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No. T-1185-08
Deponent: Harvey Feit
Affidavit Sworn: August , 2008

FEDERAL COURT OF CANADA

BETWEEN:

THE CREE NATION OF MISTISSINI and CHARLO GUNNER, KENNY COONISHISH, PHILIP JAMES SHECAPIO, CHARLIE COON- BLACKSMITH, JAMES A. GUNNER, ABRAHAM ETAPP, ISAAC ETAPP, CHARLIE ETAPP, JOSEPH P. SHECAPIO, HARRY BOSUM and SAM BOSUM

APPLICANTS

-AND-

THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

RESPONDENT

AFFIDAVIT

I, the undersigned, Dr. Harvey A. Feit, domiciled and resident in the City of Hamilton, Province of Ontario, being duly sworn do depose and say that:

1. I am Professor Emeritus of Anthropology at McMaster University. I have personal knowledge of the matters herein deposed to except where stated to be based on information and belief, in which case I believe such information to be true.

A. Qualifications and Research Experience in James Bay and Related Regions

2. I have held faculty appointments at McGill University and at Carleton University, and have held visiting appointments at the Laboratoire d'Anthropologie Sociale, CNRS (Paris, 1993,

2000, 2004 and 2007), and the London School of Economics and Political Science, LSE (1984-85).

3. I received a Ph.D. from McGill University in 1979 in anthropology, and my Doctoral Dissertation was on the hunting economy, society and culture of the Waswanipi Cree, a group of the Eeyou people who are usually known in English as the James Bay Crees.
4. Since that time I have continued to carry out research and work on James Bay Cree hunting, culture, economy, ecology, and history, and on the relationship of the Crees to governments and non-Native society and institutions.
5. I have conducted field research in the James Bay region to study Cree hunting, land use, cultural ecology, wildlife management, social organization and culture including: 22.5 months of field research at Waswanipi – 10 months during the period 1968-1970, on occasional visits each year from 1975 to 1977, two weeks in 1978, 1.5 months each in 1979 and 1980, 1 month in each of 1981, 1982, and 1983, two weeks each in 1984 and 1985, one week in 1987, two weeks in 1991, one week in 1995, two months in 1997, one month in each of 1998 and 1999, and one week in 2006; plus one week of field research at Mistissini – in each of 1974 and 1979; and occasional research at Fort George (Chisasibi Cree), in 1973-75.
6. I have been the academic advisor of graduate students and post-doctoral fellows who did research under my supervision in Nemaska, Waskaganish, Wemindji and Chisasibi in the James Bay region of Quebec, and in northern Ontario, northern Alberta, British Columbia, interior and coastal Alaska, and Belize, Paraguay, Jordan, Israel and the Philippines.
7. I am a specialist on societies, cultures and economies of the Cree of northern Quebec, sub-arctic North America, and hunting and gathering peoples of the world, and have made scholarly visits to the NWT, Alaska, the Northern Territory of Australia, and western Siberia.
8. I gave court testimony, and was an advisor to the James Bay Crees, during *Kanatawat, et al.* (1972-73). I was an advisor to James Bay Cree negotiators during negotiation and implementation of the James Bay and Northern Quebec Agreement (JBNQA) (1974-78 and

occasionally thereafter), with special emphasis on the hunting, fishing and trapping regimes, the income security program for Cree hunters and trappers (ISP), the environment regimes, and economic development.

9. I was a member and first Chair of the James Bay and Northern Quebec Native Harvesting Research Committee (1975 - 1988 which administered a budget of \$1,016,000 funded by the Government of Quebec, the Government of Canada, the Cree Regional Authority, the Makivik Corporation, the James Bay Energy Corporation, the James Bay Development Corporation, and Hydro-Québec, to conduct wildlife harvest studies in all of the Cree communities, and in the Inuit communities of northern Quebec.
10. I submitted an Affidavit in the case of Mario Lord, *et al.* (1999).
11. I conducted research on the impacts of the ISP and other aspects of the JBNQA in the James Bay Cree communities (1977-79), with funding from Québec ministère des Affaires sociales.
12. I was contracted by the Federal Review Panel assessing the “Eastmain-1-A and Rupert Diversion” hydro-electric project to prepare an evaluation of Hydro-Quebec’s Environmental Impact Statement with respect to key social components (2005).
13. I have prepared reports on the JBNQA and on Cree hunting and culture for the Government of the Northwest Territories, Renewable Resources Department (1987), Tungavik Federation of Nunavut (1985), Alaska Native Claims Commission (1984), Dene-Metis Negotiations Secretariat (1984), Gitksan-Carrier Tribal Council (1981), the Australian Institute for Aboriginal Studies (oral presentation, 1980), and the Labrador Inuit Association (1979).
14. I have been awarded ongoing funding for scholarly grants for research, mostly related to James Bay Cree peoples, from the Social Sciences and Humanities Research Council (SSHRC, 1981-present, 13 grants), a Quebec FCAR team grant (1994-97), SSHRC team grants (1991-95 and 2002-07), the National Museum of Man (now National Museum of Civilization) (1982-86, 1969-73, 8 grants), the Canada Council Killam program (1978-80),

Canada Council Doctoral Fellowships (1968-70, 3 grants), and Gouvernement du Québec, Bourses honorifiques (1968-71, 3 grants).

15. I have done research on James Bay Cree hunting territories and traplines (Indoh-hoh Istchee) since 1967, including the research in my M.A. (1968) and Ph.D. Theses (1979), and in a dozen articles and book chapters published between 1971 and 2005 (see my *Curriculum Vitae*, Exhibit 1).
16. I was the North American Regional Editor of *The Cambridge Encyclopedia of Contemporary Hunting and Gathering Peoples* (1994-99); co-editor (with Mario Blaser and Glenn McRae) of a volume, *In the Way of Development: Indigenous Peoples, Life Projects and Globalization* co-published by Zed Books (London) and the Canadian International Development Research Centre (2004); and, I have published over 50 scholarly articles and book chapters, and given over 100 scholarly lectures, mostly on James Bay Cree peoples.
17. I was the President and a member of the executive of the Canadian Anthropology Society (CASCA) (1990-93), a member of the Royal Commission on Aboriginal Peoples, Research Advisory Committee (1993-95).
18. In 2001 I was elected a Fellow of the Royal Society of Canada, and in 2008 I was the recipient of the Weaver-Tremblay Award of the Canadian Anthropology Society for engaged anthropology.
19. My *Curriculum Vitae* is attached as Exhibit 1.

B. Identities of Crees Individually, as a Society and as a Nation are Tied to Their Indoh-hoh Istchee and to Living on the Land and Caring for It

20. I will describe some features of Indoh-hoh Istchee, also called Cree traplines or hunting territories below, but I wish to indicate first why as a social scientist it is important to give them careful attention.

21. The identities of most James Bay Cree people today are closely tied to the knowledge and skills for hunting and living on the land, knowledge and skills that are widely valued and shared within the Cree communities. These skills are actively used by most Crees during the course of the year by living on or visiting their Indoh-hoh Istchee, and the Indoh-hoh Istchee of their kin, friends and associates. The value attached to these activities and knowledge is communicated to younger generations through recognizing the importance of activities on the Indoh-hoh Istchee in formal schooling, and by providing time during the school year for students to go to live with families on the land where informal Cree education takes place through daily experiences. (I use the term Crees as a short-hand for James Bay Crees.)
22. The distinctive knowledge and competence that most Crees acquire to hunt, live on the land, and use and care for Indoh-hoh Istchee are given prominence in many community activities within Cree society. For example, gatherings, assemblies and conferences organized at sites on Indoh-hoh Istchee emphasize and celebrate the value of land-based and Indoh-hoh Istchee skills. The ways the communities represent themselves to outsiders and visitors, for example by inviting them to visit traditional bush buildings in the settlements, or taking visitors to locally accessible Indoh-hoh Istchee, highlights individual and collective Cree identities and knowledge to non-Native people.
23. Hunting knowledge, skills for living on the land, and caring for Indoh-hoh Istchee are some of the central features that distinguish the James Bay Crees as individuals, as a society, and as a nation from the non-Native society that surrounds them, and this enhances their importance for both Crees and non-Crees.

C. Sharing of Indoh-hoh Istchee and “Bush” Activities, Foods and Materials are Central to and Distinctive of Cree Society

24. Cree hunters who live on Indoh-hoh Istchee for extended periods during the year organize their hunting activities in such a way as to make the visits of settlement-based people to their Indoh-hoh Istchee camps easier, and to make the visiting hunters’ harvesting activities more successful and rewarding. They keep trails open so shorter-term hunters have more extensive access to the land when they arrive. They share information about where animals or plants

of value were sighted or are likely to be found. They typically will have supplies of bush foods and firewood available for immediate use when they know others are coming.

25. Crees who are full-time workers typically have the highest incomes, and can afford more expensive hunting equipment and vehicles. They often share hunting equipment with those with less cash, including many Crees who live longer periods on their Indoh-hoh Istchee. Those with higher incomes may also pass along used equipment, or provide transportation services with their cars or trucks to those who do not have any vehicle.
26. This extensive sharing and reciprocity extends not only to production but also to the exchange and consumption of the products of the Indoh-hoh Istchee. Animals, specialized plants, pelts and other bush products will be shared widely with many kin and friends. It is considered normal for a hunter who catches big game to share half of it with other people. In return he will get some back when others have success. But the overall effect is to shift food and other products of the land from those who spend the most time on Indoh-hoh Istchee to those with less intensive access or opportunity.
27. Gifts of goods and services take place both through daily individual exchanges, and through wider community events such as feasts, which occur every week or two at some seasons and where enough foods are served that everyone present can take some home for later consumption. These exchanges are important parts of domestic economic activity in Cree households.
28. In most hunting and gathering societies such reciprocity is found to be a daily practice which involves substantial amounts of goods and services. This feature creates an economy and society based on a much greater degree of sharing than in industrialized societies, and it is one of the distinctive features of these societies. While practices of reciprocity respond to changing conditions, they remain very common and widespread in hunting societies like that of the James Bay Crees today.

D. Activities, Foods and Materials from Indoh-hoh Istchee are Specially Valued, and they Have Key Roles in the Integration of Families and Cree Society

29. In Cree society reciprocity is a norm and value, it is expected that people will share their resources with kin and friends, and with wider community on social occasions. Failure to do so is a subject of disapproval and public comment and pressure.
30. Among the activities and things that are exchanged, those that derive from living on Indoh-hoh Istchee are especially highly valued. Bush foods, locally gathered and processed medicines, the equipment and goods made by applying bush skills to products of the land (such as snowshoes, moose hide mittens and moccasins, functional and decorative decoys, children's toys, and implements, etc.) are especially highly prized even in the midst of a much expanded consumer economy. Indeed, new value has attached to these uniquely Cree goods and services partly because they are distinctively Cree in the midst of expanded communications and ties to the Canadian economy. Bush food, for example, is generally valued over comparable purchased foods in the daily larder of households for its nutritional and social value, local production, freshness and taste, as well as its accessibility.
31. While sharing is less comprehensive than it once was, most Crees actively seek to sustain the values and practices of reciprocity in changing conditions. They often do so, given the rapid growth of the Cree population, by applying this moral economy among family groups, and among extended networks of kin and kin-like friendships, even though they cannot easily extend sharing to the whole community. These groups or networks, which may sometimes approximate the size of a Cree community fifty years ago, overlap. Thus while the sharing networks in today's larger communities do not reach the whole community, the overlapping networks of reciprocity integrate families with the other networks that comprise the wider society. As the fabric of Cree society has been changing, its integration still depends on a moral economy of sharing in which both purchased and Indoh-hoh Istchee-based goods and services are vital.
32. This does not mean economic life is idyllic, or fully egalitarian. There are increased differences in wealth, and a greater diversity of values and activities among James Bay Crees today than in the past. But this is nevertheless a society in which there is a very active value placed on sharing, egalitarianism and respect for each person in daily life.

33. One consequence is that James Bay Cree communities are relatively well integrated societies, where people are linked together by ongoing experiences of giving and receiving goods and help from each other, and where an important attachment to lands and Indoh-hoh Istchee is a vital means to these processes.

E. Indoh-hoh Istchee are a Traditional Cree System of Tenure and Governance

34. The James Bay Cree system of distributing people on the land is based on the system of Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch (hunting leaders). These are forms of governance, not just a form of tenure, in the sense that they are a way of organizing Cree society.

35. Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch are recognized in Section 24.1.8 and 9 of the JBNQA where they are called “Cree traplines” and “Cree tallyman” (Sections 1, 24 and 28 of the JBNQA are attached as Exhibit 11. All references to the JBNQA 1975 are from the 1998 edition, of Les publications du Québec, Sainte-Foy, Québec).

36. This terminology is potentially confusing because “trapline” and “tallyman” are terms that derive from the beaver reserves started in the 1930s, which are described below, not from the Cree traditional Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch. Analytically, it is therefore sometimes useful and important, to distinguish between Cree Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch on the one hand, as the older Cree governance and tenure arrangement, and Cree traplines and Cree tallymen as terms associated originally with the beaver reserves in the 1930s and the cooperation of Crees and governments in the creation and practice of beaver reserves. However, the beaver reserve traplines and the tallymen of the reserve were founded on and recognitions of Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch. In Crees daily lives these are not two activities that can be split apart, they are a unified experience of living on the land. But they can be viewed from different perspectives, for example, focussing on Cree community traditions, or on the ways that they were recognized by governments in the co-management of beaver reserves.

37. In this affidavit I will generally use the term Indoh-hoh Istchee.
38. However, in certain circumstances I will contrast the terms and use trapline and tallyman as distinct terms from Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch. I do this, for example, where I want to note the specific history of government actions to establish beaver reserves and to recognize Indoh-hoh Istchee, or where maps were made by Crees in cooperation with government agents but the final drafting and adjustments of maps were made only by government agents back in their offices and away from Cree communities. In these contexts I use trapline and tallyman as terms to signal aspects of the working of Indoh-hoh Istchee and beaver reserves that were not organized by Crees, or that were partly organized jointly by Crees and governments, but which also involved a significant component of government agency that was not fully co-ordinated with Crees.
39. I also use Indoh-hoh Istchee to distinguish Cree governance and tenure from the governance and tenure of non-Cree governments because the Crees and government agents involved in the beaver reserves work in the context of different governance and tenure structures.
40. Finally, I sometimes use the term Indoh-hoh Istchee - trapline, or trapline alone, as an equivalent of Indoh-hoh Istchee, where discussing the texts of the period of the negotiation of the JBNQA, where the term trapline was the most common one used by all parties to refer to this Cree and beaver reserve system, and it was the term used in the JBNQA and other documents (see Exhibit 11).
41. The context makes clear in which senses the terms are being used, and when it does not I try to indicate my usage.
42. The Indoh-hoh Istchee system has existed among James Bay Crees for at least several centuries according to fur trade records where it was reported by the 1730s (see Toby Morantz, 1986, "Historical Perspectives on Family Hunting Territories in Eastern James Bay," *Anthropologica* 28 [1-2]: 65-91, attached as Exhibit 2). There have been debates

among scholars about whether Indoh-hoh Istchee were of Aboriginal origin, or whether they developed during the fur trade in the context of interactions between European traders and Aboriginal hunters. I think that the system of Indoh-hoh Istchee is of Aboriginal origin and that it predates contacts between Aboriginal Peoples and Europeans. (Note that the term “hunting territory” is historically the most commonly used term in scholarly writing about Indoh-hoh Istchee).

43. The whole of the over 360,000 sq. km. of land on which the James Bay Crees hunt is divided into approximately 300 Indoh-hoh Istchee which range from about 300 to several thousand sq. km., each under the supervision of a hunter, an Indoh-hoh Istchee Ouje-maaou (singular). Like all social organization, it also responds to changing conditions over time.
44. The Indoh-hoh Istchee Ouje-maaouch and their spouse typically know the land intimately from years of use, and they decide if it will be hunted in the coming year or if the game needs to be allowed to replenish. They can also decide who and how many families will hunt on the land, which game they will try to catch, and where and how intensively they will harvest animals.
45. Indoh-hoh Istchee Ouje-maaouch typically have detailed knowledge of the animal populations of their Indoh-hoh Istchee. They may know the locations of beaver lodges on their Indoh-hoh Istchee, and of how many young and adult, male and female, beaver were caught when the lodge was last trapped. There may be over a hundred beaver lodges on an Indoh-hoh Istchee. The Indoh-hoh Istchee Ouje-maaouch often hunt in ways that beaver and wildlife populations remain healthy and productive. For example, when the right numbers are hunted, the number of beaver does not exceed the number of locations suitable for founding new beaver lodges, and the whole population of beaver is healthy and productive.
46. Moose populations are relatively easy to over-hunt, although they have significant reproductive capacities, and Indoh-hoh Istchee Ouje-maaouch are generally concerned to limit their harvests to levels the moose populations can sustain. In these practices caring and responsibility extend in practice beyond the confines of human society to encompass animals as co-inhabitants of the land.

47. A key part of the system of reciprocity among people and families is the offering of invitations to use Indoh-hoh Istchee to those people who are not Indoh-hoh Istchee Ouje-maaouch, and who do not have access to an Indoh-hoh Istchee which they use regularly. To invite someone to use an Indoh-hoh Istchee is to offer them food to live, and the opportunity to hunt and harvest resources. It is one of the most valued kinds of “gifts.”
48. Some aspects of the Indoh-hoh Istchee system have been modified during the last decades in response to changes in James Bay Cree society and environment. With the growth of the Cree population, with increased access to and competition for game from non-Cree sport hunters, and with deterioration in the environment caused by resource developments, Indoh-hoh Istchee Ouje-maaouch cannot always invite all those who want to hunt to share their land. A related change has been the expansion of informal areas of “commons” near communities and along some highways where long-term access is relatively open to all Crees, a change that helps facilitate access to the land by settlement-based hunters and those without invitations to more distant Indoh-hoh Istchee. Another change is having some Indoh-hoh Istchee Ouje-maaouch who themselves are not intensive hunters, but who wish to have a say in and benefit from how their family land is used. They may become Indoh-hoh Istchee Ouje-maaouch but not hunt intensively. As a result, there can be active hunting leaders who use their Indoh-hoh Istchee intensively but who are not, and may not become, Indoh-hoh Istchee Ouje-maaouch.
49. Data from research that I did with the collaboration of Cree hunters in the period from 1968 to 1976 at Waswanipi show clearly that Indoh-hoh Istchee Ouje-maaouch were able to harvest the main game species they hunted, moose and beaver, so as not to deplete these wildlife in the long-term. They did this by monitoring indicators of the condition of moose and beaver populations and respecting the needs of the animals. If signs showed that the harvest should be reduced in an area, they would typically shift the hunt to other areas or to other game populations in order to give the wildlife that showed signs of reduction the opportunity to recover. The resulting stability of the populations of these two species in the region between 1965 and 1976 was confirmed by government aerial surveys of moose and

beaver populations.

50. Even as the Cree population has grown dramatically in recent years, Cree hunters have carefully and generally kept their wildlife harvests to levels that do not have adverse effects on the game populations, and they have met the larger subsistence needs of growing Cree communities by increasing the use of purchased foods and continuing to care for the land and wildlife.

F. Cree Culture – A Spiritual Worldview of the Land

51. Crees who live on the land have a distinctive view of the land, tied closely to their own distinctive identities, culture and spirituality. One feature of this distinctiveness is that whereas most Canadians draw a deep difference between human society and nature, Cree hunters typically do not radically separate them but rather focus on commonalities along with differences. They use a metaphor of society to tie humans very closely to animals and land. “Land” is used here in the fullest sense of the term - covering all living things, including animals and vegetation, as well as the substratum. Animals, plants and topographic features can all be thought of as being like persons in this Cree view of the world, or worldview. As a result, the Cree hunters live in a world that is a social world, and many features of the landscape from animals and vegetation, to lakes and rivers to mountains are, or may on occasion be, active social persons. Animals each have their own types of families and social groups, like geese flocks. A. Irving Hallowell, an anthropologist active from the 1930s to the 1970s, synthesized an academic description of what he learned from the Ojibwe people, who are closely related to the Crees, calling this a worldview in which there are other-than-human persons. These persons may be manifest directly or as spirits inhabiting and caring for places.
52. As a consequence, the relationships of Crees to the land are social, spiritual and moral relationships, characterized by reciprocity and caring between humans and other-than-human persons. Treating land respectfully and nurturing it are part of what people owe to the other-than-human persons in exchange for using the land. If one does not respect these others, then one can expect to be denied what one needs, or be given bad luck in the hunt, or bad luck in other aspects of one’s life, for all these persons lives depend on their mutual caring.

G. Cree Religious Traditions and the Land

53. Most James Bay Crees adopted Christianity at the end of the 19th century or early in the 20th century. But almost all kept a view of a socialized world, by incorporating the spirit persons as the helpers of the Christian deity. Some missionaries resolutely sought to change this, others saw Crees as leading exemplary Christian lives in other respects, and made accommodations. This pattern still holds true today.
54. There are also some Crees who never gave up “traditional” religion, or who have returned to it, as their exclusive faith. In addition, there are some Crees who reject the world of other-than-human-persons, either on religious grounds, or as a result of secularized worldviews presented in some parts of the school curricula. But the majority of James Bay Crees hold views that draw on both Christian and distinctive Cree traditions.
55. The land, and the Indoh-hoh Istchee by which Crees organize themselves on it, are thus embedded in spirituality.

H. The Deeply Social and Personal Relationships Crees Have to Particular Indoh-hoh Istchee are Not Transferable or Replaceable

56. Indoh-hoh Istchee Ouje-maaouch and their kin and friends typically return frequently to the same Indoh-hoh Istchee, and they come to know the animal populations, the forests and vegetation, and the terrain of the Indoh-hoh Istchee as specific entities that have interacted with and shaped Crees’ lives. This very detailed and complex historical knowledge of particular Indoh-hoh Istchee is the basis of their ability to use and care for the land today. It is a combination of knowledge built up through repeated use, long historical experience transmitted across generations, and personal commitments to caring. Some of this knowledge and experience can be generalized and used by hunters when they hunt on other Indoh-hoh Istchee. But the ability of Indoh-hoh Istchee Ouje-maaouch and other hunting leaders to hunt and care for the Indoh-hoh Istchee to which they return over many years and decades, and for which they have special responsibilities, depends on their historical connections to those

specific Indoh-hoh Istchee, and their knowledge of them.

57. Knowing if you are killing too much of any species depends in part on using past experience of how many signs of that species you might expect to see in a given area. Many factors can alter game populations so an Indoh-hoh Istchee Ouje-maaou (singular) needs to know how game has responded to the particular terrain, vegetation, microclimates, etc. of an area under different weather and climate changes. With such knowledge an Indoh-hoh Istchee Ouje-maaou can have a reasonable idea whether any changes in game populations are due to such factors, or if they are responses to being harvested too intensively. One never knows for sure, but with their experiences of the particular Indoh-hoh Istchee, hunters can adjust their hunting activities. By monitoring the results of their actions they can adjust again and approximate harvests appropriate to the condition of the wildlife.
58. Some of this knowledge and history derive from living on an Indoh-hoh Istchee over many years, sometimes from one's youth. Some of it is learned from parents, grandparents and kin who share knowledge about times before the current hunters were born. They may learn from stories of forest fires and regeneration, cyclical or irregular historical occurrences of caribou or moose, observations and knowledge of fur-bearer variations that apply to this particular area and history. Relationships to Indoh-hoh Istchee are therefore personal and specific to an Indoh-hoh Istchee and the places within it. An ideal Indoh-hoh Istchee Ouje-maaou is the active hunter with the richest knowledge, history and relationships to the particular Indoh-hoh Istchee.
59. This kind of detailed knowledge, and the practical and personal relationships to particular places and territories, cannot be transferred elsewhere. When Indoh-hoh Istchee Ouje-maaou hunt on other Indoh-hoh Istchee they do not usually have this kind of knowledge and experience of the histories of that other place.
60. Similarly, the separation of an Indoh-hoh Istchee Ouje-maaou from an Indoh-hoh Istchee will leave the Indoh-hoh Istchee without the same care, unless there is another hunter with extensive personal histories and relationships to that particular Indoh-hoh Istchee.

61. The Indoh-hoh Istchee Ouje-maaouch typically choose who will succeed them, and it is typically someone who has longstanding relationships to this particular Indoh-hoh Istchee. Someone who did not have the knowledge, experiences, and the relationships would not initially be able to care for the land the way that someone who had these could.
62. To have these relationships denied by others, or to be prosecuted by authorities for living on, using and caring for these lands, is a deeply disturbing act for Indoh-hoh Istchee Ouje-maaouch, it is a denial of one's life's work and of one's heritage and legacy.
63. The particular knowledge, skill and capabilities of Indoh-hoh Istchee Ouje-maaouch are embedded with specific Indoh-hoh Istchee. For an Indoh-hoh Istchee Ouje-maaou the loss of an Indoh-hoh Istchee is something he cannot replace by moving somewhere else, he will not normally expect to be an Indoh-hoh Istchee Ouje-maaou elsewhere. It changes his status, and takes away his life's work. So the loss of an Indoh-hoh Istchee is an irreplaceable loss for Indoh-hoh Istchee Ouje-maaouch.

I. Indoh-hoh Istchee Boundaries, Heights of Land and the Non-Cadastral Character of Cree Tenure

64. The boundaries of Indoh-hoh Istchee cannot be described by any comprehensive set of topographic or cadastral rules. Large rivers or lakes that are difficult or impossible to cross at some seasons, particularly freeze-up and break-up, are often parts of the boundaries. However, neither small water bodies nor the heights of land are systematically boundaries. Similarly higher ground, including hills and mountains (which are mostly of modest height), are not systematically boundaries. This is probably because heights of land in the region are generally not arduous to cross. After thousands of years of glacial scouring, and because the land is still rising from the compression caused by the weight of glaciers present up to 9,000 years ago, heights of land are not "natural" boundaries. As the previous sections suggest, boundaries are more likely the result of long histories of use and of knowledge.
65. Maps of Indoh-hoh Istchee made at different times show that boundaries shift somewhat over time. The most common reason is the splitting of an Indoh-hoh Istchee in the course of its

transfer to two or more hunters, particularly as the Cree population increases. But there are also adjustments to the boundaries of Indoh-hoh Istchee over time during the lifetime of individual Indoh-hoh Istchee Ouje-maaou. Hunters sometimes comment how the game animals themselves move about, and the vegetation changes over time, especially after fires and logging, and they are always responding to these changes.

66. These patterns of changes in vegetation, game, hunting activities, the long histories of use and transfers, as well as the Cree worldview of a land of other-than-human-persons, mean that Indoh-hoh Istchee and their boundaries do not correspond to the universal and (supposedly) unchanging grids of cadastral systems of tenure used by nation states to define land rights. Indoh-hoh Istchee are a unique Cree system of tenure, governance, and caring, and part of a way of life in this respect as well.

J. Concerns for Hunting and the Land in the Negotiation of the JBNQA

67. The concerns of Cree hunters to maintain respectful relationships to the land and their Indoh-hoh Istchee, and to maintain their own hunting practices, forms of governance, and culture had a major impact on the structure of the James Bay and Northern Quebec Agreement of 1975. In my experience of the negotiations leading to the JBNQA, it was an initial view of government negotiators that an agreement would be largely concerned with compensation and remedial measures related to hydro-electric and other natural resource developments. This reflected the then existing government policies.
68. The view of Indoh-hoh Istchee Ouje-maaouch was that the land is there to be used and its use can and should in principle be shared with others. But that requires that each user respect the land and the other users. Each person or entity must take into careful consideration the long commitments of others to the land and their work to assure its future. This requires consideration of others, and acknowledgment of their ongoing role in caring for their land, even as it is shared. Indoh-hoh Istchee Ouje-maaouch envisaged negotiations with the government that would be about how to share the land.
69. Cree negotiators were directed by a broad consensus in the Cree communities that the

agreement had to contain provisions affording recognition and protection of Cree hunting and of the Indoh-hoh Istchee. Early in the negotiations it became clear to all sides involved that no agreement would have broad support in the Cree communities unless such provisions were included.

70. As a result of Crees insistence, the negotiating process devoted considerable time and effort to developing the hunting, fishing and trapping and the land regime in the agreement, and the supporting ISP and environment and future development provisions of the agreement. The hunting, fishing and trapping regime recognized Cree rights, Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch (called “Cree traplines” and “Cree tallymen” in the JBNQA negotiations), established the priority of Crees uses of wildlife, and the priority of Crees use of the land subject to others right to develop.
71. To assure these Cree rights could be exercised by future generations of Crees the negotiators insisted that the land be sufficiently protected during development so that there would continue to be wildlife and resources to hunt and gather. This was expressed in the principle of conservation, and the development of the environment and future development regime.
72. They also insisted that there be a program to assure that hunters would have sufficient cash incomes to meet the needs of modern hunters, so people could continue to go out on the land and maintain a hunting way of life, and the provisions for the Cree Hunters, Trappers and Fishers Income Security Program met this need.
73. The inclusion of these provisions was largely a new emphasis in contemporary treaties. For example the Alaska Native Claims Settlement Act in the United States, completed in 1971, focused more on conventional land ownership and cash settlements. In my judgment, the James Bay Crees gave up opportunities to have a larger cash settlement by their insistence on achieving means of continuing Cree hunting society and activities, and to protect the land and wildlife, in perpetuity.

K. Importance of the JBNQA in the Views of Cree People

74. The emphasis on these provisions by Crees during the negotiations, and their inclusion as prominent features of the JBNQA assured the Crees that they would be able to continue hunting and their way of life on the land for future generations, in whichever ways that they chose to do so. My research in the communities in 1975 to 1987 indicated that many Crees thought that the governments had understood and been willing to act in ways that respected Cree concerns and practices. Many Crees thought that the agreement guaranteed the future of their land-based activities and way of life.
75. The great majority of Crees I interviewed in the communities thought the government should be trusted. In their view it made no sense, practically or morally, for governments to recognize hunting rights and provide payments for people to continue hunting, and then to fail to implement other provisions, or fail to continue to negotiate and agree to arrangements, which were essential to the successful continuance of Crees' hunting activities and the Crees hunting way of life on the land.

L. The Histories of Beaver Reserves and Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch

a) Beaver Reserves were Created in the 1930s to Protect and Strengthen Cree Hunting Society, Cree Tenure and Indoh-hoh Istchee

76. One of the reasons Crees had confidence in the federal and provincial governments in 1975 was because they had already cooperated over decades with the provincial and federal governments to protect Crees Indoh-hoh Istchee and the Crees' way of life.
77. In 1932, after hearing from Crees about the difficulties they had sustaining beaver numbers and their Indoh-hoh Istchee system in the face of intruding trappers, both Indigenous and non-Indigenous, and hearing the Crees say that this situation could be improved by respecting the Indoh-hoh Istchee, a Hudson's Bay Company (HBC) fur trader and his wife petitioned Quebec and federal government officials to act. Quebec set up the first of what were to become a series of Beaver Reserves, eventually covering the entire area of Indoh-hoh Istchee, and extending later to cover many other northern regions of the province. The Quebec Order in Council establishing the beaver reserve excluded non-Native trappers, thereby reducing the intrusions and adding provincial government recognition to Cree

tenure and governance. The plan was for fur traders and governments to work along with Cree to limit beaver harvests until beaver populations recovered, and after recovery to set harvest quotas.

78. What developed was a Quebec government - federal government - Cree - and HBC beaver reserve system. In order to put these joint institutions into practice over the next four decades, the beaver reserves used and recognized the boundaries of the Indoh-hoh Istchee as the boundaries of beaver reserve traplines. Indoh-hoh Istchee Ouje-maaouch became the “tallymen” of the traplines (the name comes from their responsibility to count and report the number active beaver lodges on their traplines, and to discuss and allocate the beaver quota with government beaver reserve managers). Thus the Indoh-hoh Istchee Ouje-maaouch together with government and HBC agents organized the beaver recovery and then beaver management and harvesting.

b) Indoh-hoh Istchee Ouje-maaouch Undertook New Activities Jointly With Governments In Order to Care for their Indoh-hoh Istchee

79. The establishment of beaver reserves and traplines did not replace Cree Indoh-hoh Istchee. Nor did the recognition of Cree Indoh-hoh Istchee Ouje-maaouch as “tallymen” replace the original system of Indoh-hoh Istchee Ouje-maaouch. The Cree knowledge, traditions and practices that comprised the Indoh-hoh Istchee and the Indoh-hoh Istchee Ouje-maaouch’s activities were part of the systematic organization of Cree social life and governance, and a way of organizing the hunting of all animals not just beaver or fur bearers.
80. The Cree system of Indoh-hoh Istchee and Indoh-hoh Istchee Ouje-maaouch involved understandings about different kinds of access people had to different kinds of animals, about the relatively egalitarian kinds of leadership that were appropriate among groups of Crees, about the responsibilities of hunters and families to each other, about how to process, distribute, use and honour game harvests, and about many forms of respect that are necessary to the mutual well-being of humans and non-humans. These practices and knowledge have all continued to today among active Cree hunters, albeit in always updated ways.

81. The beaver trapline and tallyman system added new Indoh-hoh Istchee Ouje-maaouch responsibilities and activities which involved government agents as well as Crees in some aspects of the harvesting of beaver and fur bearers. And it involved recognition of the Indoh-hoh Istchee, traplines and beaver reserves in the law of the nation state and not just Cree law. In addition governments initiated several management and support programs.
82. Where Cree and governments' ideas and practices for beaver reserves came into conflict, for example where boundaries of beaver reserves were sometimes modified at the insistence of governments and they did not any longer coincide with Indoh-hoh Istchee, changes to traplines could be imposed by governments and police. But the success of these changes in practice was often limited over time as Crees either resisted or subverted the effects of some of the changes. Such conflicts generally occurred in specific instances rather than over the whole of the region.
83. Thus, both Cree and governments' ideas and practices had effects on the other, and they both kept distinct understandings. Surveying active beaver lodges, for example, was a long-standing Cree practice, although it probably became more formalized with beaver reserves. Setting quotas with government agents was a new activity, and the sharing of the authority of Indoh-hoh Istchee Ouje-maaouch in setting game harvests with government agents was sometimes welcomed and sometimes resented. But the quotas could be modified by Indoh-hoh Istchee Ouje-maaouch when they saw the need, so as differences occurred they could be moderated. Similarly, Crees worked with government agents to map their Indoh-hoh Istchee - traplines, but governments took these maps away and drew them to conform to the boundaries of the beaver reserves described in Quebec Orders in Council, which might or might not conform precisely to the ways Indoh-hoh Istchee Ouje-maaouch drew their boundaries. Furthermore, over time, Crees would modify their Indoh-hoh Istchee - traplines, but beaver reserve descriptions and trapline maps might not be updated for a decade or more. Thus there were differing views and practices when Indoh-hoh Istchee - traplines were seen from the perspective of beaver reserves regulations, maps and programs and when they were seen from the viewpoint of Indoh-hoh Istchee Ouje-maaouch or Indoh-hoh law, governance, traditions and practices.

84. Despite these different viewpoints, in everyday life Cree hunters did not generally distinguish activities that were done as beaver reserve trappers from those as Indoh-hoh Istchee hunters. Their activities were thought of and experienced as one by Cree hunters, and to some degree they were understood this way too by government officials who used Cree hunting practices as the basis of the beaver reserves.

M. The Role of the Federal and Provincial Governments in Beaver Reserves and Traplines

a) Federal and Provincial Contributions to Establishing Beaver Reserves and Traplines in the 1930s and 1940s

85. The federal government was actively involved in establishing the beaver reserve system initially through the Director of the Indian Affairs Branch who gave his support and the assistance of Indian Agents to the project in 1932. During the 1930s the Government of Quebec took very limited responsibility for Indian issues and the federal government and the HBC took the lead in developing the first beaver reserve at Rupert House, now Waskaganish, which was leased to the HBC by Quebec.
86. The HBC was interested in increasing beaver populations and beaver pelt sales after beaver populations recovered. The federal government was interested in increasing Cree fur incomes in the expectation of reducing present and future assistance payments.
87. By the early 1940s the federal government was itself leasing land from Quebec that had been set aside for new beaver reserves, and it took the leading role on those reserves and appointed a full time “fur supervisor” to manage its leased beaver reserves and those aspects of other beaver reserves operations for which it was responsible. In the early 1940s the RCMP got involved in beaver reserve policing. During the first two decades of the beaver reserves in Quebec the federal government became the primary entity responsible for their management, along with the HBC.
88. During the 1940s and after federal officials published articles promoting, extolling and somewhat exaggerating their achievements in beaver conservation and assisting Aboriginal trapping and ways of life (D. J. Allan, 1941, “New Fur Trails,” reprinted from *The Civil*

Service Review, attached as Exhibit 3).

89. In 1946 Indian Affairs staff reported to a special Parliamentary committee on their activities and their views of managing beaver reserves. (For example, see the testimony of R.A. Hoey, Director, Indian Affairs Branch, Minutes of Proceedings and Evidence, No. 16, May 28 and 30, 1946, see pages 19-20; and Hugh Conn, General Supervisor, Fur Developments, Indian Affairs Branch, Minutes of Proceedings and Evidence, No. 16, July 25, 1946, both to the Special Joint Committee of the Senate and the House of Commons Appointed to Examine and Consider the Indian Act. These are attached as Exhibits 4 and 5 respectively).

b) The Changing Roles of the Federal and Provincial Governments At Mid-Century

90. In the 1950s Quebec took over more of the day to day management of the beaver reserves, both on newly established reserves such as Mistassini Beaver Reserve and on previously established reserves. It took an active role in gathering information on beaver colonies, and in setting quotas, and it set up beaver marketing services.

91. But Quebec did so in cooperation with the federal government which continued to promote trapping on the beaver reserves as an economic activity for Crees, offering programs to promote and assist the activity, including marketing, funding and management services.

92. The RCMP continued to provide enforcement for beaver reserves until Quebec game wardens, later conservation officers, and police officers started to replace them starting in the mid-1950s in the southern portions of the region.

93. The Department of Indian Affairs also aided in the game management of the reserves, even though beaver were under provincial jurisdiction, for example, by jointly conducting the “Initial Aerial Survey of Beaver Reserves” with provincial officials (Report by G. A. Emond, an Indian Affairs official in 1967. Attached as Exhibit 6).

94. In the 1950s the federal government also funded or promoted films and professional photo essays on its ongoing role in the development and management of beaver reserves (for example, see *The Beaver Makes a Comeback*, a short documentary film made in 1953 which

is still circulated by the National Film Board of Canada, No. 0154-030).

95. It must be noted that many of these communications emphasize the importance of the actions of the federal government on behalf of Aboriginal peoples, while generally portraying the Crees and other Aboriginal peoples as dependents, a simplified and inaccurate picture.

c) The Federal Role in Beaver Reserves During and After the JBNQA

96. The federal role in promoting economic activities on beaver reserves continued through the negotiation of the JBNQA and after.
97. At the time of the negotiation of the JBNQA, the Department of Indian and Northern Affairs (DINA) had a co-operative arrangement with the Quebec Fur Service, for the marketing of beavers from the beaver reserves. DINA covered the costs of processing accounts and the distribution of the proceeds of the sale of pelts to the trappers. In a report co-authored by DINA staff the federal role was described as providing services “in the normal course of business, however, they represent a substantial contribution to the orderly marketing of Quebec Preserve Beaver” (Bearskin, Steven, Charles Bobbish, Marcel Beaudet, Gerrard Emond, Jack Cavanaugh, and David Gimmer, 1977, “*Report of Feasibility: of Forming a Cree Trapper’s Association and Developing a Wild Fur Harvesting and Marketing Program for the James Bay Agreement Area, Province of Quebec,*” pages 16-17. Attached as Exhibit 7. Note that in this and other documents, the Quebec Beaver Reserves are sometimes, incorrectly, called “Preserves.”)
98. After the JBNQA the federal government took the leading role in the feasibility studies that led to the establishment of the Cree Trappers Association, and that were provided for in the JBNQA (Section 28.5; Exhibit 11).
99. The feasibility report on a Cree trappers association, prepared by six authors of whom three were from the Department of Indian and Northern Affairs, described the system of beaver reserves and traplines (Bearskin, Bobbish, Beaudet, Emond, Cavanaugh, and Gimmer, 1977, Exhibit 7). It proposed means for improvement of the reserves and for the development of

programs to promote wild fur harvesting and marketing for Cree tallymen and trappers through the formation of a Cree Trappers Association (CTA).

100. Section 28.5 of the JBNQA provides that when a CTA is founded it would be funded by the federal and provincial governments and the Cree Regional Authority in a mutually agreed upon proportion (see Exhibit 11). This is what happened after the CTA began, in about 1977-78.

101. Therefore, despite the beaver reserves having been established under provincial jurisdiction, their management and operation have always been a joint provincial, federal, Cree responsibility (and for a period of years an HBC responsibility as well), through leasing, specialized programs, and other co-management arrangements. The role of the federal government has varied over time, but it has played essential roles in the operations of the system of beaver reserves and traplines throughout the three-quarters of a century since they were established.

N. At the Time of the JBNQA Negotiations Indoh-hoh Istchee Maps and Trapline Maps Recognized Cree Hunting Lands to East of the James Bay Drainage Basin

102. At the time that the negotiations which led to the JBNQA began there were public records in the form of maps of Indoh-hoh Istchee and Cree traplines which showed that Indoh-hoh Istchee - traplines extended to the east of James, Hudson and Ungava Bay drainage basins.

103. The James, Hudson and Ungava Bay drainage basins were also the lands covered by the 1898 and 1912 acts that transferred these former HBC territories to Quebec. Later, in the fall of 1975, they were also the territory defined at clause 1.16 of the JBNQA (Exhibit 11).

104. I will use several terms for this territory. In general, and in discussions before or not related to the JBNQA negotiations I call this territory the “James Bay drainage basin,” for short. In the context of the JBNQA negotiations, and when discussing specific texts or positions which were adopted during the negotiations, I call this the “1898 - 1912 territory.”

When the specific provisions of the JBNQA clause 1.16 are a consideration, following the signing of the JBNQA, I call it the “JBNQA clause 1.16 territory.” Geographically, they are the same, but their meaning to people varied over time and in different settings, as did their legal status. In using each these terms I acknowledge the context of the events, I do not take a position on their relative legal standing.

105. Maps of Cree hunting territories at Mistissini made in about 1971 by the anthropologist Adrian Tanner were published that year in his article in the Quebec scholarly magazine *Recherche amérindiennes au Québec* (see “Existe-t-il des territoires de chasse?” in Volume 1 [4-5]: 69-83. Attached as Exhibit 8). Tanner’s maps were published in a special issue about the James Bay hydro-electric project and the Crees, which became a standard reference on the issues. His maps showed that a number of the eastern Mistissini Indoh-hoh Istchee were either wholly or partially over the height of land and outside of the James Bay drainage basin.
106. At the time of the JBNQA negotiations beaver reserve maps also indicated that some Mistassini Beaver Reserve traplines included lands east of the height of land and were not fully in the James Bay drainage basin. In June 1974 a trapline map used as a base for Figures 4 and 5 in the volume *Développement hydroélectrique de la Baie James: Description de l’environnement*, published by the Société de développement de la Baie James and the Société d’énergie de la Baie James (cited as SDBJ-SEBJ, 1974), shows several traplines that are part of the Mistassini Beaver Reserve that include territory over the height of land (see SDBJ-SEBJ, 1974, following page 44. The first section of this report up to page 54, including “Les activités traditionnelles des autochtones,” is attached as Exhibit 9. Note that in this exhibit missing pages and their page numbers are blank pages in the SDBJ-SEBJ volume).
107. The map was prepared by the SDBJ-SEBJ to present data on Cree beaver reserve trapline use which the corporations tabulated from data compiled by the Québec ministère du Tourisme, de la Chasse et de la Pêche [MTCP], Division des Fourrures (see pages 39 and 43 of Exhibit 9). The publication noted that it was intended to add to the existing data on the

James Bay territory the results of new studies and inventories conducted in recent years “notamment grâce à l’entente intervenue entre le ministère fédéral de l’Environnement et la Société de développement de la baie James pour le financement d’inventaires bio-physiques . . .” (SDBJ-SEBJ, 1974: 13, Exhibit 9).

108. In 1978 the SEBJ published a follow-up book to the volume cited in the previous two paragraphs, with Environment Canada financial support. The book further updated the information available to the public, adding results from the ongoing agreements between the SEBJ and Environment Canada. The book included redrawn versions of the 1974 maps cited in the previous two paragraphs. The maps showed that some Mistassini Beaver Reserve traplines included lands east of the line marking the “Limite du territoire de la Baie James” and outside the James Bay drainage basin (See SEBJ, 1978, *Connaissance du milieu des territoires de la Baie James et du Nouveau Québec*, Montréal: SEBJ. See pages 40-41, Figures 1.11 and 1.12; see also page v. The first section of this report up to page 52, including Section 1.5 Activités traditionnelles, is attached as Exhibit 10).
109. Thus there was recognition by each of the parties to the negotiation of the JBNQA that Indoh-hoh Istchee - traplines extended east of the James Bay drainage basin both before and following the signing of the JBNQA.
110. However, not all maps of beaver reserves clearly indicated whether there were Indoh-hoh Istchee - traplines that were in whole or in part east of the James Bay drainage basin. Maps were sometimes unclear as to whether there were no Cree territories east of the drainage basin, or whether the maps did not consider this area at all.
111. For example, the Section 24, Schedule 1 map in the JBNQA does not indicate whether beaver reserves existed east of the JBNQA clause 1.16 territory, an area which it leaves blank of features. A casual examination of the map might lead a viewer to think that Cree beaver reserves and traplines do not extend to the east of the James Bay drainage. The map, signed by the Québec, Direction générale du domaine territorial, Service de l’intégrité du territoire, and titled “Réserves de castors - Beaver Reserves,” is actually ambiguous with respect to the eastern boundary of Cree beaver reserves and traplines (See Exhibit 11, page 392).

112. The map shows four beaver reserves that abut the line labelled “Southern and Eastern limit of the ‘TERRITORY,’” which appears to coincide with the 1898 - 1912 and JBNQA clause 1.16 territory. These beaver reserves are the Mistassini and Abitibi Reserves which are largely within the James Bay drainage, and the Bersimis and Saguenay Reserves which were not primarily Cree beaver reserves and which are largely outside the James Bay drainage. But the map does not show the portions of any of these beaver reserves which fall outside the James Bay drainage. Only the small portions of the Bersimis and Saguenay Beaver Reserves which are within the James Bay drainage are shown. Because it does not show the extent of any beaver reserves to the east of the “territory” or the James Bay drainage, it leaves unclear whether Mistassini Beaver Reserve or other Cree beaver reserves and traplines included lands east of limits of the James Bay drainage basin, or not. The title of the map, “Réserves de castors - Beaver Reserves,” does not make clear that it only shows those portions of each beaver reserve that are in the 1898 - 1912 and JBNQA clause 1.16 territory.

113. That Mistissini Indoh-hoh Istchee - traplines included lands east of the James Bay drainage basin was common knowledge in the late 1960s and the early 1970s among people familiar with beaver reserves in the region. During my scholarly research in the adjacent Waswanipi region from 1969 to 1970, including visits to Mistissini and Chibougamau, I heard about Mistissini Indoh-hoh Istchee - traplines over the height of land in conversations with Crees and non-Aboriginal people involved in Aboriginal administration or in the fur trade. This was treated as common knowledge.

114. Thus, there was clear but not uniform evidence available to all parties at the time of the negotiation of the JBNQA that Mistissini Indoh-hoh Istchee - traplines existed east of the James Bay drainage basin.

O. During the JBNQA Negotiations The Boundaries, and Tenure Differences That Were Known to Exist, Could Not be Fully Identified and Clarified

115. Although the negotiators from all parties to the JBNQA knew of the differences between the boundaries of Indoh-hoh Istchee and the 1898 - 1912 territory, it was not possible to

clearly map the traplines. Nor was it possible to document the differences between Cree and Quebec or Canada governmental regimes of land tenure and governance, during the negotiation of the JBNQA.

116. The reason for this was that there was a lack of detailed maps of Indoh-hoh Istchee from most Cree communities. Cree hunters knew their lands and their laws well, but there was no comprehensive public record of either, separate from the Cree - government maps of beaver reserve traplines. Only Mistissini and Waswanipi Indoh-hoh Istchee had been mapped by Indoh-hoh Istchee Ouje-maaouch, the former for Adrian Tanner about 1971, and the latter for myself in 1969 and 1970.
117. In early 1975 there were some discussions of doing new mapping, and the Native Harvesting Research Committee (NHRC) established by the JBNQA Negotiating Committee did some initial mapping of Indoh-hoh Istchee. But the NHR Committee found that in the summer, when Cree hunters were in the settlements and back from their Indoh-hoh Istchee, they were too occupied by meetings related to JBNQA negotiations, and by the wildlife harvesting research done by the NHR itself, to successfully complete a full and official Cree mapping of Indoh-hoh Istchee. (For more on the NHR Committee see below).
118. In addition, the Cree - government maps of beaver reserve traplines were out of date. When doing research in the Waswanipi region in 1969-70 I was told that the trapline map I was provided with by Quebec authorities was made in about 1962, and that it was the most up to date map that there was. I found that there had been numerous divisions of traplines, adjustments and modifications by Cree hunters in the intervening years, only some of which had been updated in government records as yet.
119. The negotiations therefore took place without an up to date official public record of the exact boundaries of the Indoh-hoh Istchee, or official documentation of Cree law as it applied to Indoh-hoh Istchee.

P. JBNQA Negotiators Acknowledged the Need to Recognize Indoh-hoh Istchee Outside the

James Bay Drainage Basin and Government Negotiators Took the Position that These Lands Were Recognized by Existing JBNQA Provisions

120. The general knowledge that there were Mistissini Indoh-hoh Istchee - traplines east of the 1898 - 1912 territory, and the lack of information about many details, were part of the context in which the JBNQA negotiations took place.
121. On June 20, 1975 the first “Preliminary Draft Consolidation of the Hunting, Fishing and Trapping Regime” was circulated to the Hunting, Fishing and Trapping Sub-Committee of the JBNQA negotiations by Peter W. Hutchins, Secretary of the Sub-committee, so that members of the Sub-committee could “review and discuss” the state of their negotiations (Memo and text entitled “Preliminary Draft Consolidation of the Hunting, Fishing and Trapping Regime,” with memo dated June 20, 1975, attached as Exhibit 12).
122. I want to trace the development of the negotiated texts of what became Section 24 of the JBNQA from this consolidation to the final text in the fall of 1975 because this helps to document and clarify several matters relating to the issue of the Mistissini Indoh-hoh Istchee that were outside the James Bay drainage basin. It also indicates some of the ways that the issue was raised during the negotiations. In addition, it establishes that the Cree text calling for mention of the Mistissini beaver reserve and traplines outside the James Bay drainage basin was only dropped when a text recognizing and protecting the Indoh-hoh Istchee - traplines and the disposition of the beaver reserves was added. Finally, it helps me to identify the approximate date of the meetings at which I recall the issue of Mistissini traplines outside the James Bay drainage was negotiated and agreed upon.
123. As a member of the Sub-committee I responded to circulation of the June 20 consolidated text in a memo on July 7, 1975 in which I listed the “Proposed Additions to ‘Preliminary Draft Consolidation of the Hunting, Fishing and Trapping Regime’” which I thought needed further consideration (Memo from Harvey Feit to Hunting, Fishing and Trapping Committee Negotiators, dated July 7, 1975, on “Proposed Additions to “Preliminary Draft Consolidation of the Hunting, Fishing and Trapping Regime,” attached as Exhibit 13),

124. Item H in my Memo referred to Paragraph XVI on page 46 of the June 20, 1975 Consolidation. It set out that, “In the application of the present hunting, fishing and trapping regime, special considerations shall be given to particular factors which exist in the southern portion of the Territory” (XVI.a), and that went on in the next paragraph (XVI.b) to say:
- “(b) In this regime the word “Territory” comprises the entire area of land contemplated by the 1912 Quebec Boundary Extension Act and by the 1898 Act respecting Northwestern, Northern and North-Eastern Boundaries of the Province of Quebec” (Exhibit 12).
125. My July 7, 1975 memo said at point H, “Page 46 - insert in (b) after ‘Province of Quebec’ ‘and that area of the Mistassini Beaver preserve not included in the above’” (see Exhibit 13).
126. The June 20, 1975 Consolidation and responses to it were discussed at Sub-committee meetings on or about July 8 and 9, 1975. The copy of the Consolidation which I had at that meeting includes on page 46 the additions I suggested in my Memo of July 7, 1975 cited in the previous paragraph, written in by hand, and my hand-written marginal note in a circle “Not agreed to” (Page 46 from the “Preliminary Draft Consolidation of the Hunting, Fishing and Trapping Regime” of June 20, 1975, with handwritten text addition and note on discussion inserted by Harvey Feit on or about July 8 and 9, 1975, attached as Exhibit 14).
127. In the “Draft Consolidation of the Hunting, Fishing and Trapping Regime Approved by the Hunting, Fishing and Trapping Sub-Committee” dated July 17, 1975, paragraph XVI.b on page 49 included at the end of the June 20, 1975 text the additional text - “Cree representatives wish to see added ‘and the area of the Mistassini Beaver Preserve not included in the above.’” (“Draft Consolidation of the Hunting, Fishing and Trapping Regime Approved by the Hunting, Fishing and Trapping Sub-Committee” dated July 17, 1975, attached as Exhibit 15).
128. A list of amendments proposed by the Quebec Party on August 1 and 8, 1975 included one for page 49 of the Draft Consolidation of July 17, 1975, “Note: Sub paragraph (6) on page 49 of the text should be deleted completely because it is not entirely accurate, and

because a definition of ‘territory’ will appear in the definition section that will introduce the section.” The reference to sub paragraph 6 is a typo and it should be “b” on page 49 of the Draft Consolidation of July 17, 1975. The Quebec text suggested that the Quebec government negotiators saw problems with the text proposed by the Crees, but they did not indicate principled opposition. (“Draft Consolidation of the Hunting, Fishing and Trapping Regime Approved by the Hunting, Fishing and Trapping Sub-Committee, but with Amendments Proposed by the Quebec Party, on the 1st and 8th of August, 1975,” attached as Exhibit 16).

129. These different positions were not resolved over approximately the next two months, and both positions were carried forward in subsequent texts. For example, a draft, hand dated September 18, 1975 I think by Peter W. Hutchins, included in its Sub Section 1 on Definitions that were “NOT DISCUSSED” yet, a paragraph 1.24, “‘Territory’ means the entire area of land contemplated by the 1912 Quebec Boundary Extension Act, S.C. 2 Geo. V., c.45, and by the 1898 Act respecting the Northwest, Northern and Northeastern Boundaries of the Province of Quebec, S.C. 1898, 61 Vict., c. 3 (including off-shore islands).” My penciled marginal note next to section 1.24 was “+ Mistassini Traplines?” (“Section I - Hunting, Fishing and Trapping,” dated by hand “Sept. 18, 1975,” attached as Exhibit 17. This Exhibit includes two versions of Sub section 1, Definitions. I think that the first was a pre-circulated version as it was stapled separately, and I wrote more extended notes on it, including the text cited above. The second copy appears to be the version of the definitions circulated with the full hunting, fishing and trapping section text.)

130. Sub section 11 of the same document entitled “Definitions of Territory” included, at paragraph 11.1 on page 54, “In this Section the word ‘Territory’ comprises the entire area of land contemplated by the 1912 Quebec Boundary Extension Act and the 1898 Act respecting the Northwestern, Northern and North-eastern Boundaries of the Province of Quebec (Cree representatives wish to see added ‘and that area of the Mistassini Beaver Preserve not included in the above) [sic] except for the areas specified and in accordance with the conditions set forth in paragraph **** of this Sub Section” (Exhibit 17, note that the [sic] indicates where there was no end quotation mark in the text).

131. On or about October 5 to 7, 1975 some discussions of the issue of the Mistissini traplines outside the 1898 and 1912 territory developed. A consolidated draft text of the entire agreement was assembled shortly before October 5th. On the cover page of my copy of "L'Entente Finale. Texte anglais," I wrote, "Text to Cabinet, Oct. 5, 1975." In this text the Definitions section included definitions of "Cree tallyman" and "Cree trapline," sections 1.8 and 1.9. The definition of "Territory" at Section 1.30 was the same as in the September 18, 1975 text cited in the previous paragraph. And paragraph 11.1 was also exactly the same as the September 18, 1975 text, including the reservation that Cree representatives want a text including the Mistassini Beaver Preserve areas not covered by the 1898 and 1912 legislation to be included. (The cover page "L'Entente Finale. Texte anglais." is attached as Exhibit 18; and the hunting, fishing and trapping section, "Hunting, Fishing and Trapping. Texte Anglais." is attached as Exhibit 19.).
132. On October 7, 1975 a text which incorporated "changes agreed to between Gaston Moisan and Cree and Inuit representatives" was circulated. The cover noted that, "Exact wording to be verified by Gaston Moisan and John Lemieux," where Gaston Moisan was the Quebec negotiator on the sub-committee and John Lemieux was an NQIA lawyer. The definitions of Cree Tallyman, Cree Trapline and Territory were unchanged in this version from that of October 5, 1975. In paragraph 24.12.1 the text of the Cree representatives with respect to the recognition of Mistissini traplines outside the 1898 and 1912 territory was removed. And a new paragraph 3.25 was added on page 16 agreeing that
- "The present system of Cree traplines and the disposition of the beaver preserves presently allocated to the Crees shall continue unless otherwise agreed to by the interested Cree community or communities."
- ("Hunting, Fishing and Trapping Section," dated October 7, 1975, attached as Exhibit 20).
133. Section 3.25 then appears in the text of October 29, 1975 without qualification, as an accepted text, and it was subsequently included in the final JBNQA text. (See "Section. Hunting, Fishing and Trapping," dated October 29, 1975, attached as Exhibit 21; and Exhibit 11).

134. The text of paragraph 3.25 was written in the context of the definitions of Cree tallyman and Cree trapline, which had been drafted and agreed to shortly before. Paragraph 1.8 defined Cree tallyman as “a Cree person recognized by a Cree community as responsible for the supervision of harvesting activity on a Cree trapline.” Paragraph 1.9 defines Cree trapline as “an area where harvesting activities are by tradition carried on under the supervision of a Cree tallyman.” The agreement to include these clauses represented a recognition that Indoh-hoh Istchee were a Cree system of land and societal organization that was traditional and based on ongoing recognition within Cree communities. That is, they recognized that Indoh-hoh Istchee - traplines were rooted in Cree community governance not governmental regulations, although aspects of Indoh-hoh Istchee - traplines were recognized in regulations as well. Paragraph 3.25 recognized and protected this.
135. I recall that during the drafting of clause 24.3.25 the negotiators discussed the recognition of Mistissini Indoh-hoh Istchee - traplines outside the 1898 and 1912 territory. Crees raised the issue. In response, a Quebec negotiator said that clause 24.3.25 recognized the Cree beaver reserves and traplines, including those outside the 1898 and 1912 territory, to the extent that this occurred. I understood that there was agreement on this point.
136. In the discussions that continued, government negotiators took the position that additional text did not need to be added to the JBNQA, because the existing text of 24.3.25 was clear and it constituted recognition of the Mistissini traplines and beaver reserves, including those outside the 1898 - 1912 territory.
137. It was also stated that any issues that arose with respect to recognizing the Mistissini territories outside of the 1898 and 1912 territory would be dealt with by the parties at that future time. The ongoing negotiation of Cree hunting on Offshore Islands was noted as an example of a commitment to address issues of Cree hunting lands outside the 1898 - 1912 territory.

138. From my point of view differences remained over whether it would be better to put this recognition into a text that mentioned the Mistissini traplines outside the 1898 -1912 territory. Cree negotiators preferred to do this as well. But no agreement was reached on this point.
139. However, my understanding was that the recognition of Mistissini Indoh-hoh Istchee - traplines outside, and to the east, of the 1898 - 1912 territory was clearly agreed to by provincial and federal negotiators in these negotiations. I also understood that there was a commitment to future negotiations if there were problems arising from the form of this recognition.

Q. My Surprise at the Difficulties that Continue to Thwart Recognition and Use of Mistissini Indoh-hoh Istchee - Territories Outside the 1898 - 1912 Territory

140. I was aware at that time of the negotiations of paragraph 24.3.25 that understandings and commitments to recognize and protect Indoh-hoh Istchee - traplines east of the James Bay drainage were already being applied in other parts of the JBNQA negotiations and their implementation, as I will indicate below. I took this as an indicator that the Mistissini traplines outside the James Bay drainage would continue to be recognized, as government negotiators indicated they would.
141. As a participant in subsequent implementation processes and other negotiations over approximately the next decade, I found that these understandings and commitments to recognize and protect Indoh-hoh Istchee outside the 1898 - 1912 and JBNQA clause 1.16 territory did continue to be applied, reaffirmed and renewed in some JBNQA implementation processes and in subsequent negotiations relating to some provisions of the JBNQA.
142. I have therefore been surprised by the delays in giving these recognitions appropriate acknowledgements in some of the other subsequent agreements and in wildlife management and policing practices.

143. As a participant, an ethnographer and a scholar, I document how these understandings and commitments of federal and provincial negotiators were reaffirmed and implemented in some of the negotiations in 1975 which recognized and protected Cree Indoh-hoh Istchee that were outside the JBNQA territory, and how the commitments and undertakings continued to be recognized, reaffirmed and implemented after the completion of the JBNQA.
144. I will begin by reviewing the work of the Native Harvesting Research Committee, which was active from early 1975, covering both the period of the negotiation of the JBNQA and its initial phases of post-agreement implementation. Then I will review a post-JBNQA negotiation among the parties to establishment of guaranteed levels of wildlife harvests for Crees, in 1984, in order to fulfill a provision of the JBNQA.

R. Implementation of AIP Provisions Early in 1975 Recognized Indoh-hoh Istchee

a) In 1975 the JBNQA Native Harvesting Research Committee Was Created to Start to Implement the AIP Provision for the Priority of Native Harvesting

145. The James Bay and Northern Quebec Native Harvesting Research Committee (NHR Committee or NHRC) was established by the JBNQA Negotiating Committee in 1975 under Terms of Reference dated March 24, 1975 and modified August 21, 1975, and approved by all parties to the negotiations. (The NHRC Terms of Reference are attached as Exhibit 22. Note, the NHRC Terms of Reference were published in: 1976 in the Appendices to the NHRC's first report, and in the NHRC's final report on Cree Harvests, from which Exhibit 22 was copied. The reference to the latter volume is: James Bay and Northern Quebec Native Harvesting Research Committee, 1982, "The Wealth of the Land: Wildlife Harvests by James Bay Crees, 1972-73 to 1978-79.")
146. Following completion of the JBNQA negotiations the NHR Committee was mandated by the JBNQA (Section 24.4.31; see also 24.6.2; Exhibit 11) to be supervised and to report to the Hunting, Fishing and Trapping Co-ordinating Committee, and through it to the parties to the JBNQA. The NHR Committee completed its research on Cree harvests in 1982, and its final report on Inuit harvests in 1988.

147. The primary purpose of the NHR Committee was to design and complete research that would be the primary means by which the parties to the JBNQA would establish a “priority to native harvesting based on present existing levels of harvesting” as specified in the Agreement in Principle [AIP] among the parties of November 15, 1974. (See AIP. Schedule “B,” Section 8, page B.4, and Section 9, page B.5; attached as Exhibit 23. The priority to native harvesting was later incorporated into the JBNQA, 1975, at Section 24.6, see Exhibit 11. The NHRC mandate was set out in its Terms of Reference, Section 2.a, in Exhibit 22).
148. The NHR Committee was also to provide, “indirectly,” the harvest data for the negotiations with respect to the Offshore Islands that were in NWT and federal jurisdiction (NHRC Terms of Reference, Section 2.a refers to “Federal undertakings outlined in the letter to Chief Billy Diamond,” in Exhibit 22. The letter referred to is from Judd Buchanan to Chief Billy Diamond, dated November 15, 1974. See paragraphs 1 and 6.ii. The letter is attached as Exhibit 24). The NHR Committee was thus instructed to gather data both within and outside the 1898 and 1912 lands.
149. The NHRC was established as a committee of scientific experts representing each party and mandated to determine what were the “present levels” of wildlife harvests by Cree and Inuit hunters. One committee member was appointed by each of - Quebec, Canada, Crees, Inuit and one was appointed by the corporations involved (Hydro-Québec, JBDC, and JBEC). The Cree portion of the research was funded by the parties in four equal shares - Quebec, Canada, Crees, and the corporations. The combined Cree and Inuit portions of the research cost over \$1,000,000 in roughly 1975-1985 dollars.
150. The Chair of the Committee was rotated among four representatives on the Committee - Cree, Inuit, Quebec, and Federal. I was a member of the NHR Committee and the predecessor Working Group that negotiated its Terms of Reference, from January 1975 to 1982. I was the Chair of the Working Group and of the NHR Committee during its first year, coinciding with the negotiation of the final JBNQ Agreement. Although the NHR Committee had the capacity to decide issues by voting, it chose to make decisions by consensus, and did

so successfully throughout its existence.

b) The NHRC Mandate Recognized Cree Community Hunting Lands and the NHRC Made Them a Basis for Implementing AIP Provisions on Native Harvesting

151. The Terms of Reference for the NHR Committee specified that the NHR Committee was to prepare a scientific report on harvesting “in the Territory subject to the present negotiations,” as well as offshore islands (NHRC Terms of Reference, Section 1 and 2.a, in Exhibit 22).
152. The Terms of Reference also instructed the Committee to base the present levels primarily on research that was adapted to “local concepts of animals, seasonality and geographical location” in order to assure the “reliability of the results,” and to gather information on the “geographical localization of harvest data” based on “the area harvested by the people of each community” (Terms of Reference, pages 352 and 354 in Exhibit 22). This was necessary in part to assure the “reliability of results,” and the quality and purposes of the results would be compromised if Cree community hunting lands were not included in the research design and process. (See page 351, Exhibit 22).
153. The NHR Committee was thus instructed to gather data based on Cree systems of harvesting localization, both within and outside the 1898 and 1912 lands, in order to implement the priority to Native harvesting provisions of the November, 1974 AIP.
154. The NHR Committee Terms of Reference also instructed that where the implementation of harvest levels would require, harvests were to be attributed to smaller geographical areas, such as traplines, in so far as that was practical. (Terms of Reference, page 354 in Exhibit 22). The NHR Committee found gathering harvest data by traplines to be impractical given the demands it would place on interviewees and researchers time, as Cree hunters were only available in settlements during the summer months. The Committee therefore collected harvest data by community harvesting zones, and in some cases by other zones that included more than one trapline.

155. The Committee did collect maps of Indoh-hoh Istchee from individual Indoh-hoh Istchee Ouje-maaou, but they were used only to confirm the general similarity of the boundaries of Indoh-hoh Istchee Ouje-maaou's maps and the trapline maps of beaver reserves prepared by governments (James Bay and Northern Quebec Native Harvesting Research Committee, 1976, "Research to Establish Present Levels of Harvesting by Native Peoples of Northern Quebec, Part I," page 61; hereinafter referred to as "NHRC, 1976." The report, without its Appendices volume, is attached as Exhibit 25).

S. The NHR Committee Recognized and Used Cree Harvests and Hunting Lands to the East of the James Bay Drainage in its Implementation Research During the JBNQA Negotiations

156. When the NHR Committee designed and tested its research questionnaires in May and June of 1975 it found some Cree hunters indicated that their traplines were east of the James Bay basin. The Terms of Reference of the NHR Committee specifically mentioned collecting information for the offshore coastal areas to the west of the 1898 -1912 Territory. The NHR Committee decided to systematically include in its data the Cree harvesting lands from east of the 1898 -1912 territory.

157. The Committee agreed that where Cree harvests came from outside the 1898 - 1912 territory limits, the NHR Committee would collect information on those harvests, with the exception of harvests taken in Ontario, and that it would use this information in determining the present levels of Cree wildlife harvests needed to fulfill the guaranteed harvest levels and the priority to native harvesting provisions of the AIP and the then draft JBNQA.

158. This was supported by all parties. For example, the federal government representatives stated that it was necessary to include wildlife harvests from areas Cree hunted offshore in James Bay where mainly waterfowl and sea mammals were harvested. These areas were part of Indoh-hoh Istchee. But they were outside the areas of the 1898 - 1912 territory and therefore outside the beaver reserves created by Quebec Orders in Council. The research in this area was discussed in April, 1975 with representatives of the NWT government through the Offshore Islands Sub-committee where concerns about overlapping research were

expressed but there was no opposition to the geographic scope of the research in principle (Memo by Alan Penn a Cree representative on the Offshore Islands Sub-committee, April 28, 1975, “The Government of the Northwest Territories and the Studies of Levels of Harvesting.” Attached as Exhibit 26).

159. The federal view was adopted by the NHR Committee, and the principle was applied to all the other areas of Cree harvests that were outside the 1898 - 1912 territory.
160. In the coastal area the hunters were told to include all the harvests they took along the coast in their community zones, whether in Quebec or not. No special zone was established to distinguish harvests in coastal areas that were to the west of the 1898 - 1912 territory from those taken within the 1898 - 1912 territory because it was impractical to separate harvest zones, and it would produce unreliable results.
161. In other areas outside the 1898 - 1912 territory that were hunted by Crees, and in the Buffer and Southern Zones as defined in Section 24.12.2, separate zones were established in which to record the harvests.
162. One of the zones the NHR Committee created was called Zone 10 “East of Mistassini Traplines” (NHRC, 1976, pages 71-72, exhibit 25; and James Bay and Northern Quebec Native Harvesting Research Committee, 1982, “The Wealth of the Land: Wildlife Harvests by James Bay Crees, 1972-73 to 1978-79, pages 58-61; hereinafter referred to as “NHRC, 1982.” The main body of the 1982 Report, without Appendices, is attached as Exhibit 30).
163. The description of this area as “east of” Cree and Mistissini traplines was ambiguous or erroneous, and it was not based on detailed information. As I have indicated above, some of the beaver reserve trapline maps of the period did not indicate whether there were beaver reserve traplines outside 1898 - 1912 territory or not. But other beaver reserve trapline maps, and the most recent Indoh-hoh Istchee maps from Mistissini by Adrian Tanner, indicated that Indoh-hoh Istchee - traplines and beaver reserves extended east of the 1898 - 1912 territory. NHR Committee was not in a position to define the extent of the Indoh-hoh Istchee -

traplines and beaver reserves in Zone 10 because, as I noted above, it had only incomplete data from Indoh-hoh Istchee Ouje-maaouch maps. The NHR Committee therefore used the region-wide map of traplines that was available, the map of beaver reserves. This map, like the similar map used in the Schedule 1 map in Section 24 of the JBNQA (in Exhibit 11) which I discussed above, was ambiguous with respect to whether Indoh-hoh Istchee - traplines existed east of the 1898 - 1912 territory because it showed no details in that area (see Figure 1A on page 34 in NHRC, 1976, Exhibit 25).

164. The NHR Committee did not actually know whether Zone 10 was east of Cree or Mistissini traplines. The NHR Committee also could not place an eastern boundary on the Indoh-hoh Istchee or on the lands Cree hunters used in Zone 10. In one sense then Zone 10 did include lands that were “east of Mistissini traplines,” because it was not bounded on the east. However, whether the whole of Zone 10 was “east of” all the Mistissini traplines, or not, was something the NHR Committee had not been able to research and determine. The label for Zone 10 must therefore be considered ambiguous and unverified. Although I did play an active role in establishing and labelling Zone 10 it is, on reflection, labelled incorrectly in so far as it could be understood as indicating that there were no Indoh-hoh Istchee - traplines within Zone 10.

165. However, even if the map label was unclear, the interviewers and interviewees had clear instructions. The NHR researchers asked Mistissini hunters to report any harvests they made in Zone 10. They asked the hunters to distinguish their harvests of moose, caribou, black bear in Zone 10 from those in the community zones. For other species, fur bearers, fish, small game, and inland waterfowl, Mistissini hunters simply included their harvests from the areas east of the 1898 - 1912 territory in the Mistissini community harvests, or the community “away” harvest zone, ie. in the areas not near to the settlement of Mistissini. Thus all the harvests taken by Mistissini hunters from lands east of the 1898 -1912 territory were recorded.

166. Cree hunters reported no harvests of big game in Zone 10 in Phase I of the research, which comprised interviews conducted in 1974-75 about the years 1972-73 to 1974-75

(NHRC, 1982, pages 136, 138, 140, Exhibit 30.) Cree hunters reported harvests of these big game species in Zone 10 in each of the four years of Phase II of the NHR study, 1975-76 to 1978-79 (NHRC, 1982, pages 136, 138, 140, Exhibit 30.) The absence of reports of big game harvests in Zone 10 in Phase I is probably due to the smaller number of Mistissini hunters interviewed in that year: 82 interviewees in 1975, versus between 232 and 316 in each of the four years of Phase II from 1976 to 1979 (NHRC, 1982, pages 68 and 70, Exhibit 30). With the smaller sample in Phase I the possibility of not interviewing hunters who used all geographical areas that may have been harvested by some community members was considerably higher.

167. The NHR Committee thus recognized Cree harvests outside the 1898 - 1912 territory, including harvests taken from east of that territory. In the coastal areas west of the 1898 - 1912 territory these harvests were included in community zones but not specifically identified. For the areas east of the 1898 - 1912 territory the area was specifically identified for big game, and these and other harvests from this area were included in the species totals of community harvests by Mistissini hunters.
168. The first year of NHRC interviews were conducted between July and October, 1975. The recognition and inclusion of Cree harvests from Zone 10 in the research results represented a recognition of regular Cree hunting east of the 1898 - 1912 territory in the implementations of the AIP and during the negotiation of the JBNQA. This recognition was also a recognition that there were regular Cree hunting lands east of the 1898 - 1912 territory.
169. Although there was ambiguity arising from the way the NHRC labelled Zone 10, about whether it recognized that these lands were traplines, I think that it did. And in subsequent activities of the NHRC over the next seven years, it continually treated these harvests the same as those that came from lands within the 1898 - 1912 territory.
170. After the signing of the JBNQA in November, 1975, the Terms of Reference for Phase II of the NHR Committee's research, which began in 1976, were modified, primarily to take account of the JBNQA final provisions. The primary Terms for phase II were to "prepare a

scientific report on present levels of native harvesting in the territory subject to the James Bay-Agreement.” But its primary aim was to establish present levels of native harvesting “as required in order to fulfill the terms of Sub-Section 24.6, ‘Priority to Native Harvesting’ of the James Bay Agreement and also indirectly the terms established during negotiations presently underway between the Federal Government and the native parties concerning off-shore islands and waters, and generally to provide information required for the successful implementation of Section 24 and of the James Bay Agreement” (“Terms of reference for Research to Establish Present Levels of Native Harvesting - Phase II - 1976 to 1980.” Published in NHRC, 1982 as Appendix 2. Attached as Exhibit 31).

171. The recognition of Cree hunting and lands east of the 1898 - 1912 territory, including the use of Zone 10 to record big game harvests, thus continued without change during successive NHRC interviewing seasons in 1976, 1977, 1978, and 1979, after completion of the JBNQA.

T. Cree Harvests from East of the 1898 - 1912 Territory Were Recognized and Implemented in the Determination of Present Harvest Levels in 1982

172. In arriving at its determination of the “present levels” of wildlife harvests by Crees at the end of the Cree research in 1982 the NHR Committee included the harvests taken in Zone 10, east of the 1898 - 1912 territory, in the calculations of the annual harvests by Crees of Mistissini. The NHR Committee concluded that the present levels of harvesting that it established “have an acceptable level of reliability, and are the best available on the Cree communities for the study period,” 1972 to 1979 (NHRC, 1982, page “x”. See Exhibit 30).

173. The inclusion of harvests from Zone 10 was done not on the basis that Cree harvests from lands east of the 1898 - 1912 territory be added to the present levels of harvesting for the 1898 - 1912 territory. The decision was that present levels of harvesting which the NHR Committee was to determine applied to “the area harvested by the people of each community” (NHRC, Terms of Reference, page 354, Exhibit 22), including the area that was recognized to the east of the 1898 -1912 territory.

174. Thus there was agreement by all parties that there were regular Cree harvests of wildlife

on lands to the east of the height of land, and that these comprised an ongoing and recognized part of Mistissini hunting lands.

U. Negotiations of Guaranteed Levels in 1984 Included Indoh-hoh Istchee from West and East of the 1898 - 1912 Territory, and Agreed to the Need for Future Measures

a) The Task Force that Undertook Negotiations for Guaranteed Harvest Levels

175. A Task Force (also called a Working Group) on the Guaranteed Levels of Harvest, was established by the parties to the Hunting, Fishing and Trapping Co-ordinating Committee in 1984. The Task Force was initially mandated “to facilitate negotiations respecting the application of the principle of priority to Native Harvesting and makes (sic) recommendations thereof to the Coordinating Committee” (Hunting, Fishing and Trapping Coordinating Committee, Resolution 84-04, February 8, 1984, attached as Exhibit 27). The mandate was subsequently discussed by the Task Force, and then again by the Coordinating Committee in May 1984, and it was agreed that the Task Force was to conduct “negotiations” respecting the application of the principle of priority of Native harvesting for Crees and recommend its results to the parties through the Coordinating Committee (“First Report of the Task Force on Guaranteed Harvest Levels Established by the Coordinating Committee on Hunting, Fishing and Trapping, June 21, 1984, page 1. The report attached as Exhibit 28).

176. The Task Force was mandated to negotiate the implementation of 24.6.2.a of the JBNQA. The most relevant passages from the JBNQA are,

“24.6.1 The responsible governments and the Coordinating Committee shall apply the principle of priority of Native harvesting, as set forth in this Sub-Section.

“24.6.2 The principle of priority to Native harvesting shall mean . . . , the Native people shall be guaranteed levels of harvesting equal to present levels of harvesting of all species in the Territory.

“a) Such guaranteed levels shall be established by negotiations between the Native parties and the responsible Provincial and Federal Government through the Coordinating Committee (and the normal voting procedures shall not apply in such case)

“d) The establishment of the guaranteed levels referred to in sub-paragraphs a) and b) hereof shall be subject to the approval of the interested Native parties and the interested government parties” (Exhibit 11).

177. The Task Force was comprised of representative of the federal and provincial governments and the Crees and Inuit. It included both members who had been involved in the earlier Native Harvesting Research Committee (NHRC), that conducted the research on present wildlife harvest levels by Crees and Inuit, and of other members who had not participated in the NHR Committee.

b) Negotiations of the Guaranteed Harvest Levels for Areas Outside of the 1898 -1912 Territory, Especially the Coastal Zones

178. At its second meeting, on April 24, 1984 the Task Force discussed questions of territorial definitions and the geographical extent of the guarantees it was negotiating. At this meeting the Quebec government and the Inuit had one representative, the Crees had a representative (myself) and an observer, and the Federal government had three representatives from three departments and agencies (Oceans and Fisheries, Canadian Wildlife Service, and Environment).

179. The federal government and the Inuit negotiators stated on this as on other occasions that Cree and Inuit harvesting activities which were outside and to the west of the 1898 - 1912 territory along the coastal areas of James, Hudson and Ungava Bays should be treated the same as those from within the territory. A federal negotiator noted that this was necessary in order to fulfill the obligation to conserve wildlife and to protect Cree and Inuit rights, which were principles in the JBNQA hunting, fishing and trapping regime, as well as to fulfill the management responsibilities of the federal agencies.

180. Conservation is the overriding obligation of all parties in Section 24, and it is defined in part as “pursuit of the optimum natural productivity of all living resources and the protection of the ecological systems of the Territory so as to protect endangered species and to ensure

primarily the continuance of the traditional pursuits of the Native people . . . “ (JBNQA, Section 24.2 and 24.1.5; Exhibit 11).

181. The same federal negotiator indicated that when a conservation problem arose in the future these data would be needed. Federal authorities stressed, and all parties agreed, that the harvests of these wildlife populations could not be separated between those taken from within and from beyond the boundaries of the 1898 - 1912 territory as hunters often moved back and forth in the course of daily activities. Nor could the highly mobile wildlife populations which could traverse such boundaries several times a day be managed and conserved separately in those two jurisdictions.
182. The obligations of the parties to conservation, and to Cree traditional pursuits and harvesting guarantees, led to them all to the same conclusion and decision, to remove the reference to “in the territory” from its reports and recommendations.
183. The unofficial “Minutes/Notes” of the meeting, which I drafted for Cree use, summarize the conclusion of the general discussion which followed:
- “- L.B. [the representative of the Inuit] said that the words “in the territory” used in the text adopted at the last meeting were ambiguous, because of offshore harvesting. She recommended removing the terms.
 - In the discussion following it was agreed that the Working Group would follow the practical definitions used in the NHR research, which included offshore harvests, and those on all Cree traplines, but not harvests taken in Ontario or other provinces. It was agreed that this was consistent with the practical implementation of the agreement, and the terms ‘in the territory’ were removed” (“Minutes/Notes, Working Group on the Guaranteed Harvest Levels,” meeting of April 24, 1984, prepared by Harvey Feit for the Cree Regional Authority, page 2, paragraph 2.2, brackets added. Attached as Exhibit 29).
184. These conclusions were included in the “Draft Resolution Recommended by the Task Force on Guaranteed Harvest Levels, June 21, 1984,” which accompanied the First Report of the Task Force, and which indicated that, “Where the said guaranteed levels of harvesting

are accorded by community zones, these zones comprise the area of traplines of that community . . . plus in the case of coastal communities the offshore areas in which the right [to] harvest applies” (“Draft Resolution Recommended by the Task Force on Guaranteed Harvest Levels,” June 21, 1984, page 2, paragraph 2, see Exhibit 28).

c) Negotiations of the Guaranteed Harvest Levels for the Specific Zone East of the 1898 - 1912 Territory

185. The Task Force dealt with Cree harvests from hunting lands east of the 1898 - 1912 territory in a way that was consistent with its decision not to limit guaranteed harvest levels from west of the 1898 - 1912 territory. There was however no specific discussion of these areas, because the territories on both sides of the eastern boundary of the 1898 -1912 territory fell within the same provincial jurisdiction.

186. Despite having present harvest levels for the important big game species that were taken to the east of the 1898 - 1912 territory, the Zone 10 figures, negotiators included these figures within the Mistissini community total. They thus included the Cree harvesting areas to the east of the 1898 -1912 territory in the Mistissini community guarantees for the “area of traplines of that community” (from the text of the draft resolution, “Draft Resolution Recommended by the Task Force on Guaranteed Harvest Levels, June 21, 1984, page 2, paragraph 2. See Exhibit 28).

187. The Task Force completed its negotiations unanimously, presenting its recommended Guaranteed Harvest Levels for the Crees to the parties through the Hunting, Fishing and Trapping Coordinating Committee. (See Exhibit 28. Although it successfully negotiated the guarantees, the parties have yet to fully establish the guarantees.)

d) Undertakings to Pursue Future Measures

188. The negotiators recognized that their negotiations and agreements left unresolved issues, and they discussed and expected that these would be addressed in later agreements at the

time of implementation. The negotiators thus recommended to the Coordinating Committee and the parties to the JBNQA that they needed to initiate new measures. In a second draft resolution submitted to the Coordinating Committee on “Implementation of Guaranteed Levels of Harvesting” the Task Force recommended that “the Coordinating Committee appoint a subcommittee to consider the questions which will arise from the implementation of the guaranteed levels of harvesting” (see Exhibit 28). The negotiators thus committed to pursue future processes to address the unresolved aspects of the issues it had discussed - boundaries, principles and obligations set out in Section 24 of the JBNQA, and the boundary differences between the 1898 - 1912 territory and Cree harvesting activities and lands.

189. The negotiations on the Guaranteed Harvest Levels in 1984 thus continued the pattern established by the NHR Committee in 1975. This series of decisions, implementation actions, and negotiations, each taken in unanimity by negotiators or representatives of the Aboriginal and government parties, were consistent throughout the decade. They acknowledged that Cree Indoh-hoh Istchee - traplines or hunting lands extended beyond the eastern boundary of the 1898 - 1912 territory, and that the general principles and guarantees of Section 24 of the JBNQA applied to these lands the same as they did to Indoh-hoh Istchee within the 1898 - 1912 territory. It was also agreed that unresolved issues concerning Cree Indoh-hoh Istchee - traplines or hunting lands outside the 1898 - 1912 territory required additional measures.

Harvey A. Feit

Sworn before me in the City of Hamilton,
in the Province of Ontario,
this ____ day of August, 2008.

A Commissioner of Oaths