

IN THE NUNAVUT COURT OF JUSTICE

B E T W E E N :

THE INUIT OF NUNAVUT AS REPRESENTED BY
NUNAVUT TUNNGAVIK INCORPORATED

Plaintiff

-and-

THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY
THE ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF DEFENCE

Improperly named defendant

1. In answer to the whole of the Statement of Claim, the Attorney General of Canada (hereinafter referred to as "the Crown") states that no jurisdiction exists to entertain an action against Her Majesty the Queen in right of Canada except as provided by statute. The Crown pleads and relies upon section 23 of the *Crown Liability and Proceedings Act*, R.S.C. 1985 c. C-50 and says that proceedings against the Crown in the Nunavut Court of Justice may only be taken in the name of the Attorney General of Canada.
2. In the alternative, and in further answer to the whole of the Statement of Claim, in the event that this Honourable Court has jurisdiction to entertain the within action against the Crown as presently constituted, which is not admitted but denied, then the Crown states as follows:

General denials

3. Except to the extent the Crown expressly admits any of the allegations in the Statement of Claim, the Crown denies each and every allegation in the Statement of Claim, and puts the Plaintiff (hereinafter referred to as "NTI") to the strict proof thereof.

4. The Crown admits the allegations in paragraphs 1 through 3 and 5 through 9 of the Statement of Claim.
5. The Crown says in response to paragraphs 4 and 10 of the Statement of Claim that the Nunavut Land Claims Agreement ("the Agreement") is a land claims agreement within the meaning of section 35 of the *Constitution Act, 1982*. In the Agreement the Inuit receive defined rights and benefits in exchange for the surrender of their aboriginal claims, rights, title and interests, if any, in and to lands and waters anywhere within Canada and adjacent offshore areas within the sovereignty or jurisdiction of Canada.

Honour of the Crown

6. The Crown admits paragraph 11 of the Statement of Claim and says that it has at all times maintained the honour of the Crown in its dealings with NTI in the implementation of the Agreement, and in its dealings with the Inuit generally.

Alleged Breaches of the Agreement

7. The Crown denies the allegations in paragraphs 12(a) and (b) of the Statement of Claim and says that, as alleged in paragraphs 29 through 36 below, at all material times the Institutions of Public Government identified have been provided with proper and adequate funding to carry out their respective functions established by the Agreement.
8. The Crown denies the allegations in paragraph 12(c) of the Statement of Claim and says that a general monitoring plan is being developed in cooperation with the Nunavut Planning Commission in accordance with Article 12.7.6 of the Agreement. Further, monitoring and data collection activities are ongoing and have been ongoing since the ratification of the Agreement. The Crown denies that NTI or the Inuit generally have been prejudiced or suffered damages as alleged or at all as a result of a general monitoring plan not yet being completed.
9. The Crown denies the allegations in paragraphs 12(d) through 12(h) of the Statement of Claim and says that the Crown has developed and implemented Inuit employment plans and

pre-employment training programs in cooperation with NTI as required by the Agreement. An Inuit labour force analysis was completed and is being reviewed and updated. The Crown continues to pursue the objective of representative level Inuit employment in government in the Nunavut Settlement Area.

10. With respect to paragraph 12(i) of the Statement of Claim the Crown says that the responsibility for carrying out a second independent 5-year review of the Inuit employment plans under Article 23.7.1 of the Agreement is with the Implementation Panel. A comprehensive review of the implementation of Article 23 was conducted by the Conciliator Thomas Berger, O.C., Q.C., and reported in his Final Report of March 1, 2006. The Implementation Panel has not yet convened to consider the Conciliator's Final Report to determine the extent to which it satisfies the Terms of Reference for the second 5-year Article 23 review. Terms of Reference for the 5 year review had been set by the Implementation Panel prior to the parties engaging in the conciliation process.
11. The Crown denies the allegation in paragraph 12(j) of the Statement of Claim and says that it has met its obligations under Article 24.3.2 of the Agreement through the issuance of Contracting Policy 1996-10 and Contracting Policy Notices 1997-6 and 1997-8 of the Treasury Board of Canada Secretariat.
12. The Crown denies the allegation in paragraph 12(k) of the Statement of Claim, and says that there has been compliance with Article 24.8.1 of the Agreement and, further, monitoring and evaluation work is ongoing. Since ratification of the Agreement there have been many federal government contracts awarded to Inuit companies in Nunavut, and the Crown says that NTI and the Inuit generally have not been prejudiced or suffered any damages as a result of any delay in compliance with article 24.8.1.
13. The Crown denies the allegation in paragraph 12(l) of the Statement of Claim and says that the *Contract Relating to the Implementation of the Nunavut Final Agreement* (the "Implementation Contract") consolidated the Implementation Plan as required by Article 37.2.3 of the Agreement. Schedule 2 of the Implementation Contract sets out the various implementation funding levels for the first 10 year period following ratification of the Agreement as required by Article 37.2.2(d). The parties agreed to the Implementation

Contract on May 25, 1993. Article 37.2.2(e) requires the obligations and funding levels for successive multi year periods to be identified in the Implementation Plan. Amendments to the Implementation require the consent of the parties, but the Crown and NTI have been unable to reach agreement on terms for renewal of the Implementation Plan.

14. The Crown denies the allegations in paragraph 12(m) and says that the following Inuit Impact and Benefit Agreements (“IIBAs”) have been entered into by the Crown:

(a) Baffin Island Inuit Impact Benefits Agreement: An Agreement between Canada and the Inuit of Nunavut concerning three national Parks (Auyuittuq national Park, Ellesmere Island National Park, and Sirmilik National Park).

(b) Ukkusiksalik National Park Inuit Impact Benefits Agreement: An Agreement between Canada and the Inuit of Nunavut concerning Ukkusiksalik National Park.

15. Further, the Crown says that the following IIBAs are currently being negotiated between NTI and the Crown:

(a) National Historic Sites Umbrella Inuit Impact Benefits Agreement

(b) Canadian Heritage Rivers Umbrella Inuit Impact Benefits Agreement

(c) Umbrella Inuit Impact Benefits Agreement for National Wildlife Areas and Migratory Bird Sanctuaries

16. The Crown denies the allegations in paragraph 12(n) of the Statement of Claim and says that where IIBAs have been entered into between the Crown and NTI or with another Designated Inuit Organization (“DIO”), they have been and are provided with adequate funding to proceed. The Crown denies that NTI or the Inuit generally have suffered any damages as a result of any IIBA being negotiated with the Crown or implemented by the Crown beyond any time limits established under the Agreement, which delay is not admitted but denied.

17. With respect to paragraph 12(o) of the Statement of Claim, the Crown says that, pursuant to Article 37.2.2(e), it participated in good faith negotiations with NTI to identify obligations and funding levels in the Implementation Plan for the multi-year period following the first 10

year implementation period. The negotiations were not successful and the parties reached an impasse. In order to move forward toward a renewal of the Implementation Plan, Canada proposed the parties use the services of a conciliator, Thomas Berger, O.C., Q.C., who was then appointed by the Minister of Indian Affairs and Northern Development on the recommendation of the President of NTI, the Premier of Nunavut, and the federal Minister of State for Northern Development. Following the release of the conciliator's *Interim Report*, the Implementation Panel agreed on January 25, 2006 to recommend to the parties funding principles and associated funding levels for the Institutions of Public Government ("IPGs"). These recommendations were expressly subject to the approval of the parties and their respective internal approval processes, which are underway.

18. The Crown denies the allegations in paragraph 12(p) of the Statement of Claim and says that it has not unreasonably withheld consent to use the arbitration process in Article 38.2.1(a) of the Agreement. Article 38.2.1(a) does not create rights in either party to require the other to consent to the jurisdiction of the Arbitration Panel over the matters contemplated by that Article. Consent to confer jurisdiction on the Arbitration Panel is an exercise of discretion of the parties to the Agreement. At all material times the Crown has acted in good faith and exercised its discretion reasonably.

Allegations regarding fiduciary obligations

19. The Crown denies the allegations in paragraphs 13 through 18 of the Statement of Claim. The Crown says that the Agreement creates obligations for the Crown and NTI, and each party has discretion in determining the ways and means of meeting their respective obligations. The terms of the Agreement govern the parties' obligations and the Crown is not subject to any fiduciary or other duty not provided for in the Agreement. The Agreement, by the express terms of Articles 2.9.1 and 2.9.2, constitutes the entire agreement between the parties. There is nothing express or implied by the Agreement, or created by the operation of the Agreement, that was intended to create a fiduciary duty for the Crown toward the Inuit or that creates a fiduciary duty for the Crown in relation to the Inuit in regard to the obligations set out in the Agreement.

20. Article 37.2.2(e) of the Agreement requires obligations and funding levels for implementing the Agreement for successive multi-year periods to be identified in the Implementation Plan as agreed to from time to time by the parties to the Implementation Plan. Article 37.3.3(g) requires the Implementation Panel to 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 10 year period. Article 37.3.5 requires all decisions of the Implementation Panel to be unanimous.
21. Pursuant to the *Financial Administration Act*, R.S.C. 1985 c.F-11, it is a term of every contract providing for the payment of any money by the Crown that payment under that contract is subject to there being an appropriation for the purpose. The law regarding the appropriation of public funds by the Crown applies to all instances of government spending in Canada. Control of the Crown over public spending does not create a vulnerable position for NTI, or for the Inuit generally, as alleged in paragraph 14 through 18 or at all; nor does it give rise to a fiduciary obligation as alleged or at all.
22. The Crown says that it has provided and continues to provide adequate funding for the implementation of the Agreement in accordance with the terms of the Agreement.
23. The Crown denies the allegations in paragraph 18, including sub-paragraphs 18(a) through (e), of the Statement of Claim, and says that no fiduciary obligation, as described or at all, exists by virtue of the circumstances described or at all. The Crown says:
- (a) All its negotiations with NTI and the Inuit have been and are conducted in good faith.
 - (b) The appropriation of funds involves the weighing and prioritizing of many competing national and regional interests, obligations and policy objectives. The Crown does not seek to erode, delay or minimize the scope and substance of the benefits promised to the Inuit under the Agreement and at all times has fulfilled its obligations under the Agreement, including providing adequate funding. As stated in paragraphs 16, 63 and 64 herein, the Crown is not obliged in any particular instance to consent to the jurisdiction of the Arbitration Board pursuant to Article 38.2.1(a) of the Agreement.

- (c) The Crown has sought and continues to seek the agreement of NTI in relation to matters pertaining to the implementation of the Agreement where the Agreement so requires.
- (d) Initiatives undertaken by the Crown pursuant to the Agreement are designed to fulfill the obligations of the Crown under the Agreement. Design of government initiatives must also be in accord with Article 37.2.6, which requires that the implementation of the Agreement should not alter directly or indirectly the respective jurisdictions of the Government of Canada and the Territorial Government. The Crown has at all material times complied with Article 37.2.6.

Allegations of breaches of fiduciary obligations

- 24. The Crown denies the allegations in paragraph 19 of the Statement of Claim, including subparagraphs 19(a) through (m), and denies that it has any fiduciary obligation to the Inuit under the Agreement as described or at all. Alternatively, if any such duty exists, which is not admitted but denied, the Crown denies it has been breached as described in paragraphs 19(a) through (m) or at all.
- 25. In regard to paragraph 19(c) of the Statement of Claim, the Crown says this claim is out of time and statute barred as it is more than 6 years since information was provided in the first Implementation Contract dated May 25, 1993. The Crown pleads and relies on the *Limitations of Actions Act*, R.S.N.W.T. 1988, c. L-8, as duplicated for Nunavut by section 29 of the *Nunavut Act*, S.C. 1993, c. 28.

Arrangements for Ongoing Implementation of the Agreement

- 26. In regard to paragraphs 20 through 24 of the Statement of Claim, the Crown says that Article 37 of the Agreement speaks for itself. The parties' rights and obligations under Article 37 are as set forth therein.
- 27. In regard to paragraph 25 of the Statement of Claim, the Crown agrees that the Implementation Panel is composed of representatives of Inuit and Government as specified in

Article 37.3.2 of the Agreement. Article 37.3.3 (a) specifies that the Implementation Panel shall “oversee and provide direction on the implementation of the Agreement”, and the balance of Article 37.3.3 sets out the other mandatory functions of the Implementation Panel. The Crown says that the Implementation Panel is not a body with managerial “day-to-day” operational functions. It is a body composed of 4 members that meet, on average, 3 to 4 times a year that provides oversight and direction on Implementation at a policy or ‘goal setting’ level. It has not met since February 20, 2006 due to the refusal of NTI to attend and participate.

28. The Crown admits the allegations set out in paragraph 26 of the Statement of Claim.

Funding for Institutions of Public Government

29. The Crown admits the allegations in paragraphs 27 and 29 of the Statement of Claim. The Institutions of Public Government under the Agreement are:

The Nunavut Planning Commission (“NPC”)

The Nunavut Impact Review Board (“NIRB”)

The Nunavut Water Board (“NWB”)

The Nunavut Wildlife Management Board (“NMWB”)

The Nunavut Surface Right Tribunal (“NSRT”)

30. The Crown denies the allegations in paragraphs 28 and 30 of the Statement of Claim and says that the funding provided to the Institutions of Public Government (“IPGs”) has been sufficient for them to plan for and carry out their respective duties and responsibilities assigned to them under the Agreement in a professional manner with appropriate public involvement. The Crown has increased the funding levels to the IPGs since 2003, despite the absence of a renewed Implementation Plan.

31. The Crown says that NTI is currently refusing to nominate members for positions in the IPGs, and NTI is therefore acting in breach of the Agreement in a manner that has a

detrimental effect on the governance of Nunavut and on the socio-economic welfare of the people of Nunavut.

32. In regard to paragraph 30(c), the Crown says that it provides sufficient funding for translation services for IPGs. The Crown has no knowledge of and does not admit that the IPGs have any difficulty performing their work in Inuktitut or either of Canada's official languages.
33. In regard to paragraph 30(e), the Crown says that Article 15.4.1 of the Agreement makes participation by IPGs in a Nunavut Marine Council an option when making recommendations to government agencies regarding marine areas. Funding is provided to the relevant IPGs for this activity.
34. The Crown denies the allegations in paragraph 31 of the Statement of Claim and says that the Nunavut Planning Commission ("NPC") has been and is able to carry out its responsibilities under the Agreement. In particular:
 - a) The NPC is involved in the development of a general monitoring plan pursuant to Article 12.7.6 of the Agreement and is also involved in monitoring and data collection activities regarding the ecosystemic and socio-economic environment in the Nunavut Settlement Area.
 - b) A Nunavut Resource Centre is being developed and is expected to be in operation in 2007.
 - c) The NPC is pursuing the formulation of a Nunavut Land Use Plan as contemplated by Article 11 of the Agreement.
35. The Crown denies the allegations in paragraph 32 of the Statement of Claim and says that at all material time the Nunavut Impact Review Board ("NIRB") has been and is adequately funded.
36. The Crown denies the allegations in paragraph 33 of the Statement of Claim and says that at all material times the Nunavut Wildlife Management Board is and has been able to conduct research and harvest studies as required by the Agreement.

Funding for Hunters and Trappers Organizations

37. The Crown admits paragraphs 34 through 39 of the Statement of Claim.
38. In further answer to paragraph 39, the 2005-2006 annual funding level for each Hunters and Trappers Organization ("HTO") provided by the Crown pursuant to the Agreement was \$74,000.
39. The Crown denies the allegations in paragraphs 40 through 42 of the Statement of Claim and says that at all material times it has provided and continues to provide adequate funding for the HTOs to carry out their roles and responsibilities under the Agreement. The Crown further states that land management and wildlife management issues are not the responsibilities of the HTOs under the Agreement. The Crown has no knowledge of and does not admit that Inuit interests that have been prejudiced as a result of the organizational status of an HTO, and denies that NTI or the Inuit generally have suffered damages as alleged or at all.

General Monitoring Obligations

40. The Crown admits paragraph 43 of the Statement of Claim.
41. The Crown denies the allegations in paragraphs 44 through 45 of the Statement of Claim and says that the Crown provides funding to NPC for general monitoring activities. Further, a general monitoring plan is being developed in cooperation with the NPC and the obligations under Article 12.7.6 are being met. The Crown denies that the Agreement has been compromised as alleged in paragraph 45 or at all and further denies that Inuit well-being has been prejudiced as alleged or at all.

Inuit Employment

42. The Crown admits paragraphs 46 through 47, 49 through 50, and 52 through 53 of the Statement of Claim.

43. The Crown denies the allegations in paragraph 48 of the Statement of Claim and says that the Agreement provides as follows:

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 the achievement of this objective will require initiatives by Inuit and by Government.

23.2.2 In pursuit of this objective, Government and the DIO shall cooperate in the development and implementation of employment and training as set out in the Agreement.

44. The Crown says that it has taken steps to implement and fund the development and implementation of employment and training as contemplated in Parts 3, 4 and 5 of Article 23 of the Agreement.

45. There is no timeline specified in the Agreement by which representative level Inuit Employment must be achieved.

46. The Crown denies the allegations in paragraphs 51, 54 and 55 of the Statement of Claim and says that it has funded and continues to fund employment and training initiatives designed to increase Inuit employment in government as required by Parts 4 and 5 of Article 23 of the Agreement. The Crown continues to consider initiatives that could promote the objective of Article 23.

47. The Agreement does not create any legal right to employment in government for any individual Inuk. The Crown therefore denies that NTI has any right under the Agreement to claim for lost income, whether as alleged or at all. The Crown further states that such an allegation of lost wages is speculative, too remote, and cannot found a claim for damages.

48. The Crown admits paragraphs 56 of the Statement of Claim.

49. With regard to paragraph 57 of the Statement of Claim, the Crown says that an Inuit Labour Force Analysis has been done and that it is maintained and updated. If an Inuit Labour Force Analysis was completed after the timeline set in the Agreement, which is not admitted but

denied, the Crown says that neither NTI or the Inuit generally have suffered damage as a result.

50. The Crown denies the allegations in paragraph 58 of the Statement of Claim and repeats the allegations made above in paragraph 10. The Crown seeks to review the Terms of Reference for the second 5 year review of Article 23 in light of the Conciliator's Final Report of March 1, 2006.

Procurement Policies

51. The Crown admits paragraphs 59 and 62 of the Statement of Claim.
52. The Crown denies the allegations in paragraphs 60, 61 and 63 of the Statement of Claim and says that Article 24.2.1 sets out the objective of Article 24 as follows:

24.2.1 The Government of Canada and the Territorial Government shall provide reasonable support and assistance to Inuit firms in accordance with this Article to enable them to compete for government contracts.

53. As particularized above in paragraphs 10 and 11, the Crown says that it has met its obligations to establish and maintain procurement policies for Nunavut and, further, that it has met its obligations to monitor and evaluate the implementation of Article 24.
54. The Crown denies the allegations in paragraph 64 of the Statement of Claim and says that
- (a) Article 24 does not create any legal right of any individual Inuit company or business to be awarded government contracts and any claim for damages is speculative and too remote and cannot found a claim in damages. Further, NTI has not identified that any Inuit company or business has lost any business or employment opportunity and the Crown requests particulars. Further, NTI has no standing to bring an action for damages on behalf of any Inuit company or business.
 - (b) The Crown has conducted 2 different progress reviews of Article 24.

- (c) There are no specific timelines set out in Article 24.8.1 in regard to monitoring other than a 20 year review specified in Article 24.9.3.
- (d) Inuit companies or businesses have been awarded various government contracts with the Crown since the ratification of the Agreement and the Crown has provided and will continue to provide reasonable support and assistance to Inuit companies or businesses to enable them to compete for government contracts in accordance with the Crown's obligations under Article 24.

Inuit Impact and Benefit Agreements

- 55. The Crown admits paragraph 65 of the Statement of Claim.
- 56. The Crown denies the allegations in paragraph 66 of the Statement of Claim and says that it has provided and continues to provide adequate funding to the Government of Nunavut for incremental costs associated with the implementation of the Agreement. The Implementation Plan signed by the parties May 25, 1993 identifies the agreed funding levels for implementation of IIBA's for Territorial Parks. The Crown is not a party to the IIBA regarding Territorial Parks, has no knowledge of the status or implementation of that IIBA, and does not admit that it remains unimplemented.
- 57. In response to paragraph 67 of the Statement of Claim, the Crown says that it is currently negotiating with NTI for an IIBA in regard to National Historic Sites in Nunavut. The 2 sites that were designated as National Historic Sites in 1995 have been funded pursuant to contribution agreements that were part of the management plans for the sites that were developed between the Crown and the Kivalliq Inuit Association. These contribution agreements will be replaced by the National Historic Sites IIBA when it is completed.

Disclosure of Funding Levels for Implementation

- 58. The Crown admits paragraph 68 of the Statement of Claim.
- 59. The Crown denies the allegations in paragraph 69 of the Statement of Claim and says that funding levels for Implementation required to be identified pursuant to Article 37.2.2.(d)

were identified in the first 10 year Implementation Plan, and that the same information contemplated by Article 37.2.2(e) will be provided in the Implementation Plan for successive multi-year periods. Articles 37.2.2 (d) and (e) do not relate to funding for federal government departments' own implementation activities.

Dealing with Funding for Ongoing Implementation

60. The Crown admits paragraph 70 of the Statement of Claim.
61. The Crown denies paragraph 71 of the Statement of Claim and says that Crown and the Government of the Northwest Territories ("GNWT") negotiated the bilateral agreement to provide for the incremental cost to the Territorial government for implementing its obligations under the Agreement. The two parties to the bilateral agreement negotiated the agreement in contemplation of the creation of the new territory and government of Nunavut.
62. The Crown denies paragraphs 72 and 73 of the Statement of Claim and says that the funding provided to the Territorial government was and continues to be adequate to fund the ongoing responsibilities of the Territorial government under the Agreement. The GN succeeded the GNWT as the Territorial government under the bilateral agreement in 1999 with the coming into force of the *Nunavut Act*, S.C. 1993, c.28. The funding in the bilateral funding agreement is in addition to the funding provided by the Crown to the GN under the Territorial Formula Financing arrangement, which provides for the financing of many governmental functions that fulfill, in whole or in part, some of obligations of the GN under the Agreement.
63. The Crown denies paragraphs 74 through 79 of the Statement of Claim. Since 2001 the Crown has engaged in extensive negotiations with NTI and GN in regard to the renewal of the Implementation Plan. Efforts to negotiate a renewal of the first 10 year Implementation Plan have been unsuccessful to date. The Crown has negotiated in good faith at all material times. The Crown has never refused to discuss issues regarding the implementation of the Agreement or disclaimed any obligations which it has pursuant to the Agreement. The Crown has made numerous attempts to communicate with NTI in regard to implementation of the Agreement and funding levels for same. Despite lack of agreement by the

Implementation Panel regarding the renewal of the Implementation Plan, the Crown has provided and continues to provide adequate funding for implementation activities in accordance with its obligations under the Agreement.

64. The Crown admits paragraph 80 of the Statement of Claim and says that the parties, by November 2004, had reached an impasse in the negotiations of the renewal of the Implementation Plan despite good faith negotiations on the part of the Crown. The Crown proposed the conciliation process to assist the parties to resolve the issues in dispute and reach agreement on the renewal of the Implementation Plan. The conciliator's final report issued on March 1, 2006. The Crown continues to seek a resumption of the negotiations and an agreement on the terms of the renewal of the Implementation Plan. As of March 30, 2007 NTI continues to refuse to attend meetings of the Implementation Panel, thereby preventing resumption of negotiations between the parties.

The Arbitration Clause

65. The Crown denies the allegations in paragraphs 81 through 84 of the Statement of Claim and repeats the allegations above in paragraph 16. Article 38.2.1(a) provides for arbitration of disputes under the Agreement relating to the interpretation, application or implementation of the Agreement where both parties consent to the jurisdiction of the Arbitration Board. The Arbitration Board is not necessarily an appropriate forum for all disputes and both parties have reserved their right under the Agreement to determine in their own discretion whether Arbitration is a desired forum for a given issue.
66. This exercise of discretion in choice of forum does not infringe on any right of the parties under the Agreement, and such exercise of discretion by the Crown is not reviewable. The Crown has given due consideration of requests by the Inuit to have disputes resolved through arbitration and in each instance the Crown declined to consent. The Crown has no policy that prevents consenting to the jurisdiction of the Arbitration Board under Article 38.2.1(a) in appropriate cases.

General Responses

67. The Crown denies the allegations in paragraph 85 and says that since July 2003 the Crown has continued to fund implementation activities and to increase implementation funding. Despite good faith negotiations on the part of the Crown, the parties have been unable to agree on terms of a renewal of the Implementation Plan. The parties engaged the services of a conciliator and the conciliation process yielded recommendations to the parties on a number of important issues, including funding levels for IPGs. The Crown continues to pursue, in good faith, the implementation of the Agreement.
68. In reply to the Statement of Claim as a whole, the Crown says that it has adhered to and fulfilled its obligations under the Agreement and continues to do so. The Crown further says that NTI has suffered no damage, either as pleaded or at all, and is not entitled to any of the Declarations, Orders, Damages or any other relief.
69. In reply to the Statement of Claim as a whole, the Crown says that it has done nothing in the implementation of the Agreement that has in any way infringed any right of any Inuit under the *Constitution Act*, 1982. In the alternative, any infringement of any constitutional right, which infringement is not admitted but denied, was reasonable and justified.
70. In regard to paragraphs 86(b) and (c) of the Statement of Claim, the Crown says that an order for specific performance is not available against Her Majesty the Queen in Right of Canada and specifically pleads section 22(1) of the *Crown Liability and Proceedings Act* R.S.C. 1985 c. C-50.
71. In regard to paragraph 86(e), the Crown says that NTI does not have standing to bring a claim for damages on behalf of any individual Inuk or any Inuit company or business and, in the alternative, any such claim is speculative and too remote. The Crown further states that neither NTI, the Inuit generally, any individual Inuk or any Inuit company or business have suffered damages as pleaded or at all.
72. In regard to paragraph 86(f), there is no cause of action disclosed to support a claim for special damages as pleaded or at all.

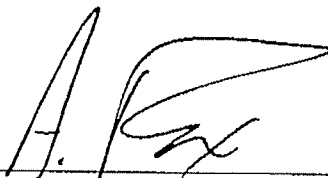
73. In regard to paragraph 86(g), the Crown says that in all its dealings with NTI, and with the Inuit generally, it has always acted in good faith and has conducted itself in accordance with the ordinary standards of decent behavior and in a manner consistent with the honour of the Crown. There is nothing in the behavior of the Crown that could possibly entitle NTI to an award of punitive damages.
74. In answer to the Statement of Claim as a whole, any claim or any event or basis for a claim that arose more than 6 years before the issuance of the Statement of Claim on December 5, 2006 is out of time and statute barred. The Crown pleads and relies upon section 2 of the *Limitations of Actions Act*, R.S.N.W.T. 1988, c. L-8, as duplicated for Nunavut by section 29 of the *Nunavut Act*, S.C. 1993, c. 28, and section 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985 c. C-50.

Place of Trial

75. The Defendant agrees that the trial of this matter be held in Iqaluit, NU.

WHEREFORE the Crown prays that this action against it be dismissed with costs against NTI.

DATED at the City of Yellowknife, in the Northwest Territories, this 30th day of March, 2007 and **DELIVERED** by the Attorney General of Canada whose address for service is in care of its solicitors and agents at P.O. Box 1030, Government of Canada Building, Iqaluit, Nunavut, X0A 0H0.



Andrew E. Fox, Legal Counsel
for the Attorney General of Canada

Court File No. 0806713CVC

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

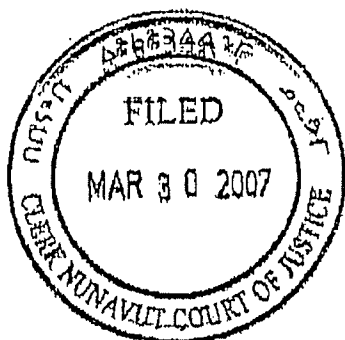
THE INUIT OF NUNAVUT AS
REPRESENTED BY NUNAVUT
TUNNGAVIK INCORPORATED

Plaintiff

-and-

THE QUEEN IN RIGHT OF CANADA AS
REPRESENTED BY
THE ATTORNEY GENERAL OF CANADA

Defendant



STATEMENT OF DEFENCE

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