1993 to discuss legislation to establish the SRT, NWB, NIRB and NPC. Notwithstanding a number of requests to DIAND, no further discussions took place on legislation in relation to the NWB, NIRB or NPC for the next two years.

(ii) Preemption of Joint Process. As a result of meetings involving the President of NTI in the spring and summer of 1995, it was finally agreed that discussions would commence on legislation for the NIRB, NWB and NPC with a joint workshop. At this workshop, held in October 1995, participants discussed principles to guide the development of legislation. As follow-up, in January 1996, Government of Canada officials circulated draft principles based on the workshop discussions.

Then, on February 9, 1996, before NTI had an opportunity to comment on the draft principles, the Government of Canada preempted the agreed process by distributing completely drafted legislation for each of the three institutions! NTI was given no

warning that this draft legislation was about to be circulated, had not seen it before, and was one name on a general distribution list.

The cover letter indicated the Government of Canada's unilateral intent to incorporate the three draft Bills into one *Nunavut Resource Management Act* to be finalized by the first week of May. Although NTI had initially supported one act for all the institutions as the best way to implement the NLCA's intent, this approach had been set aside in the interest of getting legislation for the NWB enacted. In any event, the Government of Canada's proposed time frame would have certainly resulted in violations of its fiduciary and consultation obligations.

(iii) Less than three months consultation on Bill C-51. NTI was faced with a difficult choice when the Government of Canada unilaterally disregarded the joint process and imposed its own agenda. NTI believed that it would be justified in refusing to participate in any further discussions on the legislation in view of the Government of Canada's apparent bad faith. If NTI agreed to participate in the review of the draft legislation according to the extremely restricted agenda, its ability to provide meaningful input would be severely limited. On the other hand, NTI was concerned that the institutions be able to operate with a clear mandate upon their establishment on July 9, 1996. With respect to the NWB, legislation would assist in providing important detail not set out in the NLCA. NTI, therefore, felt it had no option but to agree to try to work with the Government of Canada on the draft *NWB Act* to ensure that the legislation was in accordance with the NLCA. Given the short time frame, NTI's agreement was premised on the condition that the remaining two draft Acts be withdrawn for the time being to allow as much time as possible on the draft *NWB Act*.

In a pattern typical of the consultations, discussions did not begin on the draft *NWB Act* until April 1996. While some progress was made, it soon became clear that major differences existed that could not be resolved in a few short weeks. Notwithstanding a significant number of outstanding issues, NTI was advised by Government of

Canada officials that the bill would be tabled before the summer recess. On June 13, 1996, James Eetoolook, NTI's 1st Vice President, wrote a letter to the DIAND Minister requesting that the Minister refrain from tabling the bill until NTI's concerns had been adequately addressed. That request was refused.

As a result of the above process, NTI appeared before the Standing Committee on Aboriginal Affairs and Northern Development in November 1996 with a long list of outstanding issues. Many of these issues might have been resolved had the Government of Canada fulfilled its consultation obligations. At that time, consultations had been ongoing on the draft SRT Act for over three years. The draft *Mackenzie Valley Resource Management Act* had been the focus of consultation with aboriginal groups for about five years. Yet, the Government of Canada cut off consultations on the draft *NWB Act* after only a matter of weeks.

At the hearing, the Standing Committee took the unusual step of deciding that the NWB bill was not ready to proceed, leaving it to DIAND to consult further with NTI. The Committee took this step notwithstanding that DIAND officials had told the Committee that they thought the Government's duty to consult closely on the legislation with Inuit had been fulfilled.

(iv) Post Hearings: Sporadic Consultation Continued. Only two meetings to resolve the above issues were held in the remaining weeks of 1996, and there was no further consultation until March 3, 1997, when the Government of Canada delivered to NTI proposed changes to Bill C-51 based on the two meetings.

Following further exchanges, on June 27, 1997, a new draft bill was given to NTI. The following day, Government officials announced to NTI the Government's intention to introduce the bill in early September. At the same time, they made it clear that Justice drafters could not work on the bill during the summer. Justice drafters, however, had not yet prepared provisions which had been promised to address one of NTI's primary concerns, the interrelationships between the institutions

of public government. Given the importance of the interrelationships issue and the other unresolved aspects of the bill, DIAND's course of action was obviously unworkable and, in NTI's view, violated the Government's consultation obligations.

In late September 1997, the Government of Canada circulated a new draft bill and the promised interrelationships language to NTI, and shortly thereafter, on October 2, it notified NTI of its intent to introduce the bill in early November. NTI renewed its request that the bill not be introduced until full consultation on these provisions had taken place. NTI had first provided draft interrelationship language to DIAND in November 1996. The amount of time that passed since the June 1997 meeting at which DIAND promised this language does not seem reasonable. At meetings on October 15 and 16, however, DIAND officials could not assure NTI that the bill would not be introduced in early November.

Government of Canada officials were not able to meet again until November 3. On that date, officials notified NTI of a Director General decision not to introduce the *NWB Act* until February 1998, to enable the parties to conclude their work on the critical interrelationships provisions. When the meeting concluded, NTI undertook to provide written comments on the text under discussion and DIAND undertook to develop and provide NTI with resulting draft text for the parties to discuss further. NTI provided its comments on November 17. On November 24, DIAND officials indicated that they would not be in a position to provide promised revised language or to meet with NTI until early December. Then, on December 16, officials advised that revisions would not be available until after the New Year. NTI received no response to inquiries in late January and mid-February, and no new language.

On February 20, 1998, the Minister informed NTI that a combined NWB and SRT bill would be introduced in the current session of Parliament. Approximately ten days later, NTI received a couriered draft bill, and a phone call from a DIAND official stating that the Bill would be going to print in two days and that NTI had until then to comment on the text. The new bill contained a substantial amount of text on

the issues under discussion in the consultation that NTI had never seen, and failed to address issues that had been under active discussion between the parties.

NTI immediately advised the Government of Canada that:

- there had been no discussion on outstanding NWB items since November;
- no consultations had been held with NTI regarding the SRT bill since the summer of 1997, although significant issues remain outstanding;
- NTI had not been consulted on new language contained in the March 2 draft bill; and
- while NTI supported the Minister's goal of tabling legislation that spring, this could not be achieved without further compromising the consultation process.

Notwithstanding NTI's objections and plea for modest additional time, as best NTI has been able to ascertain, only the House Leader's change in the legislative agenda prevented the bill from being introduced in the spring 1998 session of Parliament, in clear breach of the Crown's treaty and fiduciary duties to Inuit. In early April 1998, and, again, without consulting NTI on the decision, the Government of Canada advised verbally that it intended to delay introduction of the bill to the fall 1998 session and to introduce one bill at that time that would include NPC and NIRB legislation. NTI wrote DIAND again objecting to this latest decision. NTI noted:

- the need for NWB legislation;
- that tying this bill to NIRB and NPC legislation, on which consultation had not begun, and hoping for fall passage was entirely unrealistic;
- that this decision was contrary to the Government of Canada's constitutional obligations to aboriginal people to enact such legislation; and
- that, if the necessary resources were committed, consultation on outstanding water issues could be completed in a few weeks.

NTI's objections were rejected. Later, in May 1998, responding to NTI's protests, DIAND attributed its March attempt to proceed with legislation to DIAND's perception that NTI was raising no new issues in the consultation. In light of the

active consultation that had been cut off and the undertakings that had been broken, these statements may be intended to deflect legitimate criticism of DIAND's conduct of the consultation.

(v) **Consultation Breakdown.** In March and April, NTI pressed DIAND to take advantage of the available time to try to resolve many of the outstanding issues. Consultation did resume in the summer of 1998, and was to proceed in accordance with detailed terms of reference agreed to by the parties on July 2. The terms of reference provided for a 15-day meeting schedule.

The agreed-upon schedule was overtaken on July 16, 1998, when the Government of Canada informed NTI that, to meet a fall introduction schedule, the House Leader must receive the NWB and SRT bill by August 15, but that DIAND's counsel, whose attendance was critical to the consultations, would not be available until August 4, 1998. DIAND's counsel had not met with NTI since November 1997.

In an effort to address the Government's timing concerns, NTI agreed to drop one-half of its outstanding issues from the officials' table, which, while important, were not likely to gain ground at the official's level. In addition, on July 28, NTI's Executive Director agreed with DIAND Director General Hiram Beaubier to a revised rigorous consultation schedule, which included participation of DIAND's legal counsel, targeting August 12 for completion.

Then, on August 3, 1998, Government officials informed NTI that DIAND's counsel would not be available before August 10, leaving only two days until the target completion date. On August 11, the Government confirmed that its counsel would not be available for the remainder of the week. At this point, NTI advised the Government of Canada that it could not participate further in view of DIAND's breach of the agreement that its legal counsel would be available for the meetings.

In late September, Mr. Beaubier informed NTI that the Government still planned to introduce the bill in the fall of 1998. By letter dated September 25, 1998, NTI President Jose Kusugak advised the Minister of DIAND that, due to the breakdown in consultation and the bill's outstanding defects, NTI would oppose introduction unless these problems were remedied.

(vi) New Language/No Consultation. In October 1998, NTI met and corresponded with Government of Canada officials in an attempt to resolve outstanding issues. The Government circulated a November 13 draft bill, which, remarkably, contained entirely new language on the interrelationship between the NPC and the NWB, never before shown to or discussed with NTI. NTI opposed this language because it is inconsistent with the NLCA. Not only was there a lack of close consultation on these provisions, there was no consultation whatsoever.

In response to NTI's intention to oppose the bill as a whole, the Minister met with Mr. Kusugak on November 25. None of the substantive points raised by Mr. Kusugak with the Minister was addressed by Bill C-62 when it was introduced on December 4, 1998.

d.) NWB Substantive Issues.

NTI has raised a large number of concerns, both major and minor, relating to the inconsistency of the NWB legislation with the NLCA. Many of these concerns were raised upon receiving the first drafts of these bills, through NTI's November 18, 1996 Submission to the Standing Committee on Bill C-51, and are still being argued. Huge amounts of resources have been expended in this effort.

NTI believes that most of this effort would have been unnecessary had the Government of Canada approached this implementation legislation the intent to implement the spirit, intent and words of the NLCA. Instead, NTI has found that the Government of Canada's approach has most often been with the apparent underlying goals of obtaining concessions that were not obtained during negotiations, and maintaining the status quo in

the regulatory regime. The Government's approach toward NTI has been one of government toward an interest group.

For example, the Government of Canada has consistently provided NTI with draft language based on DIAND's unilateral instructions to the drafters. The language in such drafts has very often been in direct conflict with the requirements of the NLCA, and with discussions at the table. When points of inconsistency were raised by NTI, Government of Canada officials have responded by requiring NTI to cite specific examples of how Inuit will be prejudiced by the failure to follow the language of the NLCA -- no concrete examples, no change. Often, the Government would take the position, as if this were an end to argument, that since the NLCA prevails over inconsistent legislation, it should not matter if legislation is inconsistent.

A few examples of substantive disagreements are provided for illustrative purposes.

(i) **Interrelationships between Nunavut Institutions.** The Government of Canada's approach ignored the fact that the creation of the NWB is not an isolated feature of the NLCA. On the contrary, its establishment was included in order to fulfill a fundamental objective of the NLCA, as set out at the beginning of the NLCA:

To provide for certainty and clarity of rights to ownership and use of lands and resources and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore.

Until recently, the Government of Canada refused to identify the interrelationships between the institutions that are so integral to the above objective. NTI is still trying to obtain language that accurately reflects the NLCA on the interrelationships issue, because of Government officials' reluctance to reform the existing regulatory regime so as to fully incorporate the NLCA.

(ii) **Recognition of Inuit Water Rights under Article 20.** A fundamental principle of the NLCA is to provide certainty and clarity of rights to ownership and use of

lands and resources. As the NWB was established in the context of the NLCA, it is crucial that the legislation recognize Inuit rights that relate to the regulation and use of waters in Nunavut. NTI has, therefore, been arguing from the beginning that any bill should clearly describe Inuit water rights as set forth in the NLCA. Instead, the bill introduced into Parliament described the Crown's rights and stated that these are subject to the Inuit water rights contained in the NLCA. By thus marginalizing Inuit rights, the bill failed to provide the certainty that the legislation is intended to establish or the unique context in which the NWB is intended to operate.

Significantly, the *MacKenzie Valley Resource Management Act* recognizes the equivalent rights of the Gwich'in and Sahtu Dene peoples, and no legitimate reason for not doing the same here has been offered.

(iii) Ministerial and Governor in Council Authority. The NWB bill purported to provide a role for the Minister of Indian and Northern Affairs and the Governor in Council that finds no support in the NLCA. The NLCA provides, with the exception of domestic and emergency use, that "no person may use water or dispose of waste into water without the approval of the NWB" (section 13.7.1). That Article does not add the words "and, in some cases, the approval of the Minister as well." Similarly, the NLCA does not provide the Governor in Council with authority to, for example, determine what uses and what waste activities may be permitted without a licence. The Government of Canada has suggested that it is entitled to read the NLCA as if those words were included. NTI submits, again, that the Crown is not entitled to obtain concessions from Inuit in the implementation legislation that it did not obtain during negotiations of the land claim. It should not be readily assumed that the NLCA was simply intended to confirm the status quo and traditional ways of doing business. As the Supreme Court of Canada said in *R v. Sparrow* (1990), 70 DLR (4th) 385 at 410, by entrenching aboriginal and treaty rights in the Constitution, "Parliament and the provinces have sanctioned challenges to social and economic policy objectives embodied in legislation."

Section 2.2

Legislation to Set Forth Substantive Powers, Functions and Objectives of s. 10.1.1 Institutions

Statement of Position

NTI Statements of Position 2.2

Legislation for Institutions of Public Government

The GOC's consultation process under Article 10 of the NLCA has been plagued by the following types of conduct, among others, which NTI considers to be in breach of the GOC's constitutional obligations of close consultation:

- tabling draft text that reflects (usually unstated) government administrative or policy objectives, to the detriment of consistency with substantive text of the NLCA;
- tabling draft text that conflicts or is inconsistent with the spirit and intent of the NLCA;
- long periods of inactivity or silence followed by demands for NTI's response to drafts within extremely short time frames;
- tabling new draft text that departs from the text or spirit and intent of the NLCA, without warning, adequate explanation, or, often, sufficient time to respond;
- failure to provide adequate explanation or justification for draft text that departs from the NLCA;
- repeated rejection of NTI proposals that reflect provisions of the NLCA without adequate explanation;
- promotion of the position that, since the NLCA prevails over inconsistent legislation, it should not matter if legislation is inconsistent; and
- terminating consultation before its conclusion.

To remedy the problems described above, a renewed consultation process should be developed and agreed to in writing by NTI and the GOC. It should contain the following elements, many of which have previously been proposed by NTI in draft protocols and agreed to by the GOC.

1. An independent facilitator should be engaged by the parties and funded by the GOC as a reasonable cost of discharging its consultation obligations. The facilitator should have the experience and mandate to assist the parties in achieving a close, fair and efficient consultation. The facilitator would chair

- all meetings, receive copies of all correspondence, and generally supervise the conduct of the consultation. The facilitator would field the concerns of both parties and make procedural recommendations. Reports or recommendations from the facilitator would be provided to the Minister at the request of NTI or DIAND.
2. Work plans should be developed and agreed to by senior officials of the Parties. Each work plan would include tentative deadlines for preparation of draft legislation or sections thereof, a role for a legislative working group to include GN representatives and representatives of the IPGs, and timetables of meetings and exchanges of documents. Reasonable timetables for review of draft language, and for further consultation where necessary, should be provided for in all cases. Amendments should be by agreement of the same officials who signed the work plan.
 3. NTI and the GOC should agree as to whether consultation is completed, and, subject to the following, the GOC should not introduce a bill or amendments to legislation prior to NTI's agreement that consultation is completed. In the event the GOC disagrees with NTI as to whether consultation is completed after substantial consultation, it should obtain a recommendation from the facilitator to the effect that consultation is complete before introducing a bill or amendments.
 4. There should be no surprise drafts, and no surprise provisions or language in drafts circulated by the GOC. Drafts should be based solely on mutually agreed principles, guidelines and specific drafting instructions. Using the *Nunavut Act* amendments legislative working group as a model, collaboration on drafting instructions and transparency of instructions and text should be made conditions of the process. No drafting instructions or changes to drafting instructions should be submitted to Department of Justice drafters until the parties have made all reasonable efforts to agree on them. If the parties are ultimately unable to agree on drafting instructions, or on whether further drafting instructions are required, DIAND should provide its reasons to NTI in writing before submitting instructions to the drafters. NTI and DIAND should together communicate with the drafters as required to provide clarification of drafting instructions.
 5. When text is produced by Justice in response to instructions, NTI should be provided the draft text concurrently with DIAND and given reasonable time to comment on the draft text in writing to DIAND. DIAND should take a reasonable time to consider NTI's comments and respond, and should make its representatives available to meet further at NTI's request, until both parties agree that consultation is concluded on an issue, or the facilitator so recommends. Upon request, DIAND should provide reasons in writing for disagreeing with NTI's positions on draft text and for rejecting the interpretation of the NLCA on which NTI bases its objections.

6. Where conflicting interpretations arise from language in the NLCA, and cannot be resolved, the language of legislation should remain faithful to language of the NLCA, notwithstanding drafters' usual conventions.
7. Where the parties disagree on interpretation of the NLCA, either party should disclose, on a confidential basis, the reasoned argument of any legal opinion on which it is relying. At the request of either party, a jointly-funded legal opinion should be obtained from agreed-upon counsel.
8. The GOC should pay for advice from a mutually acceptable outside expert if NTI believes it is needed to justify internal Government advice.
9. The parties should commit their responsible legal counsel fully to the work plan, including their availability for meetings, except as otherwise agreed.

Section 2.3: Article 23: Inuit Employment Within Government

2.3.1: Summary

Completion of the progressive requirements of Article 23 -- steps aimed at ensuring the timely realization of the objective of a representative level of Inuit employment within the public sector in Nunavut -- has generally been disappointing.

The detailed labour force analysis, required by section 23.3.1 of the NLCA to have been undertaken within six months of ratification, was never satisfactorily completed.

In keeping with its responsibilities to cooperate in the development and implementation of employment and training efforts, NTI conducted an analysis of federal Inuit Employment Plans (IEPs) and requested that a government-NTI working group be formed to address the deficiencies and the development of follow-up pre-employment training plans (PTPs). However, no working group was formed and to NTI's knowledge, the deficiencies identified by NTI with respect to the IEPs have not been corrected. The PTPs required by section 23.5.1 have not been developed.

Following the completion of the GNWT's "first drafts" of IEPs in July 1996, and NTI's detailed analysis of those documents, the GNWT declined NTI's requests for a joint working group to review the IEPs and to develop PTPs. Significantly, the GNWT did not address transitional issues related to division in connection with its Article 23 responsibilities.

Finally, the GNWT has denied responsibility to develop or assist in the development of municipal IEPs, which, are required by the terms of Article 23. Consequently few or no municipal IEPs have been developed.

NTI has made efforts to establish and maintain support measures to enhance the potential for success of Article 23 (NLCA s. 23.6.1). Among other things, as mentioned above, NTI conducted formal reviews of IEPs that it received from the Government of Canada and the GNWT and attempted unsuccessfully to engage each level of government in a joint effort with NTI to address the issues raised by these reviews.

2.3.2: Background

The objective of Article 23 is to increase Inuit participation in government employment in the Nunavut Settlement Area to a representative level (approximately 85%) (section 23.2.1).

Towards this objective, Article 23 follows a step-by-step progression from the creation of a detailed Inuit labour force analysis by both levels of Government, in participation with the NITC, to be undertaken within six months of ratification (section 23.3.1); to the completion of IEPs by July 9, 1996, by each government department or agency (section 23.4.1); to the development and implementation of PTPs by Government and NTI.

Section 23.4.2 of the NLCA describes in considerable detail the steps that must be included in an IEP, including:

- (a) an analysis of the level of representation of Inuit, including identification of areas of under-representation by various categories;*
- (b) a phased approach for remedying under-representation, including short and medium term goals in the form of numerical targets and timetables for all levels and occupational groupings;*
- (c) an analysis of systemic barriers;*
- (d) specific measures to increase the recruitment and employment of Inuit, such as those detailed in (i) through (x) under section 23.4.2(d);*
- (e) identification of a senior official to monitor the IEP; and*
- (f) a monitoring and reporting mechanism.*

Following completion of IEPs, Government and the Designated Inuit Organization (DIO), NTI, in this case, are required to develop and implement PTPs to provide Inuit with skills to qualify for government employment (section 23.5.2).

Article 23 provides for a high degree of cooperation between Government and the DIO. Section 23.2.2 requires that Government and NTI cooperate in the development and implementation of employment and training initiatives as set out in the NLCA. Section 23.6.1 requires NTI, with assistance from Government, to play a primary role in the establishment and maintenance of support measures to enhance the potential for success of the Article 23 measures.

2.3.3 Canada

a.) Labour Force Analysis.

As discussed above, a detailed Inuit labour force analysis was to be undertaken by Government, in participation with the NITC, by no later than January 9, 1994 (section 23.3.1).

In February 1994, NTI advised the Government of Canada that it would be seeking an update on the development of the labour force analysis at the Nunavut Implementation Panel meeting on March 9, 1994. At the March 9 meeting, the Government of Canada reported to the Panel that it would obtain "more specifics on the analysis being done" and would prepare a "one-pager" for the Panel by March 25, 1994.

By letter dated March 24, 1994, the Government advised the Panel that a committee made up of HRD, DIAND, GNWT and NITC had been established to carry out the labor force analysis. The letter advised that:

... the committee will be publishing a booklet shortly which will provide a basic overview of the current labour force in Nunavut. The NITC is presently conducting a "supply versus demand" study of the Nunavut labour market which will be completed by the end of May. The booklet and the results of the NITC study will provide the base for the Labour Force Analysis report which should be concluded by the fall of this year.
[emphasis added]

At a Panel meeting on September 27, 1994, the NITC reported to the Panel that the above described committee had met in January 1994 and that "there has been little activity since." The Government of Canada agreed to follow-up and determine when the labour force analysis would be completed. On January 24/25, 1995, the Government tabled a Draft Labour Force Analysis (the "draft report"), dated January 17, 1995.

On February 20, 1995, the GNWT's Bob Patterson provided an initial response to the draft report. The GNWT found that the draft report:

...has totally missed the mark with regards to [the objectives of section 23.3.2 of the NLCA]. It is little more than a community profile document, is confusing and difficult to read and contains virtually no labour force analysis. [emphasis added]

On March 27, 1995, the NITC provided a response to the draft report that reiterated the comments made by the GNWT and further indicated that the NITC had only been involved in the initial January 1994 meeting and had not been consulted since that time.

On August 4, 1995, the GNWT provided its comments on the draft report. On September 12/13 1995, the Government of Canada advised the Panel that it planned to hire a consultant to complete the required labour force analysis. At the December 13/14, 1995 Panel meeting, Panel members agreed that no further work would be done at present on the draft report, apart from updating it. Data produced by the GNWT would be used for the purpose of developing the IEPs and PTPs. *Footprints 2* used an NWT 1994 Labour Force Survey to supply data on the Inuit labour force (*Footprints 2*, 10/96, Exh. H).

In sum, the labour force analysis required by Article 23 was never satisfactorily completed. The purpose of the analysis was to have been "to assess the existing skill level and degree of formal qualification among the Inuit labour force and to assist in formulating Inuit employment plans and pre-employment training" (section 23.3.2). One can only speculate how the absence of an adequate labour force analysis affected the governments' abilities to prepare adequate IEPs. In any event, as discussed below, satisfactory IEPs for all departments were never completed.

b.) Inuit Employment Plans.

A number of the IEPs that were received by NTI from Government of Canada departments had common deficiencies. These evidence a failure to systematically address the requirements of section 23.4.2. For example, NTI's analysis of the federal IEPs included the following comments:

Public Works and Government Services:

"The employment plan submitted by [PWGS] is incomplete. No details were provided on strategies and measures for increasing and maintaining Inuit employment; no action plan, assignment of responsibilities, or time frames were provided; information on monitoring and evaluation mechanisms was inadequate; no strategies to address deficiencies were provided. . . ."

Dept. of Fisheries and Oceans:

"The employment plan provides no analysis of [DFO's] current shortfall in Inuit employment; inadequate information is provided on strategies and measures for increasing and maintaining Inuit employment; no action plan, assignment of responsibilities, or time frames were provided; no details on monitoring and evaluation mechanisms were provided; the plan includes no reference to 5-year review. . . . In summary, this plan raised serious questions by the Committee about this department's understanding of and commitment to the letter, spirit and intent of Article 23."

Human Resources Development:

"It is difficult to determine the areas of under-representation by occupational grouping as required by Article 23.4.2(a). The plan does not reflect. . . short and medium term goals required by [23.4.2(b)] The plan seems to lack a unified framework for achieving representative employment at the counsellor and/or clerk levels. . . . As it is, the goals appear unrelated to the identified facts regarding the demographics and labour pool It is uncertain that measures identified. . . will address the actual barriers Monitoring and reporting mechanisms . . . should be more specifically identified. . . ."

*Nunavut Tunngavik Inc. Response to the Federal Government
Departments Inuit Employment, dated January 1997.*

NTI recommended, among other things, that:

- a single agency be designated by the Government of Canada to coordinate the Government's compliance with Article 23;
- an NTI-Canada working group be established to address deficiencies in the federal IEPs; and
- each department prepare a chart to graphically illustrate its timetable for achievement of representative levels of Inuit employment within specific employment categories by specific dates.

NTI is not aware of any action taken by the Government of Canada to address the IEP's deficiencies or to follow the above recommendations.

c.) Pre-Employment Training Plans.

PTPs have not yet been prepared.

2.3.4 Government of the Northwest Territories

a.) Labour Force Analysis.

See discussion above under 2.3.3(a).

b.) Inuit Employment Plans.

NTI generally viewed the GNWT's IEPs as positive first steps in addressing Article 23, and two were identified as models (the Department of Transportation and the Kitikmeot Divisional Board of Education). Many of the IEPs, however, were deficient in terms of specificity in analyzing and addressing, through short and medium term goals, the recruitment and promotion of Inuit in the public service. As stated in NTI's *Response to the GNWT Employment Plans*, Sept. 1996:

MACA:

"It is not clear how the goals and numerical targets relate to the specific measures that will be used. . . the Plan lacks a timeline. . . and does not identify specific individuals to perform these measures."

Public Works:

"...analysis and treatment of each area is sketchy and incomplete."

Health and Social Services:

"The plans for this Department were very general. . . The plan does not present reasonable short and medium-term goals, expressed as numerical targets and timetables. . ."

Safety and Public Services:

"...the plan submitted provides little evidence of commitment to the principles and goals of Article 23."

Renewable Resources:

"The Plan calls for the achievement of representative level of Inuit employment to be reached by 2014. . . . NTI believes that the department's goal could be reached by 1999."

Nunavut Arctic College:

NTI considers the target date of 2020 for representative level to be unacceptable.

Education, Culture and Employment, the Divisional Boards of Education and Arctic College:

"...the strategies developed for ECE, the Divisional Boards and Arctic College reflect the views and principles supported by the NIC, NTI and Atti: we suggest nevertheless that goals could be achieved more rapidly than scheduled with a more aggressive approach."

As shown by the above examples, two major concerns are the lack of specificity in the IEPs and the failure of Government departments to be sufficiently aggressive in planning achievement of a representative level of employment.

Another major concern of NTI is that the GNWT's IEPs failed to consider the following major influencing factors:

- the potential impacts of staff cut-backs;
- the community empowerment initiative, devolution;
- the privatization process; and
- the amalgamation of the Departments of Economic Development and Tourism, Renewable Resources, and Energy, Mines and Petroleum Resources.

Perhaps most importantly, there has never been a clearly defined mechanism and schedule for the coordination of the Government of Nunavut's implementation and management of the IEPs to ensure that the target levels will be achieved.

On a number of occasions following its receipt of the IEPs, NTI sent a request to Charles Dent, Minister of Education, Culture and Employment, that an NTI-GNWT technical working group be formed to address the deficiencies identified by NTI, in accordance with the requirements for close cooperation in Article 23, and to begin the preparation of the required PTPs. These efforts were rebuffed by Mr. Dent in letters dated July 6, 1996 and April 1997. Other than general assurances from Mr. Dent that NTI's comments would be considered in the annual reviews and updates of the IEPs, there is no indication that GNWT departments addressed in any systematic way the deficiencies identified in the IEPs by NTI.

In July 1996, NTI notified Minister Dent that GNWT IEPs failed to take into consideration the potential impact of staff cut-backs, community empowerment, privatization, or opportunities that would arise as a consequence of meeting incremental

staffing requirements stemming from division. NTI noted that it should be clearly indicated how the IEPs will be integrated into the overall human resource development strategy of the GNWT. Mr Dent's response was to say that the Consolidated IEP was "a living document" that would be "revised regularly to ensure that changes in the government environment are addressed on an annual basis." NTI is not aware of any annual reviews or revisions.

c.) Pre-Employment Training Plans.

No PTPs have yet been developed.

2.3.5 Other Efforts

The Government of Canada, GNWT, NTI, and NITC participated in a multi-party Working Group on Human Resources and Training, which, in July 1996, produced a comprehensive training and education strategy for the start-up and operation of the Nunavut Government entitled *Nunavut: Unified Human Resource Development Strategy* (UHRDS). The UHRDS was a strategy for the funding of various programs, services and initiatives to promote Inuit employment. The UHRDS, however, was not a plan and, therefore, provided no basis for ensuring that any given program or combination thereof would meet the need for Inuit employees with the skills/knowledge requirements of the Nunavut Government.

On February 10, 1998, NTI wrote to the Office of the Interim Commissioner (OIC) urging the development of such a plan. The OIC was obviously in a difficult position given the scope of its responsibilities, the absence of the necessary groundwork under Article 23, and the failure of the existing IEPs to take into account the impact of division, staff cut-backs, community empowerment, devolution, privatization, and amalgamation of departments.

The OIC commissioned three training initiative documents, produced in March 1998. NTI responded promptly and positively, with recommendations, to the preparation of these documents.

In March 1998, the OIC also released a document entitled *Consolidated Inuit Employment and Staffing Plan for Nunavut Government Headquarters* and in May 1998, a transitional training initiatives plan to March 2000 was released. In March 1999, the OIC released a comprehensive IEP as a second phase of the March 1998 Consolidated Plan. This IEP has not yet been comprehensively assessed by NTI, but NTI's initial review indicates that it is not a workable document for the GN in that it does not contain clear direction.

2.3.6 Municipalities

NTI believes that there is no question that Article 23 applies to municipalities and has so advised Minister Dent as well as the individual municipal councils. GNWT has never provided any basis for its assertions to the contrary. See Minister Dent's undated letter to Natsiq Kango:

With respect to your concern that the impact of Article 23 on Hamlets and other local authorities is not fully taken into consideration, it is our interpretation that Part 4 does not require the preparation of Inuit Employment Plans for municipalities . . .

and, with more detail but no more clarity on April 21, 1997:

It is our view that there is not a clear requirement in Article 23 of the Nunavut Final Agreement for municipalities to prepare Inuit Employment Plans nor a requirement for the GNWT to prepare IEPs for municipalities. Even if it was found by an arbitration panel or court that IEPs for municipalities were required, we believe it would be an obligation of each municipality, not an obligation of the GNWT.

In the same letter, Minister Dent said that GNWT "may be in a position to offer some assistance and support" were NTI to (1) secure the cooperation of the municipalities, (2) obtain additional implementation funding for the purpose from the federal government, and (3) recognize that GNWT was not responsible for any aspect of a municipality's failure to comply. Not surprisingly, these requirements were non-starters.

As a result of GNWT's refusal to actively assist the municipalities in fulfilling the Article 23 requirements without additional specific implementation funding, the preparation of IEPs at the municipal level has languished, in violation of Article 23.

Section 2.3
Article 23: Inuit Employment within Government

Statement of Position

NTI Statements of Position 2.3 – 1

Article 23: General

1. Although the overall review of the implementation of the NLCA is underway and will include a review of Article 23, a thorough, independent review of Article 23 should be arranged by the Implementation Panel and carried out as outlined in section 23.7.1 of the NLCA. NTI recognizes that the framework, background and substance of Article 23 is best managed by people with cross-cultural backgrounds. The evaluation team undertaking the review of Article 23 should possess significant knowledge of Inuit values and experiences.
2. The GOC, GN and NTI should agree to jointly fund a minimum of two full-time positions within NTI, whose responsibility it will be to ensure the successful implementation of Article 23, including monitoring, reviewing and evaluating the progress in achieving Article 23 objectives on a consistent basis. A five-year plan should be developed for these positions.
3. The Inuit Employment Plans (IEPs) prepared by the GOC and GNWT departments, and the draft document developed for the Office of the Interim Commissioner (OIC), contain many good ideas that have not been implemented, but which have created reasonable expectations on the part of Inuit. Ensuring the implementation of these ideas should be made a priority of the Parties. A meeting should be held with NTI, GOC and GN departmental representatives, NITC and Ajauqtiit to pursue the full implementation of Article 23.

NTI Statements of Position 2.3–2

Article 23: Relating to the Government of Canada

1. The detailed labour force analysis required by section 23.3.1 of the NLCA was never satisfactorily completed. The GOC should commission a detailed labour force analysis as soon as possible.
2. An NTI-GOC working group should be established to address deficiencies identified in federal IEPs and to analyze new IEPs received from the

remaining federal departments and agencies. In particular, the specific requirements contained in section 23.4.2 must be included in all federal IEPs.

3. Each federal department and agency should prepare a chart to graphically illustrate its timetable for achievement of representative levels of Inuit employment within specific employment categories by specific dates.
4. The proposed NTI-GOC working group should begin working on pre-employment training plans (PTPs) as soon as possible.

NTI Statements of Position 2.3-3

Article 23: Relating to the Government of Nunavut

1. An NTI-GN working group should be established to address territorial IEPs and PTPs. In particular, the specific requirements contained in section 23.4.2 of the NLCA must be included in all IEPs.
2. An analysis of the *Comprehensive Inuit Employment Plan* prepared for the GN on behalf of the OIC should be conducted by the proposed GN-NTI working group. NTI and the GN should participate thoroughly in the planning, development and drafting process requirement to make this document operational.
3. The GN should acknowledge the requirement that municipalities comply with Article 23. The proposed GN-NTI working group should discuss the best means for achieving this objective and implement it.

Section 2.4: Article 24: Government Contracts

2.4.1 Overview

Article 24 of the NLCA provides for an initial twenty year review of the effectiveness of Article 24 in achieving its objectives. Given this time frame, NTI believes that progress towards full implementation of Article 24 since 1993 has been slow.

NTI's relationship with certain federal departments on certain projects (*i.e.*, PWGSC on Nunavut infrastructure) has been positive. NTI's overall experience with the Government of Canada, however, has been frustrating. NTI has not yet succeeded in coming to agreement with the Government of Canada on contracting procedures ensuing from Article 24. NTI officials attempting to negotiate a comprehensive government-wide set of contracting procedures have either been stalled by Treasury Board's limiting interpretation of Article 24, or else passed from one Department to another while attempting to find a way around the impasse with Treasury Board.

NTI did succeed in coming to an agreement with the GNWT on *Contracting Procedures for the Nunavut Settlement Area* (the Contracting Procedures). Negotiations towards these procedures started after NTI notified the GNWT of its intent to initiate litigation in response to the GNWT's inaction on Article 24. The fact that NTI and the GNWT were able to come to agreement on contracting procedures must be considered a positive development. However, GNWT adherence to the objectives of Article 24, once the Contracting Procedures were in place, was variable. It is NTI's observation that interpretation of the Procedures was left to individual departments, and, in some cases, to individual contracting officers. Furthermore, GNWT officials in Yellowknife charged with administering the Contracting Procedures became less and less responsive to NTI queries starting in about August 1998, as division of the territories approached.

These Contracting Procedures form a starting point for a new set of contracting procedures to be developed by the GN in close consultation with NTI.

2.4.2 Background

The core policy objectives of Article 24 are laid out in two sections of the NLCA, 24.3.6 and 24.3.7, as follows:

24.3.6 Procurement policies and implementing measures shall reflect, to the extent possible, the following objectives:

- (a) increased participation by Inuit firms in business opportunities in the Nunavut Settlement Area economy;*
- (b) improved capacity of Inuit firms to compete for government contracts; and*
- (c) employment of Inuit at a representative level in the Nunavut Settlement Area work force.*

24.3.7 To support the objectives set out in Section 24.3.6, the Government of Canada and the Territorial Government shall develop and maintain policies and programs in close consultation with the DIO which are designed to achieve the following objectives:

- (a) increased access by Inuit to on-the-job training, apprenticeship, skill development, upgrading, and other job related programs; and*
- (b) greater opportunities for Inuit to receive training and experience to successfully create, operate and manage Northern businesses.*

From NTI's point of view these sections are crucial in establishing the spirit and intent with which contracting procedures are to be developed. Both levels of government have provided NTI with a fairly narrow interpretation of their obligations to achieve these objectives. The Government of Canada has generally refrained from making reference to Sections 24.3.6 and 24.3.7, preferring instead to focus on sections of the Article which more closely circumscribe Government of Canada obligations. An example is Part 4, Sections 24.4.1 to 24.4.3:

24.4.1 In cooperation with the DIO, the Government of Canada and the Territorial Government shall assist Inuit firms to become familiar with their bidding and contracting procedures, and encourage Inuit firms to bid for government contracts in the Nunavut Settlement Area.

24.4.2 In inviting bids on government contracts in the Nunavut Settlement Area, the Government of Canada and the Territorial Government shall provide all reasonable opportunities to Inuit firms to submit competitive bids, and, in doing so, shall take, where practicable and consistent with sound procurement management, the following measures:

- (a) *set the date, location, and terms and conditions for bidding so that Inuit firms may readily bid;*
- (b) *invite bids by commodity groupings to permit smaller and more specialized firms to bid;*
- (c) *permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid;*
- (d) *design construction contracts in a way so as to increase the opportunity for smaller and more specialized firms to bid; and*
- (e) *avoid artificially inflated employment skills requirements not essential to the fulfilment of the contract.*

24.4.3 *Where the Government of Canada or the Territorial Government intends to invite bids for government contracts to be performed in the Nunavut Settlement Area, it shall take all reasonable measures to inform Inuit firms of such bids, and provide Inuit firms with a fair and reasonable opportunity to submit bids.*

As noted in more detail below, a number of individual federal departments have used section 24.6.1 as the cornerstone for instituting their own contracting procedures for Article 24.

24.6.1 *Whenever practicable, and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Government of Canada for the awarding of its government contracts in the Nunavut Settlement Area*

- (a) *the proximity of head offices, administrative offices or other facilities to the area where the contract will be carried out;*
- (b) *the employment of Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contract; or*
- (c) *the undertaking of commitments, under the contract, with respect to on-the-job training or skills development for Inuit.*

Although section 24.6.2, which relates to territorial government obligations, is almost identical to 24.6.1, the GNWT chose to take a much more expansive, and in NTI's view, positive interpretation of Inuit content implicit in 24.6.1-2, as reflected in the GNWT's Contracting Procedures.

2.4.3 Government of Canada Policies

a.) Negotiations

Under section 24.3.1 of the NLCA, the Government of Canada is required to develop, implement or maintain procurement policies, consistent with Article 24's requirements, respecting Inuit firms for all its contracts in support of its activities in the Nunavut Settlement Area. Under section 24.3.2, the Government shall develop or maintain such policies in close consultation with the DIO, and shall implement the policies through legislative, regulatory or administrative measures.

In mid-1994, NTI was contacted by Treasury Board officials wishing to discuss proposed changes to its contracting policy to recognize the NLCA. In August 1994, Inuit representatives met with officials from Treasury Board and Public Works and Government Services Canada. Shortly thereafter, an Inuit working group was formed to negotiate changes to Treasury Board policy and implement measures under section 24.3.2. It quickly became apparent, however, that the steps Treasury Board was willing to take were wholly inadequate to the purposes of Article 24.

Treasury Board's approach was to attach an appendix to its general contracting policy which applied to all aboriginal peoples with whom the Government of Canada had entered into comprehensive land claims agreements. The appendix consisted of general policy statements applicable to all land claims, followed by extracts from, in this case, Article 24. Treasury Board officials notified NTI that the scope of permissible changes to its document was limited to additional non-mandatory policy advice to federal departments. As NTI was told, bid criteria for contracts were the responsibility of contracting authorities, and Treasury Board was unable to institute mandatory implementing measures for contracting under Article 24.

In NTI's view, Treasury Board's position fell far short of sections 24.3.1's and 24.3.2's positive obligations on the Government to develop, in close consultation with NTI, specific implementing measures, enforceable by legislation, regulation or administrative

means. Treasury Board would not develop and maintain procurement policies at the level of detail required to comply with Article 24. In addition, although Treasury Board was identified as the lead agency for ensuring the implementation of Article 24, its authority apparently does not extend to contracting by Crown corporations identified in section 24.1.1 of the NLCA. NTI determined that the requirements of Article 24 could not be met through a consultation exercise with Treasury Board.

NTI wrote to the Minister of DIAND on January 16, 1995, requesting a discussion on the development of regulations pursuant to Section 8 of the *Nunavut Land Claims Agreement Act*. NTI proposed this course in order to ensure the binding effect of Article 24 on all designated departments, agencies and Crown corporations, and to provide a forum for negotiation with one entity representing the Government of Canada.

The Government of Canada was unwilling to proceed with such a discussion. In March 1995, Treasury Board issued an essentially unaltered contracting policy appendix on aboriginal land claims. In June 1995, NTI issued a policy paper which, among other things, reiterated NTI's concerns with the Article 24 consultation process. Six months later, in February 1996, the Government of Canada responded to NTI's position paper, stating that regulatory measures were unnecessary and would be rigid to a point of being counterproductive. No progress has been made on this issue since that time.

On August 31, 1995, NTI prepared the first instalment of the list of Inuit firms, and has since maintained this list as required by section 24.7.1 of the NLCA.

b.) Large Projects – Inuit Gains in Federal Contracts

NTI and the Government of Canada have come to agreement on contracting for a number of large projects. For example, a Partnering Arrangement was signed in 1995 to facilitate development, construction and subsequent property management of a large portion of the physical infrastructure for the Government of Nunavut. Partners in the Arrangement are Public Works and Government Services Canada (PWGSC), the Department of Indian Affairs and Northern Development (DIAND), Nunavut Construction Corporation (NCC)

and NTI. This Partnering Arrangement has been very successful in terms of Inuit ownership (NCC is 100% Inuit owned), Inuit employment (over 60% over-all) and skills development.

PWGSC officials stated explicitly, however, that training, employment, and contracting features for this Arrangement would not be considered as a template for a general Government of Canada contracting policy. Specific contracting procedures for the Government of Canada Building in Iqaluit were subject to the same proviso.

c.) PWGSC Guidelines

As of April 1999, no mutually satisfactory agreement had been reached regarding contracting procedures with the Government of Canada. PWGSC has unilaterally put its own set of contracting guidelines into effect, following Treasury Board guidelines. The PWGSC guidelines include a ten point (ten percent) consideration on tenders, using Section 24.6.1 to define bid criteria.

NTI is not satisfied with the limited nature of these guidelines. The figure of ten percent has never been agreed to. In fact, no agreement has ever been in place regarding the exact form of evaluation criteria. The guidelines do not have any mechanism for establishing levels of Inuit content in, for example, employment levels. Nor do they clearly address “on-the-job training or skills development for Inuit” as required by section 24.6.1(c).

PWGSC has also stressed that they will not consider business ownership by Inuit in their evaluation criteria; they do not give any consideration for “use of suppliers that are Inuit or Inuit firms in carrying out the contracts”, as required by 24.6.1(b). While PWGSC guidelines do attend to questions of employment and training, by ignoring 24.6.1(b), they circumvent broader policy objectives of the benefits of business ownership and expanded Inuit business participation in the Nunavut economy. These objectives are reflected in the wording of 24.3.6 and 24.3.7: “increased participation by Inuit firms in business opportunities in the Nunavut Settlement Area economy” and “greater opportunities for

Inuit to receive training *and experience* to successfully create, operate and manage Northern businesses” (*emphasis added*).

In order to fulfil the requirements of sections 24.3.6-7 and 24.6.1, any agreement between NTI and the Government of Canada on contracting procedures must include some consideration of Inuit business ownership.

d.) Government of Canada Treasury Board Guidelines - General

There appears to be no government-wide means of monitoring compliance with Article 24 or reporting to NTI on the results of contracting. These functions are left to the discretion of individual departments. NTI has seen no evidence that contracting officials within Government are given any training on how specifically to apply Article 24, or that contracting officials are all working from the same interpretation of Treasury Board guidelines. NTI recommends that a single contract reporting system be developed for any contracts entered into by the Government of Canada to which Article 24 applies.

As noted above, no material incentives or disincentives are presently in place for contractors’ compliance/non-compliance with contracting guidelines issued by individual departments. For example, a contractor might state that he will supply 30% Inuit labour on a job, but there are no penalties if he does not. The absence of a penalty greatly diminishes the effectiveness of any contracting procedures in achieving the objectives of Article 24. The Government of Canada should implement a system of incentives and disincentives that will ensure contractors’ compliance with Inuit content levels.

The Government of Canada has not been effective in putting section 24.4.1 into effect. Section 24.4.1 requires that Government assist Inuit firms to learn how to bid on government contracts. It has held only one workshop in the past two years at which Inuit firms might have been able to become familiar with bidding and contracting procedures. Public Works documents publicize the fact that 30 participants came to the workshop, but do not mention that only four or five were Inuit.

Certain other aspects of Part 4 - Section 24.4.2, in particular – are not ambiguous, or subject to a wide range of interpretations. Nevertheless, NTI has no evidence that the Government of Canada is adhering to those parts of 24.2.2 that require government contracting authorities “to invite bids by commodity groupings to permit smaller and more specialized firms to bid” and “to permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid.” The Government of Canada must apply these straightforward provisions of Article 24.

2.4.4 Territorial Government Policies

a.) Contracting Procedures – Gains for Inuit

As discussed above, negotiated Contracting Procedures were ratified by the NTI Board of Directors in February 1997 and by the Executive Committee of the GNWT in October 1997. A set of interim contracting procedures had been in place for over a year prior to GNWT ratification of the Contracting Procedures. The Contracting Procedures form the basis for contracting in Nunavut, and provide an accepted interpretive basis for implementation of Article 24.

The Government of Nunavut (GN) will need to develop a new set of contracting procedures. A number of areas will probably require revision through negotiations between the GN and NTI.

The time since October 1997 has allowed both NTI and the government to see how the procedures work in practice, and to evaluate the extent to which they satisfy the aims of each party. NTI’s main concerns with the GNWT’s application of Article 24 and the Contracting Procedures are detailed below.

b.) Training

On-the-job training, apprenticeship, skill development, and upgrading, as identified in section 24.3.7, have never been rigorously defined in contracting procedures with either

the territorial or federal government. As a result, the training component of contracts is subject to variable interpretation by contracting authorities.

NTI recommends that a standardized training plan form be developed, in consultation with GN Department of Education. Bidders on territorial government contracts that specify training opportunities will be required to fill out this standardized training plan. This form should be straightforward and in plain language, so as not to create a new barrier for Inuit firms. At the same time, it should outline exactly what training the bidder proposes to conduct, in accordance with agreed upon standards.

c.) Workshops

Of primary importance to Inuit businesses is the basic and specific requirement that Government "assist Inuit firms to become familiar with their bidding and contracting procedures" (Section 24.4.1). This section has been addressed by Procedure 2 of the GNWT's Contracting Procedures, which states in part that "the Working Committee will provide workshops on Territorial Government bidding and contracting procedures at least once every year in communities in the Nunavut Settlement Area, as agreed to with the DIO." Contracting Procedure 2 also provides for mandatory Article 24 workshops for government personnel: "The Working Committee will organize training to explain Article 24 obligations and these seminars will be provided to all Territorial Government departments, boards and agencies contracting in the Nunavut Settlement Area."

The GNWT did not hold any of the required bidding workshops, despite continuing requests from NTI to the Contracting Section in Yellowknife. Functions of a GN/NTI Working Committee (discussed below under "Working Committee") could include setting an annual schedule for workshops, and working on such issues as content, format, location, and so on.

NTI recommends that the GN provide and pay for all travel expenses for annual workshops so that Inuit individuals or company representatives from all communities in

Nunavut are able to easily attend. NTI further recommends that GN develop educational videos describing the bidding process in English, Inuktitut, and Innuinaqtun.

d.) Preferential Procurement Policies / Bid Criteria

(i) Requests For Proposals (RFPs). RFPs will require careful attention in GN/NTI consultations. NTI has seen widely divergent criteria used by the GNWT to evaluate "Inuit content" in RFPs (*cf.* section 24.6.2). In some cases, points have been awarded for Inuit content based on the inclusion of an Inuk in a company's proposal, whether or not he or she is associated with a registered Inuit firm.

A number of RFPs that NTI has reviewed have not included minimum levels of Inuit training and employment, or participation of Inuit firms enrolled in NTI's Inuit Firm Registry when evaluating Inuit content. Some have used arbitrary or unrevealed criteria to determine Inuit content.

NTI recommends that a single easily-interpreted set of Inuit content evaluation criteria be developed for RFPs.

ii) Sole Source Contracts. In 1998, a number of contracts went out as sole source awards (Section 24.5.3) that NTI would have preferred go out to competitive tender. Sole source contracts are awarded directly to a contractor without going through either a competitive or negotiated process. Sole source awards occur for three reasons, as listed in the GNWT's Government Contract Regulations:

- the goods, services or construction are urgently required and delay would be injurious to the public interest;
- only one party is available and capable of performing the contract; or
- the contract is an architectural or engineering contract that will not exceed \$25,000 in value or is any other type of contract that will not exceed \$1,000 in value.

The spirit of the sole source award section of Procedure 5 of the Contracting Procedures is that sole-source contracts are appropriate in cases where the public

good is in jeopardy or where facilities have been damaged and require immediate repair. In any case, they are to apply to small contracts for which a quick solution to a problem is needed.

Unfortunately, a number of awards went out this past summer in which individual contracting officers made the decision to follow the option in which "only one party is available and capable of performing the contract." In NTI's view, any contract over \$15,000 that goes out as a sole source award has entered into the realm of negotiated contracts, and should come under the rules of that Procedure.

e.) Mandatory Minimum Levels Of Inuit Employment

The idea of mandatory minimum levels of Inuit employment in the Contracting Procedures (Procedure 7) derives from one of the central objectives of the NLCA -- participation by Inuit in the Nunavut work force at a level proportionate to the Inuit population of Nunavut (section 24.3.6).

At present, there appears to be no systematic attempt to set mandatory minimum levels of Inuit employment, or to have these levels correlate to data available from other departments, such as the Department of Education, or Human Resources Development Canada. Individual contracting officers are setting levels that to an outside observer appear on occasion to be quite arbitrary.

As noted below, discrepancies have also existed from one region to another and among GNWT departments regarding minimum Inuit employment levels. While recognizing that, at the start, it may be difficult to achieve high levels of Inuit employment on some contracts, NTI believes that mandatory minimum levels should be continuously pushed to the highest levels possible.

f.) Mandatory Levels of Inuit Goods And Services

As with minimum Inuit employment levels, mandatory levels of Inuit goods and services (section 24.6.2; Contracting Procedure 7) have been applied haphazardly in contracts by

GNWT officials. These should be set at a level that is achievable in a given community on a given contract. This has not always been done.

Some confusion arises from lumping goods and services together. NTI recommends that the next generation of contracting procedures treat goods and services separately.

The measurement of Inuit content for professional and other services should be straightforward, and should include consideration of Inuit training and employment opportunities, along with Inuit firm status.

Determination of mandatory levels of "Inuit goods" has proven much harder. Some contracting authorities have seen this as a requirement to award all goods contracts to Inuit firms, as long as an Inuit firm has bid -- either an Inuit firm is supplying the goods or no Inuit firm is. Other contracting personnel have argued that as the goods themselves -- a two-by-four for example -- have no Inuit content, Inuit content is only to be considered when two bids are within \$1.00 of each other, in which case the Inuit firm would win. NTI recommends that Inuit suppliers be given a straight percentage consideration.

Some confusion may also derive from the use of the term "Inuit Goods and Services". NTI recommends that the terms "Inuit goods", "Inuit services", and "Inuit goods and services" be changed to "Inuit firms that supply goods", "Inuit firms that supply services," and so on.

g.) Government Leases

Government leases were not covered by the Contracting Procedures. As these represent commercial contracts, with significant opportunities for employment and subcontracting in operations and maintenance, and in the case of Private and Public Partnership contracts, construction as well, new Procedures will be needed to account for them.

h.) Consistency Of Interpretation

(i) GNWT Department of Public Works and Services (PWS). PWS officials in different regions of Nunavut have used different methods when applying some Contracting Procedures. An example is the application of minimum levels of Inuit employment. In the Kivalliq region, officials applied these progressively, gradually increasing the required percentages as communities and contractors develop capacity. In the Baffin region, on the other hand, percentages were sometimes below known capacity, and seemed to be applied arbitrarily.

(ii) Other Departments. Other GNWT departments, notably the Departments of Transport and Resources, Wildlife, and Economic Development, have demonstrated a fair degree of inconsistency in applying the Procedures. Examples include the award of a contract under the auspices of the Baffin Sealing Committee, in which "Inuit content" was determined in a very arbitrary way, and irregularities in the award of a Department of Transport contract for a study of the South Slave Geological Corridor. In the latter contract, Department of Transport officials refused to tell the Inuit firm that lost the bid exactly how the Department had assessed Inuit content, saying only that the winning firm had surpassed the Inuit firm. As contracting officials also allowed that Inuit firm status was worth half of the fifteen points given for Inuit content, it is very difficult to conceive how the non-Inuit firm could have scored higher in over-all Inuit content.

i.) Contracting Supervisor

NTI recommends that the GN Department of Public Works, Telecommunications, and Technical Services (PWTTS) identify one employee who will act as a specialist on contracting procedures, and who will assist all GN departments, boards, and agencies to provide consistent application of the Contracting Procedures throughout the government.

j.) Reporting

Under section 24.8.1 of the NLCA (and Contracting Procedure 9), the Territorial Government is required to monitor the implementation of Article 24. Procedure 9 outlines a clear set of reporting requirements for all contracts. As of June 1, 1999, NTI

has never received a complete set of mandatory reports from the GNWT or GN. GNWT staff have indicated that the reporting requirements are excessive, but NTI has, so far, no way of evaluating this claim.

NTI recommends that PWTTS in each region collect contracting reports from all departments and submit monthly summaries of all contracts over \$5,000 to NTI. Recommended details of these reports are as follows. For all goods contracts exceeding \$5,000 in value and on all other contracts exceeding \$25,000 in value, the following specific contract information will be collected:

- Description of the Contract
- Location of the Contract
- Name of Contract
- Value of Contract
- Status of firm (Inuit, non Inuit,)
- Type of contract (*i.e.*, construction, goods, A/E, services or lease)
- Type of award (*i.e.*, public, sole source, invitational or negotiated)
- Dollar value and percentage of goods and services supplied by Inuit firms
- Dollar value and percentage of Inuit labour
- Number of Inuit firms

k.) Working Committee.

The GNWT created a working Committee to develop Contracting Procedures which included participants from various government departments. NTI and the RIAs also had an Article 24 Working Group that coordinated Article 24 policy formation, and made recommendations to NTI's Board of Directors. These two groups working together created the GNWT Contracting Procedures.

NTI recommends that a new NTI/GN working committee be struck, comprised of three representatives from NTI and the RIAs, and three from the GN. A final report should be ratified by both the NTI Board of Directors and the GN Executive Committee on or before March 1, 2000, in order to have a new set of contracting procedures in place for the 2000 contracting and sealift season.

1.) Consequences of Non-Compliance

The standard Articles of Agreement for contracts let by the GNWT do not contain any penalties for non-compliance with requirements for minimum mandatory levels of Inuit labour, or minimum mandatory levels of goods or services supplied by Inuit firms. In other words, there are currently no consequences to non-compliance with Inuit content requirements. Government departments do keep records of contractor performance to see if mandatory levels of Inuit content have been met.

NTI believes that a standard system of penalties or damages (disincentives) should be integrated with the contracting process to provide an accurate pre-estimate of damages. Such penalties would assess damages that result from any contractor or supplier of goods or services not meeting levels that have been set and agreed to contractually. NTI also recommends that some system be instituted to monitor contractor compliance with Inuit content requirements.

NTI believes that a system of incentives or bonuses should be instituted to encourage greater Inuit content in all government procurement. An example is the system of incentives and penalties devised by Public Works and Government Services Canada for contracting on the Government of Canada Building.

Section 2.4

Article 24: Government Contracting

Statement of Position

NTI Statement of Position 2.4 – 1

Article 24: Relating to the Government of Canada

1. NTI and GOC officials should resume negotiations on or before February 1, 2000 to find mutually acceptable implementing measures for federal government contracting under section 24.3.2 of the NLCA. NTI staff and contracting officials from Treasury Board and the departments that do the majority of GOC contracting in Nunavut – PWGSC, DIAND, DFO, and DND – should meet by that date to establish terms of reference for a working group committed to developing mutually agreeable contracting procedures to meet the requirements and achieve the objectives of the NLCA generally, and Article 24 specifically.
2. The GOC should work with NTI through a close consultation process to establish acceptable levels of Inuit content within federal contracts.
3. The GOC should work with NTI to more clearly define training obligations and mechanisms for delivering training.
4. The GOC should fulfil its obligations to “assist Inuit firms to become familiar with its bidding and contracting procedures, and encourage Inuit firms to bid for government contracts in the Nunavut Settlement Area” under section 24.4.1, by holding workshops annually in all three regions in Nunavut and by assisting Inuit entrepreneurs to attend these workshops.
5. Contracting procedures agreed upon by NTI and the GOC should include some consideration of Inuit business ownership.
6. To improve consistency of interpretation within and between government departments, the GOC should appoint a single contracting official within Treasury Board to act as the federal expert on interpretation of Article 24 contracting procedures.
7. The GOC should enact a training regime for all contracting officers to acquaint them with Article 24 and accepted interpretations of its sections; these accepted interpretations are to be one outcome of a meaningful NTI/ GOC consultation process.

8. A single contract reporting system for any contracts let by the GOC to which Article 24 applies should be implemented.
9. A mechanism should be established to ensure that successful bidders comply with commitments made, for example, to Inuit employment. This mechanism would provide for material disincentives for failure to comply with commitments and for incentives for exceeding set standards. Monies collected through such a system could be used, for example, towards the establishment of a dedicated training fund for enriched training initiatives or to underwrite the costs of acquiring on-the-job experience.

NTI Statements of Position 2.4-2

Article 24: Relating to the Government of Nunavut

1. An NTI/GN working group should be struck to develop a set of contracting procedures which will ensure compliance with Article 24. The working group should consist of three representatives from NTI and the RIAs, and three from the GN. A final report should be ratified by both the NTI Board of Directors and the GN Executive Committee on or before March 1, 2000, in order to have a new set of contracting procedures in place for the 2000 contracting and sealift season.
2. A standardized training plan form should be developed, in consultation with the GN Department of Education. Bidders on GN contracts that specify training opportunities should be required to complete this standardized training plan.
3. In fulfilling its obligations under section 24.4.1, the GN should provide annual government contracting workshops and pay travel expenses to enable Inuit individuals or Inuit firm representatives from all communities in Nunavut to easily attend.
4. Pursuant to section 24.4.1, the GN should develop educational videos that describe the bidding process; these videos should be made available in English, Inuktitut and Innuinaqtun.
5. A single, easily-interpreted set of Inuit content evaluation criteria should be developed for requests for proposals.
6. Maximum dollar value on sole-source contracts should be \$15,000.
7. The NTI/GN working group should develop a new procedure on negotiated contracts that takes into account the needs of small companies in small communities.

8. The mandatory minimum levels of Inuit employment and Inuit services should be continuously pressed to their highest achievable levels.
9. Inuit companies supplying goods should be given a straight percentage consideration.
10. Use of the terms "Inuit goods", "Inuit services", and "Inuit goods and services" should be abandoned in favour of "Inuit firms that supply goods", "Inuit firms that supply services", and "Inuit firms that supply goods and services."
11. Contracting procedures should treat goods and services separately.
12. Government leases should be covered in any new set of contracting procedures.
13. GN Public Works should identify one employee who will act as a specialist on contracting procedures, and who will assist all GN departments, boards and agencies to consistently apply territorial contracting procedures throughout the Government.
14. Public Works in each region should collect contracting reports from all departments and submit monthly summaries of all contracts over \$5,000 to NTL. Recommended details of these reports are as follows. For all goods contracts exceeding \$5,000 in value and on all other contracts exceeding \$25,000 in value, the following specific contract information will be collected:
 - Description of the Contract
 - Location of the Contract
 - Name of Contract
 - Value of Contract
 - Status of firm (Inuit, non Inuit)
 - Type of contract (e.g., construction, goods, A/E, services or lease)
 - Type of award (e.g., public, sole source, invitational or negotiated)
 - Dollar value and percentage of goods and services supplied by Inuit firms
 - Dollar value and percentage of Inuit labour
 - Number of Inuit firms
15. A standard system of disincentives should be integrated with the contracting process to provide an accurate pre-estimate of damages, as required by law, along with a system of incentives for exceeding contract requirements.
16. A system should be instituted to monitor contractor compliance with Inuit content requirements.

Section 2.5: IIBAs for Parks and Conservation Areas

Article 8 of the NLCA requires that an Inuit Impact and Benefits Agreements (IIBA) be negotiated and concluded prior to the establishment of any National Park in the Nunavut Settlement Area (section 8.4.2). An IIBA must include any matter connected with a proposed Park that would have a detrimental impact on Inuit or that could reasonably confer a benefit on Inuit either on a Nunavut-wide, regional, or local basis (section 8.4.4). Similar provisions are provided in Article 8 with respect to Territorial Parks and in Article 9 with respect to Conservation Areas.

2.5.1 Overall Funding Issues

Negotiation of IIBAs with respect to Parks and Conservation Areas has been most active in the Baffin region. When this process began, a major funding gap for Inuit organizations became apparent. Funding for Inuit to participate in such negotiations was not identifiably nor separately secured in the NLCA itself or in the accompanying *Implementation Contract*.

As a partial step to addressing this problem, the Baffin Regional Inuit Association (now the Qikiqtani Inuit Association (QIA)), was allotted \$100,000 from the \$4 million Implementation Fund, established under section 37.4.1 of the NLCA. QIA obtained a further \$185,000 from the Fund, and one and a half years after that, an additional \$320,000, for a total of \$605,000. QIA contributed an additional \$242,000 of its own funding, for a total Inuit expenditure in that region of \$847,000. Apart from QIA expenditures, the Kivalliq Inuit Association has so far been allocated \$136,727 from the Implementation Fund, and invested a further \$172,000 from own-source funds, to negotiate an IIBA governing the proposed National Park at Wager Bay. The Hunters and Trapper Organisation at Clyde River was allocated approximately \$65,000 from the Implementation Fund to negotiate the IIBA for the proposed National Wildlife Area at Igalirtuuq. Accordingly, the Implementation Fund has so far provided over \$806,727 to negotiate IIBAs. This is a huge drain on the Implementation Fund, which, as discussed

above in Section 2.1, is required to cover a wide range of Inuit implementation responsibilities.

NTI and the Regional Inuit Associations have taken very seriously the obligation under the NLCA to put IIBAs in place within five years of the conclusion of the NLCA. Accordingly, Inuit have not refused to negotiate IIBAs due to inadequate funding support from the government agencies administering Parks and Conservation Areas. It is apparent to NTI that government negotiators have access to significant funding to negotiate Parks and Conservation Areas IIBAs.

National Parks and Conservation Areas are primarily federally-driven initiatives, and IIBAs are intended to reduce the negative impacts on Inuit and to allow Inuit to derive benefits from federal designation of their traditional lands, thus, this funding disparity seems incongruous and inequitable. Moreover, as discussed below, the IIBA negotiating process itself has proven time-consuming and expensive for the Inuit participants, involving costs that would not be equally experienced by the government parties.

For example, six communities are potentially affected by the three proposed Baffin National Parks. Representing this number of geographically disparate communities in locally-driven initiatives requires a tremendous amount of organization, logistical planning and financial resources. The preparation for negotiations alone took 18 months and involved a number of steps:

- appointment of a chief negotiator and negotiators from each affected community;
- community level discussions to review concerns, issues and goals respecting the Parks and the IIBA;
- research on parks management and economic development activities involving aboriginal peoples in other locations;
- research on the two existing National Park reserves in relation to such things as visitor profiles, park management, and economic studies; and
- general and detailed community level discussions, first to increase the level of knowledge and awareness about the NLCA and the *Implementation Contract*, then to determine potential economic benefits and impacts, and, later, to develop, refine and revise, as necessary, QIA negotiating positions.

The time and costs associated with this community-based approach might be viewed as unnecessary by some, but were considered critical by Inuit to achieve an IIBA that would have the necessary local support and understanding. Moreover, the benefits became obvious. Inuit negotiators acquired much more confidence during negotiations in forecasting outcomes that would be acceptable in communities. And QIA and its communities are now much better equipped to benefit from opportunities provided by the IIBA. This community-based approach also had the incidental benefit of equipping individuals with greater awareness and understanding of their rights under the NLCA. For example, some Parks officials had told Inuit that they could only harvest in National Parks for "subsistence purposes". Through the IIBA process, more Inuit now understand that their harvesting rights in Parks are broader than this.

Given this overall funding and negotiating context, NTI believes that publicly-sourced moneys for negotiating Parks and Conservation Areas IIBAs have been inequitably distributed and should be revisited, and that the Inuit organizations should be reimbursed for their expenses incurred to date in this process.

In addition, NTI has some questions regarding the Government of Canada's commitment of resources to implementation of future IIBAs, given certain suggestions from federal officials that adequate moneys may not be available in the future.

Finally, specific funding concerns with respect to Conservation Areas and Territorial Parks IIBAs are discussed in detail below in section 2.5.3 and 2.5.4.

2.5.2 National Parks IIBAs: Obstacles to Effective Negotiations

Under Part 2 of Article 8, IIBAs for Auyuittuq National Park and Ellesmere Island National Park were to be negotiated and concluded within two years of ratification of the NLCA, and for a National Park in North Baffin (Sirmilik) within three years of ratification. These, and subsequent extension of the deadlines were not met.

QIA began discussions with Parks Canada for the three proposed Baffin National Parks in 1995. Negotiations became frustrating, and more costly, because of Parks Canada's approach to the negotiations. In particular, the way in which understandings reached at the negotiating table were dealt with by senior bureaucrats and then politicians in the Parks Canada chain of command proved a barrier to agreement. These problems can be summarized as follows:

- the narrow interpretation taken by Government of Canada negotiators with respect to economic and business opportunities that could be negotiated under Article 8 and Schedule 8-3;
- the penchant of the Government of Canada to interpret the silence of the NLCA with respect to any particular matter as an all-purpose reason to refuse even to consider new ideas;
- flaws inherent in having line department officials negotiating agreements representing all departments and agencies of the Government of Canada and, specifically, the difficulty Parks Canada had in getting other federal departments "on-side" or even properly engaged in negotiations;
- limited seniority, bureaucratic clout and lack of independence of the Chief Negotiator representing the Government of Canada and, specifically, the limited extent to which a middle level employee is free, as a practical matter, to negotiate an IIBA that calls for changes in bureaucratic procedures;
- apparent problems in lines of communications and authority within Parks Canada and other federal departments resulting in the overturning of understandings struck at the negotiating table; and
- the willingness of the Minister to reject initialed compromises reached at the negotiating table and to insist on re-visiting points conclusively dealt with at the table.

One example embodies many of the above flaws in the negotiating process, both at the bureaucratic and political levels and bears further examination.

By 1996, the decision-making authority of the joint parks planning and management committee had been negotiated and resolved. This was done by the Chief Negotiator for the Government of Canada, with the full knowledge of a number of other senior government officials, and ample advice from the Department of Justice. In early 1997, however, the federal Chief Negotiator advised Inuit that the Government of Canada was

not prepared to accept what had been agreed to in 1996. At that point, Inuit were faced with a process that would allow negotiated agreements to be pulled from the table for re-negotiations. This put the entire IIBA negotiating process in jeopardy. After considerable discussion, QIA, with serious reservations, re-negotiated these provisions, again to resolution, and with further compromise. At the same time, QIA insisted on a record of understanding which was concluded on March 21, 1997. This Record of Understanding provided that the parties signal their acceptance of an Article by initialing each page. Once an Article is initialed, a party must have the consent of the other party to re-open negotiations. Upon conclusion of the Record of Understanding, the parties went on to negotiate a substantial number of other provisions, and to conclude and initial the IIBA in 1998.

In early 1999, QIA received word from the Chief Negotiator for the Government of Canada that the Minister had a concern with language in the twice-agreed joint management provisions. It appeared that the Government of Canada intended to rely on the fact that initialed Articles remained "without prejudice" until the IIBA is signed by the Government of Canada to extract further concessions from Inuit on this point. As the conclusion of negotiations on the decision-making authority of the joint management committee was, for Inuit, a central feature of the negotiated provisions, QIA felt betrayed.

At the time of this report, QIA has received formal notice from the Minister responsible for National Parks that the IIBA initialed at the negotiating table is being taken to Cabinet for approval. This is positive. However, the actions of the Minister after the conclusion of negotiations raise a serious question as to the Government of Canada's commitment to good faith negotiations. NTI believes that matters such as the level of seniority of the Chief Negotiator representing the Government of Canada, and political interference in the negotiating process, should be remedied in subsequent IIBA negotiations concerning Parks and Conservation Areas.

2.5.3 Territorial Parks

a.) Failure to Conclude IIBAs.

Section 8.4.6 of the NLCA requires that IIBAs be concluded for Territorial Parks in existence at the conclusion of the NLCA within five years of the ratification of the Agreement. This five year date has come and gone without the necessary IIBAs having been completed. This constitutes a breach of the Agreement.

From early on, both NTI and territorial government officials recognized that an umbrella IIBA approach for Territorial Parks would take less time to complete than stand-alone IIBAs for each park, and could save money better spent on implementation. It was also recognized that, while an umbrella agreement could have provisions applying to all Territorial Parks, it could also be flexible enough to allow specific details to be worked out for individual parks. NTI has the support of the three Regional Inuit Associations to negotiate a Nunavut-wide umbrella agreement.

b.) Funding Issues.

In October 1998, NTI and GNWT RWED officials met to discuss IIBA negotiations for Territorial Parks in Nunavut. One objective of the preliminary discussions was to gauge whether there was adequate will and money to negotiate an umbrella IIBA and then to implement it once finalized. After these preliminary discussions, NTI decided not to pursue umbrella IIBA negotiations at the time as it was evident that there was simply not adequate money to fund its implementation.

The *Implementation Contract* provides the GNWT with funding to carry out territorial government implementation obligations from 1993 – 2003. The Government of Canada is committed to transferring to RWED (and its successor the GN Department of Sustainable Development) \$413,000 to negotiate IIBAs for Territorial Parks in Nunavut (\$182,000 to negotiate IIBAs for new parks and \$231,000 for existing parks.) RWED was also to receive a maximum of \$900,000 to implement IIBAs, pursuant to a separate Bilateral Funding Agreement with the federal government. This commitment was based on the *Implementation Contract*, which states that the costs of implementing IIBAs shall not

exceed 5% of the parks' capital and operating costs for the period of the IIBA in the case of new Territorial Parks. In the case of existing Territorial Parks, it shall not exceed 5% of operating costs (Schedule 1 Pages 8-10 and 8-11 of the *Implementation Contract*). The \$900,000 figure was presumably based on an estimate of 5% of capital and operating costs for Territorial Parks at the time the *Implementation Contract* was executed. As the Inuit negotiators were to find out, however, budgets for Territorial Parks had been slashed by the time IIBA negotiations commenced.¹

Based on Territorial Government projections in 1998, \$2,000 would have been available to implement an umbrella IIBA for all existing parks in Nunavut that year. Only \$17,300 would have been available to implement IIBAs for all new parks. In other words, for *all* IIBA implementation for Territorial parks in 1998, there would have been less than \$20,000 according to those terms. Based on solid experience, Inuit believe \$20,000 per year is far from sufficient.

There is a mismatch between, on the one hand, the requirements for IIBA implementation and, on the other hand, the combined effect of the Territorial Government's spending intentions and the terms of the Bilateral Funding Agreement. It should be pointed out that NTI and its predecessor, TFN, had no opportunity to negotiate the \$900,000 maximum determined between the two Governments. NTI suggested to DIAND representatives that a lump sum of \$900,000 be placed in a separate trust or similar account to be used for Territorial Parks IIBAs implementation purposes.

¹ Five percent of capital and operation and maintenance (O&M) costs for new parks, and of O&M costs for existing parks, based on figures projected by RWED as of October 27, 1998, are as follows:

New Parks			
98-99:	\$280,000 capital and	\$66,000 O&M x 5%	= \$17,300
99-00:	\$200,000	\$74,000	= \$13,700
00-01:	\$733,000	\$104,000	= \$41,850
01-02:	\$603,000	\$131,000	= \$36,700
02-03:	\$000,000	\$131,000	= \$6,550

Existing Parks			
98-99:	\$42,000 O&M x 5%	=	2,100
99-00:	\$47,000	=	2,350
00-01:	\$52,000	=	2,600
01-02:	\$67,000	=	3,350
02-03:	\$67,000	=	3,350

The Government of Canada has indicated an unwillingness either to create a separate trust or similar account, or to amend the *Implementation Contract* so the 5% reimbursement formula cap on the \$900,000 is lifted. NTI believes that the Government of Canada's position is contrary to the spirit and intent of Article 8. The parties clearly intended that Territorial Parks IIBAs that could reasonably confer benefits on Inuit would be negotiated. In light of current financial constraints, NTI believes that the validity of the 5% cap may be open to challenge.

Finally, NTI does not consider it reasonable for the Government of Canada to take a "hands off" approach to Territorial Parks IIBAs by refusing to lift a 5% reimbursement formula in the implementation moneys available under the Bilateral Funding Agreement. Although it is apparent that the root of the problem is decreasing Territorial Park budgets, the Government of Canada's overall obligations are not being discharged with respect to the conclusion of IIBAs.

It should also be noted that Territorial Government expenditures for parks declined in the 1990s at the same time that the Government of Canada was cutting its financial support for Territorial Government operations. By avoiding the expenditure of a full \$900,000 for implementation of Territorial Park IIBAs, the Government of Canada is, in a sense, profiting from its broader cutbacks to the Territorial Government. This is neither appropriate nor acceptable.

c.) Sections 8.4.8 and 8.4.9: Territorial Park Contracts

In the face of the failure to conclude IIBAs required by the NLCA, NTI has a number of concerns with RWED's continuing tendering of capital and O&M contracts for Territorial Parks.

First, NTI believes that there is a significant threat of contracts being tendered in actual or potential violation of sections 8.4.8 and 8.4.9 of the NLCA. Second, contracts covered by these provisions are a primary source of economic benefits for Inuit in connection with the establishment and operation of Territorial Parks. They should, therefore, be

addressed through the IIBA process. RWED's practice of tendering contracts in the absence of an IIBA or memorandum of understanding dealing with sections 8.4.8 and 8.4.9 also raises Article 24 issues.

Finally, NTI is concerned that RWED is proceeding with new park development despite insufficient capital and O&M budgets to support IIBAs. These are, of course, required by Article 8 prior to the establishment of new parks.

NTI and the Regional Inuit Associations have consistently maintained that, to protect Inuit interests, contracts falling under sections 8.4.8 and 8.4.9 should be part of IIBA negotiations or, in the absence of an IIBA, tendered in concert with a memorandum of understanding to be negotiated between the parties. RWED, however, declined to proceed by way of memorandum of understanding, and NTI has had continuing concerns that contracts have been let to the detriment of Inuit rights.

RWED's minimalist approach to compliance with sections 8.4.8 and 8.4.9 is revealed in Territorial Contracting Procedures forwarded to NTI in February 1999. For example, although section 8.4.9 clearly states that "A DIO shall have the right of first refusal *to operate* all business opportunities and ventures that are contracted out with respect to Parks in the Nunavut Settlement Area" (emphasis added), the proposed Territorial Procedures state that "For all business opportunities and ventures in the Nunavut Settlement Area. . . the DIO will have the right of first refusal *to bid on all projects so long as they are available and capable of bidding.*"

2.5.4 Conservation Areas

a.) Failure to Conclude IIBAs on Existing Conservation Areas.

Conservation Areas in Nunavut are mainly Migratory Bird Sanctuaries and National Wildlife Areas. Similar to Territorial Parks, section 9.4.1 of the NLCA states that IIBAs must be negotiated for existing Conservation Areas within five years of the ratification date of the Agreement where there is a potential benefit or detrimental impact upon Inuit.

Schedule 9-1 identifies twelve existing Conservation Areas in Nunavut. NTI believes that at least five more are proposed. IIBA negotiations have not begun for any Conservation Areas. This is a breach of section 9.4.1 of the NLCA. The Canada Wildlife Service (CWS) acknowledges that at least seven proposed or existing Conservation Areas require IIBAs, in that each potentially has some matter which could have a detrimental impact or positive benefit for Inuit. While acknowledging that there may be one or more Conservation Areas that are so remote and small that they do not fall in this category, NTI takes the view that in the vast majority of cases, an IIBA is required as at least some benefits from each could ensue to Inuit.

Regardless of the exact number of Conservation Areas requiring IIBAs, or the form they would take, it is apparent from the CWS's lack of action to date, and from the discussion below, that the CWS has not allocated the personnel or the money, or given its officials the necessary policy direction to fulfil the constitutional obligations of the Government of Canada with respect to Conservation Area IIBAs. A sharp change in political will is required.

b.) Igaliqtuuq National Wildlife Area: Failure to Negotiate Economic Benefits.

As shown by the negotiation of the IIBA for the Igaliqtuuq National Wildlife Area, there has been a serious failure on the part of the Government of Canada to allocate sufficient resources for the conclusion of Conservation Areas IIBAs.

The Clyde River HTO was designated in October 1997, as DIO to negotiate this IIBA. It funded and in other ways supported by NTI in that role. In March 1998, the parties appeared close to finalizing an IIBA. However, in reviewing minutes of the negotiations and the draft IIBA, NTI concluded that relevant economic opportunities (for example, eco-tourism opportunities associated with whale watching) were not dealt with. In fact, NTI determined that economic benefits were essentially non-existent. NTI found this particularly strange since it was aware of strong community interest in eco-tourism opportunities consistent with the nature of the National Wildlife Area. Following

inquiries by NTI, it became apparent that community members had been advised throughout the negotiations that there was no federal money for the types of benefits detailed in Schedule 8-3.

The following statement by CWS's representative was recorded in minutes of the negotiating session:

CWS does not fund ecotourism. That is not the reason why CWS creates National Wildlife Areas, and it is not something that CWS does or funds. The HTO has business ventures that they want to do in the National Wildlife Area, and that is fine. But government is not going to fund it as part of the National Wildlife Area management process. We talked about this for over an hour and then realized that we were going around in circles.

CWS's policy of "not funding eco-tourism" is contrary to the Government of Canada's obligations under section 8.4.4 and Schedule 8-3. For the Government of Canada to suggest that it is excused from honouring its obligations to confer benefits because it has not allocated funds for those benefits is untenable.

As a result of NTI's intervention in the conclusion of the IIBA negotiations, negotiations were put on hold for over a year while CWS attempted to find some funding for economic benefits in connection with the NWA. Recently, NTI suggested to CWS that it seek appropriate funding from the Treasury Board Implementation Reserve Fund in order to make the necessary economic development commitments. CWS has indicated that it expects to hear from Treasury Board by the fall of 1999 as to whether it will be receiving implementation funds to conclude and implement the IIBA at Igalirtuuq as required. CWS is now optimistic that such funding will be found, not just in relation to Igalirtuuq but also for seven or so IIBAs for other existing and proposed Conservation Areas.

An important question is, why was funding not allocated or made available to the CWS by the Government of Canada before negotiations began? Did CWS not adequately understand and accept the obligation it has under the NLCA to negotiate IIBAs in the first place? Why did NTI have to locate a federal implementation reserve fund and advise a federal agency on how to access this fund? Progress on IIBAs for Conservation Areas will require answers to these and similar questions.

c.) Establishment of New Conservation Areas by Parks Canada without IIBAs.

In breach of the requirements of section 9.4.2 of the NLCA, Arvia'juaq National Historic Site (near Arviat) and Fall Caribou Crossing National Historic Site (near Baker Lake) were designated National Historic Sites in August 1995. Parks Canada did so without any discussion or negotiation with the DIO regarding IIBAs. Yet the Minister of Heritage recommended the Minister of Parks instruct staff to consult with the people of Baker Lake and Arviat on how to commemorate these sites in a way meaningful to them. They did this in January 1996 and came up with eight recommendations, all of which, NTI determines, should be part of IIBA negotiations. The difference is significant. The work required to implement the recommendations, when determined outside of an IIBA, could go to anybody. When determined within an IIBA, this work would be negotiated to be carried out by Inuit. Hence an Inuit benefit agreement. There may or may not be other Conservation Areas under Article 9 similarly being established in violation of the NLCA.

d.) Inappropriate Use of *Ad Hoc* Management Committees. Under sections 9.3.7 and 8.4.11-12 of the NLCA, a joint Inuit/Government Park or Conservation Area planning and management committee shall be established through an IIBA when requested by Government or a DIO. A joint management committee must be structured in accordance with section 8.4.11, its members must be appointed by the DIO, and its particular responsibilities should follow those set forth in sections 8.4.12 and 13. These include making recommendations which should serve as a base for the management plan for the Park or Conservation Area.

A practice has apparently evolved of appointing *ad hoc* management committees for proposed Conservation Areas. This practice may, in the case of the Conservation Areas, have preceded the ratification of the NLCA but did not do so with the Historic Sites which began in January 1996. This has occurred for the proposed Igaliqtuuq National Wildlife Area, the proposed Nirjutiqavvik National Wildlife Area, both under the jurisdiction of the Canadian Wildlife Service, as well as at Arvia'juaq National Historic Site, near Arviat and Fall Caribou Crossing National Historic Site near Baker Lake, under

the jurisdiction of Parks Canada. Although it may not have been the intent, the practical effect of these *ad hoc* committees is the subversion of processes provided for in the NLCA, such as the development of a management plan through the efforts of DIO-appointed Inuit participants on the joint management committee under Article 8. In the case of the proposed Igaliqtuuq National Wildlife Area, NTI only became aware of the *ad hoc* committee's draft management plan, spearheaded by CWS, when it was in its fifth draft. On review of the draft management plan, NTI had a number of concerns such as inconsistencies with Inuit harvesting rights under the NLCA and failure to recognize Inuit co-management rights.

These problems have not yet been rectified.

NTI is unsure whether other *ad hoc* committees are proceeding along this same path. Part of the problem may be the incorrect perception of Government officials who believe they have the authority to make unilateral interpretations of the requirements of the NLCA.

Section 2.5
IIBAs in Parks and Conservation Areas

Statements of Position

NTI Statements of Position 2.5-1

Government of Canada Parks and Conservation Areas

1. Given the overall negotiating context of federal Parks and Conservation Areas Inuit Impact and Benefit Agreements (IIBAs), and the inequitable distribution of publicly-sourced monies for negotiating IIBAs, NTI believes that funding for negotiating federal IIBAs should be revisited. The GOC should make a further contribution of \$806,727 to the Implementation Fund, that being the amount of the Fund expended to date to fund Inuit costs for participation in relevant IIBA negotiations.
2. The GOC, particularly Parks Canada, should act so as to remove the following negotiating obstacles to the conclusion of IIBAs for Parks:
 - the narrow interpretation taken by GOC negotiators with respect to economic and business opportunities negotiable under Article 8 and Schedule 8-3;
 - the penchant of the GOC to interpret the silence of the NLCA with respect to any particular matter as a reason to refuse to consider new ideas;
 - flaws inherent in having line department officials represent all departments and agencies of the GOC, and, specifically, the difficulty Parks Canada had in getting other federal departments' agreement or even their engagement in negotiations, and, as a practical matter, the difficulty in negotiating an IIBA that calls for changes in bureaucratic procedures;
 - apparent problems in lines of communications and authority within Parks Canada and other federal departments resulting in the overturning of understandings struck at the negotiating table; and
 - the willingness of the Minister responsible for National Parks to reject initialed compromises reached at the negotiating table and to insist on re-visiting points conclusively dealt with at the table.
3. The parties to IIBAs should approach their implementation and periodic renewal with an emphasis on adaptability and accountability of results.

4. The GOC should ensure that all its departments and agencies with responsibility for negotiating and concluding Parks and Conservation Areas IIBAs have appropriate sources and levels of funding for these purposes as well as an efficient and reliable means of accessing that funding. Further, the GOC should ensure that all such departments and agencies have knowledge of and access to sufficient funds for IIBA implementation.
5. GOC departments and agencies with responsibilities for negotiating and concluding IIBAs should review their legislation and policies to ensure clear directions are given to fulfill these obligations fully and on a timely basis.
6. The recommendations contained in the study of Conservation Area legislation conducted under section 9.3.1 of the NLCA should be followed.
7. GOC departments and agencies, and in particular Parks Canada, should immediately cease designating Conservation Areas without having negotiated IIBAs with appropriate Designated Inuit Organizations.
8. GOC departments and agencies should immediately cease operating *ad hoc* management committees in connection with Conservation Areas in the Nunavut Settlement Area without having followed the NLCA's requirements for the creation of those committees. Any draft management plan created with the assistance of an *ad hoc* management committee should be reviewed in consultation with the Designated Inuit Organization to determine its compliance with the NLCA and its acceptability to the DIO.

NTI Statements of Position 2.5-2

Territorial Parks

In order to ensure that the obligations to conclude Territorial Parks IIBAs are met, the GOC should constitute a separate account in the amount of \$900,000 for Territorial Parks IIBAs implementation, which is the amount identified for such purposes in the federal-territorial Bilateral Funding Agreement. Alternatively, the GOC should agree to lift the 5% reimbursement formula (5% of parks' capital and operating costs to be reimbursed to the GN for IIBA implementation purposes) off the use of the \$900,000.

Section 2.6: Turbot Fishery Litigation

In 1997, the Minister of Fisheries and Oceans unilaterally increased Canada's share of the Total Allowable Catch (TAC) of turbot in waters adjacent to Baffin Island (from 5,500 to 6,600 tonnes), contrary to the recommendations of the Nunavut Wildlife Management Board (NWMB), the Fisheries Resources Conservation Council, and his own officials. Nunavut Inuit were allocated only 100 tonnes of the 1,100 ton increase, for a total of 1,600 tonnes, which had the result of actually reducing to about 24% Nunavut Inuit's already marginal share of the TAC. Further, the Minister refused to grant Nunavut Inuit a groundfish licence, preventing Nunavut fishers from accessing turbot in fisheries off the coasts of Labrador and Newfoundland, although Labrador and Newfoundland fishers can access Nunavut turbot. The Minister offered no satisfactory explanation for reducing the Nunavut Inuit share of the TAC or for disregarding the advice of the NWMB.

In NTI's view, the Minister's decision violated the NLCA in a number of respects, most particularly in failing to give special consideration to the principle of adjacency in allocating quotas, as required by section 15.3.7 of the NLCA. This principle, as applied consistently in other parts of Canada, has resulted in the adjacent fishers getting some 80-95% of the groundfish quota.

Upon receipt of the Minister's decision, NTI commenced a judicial review application in the Federal Court of Canada to set the allocations aside. A decision at the trial court level in NTI's favour concluded that the principle of "priority" consideration to Inuit should govern turbot allocations under section 15.3.7 of the NCLA.

Following this decision, the Minister issued a redetermination, which reduced the overall TAC back to 5,500 tonnes, and allocated Nunavut fishers 1,500 tonnes. No groundfish licence was issued to Nunavut fishers. NTI brought a second judicial review application challenging the Minister's 1997 redetermination.

In addition, the Minister appealed the Federal Court of Canada's decision. On July 13, 1998, the Federal Court of Appeal dismissed the Minister's appeal, finding that there was no evidence in the record that the Minister had given the required "special consideration" to principles of adjacency when he allocated the turbot quota. At the same time, however, it rejected the lower court's reasons for judgment, and declared that the principle of equity (fairness), not priority consideration, is the proper standard to guide interpretation of section 15.3.7.

Before the appeal decision was rendered, the Minister issued a decision on the 1998 turbot allocations, freezing the allocations to 1996-97 levels for five years, and Nunavut fishers quota at 1,500 tonnes, or 27%. NTI challenged this decision by a third judicial review application. (Since bringing the third application, NTI has dropped the second as redundant.) On September 30, 1999, the trial court dismissed NTI's application, following the Court of Appeal's decision with little analysis. At the time of this writing, NTI had announced that it will appeal that decision.

Accordingly, litigation continues with little prospect of settlement. NTI believes that the heart of the problem may be found in the Minister's failure to embrace the spirit, rights and obligations of the Agreement. The actions of the Government of Canada with respect to the turbot fishery have had the effect of marginalizing Inuit fishers, and trivializing the NLCA's application in marine areas. Because of the intransigence of the Government and the uncertainties of litigation, the practical import of this Article remains in doubt, casting a further shadow over the NLCA as a whole. While NTI remains troubled as to why the Department of Fisheries and Oceans has pursued such a hostile, reductionist interpretation of the NLCA -- and such an unsupportive and unimaginative approach to the long-term health of an expanded commercial fishery in Nunavut -- NTI will continue to exercise vigilance and energy in the defence of Inuit rights under the NLCA in the courts of both law and public opinion.

NTI recommends that the Department of Fisheries and Oceans, NTI and NWMB engage in discussions to resolve the ongoing dispute on a consensual basis.

Section 2.6
Turbot Fishery Litigation

Statement of Position

NTI Statement of Positions 2.6

Turbot Fishery Litigation

The Government of Canada (Department of Fisheries and Oceans) should abandon its effort to understate and diminish the rights of the Inuit of Nunavut with respect to commercial fishing allocations under Article 15 of the NLCA, by:

- **making a serious proposal to the Inuit of Nunavut on the long-term allocation of commercial species in Zones I and II,**
- **respecting the principles of adjacency; and**
- **providing appropriate economic development support for the commercial fishing industry in Nunavut.**

Section 2.7: General Problems of Consistency of Federal and Territorial Legislation

2.7.1: Failure to Revise Laws of General Application

In its October, 1996, report entitled *Footprints 2*, the Nunavut Implementation Commission made the following points:

... It is now more than three years since the Nunavut Agreement came into force. Even though the federal Cabinet, in approving the Nunavut Agreement, apparently made moneys available to government departments, including GNWT departments, for the updating of the statute books to reflect the agreement, little if any progress appears to have been made. This lack of progress has contributed in no small way to widespread confusion in the minds of members of the Nunavut public as to the state of the law, particularly in relation to wildlife. The confusion appeared to have been evident in the well publicized charges laid in January, 1999, (and recently dropped) against a number of Igloodik hunters, for killing an ailing bowhead whale and distributing the resulting country food among members of the community.

Keeping the law books tidy may strike some observers as more a lawyer's obsession than an average person's concern. It is necessary, however, to see the issue in context. The project of creating Nunavut has been about making politics and government closer to home. In a contemporary societal context, making politics and government closer to home entails making fundamental laws more intelligible.

This does not, of course, require everyone to have an in-depth understanding of complete shelves of statute books and law texts: very few people need to have a finger tip familiarity with elevator safety regulations. On the other hand, it is surely not expecting too much that in a place like Nunavut -- where hunting and trapping are an integral part of cultural identity -- there is a fairly good understanding in the population as to the broad features of wildlife laws and a fairly ready access to relevant statutory materials.

Unfortunately, unless considerable greater bureaucratic energy is invested in the updating of federal and territorial laws to accommodate the Nunavut Agreement, the ability of even professional wildlife managers -- let alone members of the public -- to understand the wildlife management regime in post-division Nunavut will be almost impossible. To do so, it will be necessary to go through a series of interpretive challenges that many lawyers would find difficult: first look at the Nunavut Act, then import the wildlife laws of the pre-division NWT as "grandfathered through", then read Article 5 of the Nunavut Agreement and, as stipulated by the federal Nunavut Land Claims Agreement Act, read down (or out!) all those NWT wildlife laws that conflict or are inconsistent, and then, if any doubt remains, speculate as to the interpretive applications of the protections provided land claims rights under section 35 of the Constitution Act, 1982. In liberal democracies, the citizenry has a right to expect that the laws that impact directly on daily life will be available in a reasonably coherent and intelligible form, allowing individuals to order their activities accordingly; every effort needs to be made to ensure that the Nunavut Agreement has been given full legislative expression in updated statute books. (pp. 228-29)

Footprints 2 was released in October 1996. Despite the passage of three years, the problems described in that report remain. The longer that relevant laws of general application remain in an unamended state, the greater the risks of confusion, conflict, and costs associated with unnecessary litigation. It is unclear what has happened to the money allocated at both the federal and territorial levels to carry out the needed work.

On a more positive note, territorial government officials with responsibilities for wildlife have, in more recent months, taken some welcome steps towards the writing of the territorial *Wildlife Act* to bring it into line with the NLCA and to eliminate other features that are not in keeping with contemporary approaches to the sustainable use of wildlife.

These recent territorial government efforts have, regrettably, not been matched by any comparable effort at the federal level. For example, the *Marine Mammal Regulations* continues to ignore the existence of the NLCA, let alone reflect the substantive bite of its provisions. This woeful state of affairs must not be allowed to continue.

2.7.2 New Legislative Initiatives

Since ratification of the NLCA, the Government of Canada has continued to develop, introduce and enact legislation which has significant substantive inconsistencies with the NLCA. Most of it relates to land, water and renewable resources. As a result, NTI has been put in the position of trying to monitor, on an *ad hoc* basis, Government legislative development. NTI makes submissions to government departments and to Parliamentary standing committees, it lobbies and makes other efforts to obtain changes to draft legislation so the rights and obligations of the NLCA are reflected. As well, NTI must continue to fight so the jurisdiction and authority of the resource management bodies created under the NLCA is included in the legislation. Some examples include the *Fisheries Act*, the *Canada Oceans Act*, the *Canada Endangered Species Protection Act* and the *Marine Conservation Areas Act*. These efforts are a significant drain on the limited financial and human resources that NTI has at its disposal. The Nunavut Wildlife Management Board has also devoted similar efforts and expense on these matters. In a

number of cases, these efforts have resulted in significant changes to legislation to reflect NLCA derived rights, notably at the Parliamentary standing committee stage.

In many cases, bills have contained a general non-derogation provision (for more detail on the specific issue of non-derogation clause see section 2.7.3 below). Such clauses have presumably been inserted to address the issue of conflict or inconsistency with aboriginal or treaty rights (including rights acquired through a land claims agreement). For the reasons discussed above, however, it is neither logical nor satisfactory for legislation to be enacted that is internally in conflict or inconsistent with other Constitutional obligations of the Government of Canada. This leaves the public without notice and needing legal interpretations of conflict or inconsistency to determine the state of Canadian law.

The above analysis indicates that the Government of Canada has not turned its mind adequately or effectively to ensuring that legislative drafting is internally consistent with Constitutionally entrenched obligations owed to aboriginal peoples.

2.7.3: The Problem of Non-Derogation

Article 2 of the NCLA, supported by relevant sections of the *Nunavut Land Claims Agreement Act*, supply the Agreement and the Act with a comprehensive set of interpretive priorities in the event of inconsistencies or conflicts with any other laws. The NLCA makes abundantly clear that the provisions of the NCLA prevail in the event of any inconsistency or conflict with any other laws, including the *Nunavut Land Claims Agreement Act*. It is also abundantly clear that, subject to the paramount interpretive priority of the NCLA, the *Nunavut Land Claims Agreement Act* prevails against any other law. It should be noted that the set of interpretive priorities put forth in the NLCA, reinforced by provisions of the *Nunavut Land Claims Agreement Act*, serve to support the conclusion that the NLCA forms part of the public law of Canada.

Given the clarity of the interpretive scheme contained in the NLCA, as supported by the *Nunavut Land Claims Agreement Act*, NTI has always been careful about the introduction of any interpretive provision in any new laws that would serve to distract from this scheme. It is NTI's position that the interpretive scheme that flows from the NLCA, and supported by the *Nunavut Land Claims Agreement Act*, is, in itself, a treaty right protected by the Constitution and cannot be unilaterally altered by Parliament or the Government of Canada. Notwithstanding its confidence in this position, NTI also believes that it is preferable to avoid the confusions and misunderstandings that can come about through the introduction of interpretive provisions in new laws that would appear to be at cross-purposes with the interpretive scheme that flows from the NLCA.

Since the Constitutional recognition and affirmation of aboriginal and treaty rights in 1982, a number of pieces of legislation adopted by Parliament that deal with matters touching upon aboriginal and treaty rights have contained a "non-derogation" provision. A non-derogation provision stipulates that nothing in a new law will abrogate or derogate from aboriginal and treaty rights. This is a useful reminder to officials responsible for the administration of the new law and for judges who may have to interpret it. This clause tells those people that, when writing the new law, Parliament paid attention to the Constitutional dimensions of aboriginal and treaty rights, and had no intention to detract from or erode such rights.

Since the signing of the NLCA, a significant number of new laws with an impact on aboriginal peoples have contained the following non-derogation provision:

Nothing in this Act shall be construed so as to abrogate or derogate from the any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

Consistent use of this particular wording has provided logic and symmetry when interpreting the relationship between Constitutionally-protected aboriginal and treaty rights and federal laws of general application related to these rights. Unfortunately, for unclear and unsatisfactory reasons, recent laws have used a differently phrased non-derogation provision. The *Canada Marine Act*, for example, contains the following non-derogation provision:

Nothing in this Act shall be construed so as to abrogate or derogate from the application of section 35 of the Constitution Act, 1982 to existing aboriginal or treaty rights of the aboriginal peoples of Canada. (SC 1998, c. 10, s.3)

The reason for including a non-derogation provision in any new law is to minimize the problems of implementing the new law alongside pre-existing laws. For this reason, the introduction of a subtle, but potentially significant, change to the wording of a standard non-derogating provision is dangerous. Changing the wording of the non-derogation provision means that a lot of time consuming effort must go into guessing what the new law means before it can be administered and interpreted. It is confusing to those protected by the provision. Huge effort is spent comparing and contrasting the various versions of non-derogation provisions as they seem to capture the fleeting loyalties of those who are involved in drafting and sponsoring legislative initiatives. While there may be those with the taste and resources for such journeys, NTI -- and, it can be safely supposed, other parts of the Canadian public -- is not among them.

Finally, the purpose of any non-derogation provision is to offer security to any aboriginal people who may be apprehensive about the impact of a new law on its aboriginal or treaty rights. There are no moral grounds for imposing a non-derogation provision on any aboriginal people who believe their interests are better served by the omission of such a provision.

Section 2.7

General Problems of Consistency of Federal and Territorial Legislation

Statement of Position

NTI Statements of Position 2.7-1

Consistency of Federal and Territorial Legislation with the NLCA

1. The GOC, the GN and NTI should develop a schedule for the preparation of draft legislation to bring relevant laws of general application, notably wildlife laws, into compliance with the NLCA. The GOC and the GN should commit to undertaking the work and allocating the resources needed to meet that schedule.
2. Legislation to bring relevant laws of general application into compliance with the NLCA should be developed through a drafting process that has the full participation and confidence of NTI.
3. NTI should be supplied with an accounting as to the fate of monies allocated in 1993 to government departments and agencies for the revision of relevant laws of general application.
4. The GOC should direct the Department of Justice to develop and follow a general drafting instruction that all new legislative initiatives be drafted in such a way as to avoid any conflict or inconsistencies with aboriginal or treaty rights.

NTI Statements of Position 2.7-2

Non-Derogation Clause

1. Any non-derogation provision in legislation dealing with Nunavut should be worded as follows:

Nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

2. A non-derogation provision should not be put forward in any legislative project dealing with the rights of the Inuit of Nunavut without their consent.
3. The GN and NTI should jointly explore the inclusion of a non-derogation provision in the territorial *Interpretation Act*.

Section 2.8: Firearms Act & Regulations

The passage of Bill C-68, *An Act Respecting Firearms and Other Weapons*, (the *Firearms Act*) manifests the failure of the Government of Canada to enact legislation of general application that respects both the rights and interests of aboriginal peoples and the marked regional variations in the circumstances of the lives of Canadians. While strict regulation of firearms may be in the interest of southern urban centres, the *Firearms Act* fails to accommodate the reality of Inuit life, where a firearm is a tool needed to feed communities, families, and individuals; to travel safely on lands and waters; and to sustain a way of life.

The Inuit of Nunavut have been, are, and intend to remain a hunting society. Hunting is an essential touchstone to both cultural identity and to political and economic self-determination. To ensure that this remains the case, Inuit harvesting rights are Constitutionally protected through the application of section 2.2.1 of the NLCA and section 35 of the *Constitution Act, 1982*. Section 2.2.1 of the NLCA provides that the Agreement is a land claims agreement within the meaning of Section 35 of the Constitution Act, 1982. Section 35 of the Constitution recognizes and affirms existing aboriginal and treaty rights, including rights contained in land claim agreements.

The *Firearms Act* and regulations adopted thereunder violate Inuit rights in a number of respects. Under section 5.7.26 of the NLCA:

Subject to the terms of this Article, an Inuk with proper identification may harvest up to his or her adjusted basic needs level without any form of licence or permit and without imposition of any form of tax or fee.

Section 5.7.42 of the NLCA addresses methods of harvesting. It provides, subject to only limited qualifications which are not applicable here, that an Inuk may employ "...any type, method or technology to harvest...". The reach of this right obviously extends to firearms.

NTI is of the opinion that, in enacting the *Firearms Act* and its regulations, the Government of Canada has failed to abide by the terms and provisions of the NLCA, the Constitution, and Supreme Court case law identifying criteria that the Government must meet in order to justify interference with aboriginal and treaty rights. For example, the Government of Canada has enacted licensing, storage and lending requirements and imposed fees that unjustifiably infringe upon the constitutionally protected rights of Inuit.

Prior to the passage of the *Firearms Act*, NTI joined with other Inuit organizations in making submissions to the Government of Canada to the effect that the *Firearms Act* and its regulations would significantly impede, and possibly prohibit, Inuit from exercising their aboriginal and treaty harvesting rights. NTI intends -- in concert with like-minded organizations or on its own -- to initiate litigation seeking to strike down the legislation as being unconstitutional.

Section 2.8

Firearms Act and Regulations

Statement of Position

NTI Statement of Position 2.8

Firearms Act and Regulations

In the event that the GOC has an interest in modifying the legislative regime with respect to firearms control as it applies to the Inuit of Nunavut, the Minister of Justice should signal this interest by inviting NTI to participate in a joint working group, structured at a suitably senior level, to examine legislative revisions.

In the event such an invitation were forthcoming, NTI would welcome the participation of the GN in such an effort. Any exercise could not be constructed so as to prejudice the legal rights of participating organizations.

Section 2.9 Management Boards: Structures and Functions

Sections 5.2.1 and 10.1.1 of the NLCA establish the following bodies as “institutions of public government” (IPGs) for the Nunavut Settlement Area:

- Nunavut Wildlife Management Board (NWMB);
- (Nunavut) Surface Rights Tribunal (SRT);
- Nunavut Impact Review Board (NIRB);
- Nunavut Planning Commission (NPC); and
- Nunavut Water Board (NWB).

Given the contents of the NLCA, and the broader context of the Canadian political and legal systems, to what extent do these Article 10 bodies have characteristics typical of other Canadian IPGs? Common elements include the following:

- With certain exceptions, their members are formally appointed by Government officials;
- they operate within mandates set out in public law;
- they are empowered to carry out their functions to the four corners of the geographic jurisdictions in which they are situated;
- their decisions are binding on all those members of the public whose activities fall within their functions;
- at least in some cases, their decisions are to take into account the “public interest,” and
- they are funded by the public purse.

It would be a mistake, however, to think these bodies have only those characteristics commonly associated with other institutions of public government. Article 10 bodies have, in varying degree, characteristics that can only be understood in the context of the *Nunavut Land Claims Agreement*. They reflect the interplay between jurisdictional roles and responsibilities of the federal and territorial legislatures and governments and the rights of the Inuit of Nunavut. The following characteristics support this proposition:

- the existence of these bodies flows from the land claims agreement between the Inuit of Nunavut and the Crown, and the operation of these bodies must at all times conform to the various provisions of the NLCA;
- the NLCA supplies the bodies with special duties in relation to Inuit Owned Lands, Inuit organizations, and Inuit language and culture;
- supplementary to the public law dimensions of the NLCA, further legislation in relation to these bodies is to be developed in close consultation with NTI;

- the memberships of these bodies are, for all effective purposes, equally chosen by Inuit and the Crown;
- the current and future budgets of these bodies are jointly determined by NTI and the Crown; and
- any major revision of the functions of these bodies would be at the joint discretion of NTI and the Crown.

These characteristics support the argument that Article 10 bodies qualify as Inuit/Government co-management bodies as well as institutes of public government. One of the main purposes of the co-management structure of the IPGs is to allow their members to reflect and represent the views of their nominating or appointing organization, whether Government or a DIO. It is appropriate, therefore, for members to be selected on the basis of whether their views will be broadly compatible with the views of their nominating or appointing organization. Consultation between the organization and its nominees with respect to consultative or regulatory functions of the IPG (such as the NPC's land use planning process and the NWMB's quota setting functions) is appropriate and in keeping with the intent of the NLCA. Decision-making, however, must remain in the hands of the members of the IPGs. In particular, in cases where the IPG must function as an adjudicator (for example, where the board acts as a tribunal deciding the rights of a party) board members must decide cases based on the evidence, not on any other factors.

The IPGs are indeed instruments of a shared Inuit/Government approach to the management of natural resources. Their members, regardless of which organization has secured their appointment, and regardless of whether they are Inuit or not, are expected to operate cooperatively to fulfill their collective responsibilities in an objective, conscientious and independent manner.

Confusion has existed -- and continues to exist -- in the minds of officials and members of the public as to the fundamental character of Article 10 bodies. It would be useful for the parties to the NLCA to adopt a shared approach to issues related to structure and

functioning such as the recruitment, appointment, briefing, and assessment of members. It might be advantageous, through the Nunavut Implementation Panel, to develop a common set of materials describing relationships between members and their nominating organizations. In addition, it would be timely to examine what kinds of individuals might be excluded from consideration for appointment to these bodies on the basis of their current connections to nominating organizations. As well, the criteria used by the Government for removal of members for cause should also be addressed jointly by the parties. This would help to ensure that the criteria is understood by and agreeable to all parties.

Finally, the problem of delays in appointments of members has, in some cases, resulted in vacancies for six months or longer. This is an obviously undesirable situation and needs to be addressed.

Section 2.9
Management Boards
Statements of Position

NTI Statements of Position 2. 9

Institutions of Public Government: Structures and Functions

The Parties to the NLCA should adopt a shared approach and common understandings with respect to the structure and functioning of the IPGs, including recruitment, appointment, briefing, assessment of appointees, technical support and removal criteria. The Nunavut Implementation Panel should consider developing guidelines for use by all IPGs in areas of common concern such as, but not limited to:

- the relationships between members and their nominating or appointing organizations;
- criteria for exclusion from appointment to these bodies, based upon potential conflicts;
- the need for timely appointments to vacant board positions; and
- removal of members for cause.

Section 2.10: Overlapping Claims

A great number of fears, and perhaps a few fantasies, have grown up around the impact of the NLCA on any aboriginal or treaty rights that aboriginal peoples living adjacent to Nunavut may enjoy in the Nunavut Settlement Area.

The signature block and opening recitals of the NLCA make it plain that the Agreement is between the Crown and the Inuit of Nunavut. Article 2 and 40 make it equally plain that the Agreement does not purport to constitute any kind of definition or clarification of the aboriginal or treaty rights of any other aboriginal peoples. The NLCA goes on to confirm the opportunity of aboriginal peoples living adjacent to Nunavut to continue to harvest wildlife in areas that they have traditionally used and occupied within the Nunavut Settlement Area. In this sense, it is arguable that the NLCA goes further in providing a legal basis for the harvesting activities of at least some adjacent aboriginal peoples than those peoples could successfully enforce on the strength of any direct assertion of aboriginal or treaty rights.

At the ground level, it is not apparent that there are any significant practical problems constraining either the Inuit of Nunavut, or the members of any adjacent aboriginal people, from crossing Nunavut's boundary in the pursuit of traditional wildlife harvesting activities. At an organizational level, issues involving overlapping interests or claims currently exist with respect to four groups: the Inuit of Northern Quebec; the Crees of Northern Quebec; Manitoba Denesuline and Saskatchewan Dene.

With respect to the Inuit of Northern Quebec, the NLCA contains substantive provisions sorting out many overlap issues. NTI is confident that ongoing negotiations can result in the conclusion of an agreement between Nunavik Inuit and the Crown that is consistent with the territorial integrity of Nunavut, the jurisdictional competence of its Legislature, and the responsibilities of its government. In addition, ongoing discussions between NTI and Makivik Corporation related to various harvesting issues will likely result in agreement on issues of mutual interest.

With respect to the Crees of Northern Quebec, it is not clear exactly what islands and offshore waters are the subject of Cree claims. Until such time as the Crees provide land and resource use maps and similar documentation, it is difficult to make any assessment as to potential impacts on the rights of the Inuit of Nunavut. It is clear, however, that claims made by the Crees of Northern Quebec have questioned the territorial integrity of Nunavut and the jurisdictional competence of its Legislature and government to deal with areas inside Nunavut.

With respect to the Manitoba and Saskatchewan Dene, it remains to be determined, despite the commencement of litigation in the federal Court of Canada in 1992, whether the Crown and the Dene can arrive at a workable understanding, short of a definitive court pronouncement, as to what, if any, aboriginal or treaty rights Manitoba and Saskatchewan Dene may have north of the 60th parallel. Any out of court solutions should not have negative impacts on the rights of the Inuit of Nunavut, the jurisdictional competence of the Nunavut Legislature, or the responsibilities of the Government of Nunavut. The search for such solutions must provide for the full engagement of NTI and the Government of Nunavut. It should also be noted that Nunavut Inuit rights in Northern Manitoba are not fully defined in the NLCA; accordingly, any efforts that brings about a more precise definition of the rights of Manitoba Dene should also address this gap.

As a number of overlap issues are currently before the courts, it would not be appropriate for NTI to offer more detailed positions. It is, however, possible for NTI to offer the following position statements.

Section 2.10
Overlapping Claims

Statement of Position

NTI Statements of Position 2.10

Overlapping Claims

1. Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the rights of the Inuit of Nunavut.
2. Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the territorial integrity of Nunavut and the jurisdictional competence of its legislature and government.
3. Any agreement entered into with respect to the overlapping of the Manitoba Denesuline must address the rights of the Inuit of Nunavut in Northern Manitoba.
4. Any agreement with respect to the overlapping claims of adjacent aboriginal peoples should be negotiated in consultation with NTI and the GN, and the consultation process must be acceptable to NTI and the GN.

Part III: Article by Article Analysis

Article 1 - Definitions

NTI has no issues to raise for the purposes of this five-year review.

Article 2 – General Provisions

Section 2.7.1 stipulates that the Inuit of Nunavut “cede, release and surrender” their “aboriginal claims, rights, titles and interests . . . in and to lands and waters”. There are three points worth noting with respect to section 2.7.1 of this Article.

First, the Government of Canada is on the record as repudiating the “extinguishment” of aboriginal title as part and parcel of concluding a comprehensive land claims agreement. NTI notes this development and seeks a commitment from the Government of Canada on the formal re-negotiation of this section.

Second, in so far as section 2.7.1 supplies the Crown with a greater degree of legal predictability in the administration of Crown lands, the management of those lands must still be carried out in a way that lives up to the fiduciary obligations owed by the Crown to the Inuit of Nunavut.

Third, section 2.7.1 speaks only to territorial title. The NLCA cannot be construed as affecting in any way non-territorial rights of the Inuit of Nunavut. This includes rights such as the rights of self-government and cultural self-expression.

NTI Statements of Position 3.2

Section 2.7.1 of the NLCA

1. NTI seeks a commitment from the GOC on the formal re-negotiation of the exchange provisions to eliminate “extinguishment” features.

- 2. NTI stipulates that the management of Crown lands in Nunavut must be carried out in a way that lives up to the fiduciary obligations owed by the Crown to the Inuit of Nunavut.**
- 3. NTI stipulates that non-territorial rights of the Inuit of Nunavut, such as the rights of self-government and cultural self-expression, are in no way qualified by the exchange provisions of the NLCA, and the Crown must conduct itself so as to respect this reality.**

Article 3 – Nunavut Settlement Area

NTI has no issues to raise for the purposes of this report.

Article 4 – Nunavut Political Development

NTI is pleased with the successful start-up of the Government of Nunavut and congratulates those elected leaders and officials who contributed to that result. There are many important and positive lessons to be learned from the process that guided the design and establishment of the new territory and government, lessons which should be noted in order to secure more satisfactory progress with respect to other implementation issues.

Chief among these lessons are the following:

- Three party collaboration -- federal government, territorial government and NTI -- is essential to capture political attention and energy, to generate ideas, and to sustain public support.
- Three party collaboration can be the nucleus for attracting the involvement of other organizational players. For example, in the project creating Nunavut, organizations such as Nunavut Arctic College and the Nunavut Bar Association made significant contributions.
- Three party collaboration is most effective if structured in a flexible and reliable way (the Nunavut Political Accord offered this kind of structure, as did a number of the special purpose working groups set up in relation to topics such as training, infrastructure and telecommunications).
- Three party collaboration should not shy away from multi-year projects and commitments. For example, the Nunavut Political Accord anticipated both the design stage of the Nunavut project associated with the Nunavut Implementation Commission and the executive stage associated with the

Office of the Interim Commissioner. Many sub-projects, such as the Nunavut Unified Human Resources Development Strategy, involved multi-year periods.

- Collaboration with respect to legislative initiatives must be fulsome and genuine. It is hugely revealing to contrast the results obtained by the truly collaborative approach taken in the project to create the Nunavut Territory and Government with efforts to enact implementation legislation. A co-drafting approach led to timely amendments to the *Nunavut Act* in the summer of 1998, and the creation of a unified Nunavut Court of Justice through revision of federal legislation in the fall of 1998, while a “we draft, you react” approach resulted in the failure to enact federal legislation in support of resource management bodies within the time period required under the NLCA, and up to today.

NTI’s recommendations relevant to this Article are set out in *Statements of Position 1.1 through 1.5*.

Article 5 - Wildlife

Overview

The overall implementation of Article 5 is well under way, due principally to the efforts of the Nunavut Wildlife Management Board (NWMB). A major source of concern, given their significant responsibilities under Article 5 Part 7, is the capacity of RWOs and HTOs. A number of RWOs and HTOs have experienced operational difficulties over the past five years. These difficulties have been addressed to some extent by the NWMB, with assistance from NTI. A major commitment of time and resources is required, however, if the problems are to be resolved.

NTI has significant concerns regarding the Government of the Northwest Territories’, and now the Government of Nunavut’s, fulfillment of territorial government Article 5 obligations. As previously discussed, funding for the implementation of these responsibilities has been allocated to the territorial government by the Government of Canada and is detailed in the *Implementation Contract*. NTI is concerned that in practice, funding in this area may have been used for general government operations as opposed to being used for the implementation of specific Article 5 tasks or provisions. For this

reason, NTI seeks an accounting of territorial government moneys under *the Implementation Contract*.

NTI also has concerns regarding the Government of Canada's implementation of its obligations under Article 5, a number of which do not appear to have been met.

Sections 5.1.2(h), 5.1.6, and 5.2.38(b) and (c).

The NLCA emphasizes the importance of Inuit involvement in wildlife management, and specifically requires the NWMB to promote and encourage training for Inuit in various fields of wildlife research and management. As well, NWMB is supposed to promote and encourage the employment of Inuit and Inuit organizations in research and technical positions arising from government and private sector research contracts. It does not appear that there has been significant progress in implementing this responsibility to date.

Section 5.2.1: NWMB Appointments.

Under section 5.2.1 of the NLCA, each of four DIOs shall appoint one member to the NWMB. The *Implementation Contract* (Schedule 3, Part 1, Page 7) guidelines anticipate that the appointing DIOs would be either the "RWOs or the Regional Inuit organizations in consultation with the RWOs". The reason for this guideline was to promote a close working relationship between the NWMB and the RWOs, which have complementary authorities with respect to wildlife management. NTI has designated each of the Regional Inuit Associations as a DIO for the purposes of making an NWMB appointment. The RIAs, however, have not delegated responsibility for appointments to the RWOs, and have not always consulted with the RWOs in making appointments. Partly as a result, the flow of information between HTOs, RWOs and NWMB has been somewhat lacking at times in different regions.

Section 5.2.3. DIO Technical Advisor.

Under section 5.2.3, "where a DIO appoints a member to the NWMB, that DIO shall have the right to have a technical advisor attend all meetings as a non-voting observer."

Although the DIOs are entitled to have four technical advisors attend NWMB meetings, DIO technical advisors rarely, if ever, attend NWMB meetings. This has placed the DIO appointees at a disadvantage in respect to the NWMB's deliberations. NTI has received expressions of concern from DIO appointees that government appointees obtain considerable technical and other support from their appointing departments, whereas DIO appointees are basically operating independently. Appointment of technical advisors would also have the advantage of improving communication between DIOs and their appointees, which has also been a subject of some concern among DIOs. In short, one or more technical advisors for DIO appointments should be identified and attend all NWMB meetings.

Section 5.3.15 and 5.3.22-23: Ministerial Action with respect to NWMB Decisions.

Sections 5.3.15 and 5.3.22-23 of the NLCA require the Minister to accept, reject or vary final decisions of the NWMB and then to implement the final decision or the final decision as varied. As a result of there being no timeframe stated for Ministerial action under these provisions, problems have arisen from Ministerial delay.

Part 7: Special Features of Inuit Harvesting: HTO and RWO Powers and Functions.

The RWOs and HTOs are identified under the NLCA as the vehicles for bringing Inuit harvesting views and concerns to the forefront of wildlife management in the Nunavut Settlement Area. The effective operation of the RWOs and HTOs under Part 7 of Article 5 is, therefore, particularly important.

Under section 5.7.13, "adequate funding for the operation of the HTOs and RWOs shall be provided by the NWMB." In addition to funding the HTOs and RWOs, Schedule 3, part 1, page 8 of the Implementation Guidelines in the *Implementation Contract* details steps that the NWMB would take to assist the RWOs and HTOs. As suggested above, the effective operation of the RWOs and HTOs is in need of serious improvement and must be made a priority by the parties to the NLCA and the NWMB.

Administrative deficiencies are a primary cause of RWO and HTO difficulties. There have been meetings (both regional and Nunavut wide) to attempt to address these issues, such as the Wildlife Symposium in 1997. In NTI's view, however, trained staff are required in the community and regional offices in order to facilitate the effective resolution of administrative and substantive issues in the communities on a day to day basis.

In addition, HTOs and RWOs require more knowledge and understand of the intricacies of the NLCA, and in particular, Article 5. Although some progress has been made in this area by particular HTOs on specific issues, HTOs and RWOs in general need to develop the capacity to create detailed by-laws and rules and procedures to effectively perform the functions identified for them in sections 5.7.3 and 5.7.6. As well, HTOs need to better understand Inuit harvesting rights under the NLCA and then operate as a source of information to their members about those rights should be improved.

Section 5.7.34: Assignment of Harvesting Rights.

The assignment provisions of the NLCA have probably been the focus of more discussion and confusion over the past five years than any other single provision of the NLCA. Many Inuit have eagerly exercised their rights under the NLCA to assign their rights to harvest. In NTI's experience, the vast majority of these cases have been Inuit women seeking to have their non-Inuit spouses or common law spouses hunt for food for their families. HTOs in some communities, and particularly larger communities, have expressed concerns with the actual or potential harvesting by non-Inuit of quota species such as polar bear, narwhal, beluga and walrus, through assignments. This occurs without appropriate regulation and in some cases, without necessary experience on the side of the proposed hunter. The HTOs need assistance in developing appropriate by-laws or rules to address their concerns. For their part, territorial wildlife officials have expressed concerns regarding the enforceability of wildlife laws in view of verbal assignments.

Assignment Form.

In order to address enforcement concerns related to assignments, NTI and the NWMB have engaged in an effort with RWED over the past couple of years to develop an assignment form that may be used for assigning harvesting rights. This form provides all the specific details of the assignment, is signed by the assignor and is filed with the HTO. NTI wishes to emphasize that, while it has agreed to the use of this form for reasons of administrative efficiency, assignments do not require a form or any writing to be effective. Thus, in NTI's view, Inuit in camp may give and revoke verbal assignments effectively.

Appropriate Regulation of Assignments.

NTI is also endeavoring to provide ongoing assistance and advice to the HTOs regarding appropriate regulation of assignments. NTI believes that HTOs have the capacity to impose reasonable regulation on assignees to the same extent as apply to all their members, such as requirements that minimum standards be met in terms of safety or harvesting knowledge. More assistance to HTOs is needed on this issue.

NTI Statements of Position: Article 5

NTI Statements of Position 3.5

Article 5: Wildlife

1. As mentioned elsewhere, NTI has concerns regarding the use of implementation funding allocated to the Territorial Government by the GOC and detailed in the *Implementation Contract*. Funding for Article 5 purposes may have been used for general government operations as opposed to being used for the implementation of specific Article 5 tasks or provisions. NTI seeks an accounting of territorial government moneys allocated to the Department of Renewable Resources and detailed in Schedule 2, part 4, pages 1 and 2 of the *Implementation Contract*.
2. The NWMB should work together with NTI to ensure the implementation of the obligations under Sections 5.2.38(b) and (c) of the NLCA to promote and encourage training for Inuit in various fields of wildlife research and management, and to promote and encourage the engagement of Inuit and Inuit organizations in research and technical positions made available through government and private sector research contracts.

3. Technical advisors in connection with the four DIO appointments to the NWMB should be identified and supported by NTI and the RIAs. One or more advisors should be in attendance at all NWMB meetings, perhaps on a rotational basis.
4. In consultation with the NWMB and NTI, the Minister should set a timeframe within which (s)he will take the action required under sections 5.3.15 and 5.3.22-23 of the NLCA to accept, reject or vary final decisions of the NWMB and then to implement the final decision or the final decision as varied.
5. With the assistance of NTI and the NWMB, the HTOs should develop reasonable rules and procedures to address their concerns related to regulation of assignees.
6. The effective operation of the HTOs should be made a priority of the NWMB and the Parties to the NLCA, in accordance with their respective obligations under the NLCA and Implementation Contract.

Article 6 - Wildlife Compensation

Article 6 addresses claims for compensation for loss or damage related to wildlife harvesting as a result of development activities. Since the Surface Rights Tribunal is mandated to hear Article 6 wildlife compensation claims, a number of the requirements of Article 6 are addressed in Bill C-62, the draft NWB/SRT bill.

In connection with Bill C-62, NTI has particular concerns regarding the fulfillment of the requirements of section 6.3.4 of the NLCA, which states:

Legislation may provide for appropriate limits of liability of developers or the methods of setting such limits and shall also require proof of fiscal responsibility and may also provide for security deposits and any other matters not inconsistent with this Article. Recognizing Inuit concerns regarding collection of compensation, government will give consideration to including enforcement mechanisms. Limits on liability will be set at levels sufficient to cover reasonably foreseeable damages in relation to various development activities.

Thus, legislation must ensure developers' fiscal responsibility to Inuit is secured and defined. This may include security deposit requirements, enforcement mechanisms to assist Inuit in collecting compensation, and limits on developers. The Government of Canada, however, has only included the limits on developers' liability in the draft

NWB/SRT bill. This includes a limit on liability that NTI considers wholly inadequate (see *Major Areas of Concern, Section 2.2, Legislation*). After tabling the draft bill once, DIAND recently provided draft regulations which include provision for proof of developers' fiscal responsibility and security deposits, but no consultations have yet been conducted on these issues. No consideration has yet been given to including enforcement mechanisms in legislation. This is a matter of particular importance to Inuit who, for the most part, are not in a position to easily enforce judgements against developers.

The Government of Canada will be in breach of section 6.3.4 until appropriate regulations are promulgated.

NTI Statement of Position 3.6

Article 6: Wildlife Compensation

1. **Draft NWB/SRT legislation under Article 10 of the NLCA should require proof of developers' fiscal responsibility, security deposits by developers and enforcement mechanisms for collecting compensation, all of which are contemplated under section 6.3.4 of the NLCA.**
2. **Alongside development of NWB/SRT legislation under Article 10, the GOC should make regulations to implement any elements of section 6.3.4 that are not contained in the statute itself.**

Article 7 - Outpost Camps

NTI has no issues to raise for the purposes of this report.

Article 8 – Parks

NTI's concerns respecting this Article are covered in *Major Areas of Concern, Section 2.5: IIBAs for Parks and Conservation Areas*.

Assignment Form.

In order to address enforcement concerns related to assignments, NTI and the NWMB have engaged in an effort with RWED over the past couple of years to develop an assignment form that may be used for assigning harvesting rights. This form provides all the specific details of the assignment, is signed by the assignor and is filed with the HTO. NTI wishes to emphasize that, while it has agreed to the use of this form for reasons of administrative efficiency, assignments do not require a form or any writing to be effective. Thus, in NTI's view, Inuit in camp may give and revoke verbal assignments effectively.

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NTI Statements of Position: Article 5

NTI Statements of Position 3.5

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3. Technical advisors in connection with the four DIO appointments to the NWMB should be identified and supported by NTI and the RIAs. One or more advisors should be in attendance at all NWMB meetings, perhaps on a rotational basis.
4. In consultation with the NWMB and NTI, the Minister should set a timeframe within which (s)he will take the action required under sections 5.3.15 and 5.3.22-23 of the NLCA to accept, reject or vary final decisions of the NWMB and then to implement the final decision or the final decision as varied.
5. With the assistance of NTI and the NWMB, the HTOs should develop reasonable rules and procedures to address their concerns related to regulation of assignees.
6. The effective operation of the HTOs should be made a priority of the NWMB and the Parties to the NLCA, in accordance with their respective obligations under the NLCA and Implementation Contract.

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Article 6 addresses claims for compensation for loss or damage related to wildlife harvesting as a result of development activities. Since the Surface Rights Tribunal is mandated to hear Article 6 wildlife compensation claims, a number of the requirements of Article 6 are addressed in Bill C-62, the draft NWB/SRT bill.

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Thus, legislation must ensure developers' fiscal responsibility to Inuit is secured and defined. This may include security deposit requirements, enforcement mechanisms to assist Inuit in collecting compensation, and limits on developers. The Government of Canada, however, has only included the limits on developers' liability in the draft

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The Government of Canada will be in breach of section 6.3.4 until appropriate regulations are promulgated.

NTI Statement of Position 3.6

Article 6: Wildlife Compensation

1. **Draft NWB/SRT legislation under Article 10 of the NLCA should require proof of developers' fiscal responsibility, security deposits by developers and enforcement mechanisms for collecting compensation, all of which are contemplated under section 6.3.4 of the NLCA.**
2. **Alongside development of NWB/SRT legislation under Article 10, the GOC should make regulations to implement any elements of section 6.3.4 that are not contained in the statute itself.**

Article 7 - Outpost Camps

NTI has no issues to raise for the purposes of this report.

Article 8 – Parks

NTI's concerns respecting this Article are covered in *Major Areas of Concern, Section 2.5: IIBAs for Parks and Conservation Areas*.

Article 9 – Conservation Areas

9.5.2 Thelon Wildlife Sanctuary

The GNWT has breached its obligation to coordinate the preparation of a management plan for the Thelon Wildlife Sanctuary by July 1998, and, as mentioned above in Section 2.5, its obligation to negotiate an IIBA.

Under section 9.5.2 of the NLCA, the management plan is to be based on recommendations of the DIO (in this case, the Kivalliq Inuit Association) and affected communities (in this case, Baker Lake), and then approved by the federal and territorial governments. The plan must also be approved by the NWMB in accordance with section 5.2.34 of the NLCA.

The GNWT did a good job in coordinating the development of the draft management plan up until the summer of 1997, when the Akiliniq Planning Committee submitted its draft management plan to KIA. At that point, it appears that staff cutbacks at RWED resulted in a lack of continuity on this file. In October 1997, NTI wrote to RWED and other relevant organizations requesting that the GNWT complete its coordinating obligation with respect to the plan up to the point of its approval by KIA, NWMB, GNWT and DIAND. None of these approvals have been accomplished to date.

Baker Lake members of the Akiliniq Planning Committee have expressed a desire to negotiate an IIBA for the Sanctuary once a management plan is in place.

NTI's other concerns respecting Article 9 are covered in *Major Areas of Concern, Section 2.5: IIBAs for Parks and Conservation Areas*.

NTI Statements of Position 3.9

Article 9: Conservation Areas

1. **The GN's Department of Sustainable Development should fulfill its coordinating role with respect to the Thelon Wildlife Sanctuary management plan as stated in section 9.5.2 of the NLCA by:**
 - **ensuring that the draft management plan with recommendations identified by Kivilliq Inuit Association staff and the community of Baker Lake is presented, as soon as possible, to the KIA Board of Directors, in English and Inuktitut, for its approval;**
 - **ensuring that the draft management plan, as approved by KIA, is presented to the NWMB for its approval, and that any further changes proposed by NWMB are consistent with the recommendations of KIA and the Akiliniq Planning Committee; and**
 - **ensuring that the draft management plan, as approved by NWMB, is presented to the federal and territorial governments for their approval, and that any further changes proposed by the federal or territorial government are consistent with the recommendations of KIA and the Akiliniq Planning Committee.**
2. **The Department of Sustainable Development should thereafter initiate the implementation of the approved Thelon Wildlife Sanctuary Management Plan.**
3. **The Department of Sustainable Development should initiate IIBA negotiations with respect to the Thelon Wildlife Sanctuary.**

See also *NTI Statements of Position 2.5-1* above.

Article 10 – Land and Resource Management Institutions

Section 10.2.1 requires stand-alone legislation to provide greater clarity on the Agreement's resource management bodies. This has not been done. This represents a major, unqualified failure in the implementation process. NTI's position on the reasons for this failure and its significance is elaborated under *Major Areas of Concern, Section 2.2: Legislation*.

Article 11 - Land Use Planning

Section 10.2.1: Failure to Enact Legislation

The Government of Canada is in breach of its obligation to enact legislation setting forth the powers, functions, objectives and duties of the NPC. NTI's position on this issue is discussed above under *Major Areas of Concern, Section 2.2: Legislation*.

Funding Arrangements and Appointments.

The Government of Canada's funding arrangements for the institutions of public government are, in NTI's views, contrary to the NLCA and *Implementation Contract* in a number of respects. As well, Ministerial delays in making appointments to the institutions are interfering with their effective functioning. NTI's position on these issues is discussed above under *Major Areas of Concern Section 2.1: Tools of Implementation* and *Section 2.9: Management Boards*.

Section 11.4.2: NPC Head Office

Under section 11.4.2 of the NLCA, "the head office of the NPC shall be in the Nunavut Settlement Area." Since before the establishment of the NPC in July 1996, NTI has tried to effect the move of NPC's head office from Ottawa to Nunavut. NTI raised the issue with the NPC, at the Nunavut Implementation Panel, and with the Minister of DIAND.

NTI was unsuccessful in obtaining consensus with the federal and territorial Implementation Panel members to take action on this issue, notwithstanding that the location of NPC's head office in Ottawa clearly violates section 11.4.2. In NTI's view, this failure is symptomatic of the barriers to effective land claim implementation discussed under *Major Areas of Concern, Section 2.1: Tools of Implementation*.

Recently, the NPC has located its Executive Director function in Nunavut, and NTI understands that it will locate more head office functions in Nunavut in the near future.

NPC's Draft Regional Land Use Plans

Over the past five years, NTI has made several submissions to the NPC containing detailed recommendations on the NPC's draft regional land use plans and/or reports. Many of these recommendations have yet to be addressed. NTI is hopeful that NPC and NTI will work together in the near future to address those issues. NTI is particularly heartened by the upcoming start-up of an Inuit Owned Lands land use planning process, through which planning and management of Inuit Owned Lands will be specifically addressed in the NPC's land use plans. Land use planning for Inuit Owned Lands must, of course, closely reflect Inuit goals and objectives in accordance with sections 11.2.1(b) and 11.8.2 of the NLCA.

Ministerial Approval of Land Use Plans.

Under section 11.5.6 of the NLCA, upon receipt of a revised draft land use plan, the relevant federal and territorial Ministers are together required, either to accept the plan or to refer it back to the NPC for reconsideration with written reasons. NPC may make this information public. The NPC is to reconsider the plan in light of the written reasons and resubmit the plan to the Ministers for final consideration.

The approval process followed by the Government of Canada and the GNWT with respect to the revised draft *Keewatin* and *North Baffin Regional Land Use Plans* did not conform to the NLCA's requirements. Instead of joint written reasons, the federal and territorial Ministers separately sent the NPC "comments" from various federal and territorial departments, as well as, in the case of the federal minister, a copy of an NTI letter and attachment outlining its outstanding concerns. As a result, the NPC was obliged to engage in a further round of negotiations with DIAND and GNWT officials to arrive at agreed-upon wording.

NTI is concerned that discussions of this nature with government officials on the wording to plans after the public hearing process is concluded could have the effect of changing language that was developed as a result of public consultation and the hearing process. Indeed, by virtue of the fact that the public was, by necessity, not party to these negotiations, a degree of skepticism and legal doubt may hang over the final product. In

addition, the NLCA circumscribes the discretion of the Ministers to withhold acceptance of the NPC's final plans to matters raised in the Ministers' written reasons, and these waters have now been muddled due to the process followed. NTI hopes to address this issue further through follow-up discussions with the NPC.

NTI Statement of Position 3.11

Article 11: Land Use Planning

1. **The Nunavut Planning Commission (NPC) should ensure that all head office functions, particularly those related directly to land use planning, are located in Nunavut.**
2. **NTI has made a number of recommendations to the NPC on its draft regional land use plans and planning process, many of which have yet to be addressed. NPC should work cooperatively with NTI to achieve a mutually acceptable resolution of NTI's outstanding concerns with NPC's regional land use plans and planning process.**
3. **NTI is concerned that the approval process followed to date by the GOC and the GNWT with respect to the revised draft *Keewatin and North Baffin Regional Land Use Plans* does not conform to the NLCA's requirements. The NPC, NTI and both levels of Government should attempt to achieve a collective understanding of the land use plan approval process to be followed in the future under sections 11.5.4 through 11.5.7.**

Article 12 - Development Impact

Section 10.2.1: Failure to Enact Legislation.

The Government of Canada is in breach of its obligation to enact legislation setting forth the powers, functions, objectives and duties of the NIRB. NTI's position on this issue is discussed above under *Major Area of Concern Section 2.2: Legislation*.

Funding Arrangements and Appointments.

The Government of Canada's funding arrangements with the institutions of public government are contrary to the NLCA and the *Implementation Contract* in certain respects. Ministerial delays in making appointments to the institutions are interfering

with their effective functioning. NTI's positions on these issues are discussed above under *Major Areas of Concern Section 2.2: Implementation* and *Section 2.9: Management Boards*.

Section 12.4.4: NIRB Screening Terms and Conditions.

Section 12.4.4 of the NLCA provides that, following its screening of a project proposal, NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5. Article 12 does not, however, explicitly describe authorizing agencies' obligations to incorporate such screening terms and conditions in permits. (By way of contrast, where NIRB terms and conditions are part of a project certificate following a review, authorizing agencies are explicitly required to implement the terms and conditions in accordance with their authorities and jurisdictional responsibilities and to include them in relevant permits, thereby ensuring their enforceability (NLCA s. 12.9.1 and 2)).

This lack of specific direction with respect to NIRB screening terms and conditions, coupled with the fact that NIRB's mandate differs from, and is in many cases broader than, the mandate of authorizing agencies, have resulted in a major concern. NIRB has had to function within the contexts of authorizing agencies' authorities, and/or, willingness, to attach NIRB terms and conditions, as drafted, to its permits. In cases where NIRB terms and conditions are not included in permits, or are unacceptably altered by an authorizing agency, NIRB's terms and conditions lose their intended function as enforceable and effective mitigation measures. NIRB's ability to achieve the purposes of Article 12 has thereby been significantly impaired.

Related to the above is a continuing problem with respect to project proposals, particularly in marine areas, which are to be screened by NIRB under the terms of the NLCA, but which are not subject to permitting by any authorizing agency. In the absence of a permitting authority, there is no mechanism for implementation and enforcement of NIRB terms and conditions. In February 1997, DIAND's Regional

Director General in Yellowknife, committed to an analysis to identify gaps of this nature and propose a solution. This was never done, and the problem continues.

Major irritants have arisen in connection with NIRB's screening of project proposals that require DIAND land use permits. The terms and conditions identified by NIRB and provided to DIAND are, for the most part, clearly within the scope of the Engineer's authority under section 31 of the *Territorial Land Use Regulations*. Despite this, DIAND officials have questioned the Engineer's authority to impose NIRB's terms and conditions. DIAND is reportedly continuing to issue land use permits without all or some of NIRB's terms and conditions. At times, NIRB's terms and conditions have been provided as "recommendations," instead of being included in permits. Even worse, they have been accompanied by an opinion from DIAND that the terms and conditions in the permit alone will provide the necessary environmental protection.

NTI recognizes that NIRB's terms and conditions are recommendations under section 12.4.4 of the NLCA, and that in some cases, the Minister may have legitimate technical reasons to wish to alter NIRB's terms and conditions. DIAND's actions described above, however, undermine the effectiveness and credibility of NIRB as the public institution mandated to protect the ecosystemic integrity of the Nunavut Settlement Area. In particular, identifying NIRB terms and conditions as recommendations in a cover letter with the disclaimer described above invites permittees to disregard NIRB's terms and conditions.

In acting under section 12.4.4, the Minister must act reasonably, in good faith, and not based on irrelevant or improper considerations. The Minister should also act with an awareness of the fact that NIRB's Constitutionally protected mandate differs from DIAND's mandate. This fact alone may require DIAND to exercise more of its authority than it has in the past with respect to terms and conditions imposed on land users. It is not appropriate for a Minister to include NIRB terms and conditions only as recommendations. Unless there is an overriding reason not to (such as constraints on Ministerial discretion), the Minister of DIAND and any other relevant federal department

should include NIRB terms and conditions in permits where this is allowed by a broad reading of the legislative authority.

NTI has been hopeful that better communication between DIAND and NIRB would go some way toward resolving these problems. These hopes have not materialized.

Application of CEAA in the Nunavut Settlement Area.

NTI has repeatedly advised the Government of Canada that departmental environmental screenings in the Nunavut Settlement Area under the *Canadian Environmental Assessment Act* following the establishment of NIRB on July 9, 1996 are not appropriate. In NTI's view, the provisions of Article 12 were intended to be exhaustive of environmental assessment in Nunavut. Those provisions expressly contemplate the federal role. This role primarily relates to receiving recommendations from NIRB as to screening terms and conditions, receiving and acting on NIRB and/or federal panel reports (in the case of reviews under Parts 5 and 6), and conducting environmental reviews in accordance with Part 6 of Article 12 where referred by the Minister.

On several occasions, the Government of Canada has committed itself to discussions of this issue with NTI, as a priority and in the context of Article 10 legislation for NIRB. The Government has not yet done so.

NIRB Operation on Inuit Owned Lands.

An issue has arisen regarding the screening and review of project proposals on Inuit Owned Lands in view of Schedule 12-1 of the NLCA, which exempts from Article 12 land use activities not requiring a Government permit or authorization. NIRB is, therefore, not authorized by Article 12 to screen or review project proposals on Inuit Owned Lands where no Government permit or authorization is required. This could result in public concern in the event of a substantial project for which no Government authorization is required. Even with respect to smaller projects, NTI has been advised by the Regional Inuit Associations that NIRB's recommendations for terms and conditions would be of assistance to them.

NTI has sought a number of times DIAND's participation in discussions regarding giving NIRB the additional function of carrying out screening and reviews of proposals on IOLs. Although DIAND officials have attended some meetings, discussions to date have not been productive because of DIAND's failure to conduct necessary background work prior to the meetings.

12.11.2: Transboundary Impacts.

Under section 12.11.2 of the NLCA, the Government of Canada and the Territorial Government, assisted by NIRB, are required to use their best efforts to negotiate agreements with other jurisdictions to provide for collaboration in the review of project proposals which may have significant transboundary ecosystemic or socio-economic impacts.

NTI is concerned that the Government of Canada has not fulfilled its obligation to negotiate an agreement for collaboration in the review of the Diavik proposal for a diamond mine in the Coppermine watershed outside the Nunavut Settlement Area.

NTI Statements of Position 3.12

Article 12: Development Impact

- 1. A lack of direction in the NLCA has resulted in a situation where the implementation and enforceability of Nunavut Impact Review Board (NIRB) screening terms and conditions are dependent on the jurisdiction of authorizing agencies, and, in some cases, their willingness, to attach NIRB terms and conditions to permits. Due to this situation, NIRB's terms and conditions have in some cases lost their intended function as enforceable and effective mitigation measures. NIRB's ability to achieve the purposes of Article 12 has thereby been significantly impaired.**

DIAND, the GN and NTI should agree on terms of reference and a contractor for an independent assessment, funded by the GOC, of jurisdictional and other issues that are interfering with NIRB's ability to fulfil its Article 12 mandate. Such an assessment should, among other things, identify gaps in the enforceability of terms and conditions within NIRB's mandate, and determine whether the gaps are jurisdictional in nature and,

therefore, require statutory change, or whether a regulatory authority could fill the gap.

2. Any GOC departments or agencies that are conducting departmental environmental screenings under the *Canadian Environmental Assessment Act* (CEAA) in Nunavut should cease doing so, and the GOC should commence consultations with NTI at the earliest possible date on the remaining Article 10 legislation, which should include, as a priority, the issue of the relationship of CEAA to the Nunavut Settlement Area.
3. DIAND should enter into discussions with NTI, the Regional Inuit Associations and NIRB to discuss the feasibility of NIRB carrying out screening and reviews of proposals on Inuit Owned Lands. Any additional costs to NIRB resulting from this work should be funded by the GOC.
4. The GOC should acknowledge its unfulfilled responsibility to negotiate an interjurisdictional agreement for collaboration in the review of the Diavik proposal for a diamond mine in the Coppermine watershed outside the Nunavut Settlement Area. In all future cases of project proposals which may have significant transboundary impacts, the GOC should fulfill its obligations under section 12.11.2 to use its best efforts to negotiate agreements with other jurisdictions to provide for collaboration in the review of such projects. Additional monies may be needed by NIRB to carry out its extra case load for diamond mining activities.

Article 13 - Water Management

Section 10.2.1: Failure to Enact Legislation.

NTI's principle concern with respect to the implementation of Article 13 is the Government of Canada's failure to enact legislation setting forth the powers, functions, objectives and duties of the NWB, addressed in detail under *Major Areas of Concern, Section 2.2: Legislation*. Uncertainties arise from the absence of legislation. Unfortunately, the proposed cure would also create problems in that there are substantive provisions of the NWB bill that do not comply with Article 13.

Funding Arrangements and Appointments.

The Government of Canada's funding arrangements with the institutions of public government are contrary to the NLCA and *Implementation Contract* in certain respects. Ministerial delays in making appointments to the institutions are interfering with their

effective functioning. NTI's positions on these issues are discussed above under *Major Areas of Concern, Section 2.1: Tools of Implementation*, and *Section 2.9: Management Boards*.

No Intervenor Funding Mechanism.

A principle objective of the NLCA is to provide for rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources (See NLCA recitals, page 1). As a practical matter, the voices heard at public hearings are often those of entities that have the technical experts to review materials, prepare documents and testify at public hearings. The expectation that Designated Inuit Organizations and communities have the technical expertise to properly evaluate the impacts of development proposals is often unrealistic. Intervenor funding, especially for large-scale projects subject to public hearings, is critical to ensure that the views of stakeholders other than industry and government can be heard during reviews.

NTI Statement of Position 3.13

Article 13: Water Management

The GOC should provide adequate intervenor funding for public hearings of large scale water projects in the Nunavut Settlement Area.

Article 14 - Municipal Lands

14.1.1. Inventory of Government and Crown Lands in Municipalities.

Under the definition of "Municipal Lands" in s. 14.1.1 of the NLCA, any parcels identified by Government in an *Inventory of Government and Crown Agency Lands in Municipalities* need not be conveyed to the municipalities under section 14.3.1. Listed parcels are those required by Government in 1993 or in the foreseeable future. The *Inventory* was deposited with the registrar prior to July 9, 1993.

The *Inventory*, which was signed on behalf of TFN, states that parcels could be added to the list by Government up until July 9, 1996. Pursuant to this arrangement, in July 1996, NTI received a letter from MACA stating that it was adding 61 parcels to the list that would not be transferred to municipalities because they were needed by Government.

On receiving this notice, NTI notified the GNWT of its concern that the hamlets had a legal right to the transfer of these 61 parcels. This was because, as a legal matter, the statement that the *Inventory* could be amended up to July 1996 was not effective, since there can be no collateral agreements to the *NLCA* (NLCA, section 2.9.2). The GNWT, however, took the position that, as a practical matter, the parcels were required by the GNWT for community purposes. For this reason, they could not reasonably be transferred to the municipalities despite legal requirements.

NTI was not in a position to come to any conclusion on whether particular parcels should or should not be transferred to the municipalities. It was decided that NTI should at least notify the hamlets of the issue. NTI did so by letter dated August 14, 1996 to the GNWT, copying the hamlets, against the wishes of the GNWT. In its letter, NTI requested that the GNWT advise how it proposed to address NTI's concern. NTI never received a response, so this matter is still outstanding.

Section 14.3.1 Conveyance of Municipal Lands.

Under section 14.3.1 of the NLCA, the GNWT was to convey the fee simple estate to Municipal Lands, as defined in section 14.1.1, within the built-up area of the municipality, to the municipal corporation "as soon as practicable, and in any event no later than three years after the date of ratification of the Agreement." The territorial government has been in breach of this provision since July 1996 with respect to unconveyanced parcels.

The GNWT's December 1998 Status Report on implementation states that:

Delays ... are mainly the result of municipalities being slow to pass the necessary by-laws. Two municipalities have yet to sign their Land Administration By-Law. At the end of November, 75% of the approximate 3,600 conveyances have been registered.

Under subsection 132.2(4) of the *Hamlets Act*, a municipal corporation cannot acquire real property unless the acquisition is authorized or approved by a by-law. If a land administration by-law has been adopted, the municipal corporation cannot acquire real property unless the acquisition is also made in accordance with that by-law. MACA developed model land acquisition by-laws. NTI is advised that MACA also held seminars in the communities to assist them in passing the by-laws.

NTI is concerned that some municipalities may be reluctant to pass the by-laws until they have more information from MACA regarding the terms and conditions of transfer of Municipal Lands, and the implications of MACA's model by-law, such as the provision that development on existing parcels can proceed only at cost. The "development cost" requirement is not in the *Hamlets Act*. Rather, the language in MACA's model by-laws is based on MACA's *Municipal Lands Policy*.

NTI believes that some municipalities may also be apprehensive that they will not have access to funds necessary to develop lots in the future unless they borrow money or drastically increase lease rates. In this regard, NTI is concerned that MACA unilaterally decided to withdraw its land development capital budget, in effect cutting off any monies for municipal land development. Further, MACA did some development work in 1996 and 1997, and then advised hamlets that they would be charged back these costs at a rate of \$600/lot/year (since negotiated down by hamlets to \$250/lot/year). On reading Article 14 as a whole, the intention of transferring Municipal Lands was clearly to bring control and administration closer to the community, to foster local self-sufficiency. It was not to burden the communities with bills and a debt load they cannot overcome in the foreseeable future.

NTI has also received correspondence expressing concern over the lack of monitoring of the land transfers. Municipalities obviously feel that there are many complex issues in connection with the transfer that are not being attended to. Although MACA has

sponsored a land administrator course, this alone does not ensure that the hamlets have the capacity to take on land administration duties.

Section 14.3.1: GNWT's Block Surveys.

To facilitate the transfer of Municipal Lands to the municipalities under section 14.3.1, any necessary survey work is to be done by the GNWT. Section 14.3.1 expressly provides that the GNWT is to be responsible for the cost of any "necessary remedial surveys of the built-up area." In NTI's view, the GNWT's practice of carrying out block surveys of tracts of Municipals Lands within the built-up areas is not consistent with the obligation expressed in section 14.3.1.

The NLCA clearly requires more than survey work sufficient to facilitate conveyance of large undivided tracts of land in the built-up area. While the practice of block surveys may be sufficient to permit conveyance of the Lands, the obligation as stated in the NLCA is to carry out "necessary remedial surveys of the built-up area." NTI believes that this language requires the GNWT to carry out the survey work necessary to permit the Lands to be properly and efficiently administered and developed by the municipalities. This is consistent with the requirement of the *Implementation Contract* that: "There will be a significant number of remedial surveys which will be required to deal with developed parcels which have never been surveyed and various existing parcels which have been subdivided by a sketch plan." (*Implementation Contract*, Sch. 1, p. 14-1)

NTI Statements of Position 3.14

Article 14: Municipal Lands

- 1. A thorough review of the status of all aspects of the transfers of Municipal Lands under Article 14 should be conducted by the Parties, including:**
 - the status of land transfer by-law adoption and approval, and specifically, the reasons identified by municipalities' for not adopting by-laws;

- the existing capacity of individual municipalities to take on land administration duties and the responsibilities for land development;
 - MACA's 1996 activities in connection with withdrawing its land development capital budget, and charging hamlets back development costs. MACA should also account for rental/lease payments received on unconveyed Municipal Lands since the date of ratification to ensure that all income received has been applied to development costs in developing Municipal Lands. In addition to these purely legal matters, MACA's actions should be assessed for how they have affected communities in terms of fostering local self-sufficiency as intended by the transfers of Municipal Land under Article 14.
2. The GNWT's practice of performing block surveys of tracts of Municipals Lands within the built-up areas pursuant to its obligation in section 14.3.1 of the NLCA should be abandoned by the GN as it is inconsistent with the requirements of Article 14. An assessment of all survey work done by the GNWT under this provision should be performed to determine where additional survey work is needed to permit Municipal Lands in the built-up areas to be properly and efficiently administered and developed by the municipalities. The GNWT should pay the cost of any such surveys.
 3. The GNWT should, in consultation with the GN, respond to NTI's concern regarding the GNWT's unilateral decision to add 61 properties to the Inventory of land excluded from transfer to the municipalities under section 14.1.1 of the NLCA. In particular, it should address concerns as to whether any of the 61 parcels added to the Inventory after July 9, 1993, or any other lands the GNWT has not transferred and which may not be on the Inventory, are lands being withheld to the detriment of the municipality.

Article 15 - Marine Areas

Section 15.3.1: Structure for management of migratory marine species.

Under section 15.3.1 of the NLCA, Government is required to maintain a structure or structures to promote the coordinated management of marine species in Zones I and II and adjacent areas. Under section 15.3.2, the NWMB is guaranteed appropriate representation to these structures.

Zones I and II are defined in the NLCA as follows:

"Zone I" means those waters north of 61 latitude subject to Canada's jurisdiction, seaward of the Territorial Sea boundary as measured from lines drawn pursuant to the Territorial

Sea Geographical Co-ordinates (Area 7) Order SOR/85-872 that are not part of the Nunavut Settlement Area or another land claim settlement area;

"Zone II" means those waters of James Bay, Hudson Bay and Hudson Strait that are not part of the Nunavut Settlement Area or another land claim settlement area.

No structures have been identified by the Department of Fisheries and Oceans for the purpose of meeting the requirements of section 15.3.1. At the same time, an Atlantic Fisheries Policy Review (AFPR) Working Group has been formed within the Department of Fisheries and Oceans, with the specific mandate to prepare "an overall policy framework for Atlantic fisheries," including "conservation, economic viability and the industry's own role in fisheries management." One of the three stated objectives of the AFPR is to "commit to a set of principals to guide fisheries management in the long term (*i.e.*, define what we mean by conservation, allocation, accountability, economic viability, *etc.*)."

It is clear that the AFPR will be addressing issues of allocation and adjacency in Zones I and II and adjacent areas.

In the plain meaning of section 15.3.1, the AFPR Working Group is a structure, the mandate of which includes promoting the coordinated management of migratory marine species in Zones I and II and areas adjacent to Zones I and II. This would include, among others, NAFO Sub-Area 0, 1 and 2, as well as marine areas of the Nunavut Settlement Area adjacent to Zones I and II.

Section 15.3.2, therefore, requires the NWMB to appoint an appropriate representative to the AFPR Working Group and any successor structure. The creation and maintenance of such a structure is an obligation of section 15.3.1 of the NLCA.

Section 15.3.7: Turbot Allocations.

NTI's court challenges of turbot allocations by the Minister of Fisheries and Oceans in Davis Strait, in violation of Article 15 of the NLCA, are discussed in detail in *Major Areas of Concern, Section 2.6: Turbot Fisheries Litigation*.

Section 15.4.1: Nunavut Marine Council.

Section 15.4.1 of the NLCA provides for the establishment of a Nunavut Marine Council by the NIRB, NWB, NPC and NWMB, to advise and make recommendations to other government agencies regarding marine areas.

Nunavut Wildlife Management Board, Nunavut Impact Review Board, Nunavut Water Board and Nunavut Planning Commission, in consultation with the parties to the NLCA, should develop clearly defined roles and terms of reference for the Nunavut Marine Council. These should be designed to alleviate any concerns regarding overlapping jurisdiction or interference with the mandate of other institutes of public government. A Nunavut Marine Council with a clearly defined role will provide an improved, united voice for promoting Inuit interests on marine issues what each IPG could do acting separately.

In addition, the absence of funding for the operation of the Nunavut Marine Council is an impediment to its effective establishment and operation. No funding is provided under the NLCA or the *Implementation Contract* for the Nunavut Marine Council and the Minister of Indian Affairs and Northern Development has recently denied a joint request for funding from the institutions. NTI understands that the Department of Fisheries and Oceans (DFO) is willing to provide some funding assistance to a Nunavut Marine Council.

NTI Statements of Position 3.15

Article 15: Marine Areas

1. The GOC has not advised the NWMB or NTI of its structure to promote the coordinated management of migratory marine species in Zones I and II and adjacent areas, as it is required to do under section 15.3.1 of the NLCA. The GOC should, therefore, immediately fulfill its obligations under sections 15.3.1 and 15.3.2 to identify a section 15.3.1 structure and appoint a representative of the NWMB to that structure.
2. NWMB, NIRB, NWB and NPC, in consultation with the Parties to the NLCA, should develop clearly defined roles and terms of reference for the

Nunavut Marine Council designed to alleviate any concerns regarding overlapping jurisdiction or potential interference with the mandate of individual IPGs.

- 3. DIAND, DFO, NWMB, NIRB, NWB, NPC and NTI should seek a joint funding arrangement for the Nunavut Marine Council that would include annual core funding from the GOC, and might include contributions from other parties.**

See also NTI Statement of Position 2.6 above.

Article 16 - Outer Land Fast Ice Zone

NTI has no issues to raise for the purpose of this report.

Article 17 - Purposes of Inuit Owned Lands

NTI has no issues to raise for the purposes of this report.

It should be noted, however, that NTI, the Regional Inuit Associations and the Nunavut Planning Commission will be conducting a joint Inuit Owned Land Use Planning and Management Project to address the requirements of section 11.2.1(b) and 11.8.2 of the NLCA. The Project will examine the values that Inuit place on Inuit Own Land parcels and how Inuit would like to use and manage these parcels in the future for inclusion in NPC's land use plans.

Article 18 - Principles to Guide the Identification of IOLs

NTI has no issues to raise for the purposes of this report.

Article 19 - Title to Inuit Owned Lands

Section 19.4.2: Future Inuit Owned Lands: NorthWest Company lands, and Section 19.5.1: North West Company lands and Bishop of the Arctic lands.

Under section 19.4.2 and Schedule 19-8, Part III no. 7, of the NLCA, two parcels of land at Button Point area, Bylot Island, were to become Inuit Owned Lands. This was supposed to happen when the North West Company transferred title for the two parcels to the Qikiqtani Inuit Association (QIA). Prior to the ratification of the NLCA, the North West Company agreed to do this.

Under section 19.5.1 of the NLCA, two parcels of land in Pangnirtung were to become Inuit Owned Lands on the date when the North West Company and the Bishop of the Arctic respectively transferred title for those lands to QIA, which, prior to the ratification of the NLCA, they also agreed to do.

Since ratification of the NLCA, lawyers for NTI have been attempting to make the land transfer happen. However, both the North West Company and the Bishop of the Arctic are demanding that for restrictive covenants be attached to the transfers.

In the case of the Bishop of the Arctic's lands, the Bishop insists on a covenant that the lands being transferred will be used only as an elders' centre and youth centre under certain restrictions. Two other difficulties have delayed the completion of this transfer: (i) difficulties regarding the plan of survey for the Bishop's land; and (ii) the release of certain rights held by the Government of Canada in respect of the Bishop's land. It is expected that the terms of the restrictive covenant will be finalized shortly. It is also expected that the issues regarding the plan of survey, and the restrictions on the Bishop's title will also be resolved shortly.

In the case of the North West Company's lands, negotiations on the terms of the restrictive covenant on the Pangnirtung land have yet to be completed. The North West Company wishes to have a non-competition clause. QIA must also prepare a plan of survey for the portion of the land they intend to acquire.

With regard to the Bylot Island lands, there have been certain difficulties regarding the North West Company's right to transfer these lands, because of the legal description and plan of survey. These issues required extensive discussions with the Land Titles Office, as well as with the North West Company. These issues have now been resolved.

19.4.1: Other Future Inuit Owned Lands.

Four parcels in the Kitikmeot region referred to in section 19.4.1 of the NLCA and identified in Schedule 19-8 are to be transferred to the DIO when the lease expires or the DIO provides a letter to Government from the lessee indicating that the lessee consents to its lease being located on Inuit Owned Lands. The lessees have indicated their consent to the transfers. These transfers are in process of being dealt with by the DIO, Kitikmeot Inuit Association.

Section 19.8.8 Surveys.

NTI is largely satisfied with the status of surveys being conducted under section 19.8.8 of the NLCA. Generally, the survey fieldwork is on schedule. However, the recording in the Land Titles Office is behind schedule. At the time of this writing, the surveys have been recorded from the 1997 survey season forward, but the surveys from the 1994 to 1996 survey seasons have not been recorded. The reason is that the older survey recordings are being revised to meet the more desirable 1997-98 standard.

NTI Statements of Position 3.19

Article 19: Title to Inuit Owned Lands

- 1. The North West Company should make all reasonable efforts to conclude as soon as possible with QIA the negotiations on the terms of the transfer of Pangnirtung lands, which the North West Company committed to transfer to the DIO. Similarly, the Bishop of the Arctic should promptly finalize negotiations with QIA on the terms of the transfer of the Bishop's land, which the Bishop committed to transfer to the DIO.**

Transfers of future Inuit Owned Lands under section 19.4.1(a) and schedule 19-8, Part I of the NLCA, should take place forthwith.

Article 20 – Inuit Water Rights

There are a number of unresolved transboundary issues associated with development activity outside the Nunavut Settlement Area, particularly, issues related to Inuit water rights (Article 20) and harvesting rights (Article 40).

Under section 20.4.1 of the NLCA, where a project outside of Nunavut may substantially affect the quality, quantity or flow of water through Inuit Owned lands, the project or activity must not be approved by the competent water authority until a compensation agreement has been entered into with the DIO. NTI has concerns that diamond activity in the Northwest Territories may have substantial individual and cumulative impacts on the Coppermine River watershed that have not been adequately recognized by proponents or regulatory authorities in impact and benefit agreements and licencing. NTI believes that compensation agreements in relation to potential downstream effects of diamond activity should be entered into by proponents and the DIO under section 20.4.1.

Article 21 - Entry and Access

Sections 21.7.2 to 21.7.6 Third Party Mineral Interests in Inuit Owned Lands.

Sections 21.7.2 to 21.7.6 of the NLCA describe the respective rights of Inuit and others in connection with third party interests in minerals on Inuit Owned Lands. This relates to situations where Inuit own the subsurface rights, but where other interests were in existence on July 9, 1993 -- the date of ratification of the NLCA.

Section 21.7.2.

Under section 21.7.2, pre-existing interests continue in accordance with their terms and conditions under existing legislation. Any provisions of successor legislation that would have the effect of diminishing the rights of the DIO only apply to Inuit Owned Lands with the consent of the DIO. The DIO receives whatever consideration is paid or payable by the interest holder for the use or exploitation of the minerals, following the date of vesting.

In May 1995, NTI requested that DIAND establish a process to ensure that payment has been made to Inuit of all amounts due under section 21.7.2. At that time, NTI indicated that an appropriate process would include written verification of all income producing pre-existing interests on Inuit Owned Lands. Although there was some initial difficulty, a process has now been established by DIAND to calculate and remit to NTI mineral lease rentals received by DIAND with respect to existing rights on subsurface Inuit Owned Lands. NTI hopes to receive information pursuant to this process that will confirm that all required past payments have been made.

There are no royalties due under section 21.7.2 at this time. NTI and DIAND have had some discussions regarding the process by which royalties would be calculated for one project that was subsequently put on hold. In view of the fact there are other proposed development projects that may become a reality in the near future, discussions between NTI and DIAND regarding royalty payments should begin again soon.

Section 21.7.3.

Under section 21.7.3, the Government of Canada is obligated to transfer administration of a third party mineral interest to the DIO where the DIO and third party interest holder agree to administration of the interest by the DIO. Although no holder of third party interest has requested that administration of an interest be transferred to NTI so far, it would be wise to plan for when this does happen.

Section 21.7.4.

Under section 21.7.4, DIAND must exercise all powers, discretions and authorities in relation to third party mineral interests that affect the interests of the DIO as title holder in consultation with the DIO. In NTI's view, the "powers, discretions and authorities" that affect "the interest of the DIO as title holder" should be identified by DIAND, in consultation with NTI. This has not yet been done. Such matters as the following may be appropriate:

- NTI has become aware that in the process of converting *Canada Mining Regulations* (CMR) claims to mineral leases, there is a possibility that surveys of

these areas could be done in a manner inimical to NTI's rights. Section 56 of the CMR provides for a protest by "any person who has an interest in land contiguous to the claim." NTI interprets that to include all lands administered by NTI. NTI, therefore, believes that it should be consulted in the process of claims being taken to lease, and that NTI should review the draft legal surveys before they are approved. There has been some recent informal discussion between NTI and DIAND to develop a procedure to ensure NTI's involvement.

- Another area for consultation with NTI arises from section 59(2.1) of the CMR, which deals with the terms and conditions to be applied to the renewal of a lease.
- NTI has identified several other areas in which it believes it should be consulted.

Following the completion of an identification process, NTI and the Government of Canada should discuss how these powers, discretions and authorities will be exercised in consultation with NTI.

Section 21.7.6.

Under section 21.7.6, DIAND is obliged to share information with the DIO as follows:

21.7.6 Government shall share with the DIO any information received from a third party interest holder referred to in Section 21.7.2 which that party is required to provide by legislation, where such information is required to permit the DIO;

- (a) *to verify the consideration paid or payable to Government by the interest holder for the use or exploitation of the minerals other than specified substances; or*
- (b) *to participate in consultation with Government regarding third party interests as provided for in this Article.*

In the summer of 1996, DIAND issued a *Discussion Paper on Proposed Amendments to the Northwest Territories Mining Royalty Regime in the Canada Mining Regulations*, preliminary to proposed amendments to the royalty provisions and other administrative provisions of the CMR. The *Discussion Paper* suggested changes to the CMR that would have contravened section 21.7.6 of the NLCA in several respects. In response to NTI's letter of concern, DIAND took the following position:

... As you point out at the beginning of your letter, the Nunavut Land Claims Agreement is a constitutional document by virtue of Section 35 of the Constitution Act, 1982. As such, the provisions of Article 21 automatically take precedence over any provision of the Canada Mining Regulations, and there is therefore no need to include such language in the Canada Mining Regulations.

As discussed above under *Major Areas of Concern, Section 2.2, Legislation* and *Section 2.7, General Problems of Consistency with Legislation*, NTI strongly objects to this line of reasoning. The Government of Canada has taken this line of reasoning in a number of contexts. The Constitutional status of the NLCA does not provide the Government of Canada with an acceptable rationale for adopting legislation inconsistent with the Agreement. This position necessarily will result in litigation costs to Inuit and to the people of Canada in general, as Inuit are forced to challenge inconsistent legislation in court. It will also result in administrative inconvenience, inefficiencies and confusion among bureaucrats and members of the public using legislation.

In the case of the CMR amendments it appears that, ultimately, NTI's continued objections had the desired effect, and the CMR amendments as adopted did not include the offensive provisions.

To ensure that the information to which NTI is entitled with respect to royalties under section 21.7.6 will be provided to NTI on a consistent basis, it was agreed that NTI would provide a draft agreement for DIAND's consideration. NTI did so in September 1997, but received no response. At a December 1998 meeting with NTI, DIAND officials advised that the draft agreement was "bogged down" in the Justice Department, and the parties agreed to address the issue in the larger context of information requirements under both Article 21 and 25, discussed below.

NTI Statements of Position 3.21

Article 21: Entry and Access to Inuit Owned Lands

- 1. The parties to the NLCA should ensure that, in accordance with section 21.7.2 of the NLCA, all required past payments have been made to Inuit for the use and exploitation of minerals on Inuit Owned Lands that were subject to pre-existing interests.**
- 2. In view of certain proposed development projects involving pre-existing mineral rights on Inuit Owned Lands, discussions between NTI and GOC regarding the process by which royalty payments to NTI will be calculated**

under section 21.7.2 of the NLCA should continue promptly.

3. The GOC and NTI should clarify the process by which administration of third party interests can be “transferred” to NTI under section 21.7.3. This should be done in the near future before requests for such a transfer are made.
4. All “powers, discretions and authorities. . . affecting the interest of the DIO as title holder” under section 21.7.4 should be identified by DIAND in consultation with NTI. Following an identification process, the parties should determine how these powers, discretions and authorities will be exercised in consultation with NTI as required by section 21.7.4. NTI believes that sections 56 and 59(2.1) of the *Canada Mining Regulations* are two examples where powers, discretions and authorities should be exercised by the GOC in consultation with NTI.
5. The GOC should promptly conclude discussions with NTI to determine the royalty information that it will provide to NTI under section 21.7.6 of the NLCA.

Article 22 - Real Property Taxation

Under Article 22 of the NLCA, the tax-exempt status of Inuit Owned Lands is described as follows:

22.2.1 Subject to this Article and the Agreement, no federal, territorial, provincial or municipal charge, levy or tax of any kind whatsoever shall be assessable or payable on the value or assessed value of Inuit Owned Lands and, without limiting the generality of the foregoing, no capital, wealth, realty, school, water or business tax shall be assessable or payable on the value or assessed value of Inuit Owned Lands.

22.2.2 Subject to Section 22.2.5, Inuit Owned Lands within municipal boundaries that,

- (a) have improvements; or*
- (b) do not have improvements, and lie within a planned and approved subdivision and are available for development,*

shall be subject to real property taxation under laws of general application.

...

22.2.4 For the purposes of Sections 22.2.2 and 22.2.3, improvements do not include:

- (a) improvements which result from government or public activity;*
- (b) outpost camps;*
- (c) any non-commercial structure associated with wildlife harvesting including cabins, camps, tent frames, traps, caches and weirs; or*
- (d) any non-commercial structure associated with any other traditional activities.*

Since 1993, the Regional Inuit Associations have been faced with numerous situations in which Inuit Owned Land parcels have been assessed for taxation in actual or potential violation of Article 22 of the NLCA. Overcoming bureaucratic resistance to resolving these questions on a timely basis has proven difficult, resulting in a number of DIO appeals of assessments before the territorial or municipal boards of revision.

Most recently, by way of example, parcels identified as 800-SK-201 and 800-SK-197 on a map entitled *Inuit Land Selection* were assessed by the Municipality of Iqaluit. NTI contacted the Municipality and the territorial Department of Municipal and Community Affairs in an attempt to determine if these parcels are within "planned and approved subdivisions;" little information was available, however. It does not appear that the parcels fall within planned and approved subdivisions. Further, parcel 800-SK-201 is undeveloped and parcel 800-SK-197, although developed, is exempt from taxation under 22.2.4(d), which defines "improvements" as excluding "any non-commercial structure associated with any other traditional activity." Finally, NTI's believes that road access and power-lines to the parcels do not bring the parcels within the terms of Section 22.2.2(a) as they do not constitute improvements within the meaning of the term. In any event, they would be exempted by 22.2.4(a) as resulting from government or public activity.

In accordance with Article 22 of the NLCA, these parcels should be exempt from taxation until:

- the parcels are subdivided and are available for development; or
- development occurs which is not exempt as outlined above.

The assessment of these parcels of land appears to be a violation of the NLCA. A formal appeal of the assessment seems unnecessary and burdensome to Inuit. Unless contrary information is provided, the Territorial Government should reimburse QIA for all previous tax payments and rates levied against the noted parcels.

Further, a process should be established by the Government of Nunavut, relevant municipalities, NTI and the RIAs, which would result in similar situations being

addressed in an expeditious and informal manner, in order to avoid formal appeals of questionable assessments.

NTI Statement of Position 3.22

Article 22: Real Property Taxation

A process should be established by the GN, relevant municipalities, NTI and the RIAs, that would allow for the informal and expeditious resolution of questions regarding the appropriateness of tax assessments on Inuit Owned Lands in view of Article 22 of the NLCA. With regard to one such issue, the GNWT should reimburse QIA for all tax payments previously made on parcels identified as 800-SK-201 and 800-SK-197 in violation of the provisions of Article 22.

Article 23 – Inuit Employment Within Government

NTI's position on this Article is covered in *Major Areas of Concern, Section 2.3: Article 23*.

Article 24 – Government Contracts

NTI's position on this Article is covered in *Major Areas of Concern, Section 2.4: Article 24*.

Article 25 – Resource Royalty Sharing

Section 25.2.4. Statement of Royalty Revenues.

Under Article 25, Inuit have the right, in every calendar year from the date of ratification, to be paid 50% of the first \$2 million of resources royalties for production on Crown lands and 5% of additional resource royalties for that year. This right applies to any share of production paid or payable to Government as owner of a resource produced from Crown lands in the Nunavut Settlement Area, including the Outer Land Fast Ice Zone. Amounts due are payable to Nunavut Trust in quarterly payments and are calculated on the basis of amounts received for resources produced after the date of ratification.

Article 25 stipulates the following information requirements in connection with these payments:

25.2.4 Government shall annually provide the Nunavut Trust with a statement indicating the basis on which royalties were calculated for the preceding year.

25.2.5 On the request of the Nunavut Trust, Government shall request the Auditor-General to verify the accuracy of the information in the annual statements.

NTI first wrote to DIAND in May 1995 regarding a concern shared by NTI and Nunavut Trust that Nunavut Trust was not being provided with sufficient background information, in the form of the required annual statement, to satisfy itself as to the accuracy of the payments made by DIAND. At a meeting in October 1995 between DIAND and NTI officials, DIAND agreed that the information previously provided to Nunavut Trust to determine the basis on which royalties are calculated should be expanded. At that time, DIAND undertook to consult with the mining companies operating in the Nunavut Settlement Area to seek their consent to the provision of this information to Nunavut Trust. In February 1997, DIAND wrote to Nunavut Trust indicating that the relevant companies have agreed to the disclosure of certain information to Nunavut Trust pursuant to section 25.2.4 of the NLCA and requesting a confidentiality agreement. In November 1997, NTI responded on behalf of itself and Nunavut Trust indicating willingness to enter into a confidentiality agreement on certain terms set forth in that letter. DIAND has not responded to NTI specifically with respect to the confidentiality agreement, and at the time of this writing the matter has not yet been concluded.

Section 25.3.1: Consultation.

Under section 25.3.1, the following consultation requirements apply with respect to royalties payable to Government:

25.3.1 Government shall consult with the DIO on any proposal specifically to alter by legislation the resource royalty payable to Government. Where Government consults outside of Government on any proposed changes to the fiscal regime which will change the resource royalty regime, it shall also consult with a DIO.

In July 1995, NTI learned informally DIAND had formed a multi-department government working group that was reviewing the royalty regime under the CMR. NTI also learned that industry representatives had been directly involved in the review and had attended working group meetings. NTI wrote to the Regional Director General of DIAND at that time to express concern that NTI had not been invited to participate in this review. NTI pointed to the unique interest and rights of Inuit deriving from the NLCA, including Inuit entitlement to 100% of the royalties from grandfathered rights and a significant share of royalties from Crown lands, and the consultation obligations attendant thereto. DIAND's response was to acknowledge that it had indeed exchanged "technical information about royalties with BHP Diamonds Inc." and that "discussions between federal officials and BHP on the review of royalties have been undertaken in the context of all aspects of the development of its diamond mining project." DIAND declined to consult with NTI at that time, stating that its review was in the initial stages of preparation. As discussed above, in the summer of 1996, DIAND issued its *Discussion Paper on Proposed Amendments to the Northwest Territories Mining Royalty Regime in the Canada Mining Regulations*.

NTI considers that DIAND's consultation with members of the mining industry at a time when DIAND's review was, by its own admission, in the initial stages of preparation, and while DIAND was refusing to consult with NTI, was contrary to the NLCA, and specifically, section 25.3.1, which requires consultation with NTI "where Government consults outside of Government" on proposals to alter the royalty regime.

NTI Statements of Position 3.25

Article 25: Resource Royalty Sharing

- 1. NTI, the GOC and Nunavut Trust should conclude as soon as possible any agreements required in order for Nunavut Trust to receive adequate information needed to verify royalty payments it receives under Article 25.**

2. Section 25.3.1 of the NLCA requires that the GOC consult with NTI every time it consults outside of Government on any proposed changes to its royalty regime. DIAND should re-examine, in consultation with NTI, its consultation practices with respect to revisions to the *Canada Mining*

Regulations and royalty regime with a view to ensuring future compliance with section 25.3.1.

Article 26 – Inuit Impact and Benefits Agreements

To date, only one Inuit Impact and Benefit Agreement (IIBA) has been negotiated to completion. This is the Agreement between the Kitikmeot Inuit Association and Echo Bay for the ULU gold project. As the first IIBA, the Echo Bay IIBA has considerable value as a precedent and, therefore, a large potential impact on Inuit Nunavut-wide.

The Echo Bay IIBA is generally thorough in terms of addressing a wide range of economic matters which could “reasonably confer a benefit on Inuit,” as required by section 26.3.1 of the NLCA. Echo Bay, however, failed in many areas to commit to enforceable, legally-binding benefits. The DIO is, therefore, left to rely on the good faith and cooperation of the developer in achieving many of the goals of the IIBA.

In addition, the IIBA does not specifically address and provide for mitigation of potential detrimental impacts of the proposed development project. Instead, the IIBA leaves impacts for potential negotiation following environmental assessment, if necessary to ensure consistency with project approvals. In NTI’s view, an IIBA provides an important avenue for reducing potential negative environmental and social impact to the satisfaction of Inuit, which should not be overlooked. This is a right over and above project approvals in permitting requirements, and a means for addressing specific Inuit concerns that may not be addressed in a project approval.

NTI believes that the above deficiencies may become characteristic of developers’ approaches to future IIBAs, and that these deficiencies should be avoided in future IIBA negotiations.

NTI Statement of Position 3.26

Article 26: Inuit Impact and Benefit Agreements for Major Development Projects

IIBAs for major development projects under Article 26 of the NLCA should provide specific, enforceable commitments for economic benefits, and should address all potential detrimental environmental impacts of the projects.

Article 27 – Natural Resource Development

Under section 27.1.1 of the NLCA, prior to opening any lands for petroleum exploration in the Nunavut Settlement Area, the Government of Canada must notify the NTI and provide it with an opportunity to present its views and discuss the terms and conditions for exploration rights. Under section 27.1.2, prior to the initial exercise of rights in respect of exploration, development or production of petroleum on Crown lands, in order to prepare a benefits plan, the proponent is required to consult the DIO with respect to the matters listed in Schedule 27-1.

On June 23, 1998, DIAND's Oil & Gas Directorate (OGD) officially informed NTI of its intent to open certain Baffin lands for petroleum exploration. At that point, OGD officials and NTI began a dialogue, including meetings and an exchange of correspondence, which continues to date. This consultative process is intended to fulfil the requirements of section 27.1.1, and, in particular, to address NTI's concerns with the OGD's proposed Call for Nominations and Call for Bids. The quality of this process has been good and the working relationship cordial. Thus far, NTI is of the opinion that the members of the OGD take seriously the Constitutionally protected status of the NLCA and the legal rights and obligations arising thereunder.

NTI has one principal concern. Exploration rights are ultimately issued pursuant to a Call for Bids, which specifies, among other things:

- the terms and conditions to which the interest is subject;
- the terms and conditions that a bid must satisfy in order to be considered by the Minister; and

- the sole criteria that the Minister will apply in assessing bids submitted in response to the Call.

Interest in exploration rights are initially solicited through a Call for Nominations, however, which appears to set firmly certain terms and conditions of the Call for Bids. A September 16, 1998 letter from the OGD indicated that Northern Benefits Requirements, an attachment to the Call for Bids, cannot change after the Call for Nominations is issued. In fact, the terms and conditions of the Call for Bids are attached to the draft Call for Nominations. In meetings with the OGD, officials indicated that changes to the Northern Benefits Requirements cannot be made without extensive consultation with industry and other aboriginal groups.

NTI is concerned because the Northern Benefits Requirements attachment contains language that could conflict with Inuit employment and training opportunities contemplated by Schedule 27-1 of the NLCA. For example, the attachment allows companies to conduct their operations on a "competitive basis" and so as to optimize northern benefits "within the context of [the company's] general procurement policy." Without knowing what those policies are, northern benefits opportunities are thus made subject to any companies' general procurement policies. This has the potential to prejudice later negotiations with NTI for preferential employment, training and business opportunities under section 27.1.2 and Schedule 27-1. NTI wishes to ensure that no terms and conditions in the Call for Nominations prejudice future negotiations.

NTI and the OGD continue to discuss this issue and others, and NTI is pleased that some aspects of the draft Call documents, such as the references to "Benefits Plans" in the body of the proposed Call for Bids, have been expanded considerably. We look forward to a final successful resolution in the near future so that the Call for Nominations may proceed.

NTI Statement of Position 3.27

Article 27: Natural Resource Development

Negotiations on a proposed Call for Nominations and Call for Bids in connection with the opening of lands in the Baffin Region for petroleum development should be concluded by the GOC and NTI on a basis that is consistent with the NLCA and that does not prejudice future negotiation of a benefits plan for Inuit under section 27.1.2 of the NLCA.

Article 28 - Northern Energy and Minerals Accord

Under section 28.1.1 of the NLCA, NTI has a right to participate in the development and implementation of a Northern Energy or Minerals Accord (NEMA) with the Government of Canada. NTI and the GNWT participated in bilateral discussions on the development of a joint NWT-NTI position on a NEMA, beginning in mid-1994. A draft Accord, dated January 11, 1995 was prepared and was relatively close to conclusion when talks broke down in 1995. There have been no further discussions directly related to the Accord since that time.

Focus must now be given to the conclusion of a Nunavut Energy and Mineral Accord as an important element of strengthening the jurisdictional capacity of the Government of Nunavut and the economic self-reliance of Inuit and other residents. The process for concluding such an Accord should be addressed in the Nunavut Partnership Agreement referred to in NTI's *Statement of Position 1.5*.

On a separate but related matter, DIAND, Nunavut Government officials, and NTI are proceeding with discussions concerning possible changes to the mineral tenure regime in Nunavut. These changes would include creation of Nunavut Mineral Tenure Regulations under the *Territorial Lands Act* to parallel the CMR, which would continue to apply in the NWT. A longer term project is the development of a *Nunavut Mining Act*. Discussions have proceeded well to date, with an exchange of views on the details of a mineral tenure regime. There is, however, a need for the parties to more formally proceed toward the creation of a new set of mineral tenure regulations for Nunavut,

perhaps in the context of Nunavut Energy and Mineral Accord discussions. The process for proceeding with these discussions should also be addressed in the Nunavut Partnership Agreement referred to in NTI's *Statement of Position 1.5*.

Article 29 – Capital Transfer

NTI has no issues to raise with respect to this Article for the purposes of this report.

Article 30 – General Taxation

NTI has no issues to raise with respect to this Article for the purposes of this report.

Article 31 – Nunavut Trust

NTI has no issues to raise with respect to this Article for the purposes of this report.

Article 32 – Nunavut Social Development Council

The Nunavut Social Development Council (NSDC), has the responsibility under section 32.1.1 of the NLCA to “participate in the design of social and cultural policies, and in the design of social and cultural programs and services . . . within the Nunavut Settlement Area.” The NSDC was incorporated to operate as a non-profit DIO in accordance with section 32.3.2 of the NLCA in 1996, and located its offices in Igloolik in 1997.

Since its inception, the NSDC has focused on bringing Inuit traditions into the modern health and justice programs and on working with youth and elders. At the Canada-wide level, the NSDC is a member of the *Inuit Social Policy Renewal Technical Committee*, which provides input into the *National Aboriginal Technical Committee on Social Policy Renewal*, advisor to the federal government on aboriginal priorities and concerns with respect to social policy.

At the territorial government level, the NSDC had an initial meeting in July 1997, with senior officials of a consortium of GNWT departments and agencies involved in social policy issues -- the "Social Envelope Consortium." This meeting was intended to initiate a dialogue between the NSDC and the GNWT regarding the development of social policy. A second meeting involving NSDC and the Consortium occurred in December, 1997. Unfortunately, the December, 1997, meeting of the NSDC and the Consortium proved to be the last. The Consortium advised the NSDC that the GNWT was disinclined to make social policy changes in Nunavut in advance of April 1, 1999. The NSDC's efforts in 1998 to convene meetings with the three Nunavut regional education and health boards were also unsuccessful.

In September, 1998, the GNWT proclaimed a new Adoption Act over the objections of NTI and NSDC. In NTI's view, the GNWT had failed to adequately engage the NSDC in discussion on the proposed legislation in breach of the GNWT's obligations under section 32.2.1 of the NLCA. Moreover, it was inappropriate for new legislation of this nature and import to be proclaimed so close to the scheduled start-up of the Government of Nunavut on April 1, 1999.

NTI Statement of Position 3.32

Article 32: Nunavut Social Development Council

The GN and the Nunavut Social Development Council should develop a strong, cooperative, consultative relationship in the pursuit of social policy reform in Nunavut. Such a relationship should emphasize maximum participation by all interested organizations and individuals, and should foster a spirit of informed and creative public debate on fundamental social policy problems and options.

ARTICLE 33 – Archaeology

The Inuit Heritage Trust has had difficulty reaching agreement with the Government of Canada, and specifically with the Canadian Museum of Civilization (CMC), regarding the interpretation and application of section 33.7.1 of the NLCA. The Trust disagrees with the position of the CMC that joint Inuit/Crown title to archaeological objects only

arises for specimens found after the creation of the Trust. The Trust is of the view that joint ownership extends to all Nunavut archaeological specimens, regardless of the date of their discovery and first possession, subject only to the exceptions set out in section 33.7.1. The Trust considers the resolution of this dispute to be a matter of considerable importance and is not satisfied with the position of the CMC, a position that is apparently supported by the Government of Canada as a whole.

On another front NTI is also not aware of federal or territorial government efforts to implement their employment and contracting obligations under Part 6 of Article 33.

Finally, NTI and the Trust also are concerned about the practical ability of the Government of Nunavut to provide the infrastructure and expertise necessary to assume its full responsibilities under the Article. Fulfilling the objectives of the Article will not be possible until the GN and/or Government of Canada make provision for the construction in Nunavut of facilities capable of safely housing Inuit artifacts and archival material (*i.e.*, climate control, security, adequate public and scientific access). The GN must also develop the expertise and staffing needed to implement Part 5 of Article 33 with respect to archaeological permits.

NTI Statements of Position 3.33

Article 33: Archaeology

1. **The Canadian Museum of Civilization should re-visit its position on the interpretation of section 33.7.1 of the NLCA (joint Inuit/Crown title to archaeological specimens) with a view to adopting an interpretation acceptable to the Inuit Heritage Trust and NTI.**
2. **The GOC, GN, NTI and the Inuit Heritage Trust should form a special working group to prepare for the construction and operation of facilities in Nunavut that meet the principles and other provisions of Articles 33 and 34 of the NLCA with respect to the conservation and use of archaeological, ethnographic and archival (*i.e.*, oral history) materials.**
3. **The GOC and GN should consult with NTI and the Inuit Heritage Trust regarding their efforts to implement their employment and contracting obligations under Part 6 of Article 33.**

Article 34 – Ethnographic Objects and Archival Material

The discussion and accompanying Statements of Position under Article 33 is equally relevant to ethnographic objects and archival materials.

Article 35 – Enrolment

NTI has no issues to raise for the purposes of this report.

Article 36 - Ratification

NTI has no issues to raise for the purposes of this report.

Article 37 – Implementation

This topic is covered in *Major Areas of Concern, Section 2.1: Tools of Implementation*.

Article 38 – Arbitration

To date, arbitration has not been used to resolve disagreements under the NLCA. NTI has no specific issues to raise about this Article for the purposes of the five-year review, but it should be noted that the use of arbitration could become more desirable in the absence of improvements to the overall implementation process, as more fully described in *Major Areas of Concern, Section 2.1: Tools of Implementation*.

Article 39 – Inuit Organizations

There are no implementation issues outstanding between the Crown and NTI with respect to this Article.

NTI has taken a broad view of this section and has been vigilant in asserting the requirements for accountability to Inuit and democratic control by Inuit as pre-conditions to an organization securing a role in implementation.

Article 40 – Other Aboriginal Peoples

This topic is covered in *Major Areas of Concern, Section 2.10: Overlapping Claims*.

As mentioned above under Article 20, there are also unresolved issues regarding compensation to Inuit for interference with harvesting rights under section 40.3.2 of the NLCA by developers operating outside the Nunavut Settlement Area. NTI believes that agreements should be entered into to provide a framework for any future compensation claims for interference with these Inuit harvesting rights.

NTI Statements of Position 3.40

Article 40: Other Aboriginal Peoples

NTI's position on this Article is covered in *Major Areas of Concern, Section 2.10: Overlapping Claims*.

Article 41 – Contwoyto Lake Lands

Section 41.1.1 of the NLCA states that:

Upon ratification of the Agreement, Government shall grant to the DIO fee simple title, including the mines and minerals that may be found to exist within, upon or under such lands, to the parcels of land described in Schedule 41-1.

Notwithstanding that the grant of Contwoyto Lands was to take place "upon ratification," extensive negotiations and significant delays by the Government of Canada in responding to NTI positions resulted in a lengthy delay in transferring these lands. The process was finally completed on May 7, 1999.

Throughout the negotiations, NTI took the position that the grant should be construed liberally and that NTI was entitled to all the incidents of ownership that flow with a grant at common law. In contrast, the Government of Canada took the more restrictive view that, under the terms of the *Territorial Lands Act* or *Federal Real Property Act*, title should be subject to a number of restrictions and exceptions, which were not acceptable to the Inuit.

Among the matters which were the subject of negotiation were the rights to the beds of water bodies underlying the lakes within the granted lands, riparian rights to water flowing through the granted lands, the exclusive right to fisheries on water bodies within the granted lands, and certain rights of the Crown to reserve portions of the lands for public roads under the *Territorial Lands Regulations*.

Ultimately, the Government of Canada and NTI agreed that the Government would cede ownership of the beds of water bodies. It would not cede riparian rights, exclusive fisheries, or the right to acquire roadways under Section 7 of the *Territorial Lands Regulations*.

As the grant of land under Article 41 was not an ordinary grant which fit within the terms of the *Territorial Lands Act* or *Federal Real Property Act*, there was also extensive discussion and negotiation regarding the form of the grant. An order-in-council was required to ensure that the Inuit obtained title to land within one hundred (100) feet of water bodies. At various stages, the Government of Canada appeared unclear as to the legislative authority under which the grant was to be made. The grant was finally made as a notification under the *Territorial Lands Act*.

Article 42 – Manitoba and Marine Area East of Manitoba

NTI's position is as set under *Major Area of Concern Section 2.10: Overlapping Claims*.

Appendix I

Statements of Position

This is a consolidated list of the Statements of Position drawn from the document entitled *Taking Stock: A Review of the First Five Years of Implementation of the Nunavut Land Claims Agreement*.

Part I Setting the Context

NTI Statement of Position 1.1

The Government of Canada (GOC), the Government of Nunavut (GN), and NTI should enter into a three party Nunavut Partnership Agreement. Flowing from the special relationship that exists between the Crown and the Inuit of Nunavut, acknowledging the different jurisdictional roles of the federal and territorial governments, and building on the positive precedent of the 1992 Nunavut Political Accord, this Partnership Agreement should, among other things:

- recognize the distinct and overlapping responsibilities of the three parties;
- commit the parties to a high level of open communication and cooperation;
- identify matters of shared priority;
- establish practical objectives with respect to the pursuit of priorities; and
- establish such working groups and other mechanisms as may be useful in achieving progress with respect to those priorities.

NTI Statement of Position 1.2

The obligations and activities associated with the implementation of the Nunavut Land Claims Agreement (NLCA) should be appropriately referenced in the Nunavut Partnership Agreement.

NTI Statement of Position 1.3

The undertakings and activities that result from the Nunavut Partnership Agreement should include the carrying out of a comprehensive, methodologically rigorous Nunavut Survey. The Nunavut Survey would review the following:

- demographic trends in Nunavut;
- the socio-economic circumstances and conditions of the Inuit and other residents of Nunavut;

- the state of official languages in Nunavut; and
- patterns in public expenditures allocated to improve socio-economic conditions in Nunavut and with respect to official languages.

The Survey should form part of the general monitoring obligations that flow from section 12.7.6 of the NLCA and the Nunavut Planning Commission should be involved in the development and management of the Survey. The design and carrying out of the Survey should take advantage of the work of Statistics Canada with respect to the 1991 and 2001 Aboriginal Peoples Surveys.

NTI Statement of Position 1.4

The first Nunavut Survey should be organized so as to be completed in 2001 and, in any event, at least one year before the next five-year review of the NLCA scheduled for 2003. The Survey should be conducted at two-year intervals thereafter, unless otherwise decided by the parties to the Nunavut Partnership Agreement.

NTI Statement of Position 1.5

The Nunavut Partnership Agreement should provide additional assurances to NTI as to its full and meaningful role in the development of any new legislative proposals affecting the rights of the Inuit of Nunavut. Assurances given through a Partnership Agreement should not detract from the urgent need to create a new approach to the development of legislation pursuant to Article 10 of the NLCA (*see* NTI Statements of Position 2.2, Legislation for Institutions of Public Government, below).

Part 2

Major Areas of Concern

NTI Statement of Position 2.1-1

Role of the Nunavut Implementation Panel or Replacement Body

The Panel must adopt a more pro-active or assertive approach when soliciting claim implementation problems from claim bodies if it is to fulfil this general mandate of providing direction on implementation of the Agreement.

It is acknowledged that these two options may overlap in whole or in part.

A joint review of the role and terms of reference of the Nunavut Implementation Panel should be conducted by the Parties as a top priority. The object of the review

should be to reach agreement on either the role of the Panel and the scope of its mandate or, alternatively, on a body to replace the Panel. A review of the Panel's role and mandate should include the following options:

1. confirmation that the Panel is to play a "hands on" role in implementation and identification of ways to clarify and strengthen that role, including, but not limited to:
 - (i) changing how appointments are made to overcome the Panel's history of internal conflicts;
 - (ii) providing the Panel with its own budget and staff;
 - (iii) requiring the Panel to develop, in consultation with the Parties, a comprehensive set of Panel operating rules, procedures and processes designed to facilitate the proper fulfillment of all aspects of its mandate;
 - (iv) ensuring the production of implementation reports from time to time written by the Panel and at five year intervals to be disseminated to the public and claim bodies. The reports should include recommendations by the Panel on all of those obligations, specific activities, and projects that have not been carried out in accordance with the Panel's views;
 - (v) making inquiries to the claim bodies regarding obligations not carried out to determine why the obligation has not been carried out on time and determine with the bodies how to get the obligation(s) carried out to completion; and
 - (vi) requiring the Panel to develop and implement a communication strategy for the purpose of informing interested persons and bodies on the work of the Panel and a procedure for bringing matters before the Panel and providing regular updates on implementation matters;
2. agreement that the Panel's role should be more focused on problem-solving and identifying ways to strengthen that role;
3. agreement that Panel key discussions revolve around clearly stated tasks/activities instead of on differences in interpretation of what is to be done about such issues as above; and
4. agreement that the Panel should be replaced by an independent, corporate implementation body.

NTI Statements of Position 2.1-2

Improved Detail and Predictability in the Implementation Contract

The implementation activities set out in Schedule 1 of the *Implementation Contract* should be supplemented with more specific details, either through revisions to Schedule 1 or through a separate planning document, to assist in avoiding disputes between the Parties and to provide greater direction to those responsible for implementation and/or monitoring implementation. Where a Party has already developed more detailed plans in relation to its own responsibilities, such plans should, where possible, be shared with the other Parties.

NTI Statements of Position 2.1-3

Funding of Institutions of Public Government (IPGs)

1. Not all Nunavut Implementation Panel members are in an equal position to understand the current financial circumstances and past financial performance of the various IPGs. This places NTI and territorial Panel members at a tangible disadvantage in assessing reallocation needs of the IPGs. The GOC should re-examine its reluctance to share with other Panel members the details of its bilateral financial arrangements with the IPGs and should develop, with NTI and the GN, a common understanding as to the sharing of such information.
2. Individual IPGs have raised questions regarding the adequacy of overall funding for the purpose of carrying out their duties. Other IPGs have substantial surpluses. The Nunavut Implementation Panel should be provided with adequate resources to conduct independent analyses of the workplans, financial performance and projected needs of IPGs.

NTI Statements of Position 2.1-4

Funding Negotiations for the Second Planning Period

An independent assessment of implementation funding requirements, should be undertaken by the Panel.

1. The Panel should undertake a study to determine current funding issues and to provide an independent analysis for the purpose of negotiating funding for the second planning period.

2. A process and timetable for negotiation of implementation funding for the second planning period should be developed and agreed to, with preliminary negotiations commencing at least two years before the completion of the first ten year period.
3. Sufficiently in advance of negotiation of implementation for the next planning period, NTI should be supplied with an accounting as to the fate of monies allocated in the *Implementation Contract* to the Territorial Government for implementation responsibilities.

NTI Statements of Position 2.1-5

Nunavut Implementation Training Committee (NITC)

1. All training initiatives funded through the NITC should be tied to specific implementation training requirements respecting positions required to implement the NLCA under the Implementation Training Plan. A system should be in place to determine the effectiveness of the training initiatives in fulfilling the requirements and objectives of the Implementation Training Plan, *i.e.*, to determine whether they meet specific training objectives directly linked to skills and qualifications needed for targeted positions.
2. All training initiatives must be funded in accordance with section 37.7.2 of the NLCA. Specifically, the Implementation Training Plan must identify existing Government training programs which meet Inuit implementation training requirements in the Plan. Training initiatives may be funded out of the Implementation Training Trust only where training requirements cannot be met under Government training programs.
3. A joint effort should be made by NITC, the GN and GOC to co-ordinate their training efforts within and across their respective responsibilities.
4. NTI supports the general proposition that Inuit organizations should be involved in the planning, design and execution of training initiatives under the Implementation Training Plan. Inuit organizations should not, however, take all responsibility for ensuring and assessing the success of such efforts. NTI supports the development of training protocols between NITC and Inuit organizations with the goal of reaching a mutual understanding of Inuit organizations' participation in project management, delivery and evaluation of training initiatives. NITC should identify how it will support Inuit organizations, in ways beyond providing financial support, to assess training efforts and results.
5. NTI notes that NITC expects Inuit organizations to build the capacity to offer training in-house, thereby avoiding or minimizing the need for outside consultants. NTI believes that Inuit organizations will need further assistance from NITC in order to achieve this result.

6. The capital of the Implementation Training Trust should be preserved for the benefit of Inuit in the future.

NTI Statements of Position 2.2

Legislation for Institutions of Public Government

The GOC's consultation process under Article 10 of the NLCA has been plagued by the following types of conduct, among others, which NTI considers to be in breach of the GOC's constitutional obligations of close consultation:

- tabling draft text that reflects (usually unstated) government administrative or policy objectives, to the detriment of consistency with substantive text of the NLCA;
- tabling draft text that conflicts or is inconsistent with the spirit and intent of the NLCA;
- long periods of inactivity or silence followed by demands for NTI's response to drafts within extremely short time frames;
- tabling new draft text that departs from the text or spirit and intent of the NLCA, without warning, adequate explanation, or, often, sufficient time to respond;
- failure to provide adequate explanation or justification for draft text that departs from the NLCA;
- repeated rejection of NTI proposals that reflect provisions of the NLCA without adequate explanation;
- promotion of the position that, since the NLCA prevails over inconsistent legislation, it should not matter if legislation is inconsistent; and
- terminating consultation before its conclusion.

To remedy the problems described above, a renewed consultation process should be developed and agreed to in writing by NTI and the GOC. It should contain the following elements, many of which have previously been proposed by NTI in draft protocols and agreed to by the GOC.

1. An independent facilitator should be engaged by the parties and funded by the GOC as a reasonable cost of discharging its consultation obligations. The facilitator should have the experience and mandate to assist the parties in achieving a close, fair and efficient consultation. The facilitator would chair all meetings, receive copies of all correspondence, and generally supervise the conduct of the consultation. The facilitator would field the concerns of both parties and make procedural recommendations. Reports or recommendations

from the facilitator would be provided to the Minister at the request of NTI or DIAND.

2. Work plans should be developed and agreed to by senior officials of the Parties. Each work plan would include tentative deadlines for preparation of draft legislation or sections thereof, a role for a legislative working group to include GN representatives and representatives of the IPGs, and timetables of meetings and exchanges of documents. Reasonable timetables for review of draft language, and for further consultation where necessary, should be provided for in all cases. Amendments should be by agreement of the same officials who signed the work plan.
3. NTI and the GOC should agree as to whether consultation is completed, and, subject to the following, the GOC should not introduce a bill or amendments to legislation prior to NTI's agreement that consultation is completed. In the event the GOC disagrees with NTI as to whether consultation is completed after substantial consultation, it should obtain a recommendation from the facilitator to the effect that consultation is complete before introducing a bill or amendments.
4. There should be no surprise drafts, and no surprise provisions or language in drafts circulated by the GOC. Drafts should be based solely on mutually agreed principles, guidelines and specific drafting instructions. Using the *Nunavut Act* amendments legislative working group as a model, collaboration on drafting instructions and transparency of instructions and text should be made conditions of the process. No drafting instructions or changes to drafting instructions should be submitted to Department of Justice drafters until the parties have made all reasonable efforts to agree on them. If the parties are ultimately unable to agree on drafting instructions, or on whether further drafting instructions are required, DIAND should provide its reasons to NTI in writing before submitting instructions to the drafters. NTI and DIAND should together communicate with the drafters as required to provide clarification of drafting instructions.
5. When text is produced by Justice in response to instructions, NTI should be provided the draft text concurrently with DIAND and given reasonable time to comment on the draft text in writing to DIAND. DIAND should take a reasonable time to consider NTI's comments and respond, and should make its representatives available to meet further at NTI's request, until both parties agree that consultation is concluded on an issue, or the facilitator so recommends. Upon request, DIAND should provide reasons in writing for disagreeing with NTI's positions on draft text and for rejecting the interpretation of the NLCA on which NTI bases its objections.
6. Where conflicting interpretations arise from language in the NLCA, and cannot be resolved, the language of legislation should remain faithful to language of the NLCA, notwithstanding drafters' usual conventions.

7. Where the parties disagree on interpretation of the NLCA, either party should disclose, on a confidential basis, the reasoned argument of any legal opinion on which it is relying. At the request of either party, a jointly-funded legal opinion should be obtained from agreed-upon counsel.
8. The GOC should pay for advice from a mutually acceptable outside expert if NTI believes it is needed to justify internal Government advice.
9. The parties should commit their responsible legal counsel fully to the work plan, including their availability for meetings, except as otherwise agreed.

NTI Statements of Position 2.3 – 1

Article 23: General

1. Although the overall review of the implementation of the NLCA is underway and will include a review of Article 23, a thorough, independent review of Article 23 should be arranged by the Implementation Panel and carried out as outlined in section 23.7.1 of the NLCA. NTI recognizes that the framework, background and substance of Article 23 is best managed by people with cross-cultural backgrounds. The evaluation team undertaking the review of Article 23 should possess significant knowledge of Inuit values and experiences.
2. The GOC, GN and NTI should agree to jointly fund a minimum of two full-time positions within NTI, whose responsibility it will be to ensure the successful implementation of Article 23, including monitoring, reviewing and evaluating the progress in achieving Article 23 objectives on a consistent basis. A five-year plan should be developed for these positions.
3. The Inuit Employment Plans (IEPs) prepared by the GOC and GNWT departments, and the draft document developed for the Office of the Interim Commissioner (OIC), contain many good ideas that have not been implemented, but which have created reasonable expectations on the part of Inuit. Ensuring the implementation of these ideas should be made a priority of the Parties. A meeting should be held with NTI, GOC and GN departmental representatives, NITC and Ajauqtiit to pursue the full implementation of Article 23.

NTI Statements of Position 2.3–2

Article 23: Relating to the Government of Canada

1. The detailed labour force analysis required by section 23.3.1 of the NLCA was never satisfactorily completed. The GOC should commission a detailed labour force analysis as soon as possible.

2. An NTI-GOC working group should be established to address deficiencies identified in federal IEPs and to analyze new IEPs received from the remaining federal departments and agencies. In particular, the specific requirements contained in section 23.4.2 must be included in all federal IEPs.
3. Each federal department and agency should prepare a chart to graphically illustrate its timetable for achievement of representative levels of Inuit employment within specific employment categories by specific dates.
4. The proposed NTI-GOC working group should begin working on pre-employment training plans (PTPs) as soon as possible.

NTI Statements of Position 2.3–3

Article 23: Relating to the Government of Nunavut

1. An NTI-GN working group should be established to address territorial IEPs and PTPs. In particular, the specific requirements contained in section 23.4.2 of the NLCA must be included in all IEPs.
2. An analysis of the *Comprehensive Inuit Employment Plan* prepared for the GN on behalf of the OIC should be conducted by the proposed GN-NTI working group. NTI and the GN should participate thoroughly in the planning, development and drafting process requirement to make this document operational.
3. The GN should acknowledge the requirement that municipalities comply with Article 23. The proposed GN-NTI working group should discuss the best means for achieving this objective and implement it.

NTI Statements of Position 2.4 – 1

Article 24: Relating to the Government of Canada

1. NTI and GOC officials should resume negotiations on or before February 1, 2000 to find mutually acceptable implementing measures for federal government contracting under section 24.3.2 of the NLCA. NTI staff and contracting officials from Treasury Board and the departments that do the majority of GOC contracting in Nunavut – PWGSC, DIAND, DFO, and DND – should meet by that date to establish terms of reference for a working group committed to developing mutually agreeable contracting procedures to meet the requirements and achieve the objectives of the NLCA generally, and Article 24 specifically.
2. The GOC should work with NTI through a close consultation process to establish acceptable levels of Inuit content within federal contracts.

3. The GOC should work with NTI to more clearly define training obligations and mechanisms for delivering training.
4. The GOC should fulfil its obligations to “assist Inuit firms to become familiar with its bidding and contracting procedures, and encourage Inuit firms to bid for government contracts in the Nunavut Settlement Area” under section 24.4.1, by holding workshops annually in all three regions in Nunavut and by assisting Inuit entrepreneurs to attend these workshops.
5. Contracting procedures agreed upon by NTI and the GOC should include some consideration of Inuit business ownership.
6. To improve consistency of interpretation within and between government departments, the GOC should appoint a single contracting official within Treasury Board to act as the federal expert on interpretation of Article 24 contracting procedures.
7. The GOC should enact a training regime for all contracting officers to acquaint them with Article 24 and accepted interpretations of its sections; these accepted interpretations are to be one outcome of a meaningful NTI/ GOC consultation process.
8. A single contract reporting system for any contracts let by the GOC to which Article 24 applies should be implemented.
9. A mechanism should be established to ensure that successful bidders comply with commitments made, for example, to Inuit employment. This mechanism would provide for material disincentives for failure to comply with commitments and for incentives for exceeding set standards. Monies collected through such a system could be used, for example, towards the establishment of a dedicated training fund for enriched training initiatives or to underwrite the costs of acquiring on-the-job experience.

NTI Statements of Position 2.4-2

Article 24: Relating to the Government of Nunavut

1. An NTI/GN working group should be struck to develop a set of contracting procedures which will ensure compliance with Article 24. The working group should consist of three representatives from NTI and the RIAs, and three from the GN. A final report should be ratified by both the NTI Board of Directors and the GN Executive Committee on or before March 1, 2000, in order to have a new set of contracting procedures in place for the 2000 contracting and sealift season.

2. A standardized training plan form should be developed, in consultation with the GN Department of Education. Bidders on GN contracts that specify training opportunities should be required to complete this standardized training plan.
3. In fulfilling its obligations under section 24.4.1, the GN should provide annual government contracting workshops and pay travel expenses to enable Inuit individuals or Inuit firm representatives from all communities in Nunavut to easily attend.
4. Pursuant to section 24.4.1, the GN should develop educational videos that describe the bidding process; these videos should be made available in English, Inuktitut and Innuinaqtun.
5. A single, easily-interpreted set of Inuit content evaluation criteria should be developed for requests for proposals.
6. Maximum dollar value on sole-source contracts should be \$15,000.
7. The NTI/GN working group should develop a new procedure on negotiated contracts that takes into account the needs of small companies in small communities.
8. The mandatory minimum levels of Inuit employment and Inuit services should be continuously pressed to their highest achievable levels.
9. Inuit companies supplying goods should be given a straight percentage consideration.
10. Use of the terms "Inuit goods", "Inuit services", and "Inuit goods and services" should be abandoned in favour of "Inuit firms that supply goods", "Inuit firms that supply services", and "Inuit firms that supply goods and services."
11. Contracting procedures should treat goods and services separately.
12. Government leases should be covered in any new set of contracting procedures.
13. GN Public Works should identify one employee who will act as a specialist on contracting procedures, and who will assist all GN departments, boards and agencies to consistently apply territorial contracting procedures throughout the Government.
14. Public Works in each region should collect contracting reports from all departments and submit monthly summaries of all contracts over \$5,000 to NTI. Recommended details of these reports are as follows:

For all goods contracts exceeding \$5,000 in value and on all other contracts exceeding \$25,000 in value, the following specific contract information will be collected:

- Description of the Contract
 - Location of the Contract
 - Name of Contract
 - Value of Contract
 - Status of firm (Inuit, non Inuit)
 - Type of contract (*e.g.*, construction, goods, A/E, services or lease)
 - Type of award (*e.g.*, public, sole source, invitational or negotiated)
 - Dollar value and percentage of goods and services supplied by Inuit firms
 - Dollar value and percentage of Inuit labour
 - Number of Inuit firms
15. A standard system of disincentives should be integrated with the contracting process to provide an accurate pre-estimate of damages, as required by law, along with a system of incentives for exceeding contract requirements.
16. A system should be instituted to monitor contractor compliance with Inuit content requirements.

NTI Statements of Position 2.5-1

Government of Canada Parks and Conservation Areas

1. Given the overall negotiating context of federal Parks and Conservation Areas Inuit Impact and Benefit Agreements (IIBAs), and the inequitable distribution of publicly-sourced monies for negotiating IIBAs, NTI believes that funding for negotiating federal IIBAs should be revisited. The GOC should make a further contribution of \$806,727 to the Implementation Fund, that being the amount of the Fund expended to date to fund Inuit costs for participation in relevant IIBA negotiations.
2. The GOC, particularly Parks Canada, should act so as to remove the following negotiating obstacles to the conclusion of IIBAs for Parks:
 - the narrow interpretation taken by GOC negotiators with respect to economic and business opportunities negotiable under Article 8 and Schedule 8-3;
 - the penchant of the GOC to interpret the silence of the NLCA with respect to any particular matter as a reason to refuse to consider new ideas;
 - flaws inherent in having line department officials represent all departments and agencies of the GOC, and, specifically, the difficulty

Parks Canada had in getting other federal departments' agreement or even their engagement in negotiations, and, as a practical matter, the difficulty in negotiating an IIBA that calls for changes in bureaucratic procedures;

- apparent problems in lines of communications and authority within Parks Canada and other federal departments resulting in the overturning of understandings struck at the negotiating table; and
- the willingness of the Minister responsible for National Parks to reject initialed compromises reached at the negotiating table and to insist on re-visiting points conclusively dealt with at the table.

3. The parties to IIBAs should approach their implementation and periodic renewal with an emphasis on adaptability and accountability of results.
4. The GOC should ensure that all its departments and agencies with responsibility for negotiating and concluding Parks and Conservation Areas IIBAs have appropriate sources and levels of funding for these purposes as well as an efficient and reliable means of accessing that funding. Further, the GOC should ensure that all such departments and agencies have knowledge of and access to sufficient funds for IIBA implementation.
5. GOC departments and agencies with responsibilities for negotiating and concluding IIBAs should review their legislation and policies to ensure clear directions are given to fulfill these obligations fully and on a timely basis.
6. The recommendations contained in the study of Conservation Area legislation conducted under section 9.3.1 of the NLCA should be followed.
7. GOC departments and agencies, and in particular Parks Canada, should immediately cease designating Conservation Areas without having negotiated IIBAs with appropriate Designated Inuit Organizations.
8. GOC departments and agencies should immediately cease operating *ad hoc* management committees in connection with Conservation Areas in the Nunavut Settlement Area without having followed the NLCA's requirements for the creation of those committees. Any draft management plan created with the assistance of an *ad hoc* management committee should be reviewed in consultation with the Designated Inuit Organization to determine its compliance with the NLCA and its acceptability to the DIO.

NTI Statements of Position 2.5-2

Territorial Parks

In order to ensure that the obligations to conclude Territorial Parks IIBAs are met, the GOC should constitute a separate account in the amount of \$900,000 for Territorial Parks IIBAs implementation, which is the amount identified for such purposes in the federal-territorial Bilateral Funding Agreement. Alternatively, the GOC should agree to lift the 5% reimbursement formula (5% of parks' capital and operating costs to be reimbursed to the GN for IIBA implementation purposes) off the use of the \$900,000.

NTI Statement of Positions 2.6

Turbot Fishery Litigation

The Government of Canada (Department of Fisheries and Oceans) should abandon its effort to understate and diminish the rights of the Inuit of Nunavut with respect to commercial fishing allocations under Article 15 of the NLCA, by:

- making a serious proposal to the Inuit of Nunavut on the long-term allocation of commercial species in Zones I and II,
- respecting the principles of adjacency; and
- providing appropriate economic development support for the commercial fishing industry in Nunavut.

NTI Statements of Position 2.7-1

Consistency of Federal and Territorial Legislation with the NLCA

1. The GOC, the GN and NTI should develop a schedule for the preparation of draft legislation to bring relevant laws of general application, notably wildlife laws, into compliance with the NLCA. The GOC and the GN should commit to undertaking the work and allocating the resources needed to meet that schedule.
2. Legislation to bring relevant laws of general application into compliance with the NLCA should be developed through a drafting process that has the full participation and confidence of NTI.
3. NTI should be supplied with an accounting as to the fate of monies allocated in 1993 to government departments and agencies for the revision of relevant laws of general application.

4. The GOC should direct the Department of Justice to develop and follow a general drafting instruction that all new legislative initiatives be drafted in such a way as to avoid any conflict or inconsistencies with aboriginal or treaty rights.

NTI Statements of Position 2.7-2

Non-Derogation Clause

1. Any non-derogation provision in legislation dealing with Nunavut should be worded as follows:

Nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

2. A non-derogation provision should not be put forward in any legislative project dealing with the rights of the Inuit of Nunavut without their consent.
3. The GN and NTI should jointly explore the inclusion of a non-derogation provision in the territorial *Interpretation Act*.

NTI Statement of Position 2.8

Firearms Act and Regulations

In the event that the GOC has an interest in modifying the legislative regime with respect to firearms control as it applies to the Inuit of Nunavut, the Minister of Justice should signal this interest by inviting NTI to participate in a joint working group, structured at a suitably senior level, to examine legislative revisions.

In the event such an invitation were forthcoming, NTI would welcome the participation of the GN in such an effort. Any exercise could not be constructed so as to prejudice the legal rights of participating organizations.

NTI Statements of Position 2.9

Institutions of Public Government: Structures and Functions

The Parties to the NLCA should adopt a shared approach and common understandings with respect to the structure and functioning of the IPGs, including recruitment, appointment, briefing, assessment of appointees, technical support and removal criteria. The Nunavut Implementation Panel should consider developing guidelines for use by all IPGs in areas of common concern such as, but not limited to:

- the relationships between members and their nominating or appointing organizations;
- criteria for exclusion from appointment to these bodies, based upon potential conflicts;
- the need for timely appointments to vacant board positions; and
- removal of members for cause.

NTI Statements of Position 2.10

Overlapping Claims

1. Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the rights of the Inuit of Nunavut.
2. Any agreements entered into with respect to the overlapping claims of adjacent aboriginal peoples must respect the territorial integrity of Nunavut and the jurisdictional competence of its legislature and government.
3. Any agreement entered into with respect to the overlapping of the Manitoba Denesuline must address the rights of the Inuit of Nunavut in Northern Manitoba.
4. Any agreement with respect to the overlapping claims of adjacent aboriginal peoples should be negotiated in consultation with NTI and the GN, and the consultation process must be acceptable to NTI and the GN.

Part III

Article by Article Analysis

Note: Articles of the NLCA with respect to which NTI has no specific issues to raise are not included below.

NTI Statements of Position 3.2

Section 2.7.1 of the NLCA

1. NTI seeks a commitment from the GOC on the formal re-negotiation of the exchange provisions to eliminate "extinguishment" features.
2. NTI stipulates that the management of Crown lands in Nunavut must be carried out in a way that lives up to the fiduciary obligations owed by the Crown to the Inuit of Nunavut.

3. NTI stipulates that non-territorial rights of the Inuit of Nunavut, such as the rights of self-government and cultural self-expression, are in no way qualified by the exchange provisions of the NLCA, and the Crown must conduct itself so as to respect this reality.

NTI Statements of Position 3.4

Article 4: Nunavut Political Development

See NTI Statements of Position 1.1 through 1.5 above.

NTI Statements of Position 3.5

Article 5: Wildlife

1. As mentioned elsewhere, NTI has concerns regarding the use of implementation funding allocated to the Territorial Government by the GOC and detailed in the *Implementation Contract*. Funding for Article 5 purposes may have been used for general government operations as opposed to being used for the implementation of specific Article 5 tasks or provisions. NTI seeks an accounting of territorial government moneys allocated to the Department of Renewable Resources and detailed in Schedule 2, part 4, pages 1 and 2 of the *Implementation Contract*.
2. The NWMB should work together with NTI to ensure the implementation of the obligations under Sections 5.2.38(b) and (c) of the NLCA to promote and encourage training for Inuit in various fields of wildlife research and management, and to promote and encourage the engagement of Inuit and Inuit organizations in research and technical positions made available through government and private sector research contracts.
3. Technical advisors in connection with the four DIO appointments to the NWMB should be identified and supported by NTI and the RIAs. One or more advisors should be in attendance at all NWMB meetings, perhaps on a rotational basis.
4. In consultation with the NWMB and NTI, the Minister should set a timeframe within which (s)he will take the action required under sections 5.3.15 and 5.3.22-23 of the NLCA to accept, reject or vary final decisions of the NWMB and then to implement the final decision or the final decision as varied.
5. With the assistance of NTI and the NWMB, the HTOs should develop reasonable rules and procedures to address their concerns related to regulation of assignees.

6. The effective operation of the HTOs should be made a priority of the NWMB and the Parties to the NLCA, in accordance with their respective obligations under the NLCA and Implementation Contract.

NTI Statement of Position 3.6

Article 6: Wildlife Compensation

1. Draft NWB/SRT legislation under Article 10 of the NLCA should require proof of developers' fiscal responsibility, security deposits by developers and enforcement mechanisms for collecting compensation, all of which are contemplated under section 6.3.4 of the NLCA.
2. Alongside development of NWB/SRT legislation under Article 10, the GOC should make regulations to implement any elements of section 6.3.4 that are not contained in the statute itself.

NTI Statement of Position 3.8

Article 8: Parks

See NTI Statements of Position 2.5-1 and 2.5-2 above.

NTI Statements of Position 3.9

Article 9: Conservation Areas

1. The GN's Department of Sustainable Development should fulfill its coordinating role with respect to the Thelon Wildlife Sanctuary management plan as stated in section 9.5.2 of the NLCA by:
 - ensuring that the draft management plan with recommendations identified by Kivilliq Inuit Association staff and the community of Baker Lake is presented, as soon as possible, to the KIA Board of Directors, in English and Inuktitut, for its approval;
 - ensuring that the draft management plan, as approved by KIA, is presented to the NWMB for its approval, and that any further changes proposed by NWMB are consistent with the recommendations of KIA and the Akiliniq Planning Committee; and
 - ensuring that the draft management plan, as approved by NWMB, is presented to the federal and territorial governments for their approval, and that any

further changes proposed by the federal or territorial government are consistent with the recommendations of KIA and the Akiliniq Planning Committee.

2. The Department of Sustainable Development should thereafter initiate the implementation of the approved Thelon Wildlife Sanctuary Management Plan.
3. The Department of Sustainable Development should initiate IIBA negotiations with respect to the Thelon Wildlife Sanctuary.

See also NTI Statements of Position 2.5-1 above.

NTI Statement of Position 3.10

Article 10: Land and Resource Management Institutions-Legislation

See NTI Statements of Position 2.2 above.

NTI Statement of Position 3.11

Article 11: Land Use Planning

1. The Nunavut Planning Commission (NPC) should ensure that all head office functions, particularly those related directly to land use planning, are located in Nunavut.
2. NTI has made a number of recommendations to the NPC on its draft regional land use plans and planning process, many of which have yet to be addressed. NPC should work cooperatively with NTI to achieve a mutually acceptable resolution of NTI's outstanding concerns with NPC's regional land use plans and planning process.
3. NTI is concerned that the approval process followed to date by the GOC and the GNWT with respect to the revised draft *Keewatin* and *North Baffin Regional Land Use Plans* does not conform to the NLCA's requirements. The NPC, NTI and both levels of Government should attempt to achieve a collective understanding of the land use plan approval process to be followed in the future under sections 11.5.4 through 11.5.7.

NTI Statements of Position 3.12

Article 12: Development Impact

1. A lack of direction in the NLCA has resulted in a situation where the implementation and enforceability of Nunavut Impact Review Board (NIRB) screening terms and conditions are dependent on the jurisdiction of authorizing agencies, and, in some cases, their willingness, to attach NIRB terms and conditions to permits. Due to this situation, NIRB's terms and conditions have in some cases lost their intended function as enforceable and effective mitigation measures. NIRB's ability to achieve the purposes of Article 12 has thereby been significantly impaired.

DIAND, the GN and NTI should agree on terms of reference and a contractor for an independent assessment, funded by the GOC, of jurisdictional and other issues that are interfering with NIRB's ability to fulfil its Article 12 mandate. Such an assessment should, among other things, identify gaps in the enforceability of terms and conditions within NIRB's mandate, and determine whether the gaps are jurisdictional in nature and, therefore, require statutory change, or whether a regulatory authority could fill the gap.

2. Any GOC departments or agencies that are conducting departmental environmental screenings under the *Canadian Environmental Assessment Act* (CEAA) in Nunavut should cease doing so, and the GOC should commence consultations with NTI at the earliest possible date on the remaining Article 10 legislation, which should include, as a priority, the issue of the relationship of CEAA to the Nunavut Settlement Area.
3. DIAND should enter into discussions with NTI, the Regional Inuit Associations and NIRB to discuss the feasibility of NIRB carrying out screening and reviews of proposals on Inuit Owned Lands. Any additional costs to NIRB resulting from this work should be funded by the GOC.
4. The GOC should acknowledge its unfulfilled responsibility to negotiate an interjurisdictional agreement for collaboration in the review of the Diavik proposal for a diamond mine in the Coppermine watershed outside the Nunavut Settlement Area. In all future cases of project proposals which may have significant transboundary impacts, the GOC should fulfill its obligations under section 12.11.2 to use its best efforts to negotiate agreements with other jurisdictions to provide for collaboration in the review of such projects. Additional monies may be needed by NIRB to carry out its extra case load for diamond mining activities.

NTI Statement of Position 3.13

Article 13: Water Management

The GOC should provide adequate intervenor funding for public hearings of large scale water projects in the Nunavut Settlement Area.

NTI Statements of Position 3.14

Article 14: Municipal Lands

1. A thorough review of the status of all aspects of the transfers of Municipal Lands under Article 14 should be conducted by the Parties, including:
 - the status of land transfer by-law adoption and approval, and specifically, the reasons identified by municipalities' for not adopting by-laws;
 - the existing capacity of individual municipalities to take on land administration duties and the responsibilities for land development;
 - MACA's 1996 activities in connection with withdrawing its land development capital budget, and charging hamlets back development costs. MACA should also account for rental/lease payments received on unconveyed Municipal Lands since the date of ratification to ensure that all income received has been applied to development costs in developing Municipal Lands. In addition to these purely legal matters, MACA's actions should be assessed for how they have affected communities in terms of fostering local self-sufficiency as intended by the transfers of Municipal Land under Article 14.
2. The GNWT's practice of performing block surveys of tracts of Municipals Lands within the built-up areas pursuant to its obligation in section 14.3.1 of the NLCA should be abandoned by the GN as it is inconsistent with the requirements of Article 14. An assessment of all survey work done by the GNWT under this provision should be performed to determine where additional survey work is needed to permit Municipal Lands in the built-up areas to be properly and efficiently administered and developed by the municipalities. The GNWT should pay the cost of any such surveys.
3. The GNWT should, in consultation with the GN, respond to NTI's concern regarding the GNWT's unilateral decision to add 61 properties to the Inventory of land excluded from transfer to the municipalities under section 14.1.1 of the NLCA. In particular, it should address concerns as to whether any of the 61 parcels added to the Inventory after July 9, 1993, or any other lands the GNWT has not transferred and which may not be on the Inventory, are lands being withheld to the detriment of the municipality.

NTI Statements of Position 3.15

Article 15: Marine Areas

1. The GOC has not advised the NWMB or NTI of its structure to promote the coordinated management of migratory marine species in Zones I and II and adjacent areas, as it is required to do under section 15.3.1 of the NLCA. The GOC should, therefore, immediately fulfill its obligations under sections 15.3.1 and 15.3.2 to identify a section 15.3.1 structure and appoint a representative of the NWMB to that structure.
2. NWMB, NIRB, NWB and NPC, in consultation with the Parties to the NLCA, should develop clearly defined roles and terms of reference for the Nunavut Marine Council designed to alleviate any concerns regarding overlapping jurisdiction or potential interference with the mandate of individual IPGs.
3. DIAND, DFO, NWMB, NIRB, NWB, NPC and NTI should seek a joint funding arrangement for the Nunavut Marine Council that would include annual core funding from the GOC, and might include contributions from other parties.

See also NTI Statement of Position 2.6 above.

NTI Statements of Position 3.19

Article 19: Title to Inuit Owned Lands

1. The North West Company should make all reasonable efforts to conclude as soon as possible with QIA the negotiations on the terms of the transfer of Pangnirtung lands, which the North West Company committed to transfer to the DIO. Similarly, the Bishop of the Arctic should promptly finalize negotiations with QIA on the terms of the transfer of the Bishop's land, which the Bishop committed to transfer to the DIO.
2. Transfers of future Inuit Owned Lands under section 19.4.1(a) and schedule 19-8, Part I of the NLCA, should take place forthwith.

NTI Statements of Position 3.21

Article 21: Entry and Access to Inuit Owned Lands

1. The parties to the NLCA should ensure that, in accordance with section 21.7.2 of

the NLCA, all required past payments have been made to Inuit for the use and exploitation of minerals on Inuit Owned Lands that were subject to pre-existing interests.

2. In view of certain proposed development projects involving pre-existing mineral rights on Inuit Owned Lands, discussions between NTI and GOC regarding the process by which royalty payments to NTI will be calculated under section 21.7.2 of the NLCA should continue promptly.
3. The GOC and NTI should clarify the process by which administration of third party interests can be “transferred” to NTI under section 21.7.3. This should be done in the near future before requests for such a transfer are made.
4. All “powers, discretions and authorities. . . affecting the interest of the DIO as title holder” under section 21.7.4 should be identified by DIAND in consultation with NTI. Following an identification process, the parties should determine how these powers, discretions and authorities will be exercised in consultation with NTI as required by section 21.7.4. NTI believes that sections 56 and 59(2.1) of the *Canada Mining Regulations* are two examples where powers, discretions and authorities should be exercised by the GOC in consultation with NTI.
5. The GOC should promptly conclude discussions with NTI to determine the royalty information that it will provide to NTI under section 21.7.6 of the NLCA.

NTI Statement of Position 3.22

Article 22: Real Property Taxation

A process should be established by the GN, relevant municipalities, NTI and the RIAs, that would allow for the informal and expeditious resolution of questions regarding the appropriateness of tax assessments on Inuit Owned Lands in view of Article 22 of the NLCA. With regard to one such issue, the GNWT should reimburse QIA for all tax payments previously made on parcels identified as 800-SK-201 and 800-SK-197 in violation of the provisions of Article 22.

NTI Statement of Position 3.23

Article 23: Inuit Employment within Government

See NTI Statements of Position 2.3-1 through 2.3-3 above.

NTI Statement of Position 3.24

Article 24: Government Contracts

See NTI Statements of Position 2.4-1 and 2.4-2 above.

NTI Statements of Position 3.25

Article 25: Resource Royalty Sharing

1. NTI, the GOC and Nunavut Trust should conclude as soon as possible any agreements required in order for Nunavut Trust to receive adequate information needed to verify royalty payments it receives under Article 25.
2. Section 25.3.1 of the NLCA requires that the GOC consult with NTI every time it consults outside of Government on any proposed changes to its royalty regime. DIAND should re-examine, in consultation with NTI, its consultation practices with respect to revisions to the *Canada Mining Regulations* and royalty regime with a view to ensuring future compliance with section 25.3.1.

NTI Statement of Position 3.26

Article 26: Inuit Impact and Benefit Agreements for Major Development Projects

IIBAs for major development projects under Article 26 of the NLCA should provide specific, enforceable commitments for economic benefits, and should address all potential detrimental environmental impacts of the projects.

NTI Statement of Position 3.27

Article 27: Natural Resource Development

Negotiations on a proposed Call for Nominations and Call for Bids in connection with the opening of lands in the Baffin Region for petroleum development should be concluded by the GOC and NTI on a basis that is consistent with the NLCA and that does not prejudice future negotiation of a benefits plan for Inuit under section 27.1.2 of the NLCA.

NTI Statement of Position 3.32

Article 28: Nunavut Social Development Council

The GN and the Nunavut Social Development Council should develop a strong, cooperative, consultative relationship in the pursuit of social policy reform in Nunavut. Such a relationship should emphasize maximum participation by all interested organizations and individuals, and should foster a spirit of informed and creative public debate on fundamental social policy problems and options.

NTI Statements of Position 3.33

Article 33: Archaeology

1. The Canadian Museum of Civilization should re-visit its position on the interpretation of section 33.7.1 of the NLCA (joint Inuit/Crown title to archaeological specimens) with a view to adopting an interpretation acceptable to the Inuit Heritage Trust and NTI.
2. The GOC, GN, NTI and the Inuit Heritage Trust should form a special working group to prepare for the construction and operation of facilities in Nunavut that meet the principles and other provisions of Articles 33 and 34 of the NLCA with respect to the conservation and use of archaeological, ethnographic and archival (*i.e.*, oral history) materials.
3. The GOC and GN should consult with NTI and the Inuit Heritage Trust regarding their efforts to implement their employment and contracting obligations under Part 6 of Article 33.

NTI Statements of Position 3.37

Article 37: Implementation

See NTI Statements of Position 2.1-1 through 5 above.

NTI Statements of Position 3.40

Article 40: Other Aboriginal Peoples

See NTI Statements of Position 2.10 above.