

**NEGOTIATING
RECOGNITION OF
ABORIGINAL RIGHTS:
history, strategies and
reactions to the James
Bay and Northern
Quebec Agreement**

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Discussions of the means available for gaining recognition of the aboriginal rights of indigenous populations within nation states have often tended to centre around discussions of the relative merits of reaching negotiated settlements with responsible governments or of seeking judicial determination of the rights, usually through initiation of court actions. While these do not exhaust the possibilities the aim of this paper is to reflect on the nature of these two options, and more specifically to indicate how these options are not so much alternatives as complementary means, each appropriate at various points in the process of defining and gaining recognition of aboriginal rights. I will suggest in this paper that negotiation may in many cases be the best of the means available for defining and recognising such aboriginal rights, and that other means such as legal action and political mobilisation may generally be more effective as levers for a negotiation process. The demands of negotiation are, however, heavy and they must be understood. The potentials of negotiation in a given situation, therefore, need to be examined to see if they offset these demands when actual strategic planning and decisions are taken.

My evaluation of the possibilities is based on an account of the court cases and the negotiations initiated by the indigenous peoples of the northern portion of the Province of Quebec, Canada following the announcement that the provincial government would build the largest hydro-electric project in the free world on the lands of the Cree Indian and Inuit (Eskimo) peoples of that region.

The indigenous peoples' responses to the project led, eventually, to the first modern comprehensive land claims settlement in Canada. Signed in 1975, the James Bay and Northern Quebec Agreement (JBNQA) has since then been given legislative form and is now in the process of being implemented. My own first-hand experience of these processes has involved assisting the Cree Indians as an expert witness in court, as an adviser helping to develop the social inputs to the court case, as an assistant and adviser to the Cree negotiators and their lawyers during negotiations, and as a Cree appointee to several official bodies concerned with the initial implementation of the JBNQA.

**INITIAL RESPONSES TO THE JAMES BAY HYDRO-ELECTRIC PROJECT:
FROM GOVERNMENT TRUSTEESHIP TO NEGOTIATIONS TO THE COURTS**

The decision to build the James Bay Hydroelectric Project was announced in April 1971 at a massive political rally called by the then Premier of Quebec, Robert Bourassa.

The initial Cree reaction was one of shock: at not having been informed and consulted; at the size of the project which was then expected to flood 8800 km² of the approximately 363 000 km² of Cree hunting lands; at the impact the project would have on the wildlife that still provided an essential and substantial portion of the Cree diet; at the impact of the project on the hunting activities of the Cree; which were central to their culture and social organisation; at the social consequences of a massive influx of non-indigenous workers to the territory; at the uncertain economic benefits for

Cree; and, at the possible difficulties for the continued maintenance of the Cree communities and villages.

At the time of the announcement the Cree were grouped into eight distinct communities, called 'administrative bands' or just 'bands', which ranged from about 250 to 1500 people each at eight major settlements, and some 10 small summer encampments. In winter, about half the adult population and one-third of the children dispersed to 150-200 smaller encampments of one to five families each, from which subsistence hunting and fishing as well as commercial trapping activities were conducted. Children who were not in the bush went to local schools up to high school and some continued their education in urban centres. Those adults who hunted depended on fur pelt sales, some summer employment and government transfer payments. Those living in the settlements depended generally on transfer payments, intermittent employment and limited local subsistence hunting and fishing. The Cree population of Quebec shared a mutually intelligible series of dialects of the Montagnais language and had some kinship and friendship linkages across band boundaries, based both on former commercial fur trade networks and on more recent schooling in a few large residential schools. However, the Cree had no unifying administrative or political organisation that united them as a distinctive population. The only cohesive structure was an association of all Quebec Indian bands, which held several meetings a year of the administrative chiefs and band councillors.

The first response of the Cree to the announcement was to use friendship linkages to establish informal communications among the eight Cree bands potentially affected by the project, and call a meeting of the administrative chiefs plus some of the traditional and young leadership from each band to discuss possible responses. The provincial association was invited to send representatives and legal counsel.

This June 1971 meeting was the first unified response by the Cree, and it was the beginning of a long process that developed an effective unified political organisation and leadership. Finding an adequate response to the hydro electric project was not, however, easy. The recently passed Alaska Native Claims Settlement Act was known about, but the Cree were not initially seeking a settlement of aboriginal rights, they were seeking ways to oppose a specific development project. The Cree leadership agreed to ask the federal government to intervene on their behalf to protect Cree lands (Diamond, 1977). It is not clear whether this resolution ever reached the Minister of Indian Affairs, but it was announced over the media. The federal government decided not to intervene on behalf of the Cree, apparently because action against the provincial government would work against its general political strategy for dealing with a province where separatist sentiments were active. It adopted a position of 'alert neutrality', which while it clearly violated the spirit if not the letter of the trust mandate of the federal government, guided federal policy throughout most of the successive events (cf. Bird, 1972).

Up to this time many Cree had considered the federal government a benevolent protector, if often ill-informed and somewhat erratic. The preceding events clarified for the leadership, and later for the population as a whole, how the federal authorities could not be counted on to actively assist the Cree to protect their interests.

At the same time (early 1972) the federal government began to provide interest-free loans to the Cree, beginning with small grants to pay for communications workers and some basic research. These later grew to substantial sums to cover the costs of the court case and succeeding negotiations. Part of the impetus for the initial financial commitment by the federal government appears to have been the public support for the plight of the Cree and Inuit people by a small but vocal sector of environmental, Church and critical social organisations which organised in the southern urban centres, and which were partly based in the universities.

Thus, while the initial Cree response to the James Bay project failed to make direct headway, it did gain the financial means to develop a more autonomous response. It must be noted, however, that the failure of the federal government to actively support the indigenous peoples deprived them in large measure of an important potential avenue of political action, namely using differences of bureaucratic and political interests between the federal and subordinate levels of government as a lever against one or the other. This is the type of political action which has been at the core of developments in Alaska (Brelsford, 1980).

In 1972, (a chronology of events is given in the Appendix)¹ the Cree used their new funding to conduct information and research programmes, and to initiate trilateral negotiations with Quebec and Canada. Quebec appointed a negotiator and a series of initial meetings were held. The position of the Government of Quebec at the time was that the plans for the project were not negotiable, and that the indigenous peoples had no special rights, or at least none that warranted anything more than an expropriation of their interest in the land and monetary compensation for that interest. This position was completely unacceptable to the Cree, who insisted that they did have rights; and, although they were told the project would be hard to stop permanently, they were adamant that it be modified so as to affect them less.

During the spring and summer of 1972 the Cree, now joined by the Inuit, took out a court action against Quebec and the state-controlled development corporations, an action which the Cree hoped would put pressure on the government to discuss serious project modifications and remedial actions that were necessary to maintain the hunters' way of life. To give further impetus to these demands, the Cree and Inuit hired several scientists to document their dependence on wildlife resources and on the land and to assess potential effects of the project on these (Salisbury et al., 1972b; Spence, 1974). Using the results of these researchers, the Cree and Inuit again pursued negotiations with Quebec but they were met with a continued refusal to modify the project, and with assurances that effects of the project would be easily remedied and the environment could be protected using environmental management techniques. It was actually argued by some scientists that the environment would be improved by the ecological management that would accompany development.

Unable to make headway, the Cree and Inuit leaders attempted to have their case heard at the highest level of provincial government. They arranged a meeting with the provincial premier, but it lasted only 15 minutes; Premier Bourassa cut off the presentations made by the Cree and Inuit leaders and reiterated the basic government positions, before rushing off to other business.

After this meeting the Cree and Inuit leaders decided they had to accelerate legal proceedings. The Cree legal advisors thought the Cree had a very good legal basis for the action because their rights had never been extinguished, and because of the particular legislative provisions affecting the territory, discussed below. However, they were not optimistic about stopping the project permanently, nor about whether a court would rule strongly in their favor given the size and the political dimensions of the project.

This initial stage of negotiations demonstrated the impossibility of negotiations without each party having some perceived power to influence the actions of the other. Quebec saw no threat from the indigenous people, no realistic means by which they could alter the course of action which the Quebec government was pursuing, and it therefore felt no need to give up anything it valued, no need to compromise. In short, it really was not ready to negotiate.

Quebec maintained this intransigent position despite the fact that in 1971 a royal commission on the territorial integrity of the boundaries of Quebec had reported on the potential rights of the indigenous peoples, and had pointed out the need to recognise

those interests and to obtain their surrender in accordance with the 1912 act of parliament transferring most of northern Quebec from the federal to provincial Crown. This explicit legislated obligation to settle any aboriginal rights which might exist, which applied to about 78% of the territory of what is now northern Quebec, was one of the unique features of the land claims proceedings in this region. Quebec also maintained its position despite the conclusions of a joint federal-provincial task force, established to report on the environmental impacts of the project, which stated that the major impacts would be those experienced by the indigenous populations (Joint Federal-Provincial Task Force, 1971).

These circumstances point up the significance of the federal government's refusal to intervene actively, and the insignificance of the aboriginal rights issues in the particular context of Quebec politics, where strong and vocal support from a minority of the population did little to raise public opinion, or to sway government policy.

In order to accelerate court action, the Cree and Inuit inscribed an interlocutory injunction against the governments and the state-controlled corporations to stop construction work which had been going on for a year. This injunction was sought on the grounds that the indigenous peoples would suffer irreparable damage while awaiting the hearings and decisions on their main court injunction.

After a brief hearing before Mr Justice Malouf, who ruled that the case for an interlocutory injunction should be heard, actual court hearings began in a matter of weeks rather than having to wait months or years for the main injunction hearing. Furthermore, whereas the main injunction would be a hearing concerned primarily with the legal basis for and nature of the claimed aboriginal rights, and would therefore concern Indian life mainly from the perspective of the historical and archaeological evidence for occupancy and use of the land, the interlocutory injunction would focus on how people were living today, and how the project would affect them in the immediate future.

In order to get an interlocutory injunction the Cree and Inuit had to prove precisely the points which the Quebec government did not accept: that there was a *prima facie* aboriginal right which allowed the Cree and Inuit people to stop the project; and that there were real, serious and immediate impacts of this development on the indigenous peoples, which were irreversible and unacceptable.

Part of the verdict would hang on the question of the 'balance of convenience', i.e., on which party would suffer the most damages, if the project was allowed to continue, or if it was stopped. Thus, the interlocutory hearing resembled in some respects an impact assessment evaluation focusing on the impact on Cree and Inuit ways of life as well as on the economic and social needs for the project in Quebec (Penn, 1975).

These questions provided opportunities for extensive Cree and Inuit inputs into the court case, which thus became a forum in which representatives from the Cree and Inuit communities could articulate their own experience and concerns. It also stimulated extensive discussions in the villages that helped to formulate a consensus about what the people wanted for the future. The court case thus became a means for political mobilisation.

The interlocutory injunction hearing lasted six months, and heard testimony from 167 witnesses, many of them Cree and Inuit. The presiding justice took five months to prepare his judgment.

Quebec argued in court that the indigenous peoples had no rights, that there was only a moral obligation to deal with them, and that even if the court decided they did have rights these would simply be the rights to provisions such as are found in the old treaties: small reserve lands, an annual *per capita* token cash payment, and the right to hunt on unoccupied Crown lands until they were needed for development. Quebec also argued that the indigenous people were just like Euro-Canadians now, they no longer

had a distinctive way of life, that the land was under-utilised, that the indigenous people were totally dependent on government transfer payments and investments, and that therefore there were no irreparable damages from the project.

The indigenous people argued that Euro-Canadians were trespassers and Quebec had to settle the aboriginal title before using the territory. They argued that the Cree and Inuit had definite rights, that they had occupied the land from time immemorial, that they had been exercising their rights, that their hunting and land use activities were important and constituted a way of life people wanted to continue, that their diet was dependent in part on animals and the sale of furs, that they had a unique concept of the land, and that any interference would compromise their existence as a people.

Mr Justice Malouf released his surprise ruling in November, 1973, granting the interlocutory injunction and ordering work on the project stopped immediately. Furthermore, the judge ruled there was clear evidence that the Cree and Inuit had exercised personal and usufructory rights over the territory and had possessed and occupied it since time immemorial. As a result 'the Province of Quebec cannot develop or otherwise open up these lands for settlement without the prior agreement of the Indians and Eskimo' (Malouf, 1973:38). This was the strongest recognition and interpretation of an aboriginal right rendered judicially in Canada up to that time, and indeed since. It was a stronger interpretation than many lawyers thought possible, and stronger than some thought could be defended.

CHOOSING HOW TO DEFINE AND SEEK RECOGNITION OF ABORIGINAL RIGHTS

The province moved to suspend the injunction immediately, pending an appeal of the first judgment to higher court. Within a week the Court of Appeal had ruled to suspend the injunction and allow the project to continue while it held hearings and considered the appeal of the first judgment, a procedure which took over a year. This suspension was as sudden as the initial judgment, but it could not completely undo the effects of the earlier ruling, for two reasons.

First, the Cree and Inuit had demonstrated that they could effect governmental activities. By November 1973, possibly a thousand million dollars had already been spent, and some 4000-6000 workers were on site. Even temporary disruptions of a project of this scale are massive, costly, and disruptive of operations over a much longer period than the actual period of the work stoppage; With two appeal rulings to be made before final determination of the interlocutory injunction, and three rulings yet to come on the permanent injunction, as well as various procedural and jurisdictional appeals, there was a clear possibility of further disruptions and stoppages.

This point was not lost on potential investors. Although clear data are hard to come by, it appears likely that while funding for the expected 12 thousand million dollar project from USA and European sources was not cut off, funds available at relatively acceptable rates were limited, and those available cost more than they otherwise would have. In consequence, Quebec apparently tried to use internal funding to keep the project going, which affected government investments in other economic sectors and made government financial administration difficult.

While these factors had all been at work to some degree since legal action began, the court judgment now made it impossible for Quebec to ignore the Cree and Inuit case. Within five days of the first court judgment Quebec announced it was ready to negotiate, and within two weeks it presented the Cree and Inuit with a proposed settlement.

Up to this point the Cree and Inuit leaders and lawyers had claimed an aboriginal

right in order to strengthen their claim that the government had to modify the project. The judgment pushed into the forefront the possibility of defining and seeking recognition of aboriginal rights in northern Quebec, which the court had unexpectedly gone so far towards claiming existed.

However, this new possibility developed slowly, even though it was consistent with the consensus that had developed within and among the indigenous communities during the court proceedings. The extensive discussions had, on one hand, led to a revitalisation of people's commitment to pursuing and maintaining a hunting way of life. On the other hand, discussions led also to a consensus that the Cree and Inuit people needed a clear recognition of their distinctive ways of life and communities and more extensive control over their villages, the services they used, and the land and wildlife on which they depended. There was, in short, a consensus developing for a general redefinition of the relationship of the Cree and Inuit communities to the governments and Euro-Canadian society.

This consensus was consistent with the negotiations proposal made to the Cree and Inuit peoples by the Quebec Premier shortly after the announcement of the court ruling (Bourassa, 1974). The 11-point proposal, based on some indirect discussions with the Cree, emphasised two things: the offer of a renewed relationship between the indigenous peoples and the government through their active involvement in the development of the region; and modifications to the project. The latter were essentially changes warranted by the continuing engineering and cost optimisation studies, but some did reduce impacts on areas critical to the Cree. However, the Cree and Inuit found the proposal unacceptable, and told the federal Minister of Indian Affairs so that he privately suggested it could be the basis for a rapid settlement of their dispute with Quebec.

The central choice now confronting the Cree and Inuit leaders was whether to recommend to their people to continue with their opposition to the project and attempt to gain recognition of their aboriginal rights primarily through continued court action, or to renew negotiations. It is worth recalling that the Cree and Inuit already had experience with trying both means, although under different circumstances than now existed. A third possibility they had to consider was an imposed settlement.

Pursuing the court cases had several advantages, and risks. First, if the courts upheld the position of the first judgment they would provide the strongest possible definition of aboriginal rights. However, it was considered most likely that a final court ruling would be weaker, and there was a real risk of gaining little or no recognition at all.

Second, the court definition of an aboriginal right was likely to involve usufructory interest in the land, and possibly an interest that would be strong enough to control or exert power over some outside development projects. But, it was less clear whether a judicial determination of the aboriginal right would include actual control of resources and development. And it was less likely that such a determination would include other elements which the indigenous people now saw as critical to their futures, such as increased control over social services, and participation in regional and supraordinate administrative, economic and political structures. While it was possible that some or all of these rights could be attained through political manoeuvring based on a clear judicial recognition of aboriginal rights, this emphasised that a judicial determination was likely to be incomplete by itself, and that at one point or another, court action would have to lead to political negotiations.

Negotiations, on the other hand, had the essential advantage that the indigenous people would be looking neither to Euro-Canadians, nor to an alien judicial system, to take the decisive role in defining an aboriginal right or what were acceptable project modifications or remedies. In negotiations, the indigenous peoples would take the

active role in defining what they wanted recognised as their aboriginal rights, how they wanted to exercise them, and how the project could be made less damaging. And, they could do this in the light of present problems and future aspirations.

But, this advantage required that they assume the difficult responsibilities for creating consensus about what they wanted. Furthermore, negotiation also imposed the burden of compromise, because each side must not only have power it must be prepared to give something up in an exchange. Assuming the responsibilities of a negotiation included taking the often heavy responsibilities of striking the compromises. Finally, there was a real chance negotiations would not produce acceptable results because the compromises might be so burdensome as to be unacceptable.

The advantage of negotiations, as opposed to a settlement imposed by a court or by parliament, in addition to the effective inputs of the native people into the provisions of the former was the greater acceptance and willingness of all parties to work and live with the provisions of a negotiated agreement. Where settlements are imposed, or parties forced into an agreement, the outcome is usually neither accepted nor workable, and the settlement is frequently undermined by bitter opposition or passive subterfuge, or both.

The Cree and Inuit decided that renewed efforts at negotiations would be an essential means of taking a maximally active role in determining their own future, and of effectively re-defining for Euro-Canadian society and governments how they wanted to live in the future.

The key question then was when to re-open negotiations. Under the circumstances existing at the time immediate negotiations seemed the best choice. The court case had brought about a consensus in the Cree villages on major problems and components for discussion, a consensus that could now be developed toward a consensus on solutions and possible compromises. Such consensus is essential for success, and it can easily lead to disillusionment and demoralisation if it is not enhanced and pursued at a reasonable pace.

The court decision seemed more likely to be eroded in successive court appeals than to be fully maintained. The year-long interlocutory injunction procedure augured for a long string of court battles over 4 or 5 years before a final judicial determination on the question of an aboriginal right would be rendered. Such delayed legal action would not permit rapid resolution of the community and economic problems the Cree and Inuit wanted improved. Also because construction of the hydro-electric project would probably continue during legal actions, a final judicial declaration stopping or modifying the project would be meaningless; the damages would already have occurred.

The massive commitment of capital to the project also made successive judicial declarations less likely. It was thought that the governments could not permit a judicial decision to require abandonment of the project once construction was well advanced because the economic and political consequences would be too severe. The parliaments would probably legislate a land claims settlement, in order to pre-empt a possibly adverse judicial decision. The indigenous peoples thought they would probably have very limited input to such a settlement act, certainly less than in negotiations.

The Cree and Inuit therefore decided to recommence negotiations immediately. But because they had already experienced difficulties in establishing meaningful negotiations, they decided not to abandon their court cases, but to hold them in reserve should negotiations prove fruitless.

In summary, the Cree decided to start negotiations for three kinds of reasons. First, negotiations were seen as preferable to court actions in the process of seeking project changes and a definition and recognition of aboriginal rights because they provide the

greatest input by indigenous people into the definition of those rights and their adaptation to modern conditions. Second, the prerequisites for serious negotiation were present, including (1) consensus on issues and general goals, (2) a substantial power base, recognised by the governments, that was judged to be high and probably at its peak, and (3) a willingness to compromise existed on both sides. Third, the costs of not attempting a fairly rapid settlement were high in terms of continuing impacts, delayed benefits, and declining opportunity for effective inputs to a settlement.

SOME REACTIONS TO THE NEGOTIATED RECOGNITION OF ABORIGINAL RIGHTS

The announcement that the Cree and Inuit were prepared to negotiate with the government and, by implication, to reach certain compromises, had serious implications for relations between the Cree and Inuit and their supporters. While public support had so far played a limited role, the Cree and Inuit of Quebec had been a *cause célèbre* during the court case. Two books were published on their struggle against the project (Richardson, 1972, 1975), and a series of films and articles had been circulated (cf. bibliography in Feit, 1976).

The core of the Euro-Canadian supporters were environmentalists for whom the massive hydro-electric project was a monstrosity. They supported the Cree and Inuit struggle against the project largely in the hope that they could stop it entirely. Their desire for opposition at any cost was not dampened by the lesson of the initial court victory and its reversal, which indicated that stopping the project permanently was unlikely. The aboriginal rights issues were not of primary interest to them, and they tended to see adaptations and changes of the indigenous population to the Euro-Canadian presence as losses of integrity and principles. Their opposition to negotiations developed with time, and when the first agreements were announced to the media, many of the former Euro-Canadian supporters labelled the Cree and Inuit sell-outs.

The experience was a sad one for the Cree and Inuit leadership, and it suggests a possibly general instability of alliances between the indigenous people and environmental and conservationist movements. These groups were not generally informed about the conditions of the indigenous peoples, and neither shared nor understood the concerns and priorities of the Cree and Inuit. Many could not see that the Cree and Inuit did not face a single-issue problem but rather the complicated issues of how to redefine their relationships to Euro-Canadian society and how to strengthen and continue their culture and society. The Cree and Inuit could not simply move away from the project if they lost the battle. For them, the chance of a partial victory, and therefore a partial loss, could well be more attractive than the risk of an all or nothing strategy, because they would suffer the human cost of a complete defeat.

Equally sad for the Cree and Inuit were the divisions that occurred between themselves and other indigenous peoples in Quebec and Canada. The initial court judgment was perceived as a victory for all indigenous peoples in Canada, many of whom wished to see the court case pursued to completion, in the hope of establishing a strong judicial recognition of aboriginal rights that would form the basis for court actions and negotiations elsewhere. The Cree and Inuit had always supported the common interests of indigenous peoples, but they felt that their own interests, and those of others as well, could best be served by a successful and innovative negotiated agreement which redefined and specified their aboriginal rights.

Other indigenous people had either not yet reached a consensus of their own on the contents of aboriginal rights or had different priorities and objectives than the Cree and Inuit of Quebec. This became apparent early in the negotiations as a growing

separation, but not a complete split, developed between the Cree and Inuit of northern Quebec and the other Indian peoples of Quebec and Canada.

From my personal perspective, these differences centred around four areas. First, the northern native peoples differed from southern Indian peoples because the former had a viable hunting way of life and an important subsistence economy which they wished to maintain and develop. This priority led to a series of trade-offs which must have looked anachronistic to many southern Indian peoples near or in urban areas, for whom aboriginal hunting rights played an important role but not an immediate role in their economic welfare. This was the basis of significant differences on how land, mineral resources, and economic provisions of the negotiations should be viewed and valued.

The priorities and trade-offs the Cree and Inuit made could be understood only in the light of their efforts to maintain an economy balanced between subsistence production and locally controlled economic enterprises and employment. And, they also could be understood only in the light of the slow *de facto* erosion of the land base on a day to day basis which the Cree and Inuit were determined to reverse.

Second, the Cree saw themselves as a people who had maintained extensive autonomy in the face of earlier intrusions by Euro-Canadian interests, and they saw themselves neither as losing their distinctiveness as a people, nor primarily as victims, although they did see themselves as having been treated unjustly by Euro-Canadians. The court case had strengthened their identity, and was seen as a partially successful confrontation with governments and outsiders that set the stage for new responses designed to increase their autonomy. Thus, they were willing to see the vague and unspecific aspects of their claim for an aboriginal right extinguished, so long as the aboriginal right was defined to include the specific rights which they felt would help assure their continued existence as a people. They therefore tended to view the recognition of aboriginal rights as a recognition of the specific rights that would allow them to deal with the immediate problems they were encountering. The key rights they wanted recognised were the traditional hunting, fishing, trapping, and land use rights; but they also insisted on inclusion of rights not traditionally included in the aboriginal rights concept, such as rights to services and government and administrative powers.

This was in contrast to other indigenous peoples who saw recognition of a general aboriginal right as essential to maintenance of their identity, and who saw their ties to the land as dependent on such recognition. This was especially the case where a distinctive economic adaptation, such as hunting, was no longer practiced; or where indigenous peoples had already had their rights extinguished by treaty, or *de facto* by being driven off much of their land by encroaching Euro-Canadians. In these cases, and especially where there is a long established claim to have extinguished aboriginal rights, a generalised recognition of the aboriginal right is an essential step to get the government to open new negotiations. Therefore, the process of claiming such a general right may be essential to political action, to maintenance of an identity vis-à-vis Euro-Canadians, and to continued cultural survival.

The Quebec Cree and Inuit were not in the same circumstances; their rights had not been extinguished, they had not been driven off the land, and their identity as native people was not threatened. They therefore sought, and would only accept, a negotiated agreement which recognised the specific rights they felt would prevent them from being driven off the land and having their hunting society and culture destroyed. They were ready to trade off the general and vague aspects of an aboriginal right for an explicit definition of these rights. Although such an agreement might not be just, it could assure their future as a people.

Third, the Cree and Inuit of Quebec differed from some other Indian and Inuit

peoples with respect to the political structures they sought. The Cree sought local and regional autonomy and self-determination through encapsulation of their communities within ethnic structures but by also building extensive administrative, consultative and political linkages to provincial and national institutions. They also sought to limit the authority of the provincial and national institutions through a series of legally binding principles and operating procedures. The northern Quebec Inuit sought to establish both ethnic and non-ethnic regional structures in which Inuit control would continue for the foreseeable future. This difference in approach was due, in part, to the fact that the Cree population was a minority in its territory, approximately 6500 compared with about 20 000 Euro-Canadian and eight villages, as opposed to seven Euro-Canadian settlements. The Inuit, in contrast, numbered approximately 4500 as opposed to 500-800 Euro-Canadians, and inhabited 12 villages as opposed to one predominantly Euro-Canadian mining settlement.

The position of both the Cree and the Inuit, however, contrasted with that developed in some other parts of the Canadian north where indigenous peoples appear, if I understand their position correctly, to want more extensive governmental powers and sovereignty, falling somewhere between those of a provincial government and those of the federal government. Such an objective seemed to imply an administrative and bureaucratic structure that would, at least in the northern Quebec case, be substantially out of proportion to the size of the indigenous populations. Furthermore, the Cree had experienced some success at maintaining their autonomy within the framework of the state apparatus; although not without conflicts and some losses which they sought to reverse through negotiations. Finally, in my view, the evidence that macrostructures would be substantially more autonomous from national political and international economic interests than the enclaves linked to macrostructures sought by the Cree and Inuit is uncertain in the light of the contemporary plight of small third world nations. Whichever view is correct, at the time of the northern Quebec negotiations the Quebec government was seeking increased autonomy within Canadian confederation, and such broad sovereignty for the Cree or Inuit at a provincial or regional level was non-negotiable. However, at a local level, extensive autonomy was imperative and was achieved. The Cree and Inuit, therefore, did not seek the broader range of regional powers, and chose instead to negotiate for certain restrictions on macro-administrative and legal powers; in the expectation that they would demand extensive local powers which could provide an adequate basis for effective autonomy.

There was considerable debate and compromise on the actual type of decision-making and consultative powers to be given to the regional structures linking the Cree and Inuit to provincial and national institutions, and this formed a core of the negotiations process. (For a discussion of the results in the sector of hunting see Feit, 1979.) As these compromises became public, and as the specific objective the Cree and Inuit had set for themselves became clear, the issue of governmental power and sovereignty became an important point of disagreement between the Quebec Cree and Inuit and several other indigenous populations in the Canadian north.

Fourth, as I have indicated, the Quebec Cree and Inuit were dealing with the problem of the definition and recognition of aboriginal rights within the context of an ongoing project. The presence of a project affects the strategies and options available, and the choices made. The project and the aboriginal rights objectives were intimately related because the Cree and Inuit were being asked, in effect, to permit the construction of the hydro-electric project and other development of the territory as a concession in the settlement. Thus, the process proceeded in the shadow of a pending threat. Much of the discussion of aboriginal rights negotiations has envisaged a situation where native peoples would not incur heavy costs if a settlement were delayed, and it

therefore often does not take sufficient account of the trade-offs and priorities under circumstances where this is not the case.

On the other hand, it is possible to overemphasise one side of this complex issue because it must be noted that there would have been no negotiations without the project. From a James Bay perspective it sometimes looks as if the same pattern is occurring elsewhere in Canada; that there is real activity only in the face of threatened developments. Where no development is proposed governments appear to be extremely slow to respond seriously to aboriginal rights claims. Indeed, it sometimes appears as if this kind of a threat is essential to both sides for negotiations to proceed to conclusions.

These differences between the Quebec Cree and the Inuit and many of the other indigenous peoples of Canada point out the diversity of historical experiences and contemporary circumstances that both unite and distinguish indigenous peoples within the country. The northern Quebec Cree and Inuit people remained true to their own understandings of contemporary circumstance and historical experience, and chose to pursue a negotiated recognition of specific aboriginal rights and new rights. In the process they were alienated from some, indeed many, of the other indigenous peoples. It was an unfortunate, but apparently unavoidable consequence of events. This experience runs counter to many of the efforts to define all Indians as having common interests, and it reflects real differences that are often glossed over or denied.

While this is an important conclusion it is also worth noting that the variety of ideas, analyses and values which disagreements among indigenous peoples expose, indicate the complexity of the choices that must be taken, and the difficulty of the consensus that must be developed whenever a group undertakes to define what the aboriginal right will mean in its own case. And, they show that there is no single answer to this formulation, each group being challenged to remain true to, and thereby gain its strength from, its own history, experience, knowledge and values.

THE ORGANISATION OF AND STRATEGIES FOR THE NEGOTIATION PROCESS

Once the Cree and Inuit had approved the decision to re-initiate negotiations, they began by rejecting the government's proposal. They rejected the inadequate land provisions of the proposal, the inadequate recognition of hunting, fishing and trapping rights and environmental protection, the inadequate modifications to the project and proposals for remedial and compensatory measures, and the failure of the proposals to provide for sufficient local or regional autonomy and self-determination (Diamond, 1977).

The Cree immediately drew up a position paper called 'Our Land, Our Demand' in order to take the initiative and define the scope and contents of the negotiations.

Negotiations were organised as a two-stage process, with the goal of reaching an agreement in principle first, and then, if this was acceptable to all parties, proceeding to a final agreement. If the Agreement in Principle was unacceptable, then it was back to the courtroom.

Early in the negotiations the Cree formed their own political association, the Grand Council of the Crees (of Quebec), with the administrative chief and another leader from each community on its board of directors, and an executive group of four regional leaders. The Grand Council took over the organisation of the negotiations. However, the Cree people remained the final decision-makers; they gave the GCCQ a mandate to negotiate, but retained the right to decide whether the results of those negotiations were acceptable.

Day to day negotiations were carried on by Cree and Inuit teams consisting of a

maximum of 20 persons each. By my estimate, the government negotiating teams reached a maximum of about 200 people at one point in the two-year process. The Cree team consisted of the four Cree executive members who took strategy and policy decisions, four to six senior and junior Cree negotiators, and approximately eight Euro-Canadian lawyers and consultants with diverse professional experience in biology and ecology, geography, engineering and anthropology. The small size of the Cree negotiating team facilitated coordination and an integrated approach in the diverse range of issues discussed. Most of those involved had worked with the Cree during the court cases, and when additional assistance from Euro-Canadians was needed, an effort was made to find individuals with some experience in the Cree communities. A group of Cree and Inuit communications workers kept information linkages open between the negotiating group, working in urban centres, and the Cree communities. Progress of the negotiations was regularly reported in the villages, but such information was effectively kept out of the mass media because experience indicated that public opinion would not, at that time, support a negotiated settlement.

The negotiations were organised around seven parties, the Cree, the Inuit, the governments of Quebec and Canada, and the three Quebec state-owned corporations responsible for the development of the territory. While the presence of the corporations was an unusual feature, it made it possible for the Cree and Inuit to deal with them directly, rather than having them play a behind-the-scenes role. Although it complicated the process, and cost certain objectives, their presence was sometimes an assistance because conflicting interests between them and government agencies helped negotiating Cree and Inuit objectives which did not threaten their immediate and relatively narrow interests.

Negotiations were conducted by a main negotiating committee and several subcommittees. The main committee consisted of the senior negotiators and lawyers for each party as regular members, and various specialist advisers as part-time participants. It drafted some of the general provisions of the agreements, and edited the texts of the drafts negotiated in the subcommittees. Some substantial revisions of drafts were made by the main committee, but an effort was made to have strong mandates for effective negotiations by the smaller subcommittees. The subcommittees were typically comprised of Cree and Inuit negotiators, and one or more lawyers and professional experts, on one side, and senior government or corporate administrators from the departments most directly involved in the specific subject matter, on the other.

It was considered important that senior administrators from the departments that would have a role in administering an agreement be involved so that the agreements reached be perceived as practicable. Negotiations also aimed at creating a core of informed administrators who would know something about the indigenous peoples, and about the compromises involved in, and the meaning of, the agreements that were finally reached. At the same time, the negotiations were directed toward solutions to problems which did not assume that an informed government administrator would necessarily be involved in their implementation.

A basic strategy of the Cree and Inuit negotiating team was to keep the initiative by drafting a constant flow of position papers and working documents, and tabling these in the appropriate subcommittee prior to the formulation of government positions. This put a heavy workload on the small staff, but it directed the negotiations to critiques, defenses, and modifications of Cree and Inuit positions, rather than of government positions. This procedure tended to retain the internal logic and assumptions of the Cree and Inuit positions in the final documents, although in many cases the text resulting from negotiated compromises had inconsistencies in logic and assumptions.

The Cree and Inuit strategy assumed neither all-pervasive conflict nor cooperation with governments. Each party was seen as self-interested, self-organised, and willing to make trade-offs; widespread, underlying shared interests were not assumed to exist. Despite the limited range of shared interests the pattern of conflict was not monolithic; there appear to have been several sets of relatively self-consistent assumptions, bodies of knowledge, and interests, each unique to a party and each having specific areas of conflict or overlap with those of other parties. The parties involved differed not only across levels, the self-interested and self-organised organisations within levels differed (for example, the diverse departments, agencies and corporations within each government). Thus, conflicts occurred within as well as across levels. Each agency sought its highly valued goals and exploited the areas other parties or units undervalued relative to the agent.

The negotiation was constrained by the historical conditions and the powers of the parties; however, these came into play only in the areas of direct conflict, which while critical were limited. All parties had minimum positions which were unchangeable. These became clear early in the negotiations. As they proceeded a central strategy was to specify and thereby narrowly focus the areas of direct conflict, and also to find alternative ways in which goals were unacceptable in one form could be accepted.

The process required careful thinking out of positions and tactics, based on the clear identification of objectives and priorities, and the anticipation of counter positions. The Cree and Inuit teams identified immediate objectives, fallback positions and trade-off alternatives prior to each negotiating discussion. Planning thus played an essential and critical part in determining the course and outcome of the negotiating process.

In consequence, the course and outcome of negotiations were not solely and objectively determined by power in the wider political and economic spheres; the outcome was significantly, but not entirely, determined in the series of strategic decisions taken in the course of negotiations. Nevertheless, important areas remained in which a satisfactory set of provisions could not be reached, given the positions of each party.

The Government of Quebec had six firm negotiating positions: (1) that it maintain and extend its jurisdiction and authority over the northern regions of the province; (2) that the territory be opened for controlled development; (3) that the settlement create no more than a politically acceptable level of opposition among Euro-Canadians; (4) that any outstanding aboriginal rights claims be extinguished; (5) that the economic viability of the hydro-electric project not be compromised, and the economic costs of concessions be minimised; and (6) that there be no royalties provisions, although a lump sum compensation in place of royalties was acceptable. The corporations shared these positions, especially the second and fifth.

The Government of Canada was represented but not active during most of the negotiations. It only intervened at the end to impose a series of conditions by which it sought to protect its interests. These were (1) that the final jurisdiction of the federal government over Indian affairs be maintained although it was preferable if continued federal jurisdiction was coupled with a turning over of administrative responsibilities, including some sharing of administrative responsibilities, including some sharing of financial responsibilities, to subordinate levels of governments or to the indigenous peoples themselves; (2) it was essential not to reduce federal jurisdiction within Quebec; (3) no precedent should be set in the northern Quebec negotiations that would compromise the federal government in the settlement of land claims elsewhere in Canada.

For the Cree and Inuit the essential positions were (1) that the provisions make possible the continuation of hunting and subsistence economy, and the regulation of

future development; (2) that project modifications be made and remedial measures taken to reduce the impacts of the hydro-electric project; (3) that land be set aside for the Cree and Inuit sufficient to protect their communities, and some of their most important wildlife harvesting sites and activities; (4) that control over basic administrative services, programmes and new regional structures be turned over to the Cree and Inuit with extensive local autonomy well beyond that normally given municipal governments, but with funding from provincial or federal governments; (5) that a balance be struck between rights and benefits in the land rights and benefits flowing to people who no longer depended on the land but who needed new economic opportunities; and (6) that there be sufficient monetary compensation so that funds could be invested and protected for future generations, while providing adequate incomes for the costs of implementing the other objectives.

While this over-simplifies the positions, it does show that there were points of agreement, areas where the interests of one party were unopposed by another, and areas of general or direct conflict. The key areas of general conflict were: control of development activity; project modifications; transfers of land from Quebec to Cree and Inuit control; transfer of regional administrative powers and control over basic resources (such as wildlife) from Quebec to Cree and Inuit institutions; royalties; and an adequate protection of hunting rights, resources and opportunities. This paper does not review the specific provisions of the Agreement relating to these and other issues.² As indicated above, satisfactory solutions were found for some, but not all of these conflict areas. The Cree and Inuit had to decide whether the package as a whole was sufficient to protect and build their future.

THE DECISION TO SETTLE AND IMPLEMENTATION

The first set of negotiations lasted about eight months, but most of the work on the Agreement in Principle was completed in the last two months. This Agreement spelled out the broad outlines of the positions all parties could agree upon. The main legal provisions provided for eventual Cree and Inuit withdrawal of opposition to the hydroelectric project and of claims to other undefined rights and recognition by both governments of the rights spelled out in the agreement. Four sections were elaborated in some detail: the general principles for a hunting, fishing and trapping regime; the new modifications to the hydro-electric project and the associated compensatory and remedial measures; the size and principles for land allocations and the associated regime; and the compensation to be paid.

The Agreement in Principle was taken back to each of the Cree communities, where the provisions were outlined in detail. The outcome was summarised by Chief Billy Diamond of the Grand Council of the Crees, in his speech to the press, announcing that all Cree communities had accepted the Agreement in Principle and that it would be signed on the first anniversary of the court judgment on the interlocutory injunction. After outlining the provisions of the Agreement in Principle, Chief Diamond said:

The Cree People were very reluctant to sign an Agreement in Principle. However, after many meetings and many hours of meetings, the Grand Council of the Crees has received a mandate to sign an Agreement in Principle with the Quebec Government. Our mandate is also to see that the Quebec Government lives up to its obligations and we have a mandate to suspend court proceedings. We also have a mandate to carry out future negotiations with the Quebec Government.

We feel, as Cree People, that by coming to an Agreement in Principle, that it is the best way to see that our rights and that our lands are protected as much as possible from white man's intrusion and white man's use. We have always said that we wanted to maintain our way of life. We have always said that we want to pass the land on to our

children. Now we believe that this Agreement in Principle will maintain our way of life and that we can also pass the land on to our children, just as it has been done in the past. It guarantees the future of our children. It also guarantees that we can continue to live in harmony with nature. We believe that even though we practised the traditional way of life, the aboriginal way of life, we believe this agreement supports and strengthens the hunting, fishing and trapping rights in/over all of the territory, and restricts non-native activity in that area.

By the proposed agreement, we feel we have removed the worst effects of the Project to our way of life and the Cree People. The Treaties in the past that were signed have always been to settle land claims and land uses and land rights once and for all. However, we believe that the Cree People have not settled their land claims once and for all; other negotiations will continue after the Agreement in Principle.

We realise that perhaps we will disappoint many of the public by signing an Agreement in Principle with the Quebec Government. We realise that many of the friends that we have made during our opposition to the project will label us as 'sell-outs'.

However, we have come to a decision together, and we intend to carry-out that decision, and also we consider it a victory. A BIG VICTORY FOR US, because there are only 6 000 Crees and there are 6 million Quebecers here in this Province. It is also a big victory because there are not very many people that can persuade the best engineers in the world to change the location of a major dam and to change their plans such that our way of life will be less harmed.

I hope you can all understand our feelings, that it has been a tough fight, and our people are still very much opposed to the project, but they realise that they must share the resources. That is why we have come to a decision to sign an Agreement in Principle with the Quebec Government. (Diamond 1974)

One provision of the Agreement in Principle was that a final agreement would be signed within a year. During the next 12 months extensive and intensive negotiations continued in order to give detailed specifications to the rights agreed upon during the first phase of negotiations, and to provide a legally explicit and binding framework for recognising and exercising such rights. More than 15 subcommittees and task forces were established covering: project modifications; hunting, fishing and trapping; environmental protection; land selection and regime; local and regional government; economic development; income security for hunters; legal entities; taxation and compensation; education; health; police and justice; and eligibility. Each subcommittee drafted a section of the final agreement for approval or revision by the negotiating committee. The texts were drafted in both English and French, and the aboriginal peoples had to work in their second language, English. The final agreement, read out in the villages and translated into the native languages, was ratified by vote. Only after it was legislated did the Cree and Inuit finally drop their court cases.

A key decision was whether or not the agreement should be dependent upon legislation, that is, did it have to be enacted into law to have effect. The Cree and Inuit, on legal advice, decided to have legislation, and negotiate an agreement in great detail to assure that the changes needed to pass legislation giving legal force to the various sections would require a minimum of interpretation and leave a minimum of room for later change; and that there be a relatively clear basis for legal recourses to the courts if the governments did not live up to the terms of the agreement.

The final agreement took an intensive year of work to draft. It needs to be stressed that it simply took an enormous effort to keep the process going, and a total commitment of those involved to bring it to completion. There was considerable pressure on and by government parties to withdraw from part or even all of the agreement, because it was felt the native people had gotten too much. Thus, without a massive effort by the Cree the final agreement would never have been completed and approved by all parties.

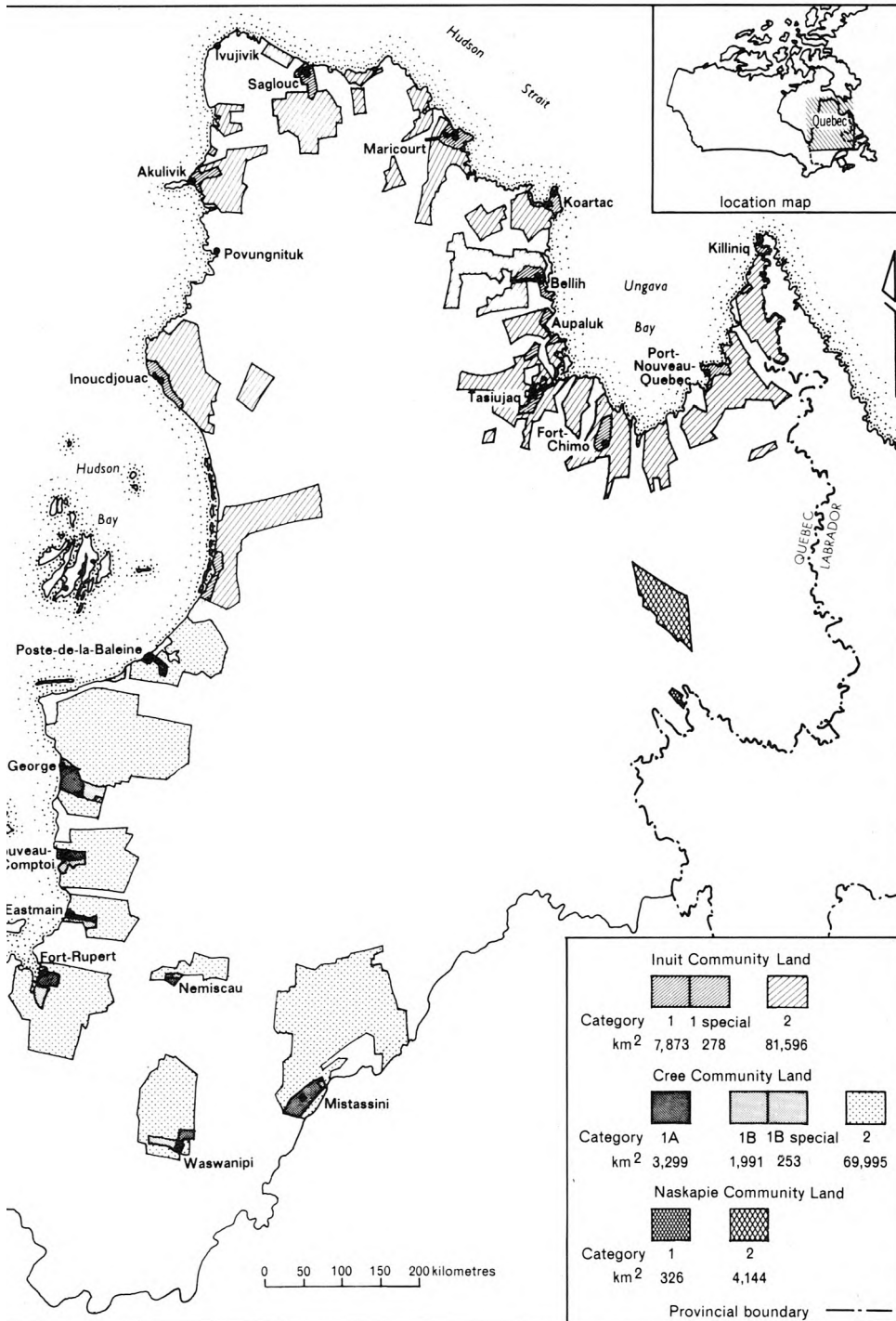


Fig. 1
Division of lands under the James Bay and Northern Quebec Agreement.

The agreement was given legal force by general government legislation two years after it was signed, and shortly before the deadline which the agreement specified for such legislation. Altogether 20 Legislative bills were necessary to implement all the provisions of the agreement, particularly from the Quebec government, and some are still being revised. The governments have, as expected, often tried to turn the legislative drafting itself into a renegotiation of the provisions. This process has been resisted but not entirely prevented. The governments have also tried to delay implementation and considerable effort has been necessary to force implementation. Nevertheless, implementation is proceeding, and in many areas it is proceeding as rapidly as the Crees and Inuit respond to the opportunities. In addition, negotiations continue on certain topics which were not settled in the final text. The Cree are now drafting the actual legislation in the outstanding areas where negotiations continue.

The final agreement was signed in November, 1975, and despite the slow passage of the legislation various provisions were, by the terms of the agreement, implemented immediately by provisional orders-in-council and regulations under existing laws. As a result, nearly all the provisions are now implemented, in whole or in part, permanently or temporarily.

The agreement contains a number of relatively innovative measures and provisions, and these in particular will need close evaluation. Among these are: a guaranteed income security programme for people who live by hunting, fishing and trapping as a way of life; establishment of a series of permanent, preferential, exclusive and mandatory consultative bodies of government and Cree and Inuit experts to supervise and implement specific hunting, fishing and trapping, and environmental provisions of the agreement, legally binding principles and operational rules to govern the exercise of governmental authority over wildlife and the environment; recognition of the Cree system of land use and control; a guaranteed allocation of wildlife to the indigenous peoples; Cree and Inuit administration and control of social services and local governments and structures; and new legislation replacing the federal Indian Act with a Cree-designed Cree Act.

Experience with these provisions is just beginning to accumulate, and I believe it may be several years before it will be possible to evaluate either the effectiveness of the provisions of the agreement in general, or whether the agreement will meet the specific expectations and objectives of the Cree and Inuit of northern Quebec. Nevertheless, some initial assessments have been undertaken (cf. Salisbury, 1979; Scott, 1979; Scott & Feit, in press, LaRusic, 1979; and LaRusic et al., 1979). It is already clear that the negotiations did not take sufficient account of the financial and human burden of legislating, implementing and operating the provisions of the agreement. The human and monetary costs to the Cree and Inuit are heavy and should have been more carefully considered, and more appropriate provisions should have been made. Furthermore, it is clear that in some areas there is considerable government resistance to implementing the agreement in full, and judicial and political initiatives have been required to try to bring compliance. The critical tests of the process are now occurring.

It is clear, however, that the process of reaching the agreement has strengthened the Cree and Inuit peoples of northern Quebec because they have successfully fought for and achieved many of their objectives. Furthermore, it has given them new resources, organisations and experience which they are now using to implement and pressure for respect of the agreement, and to initiate new consultations, court actions, and negotiations in order to further their rights, protect their land, and determine their futures. Serious modifications to the agreement are also now being given some initial consideration.

CONCLUSION

A land claims agreement, however important it may be, should, I suggest, be seen as but one critical step in the process by which indigenous peoples can redefine their relations to encapsulating societies, and thereby attempt to ensure their own futures. The settlement establishes structures and means for a continuing relationship between the indigenous peoples and the government and it provides the resources with which the indigenous peoples can actively pursue their own interests. An agreement does not answer or foresee all the problems. It is a tool in ongoing processes in which the agreement itself will have to be changed and modified.

Gaining recognition of aboriginal rights is a dynamic and continuing process in which court battles, political action, legislation, and negotiations must be used and coordinated. Any aboriginal rights negotiation offers lessons that should be of use for the continuing efforts of all those engaged in seeking recognition of aboriginal rights. The critical evaluation of aboriginal rights agreements will be whether they enhance the ability of indigenous people to determine their own lives and futures, and whether they respond to the new opportunities for achieving those objectives.

ACKNOWLEDGEMENTS

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APPENDIX:

THE CREE AND THE JAMES BAY AGREEMENT: A CHRONOLOGY OF EVENTS¹

KEY: Announcement and early reactions (Roman type)

The court case (Bold type)

Negotiations and Agreement (Italic type)

February 1971. Publication of the Dorion Commission Report on the territorial integrity of the province; the Commission recommends the extinguishment of aboriginal rights, which were described as partial and private, by the recognition of certain proprietary rights and compensation.

30 April 1971. Prime Minister Bourassa announces plans for the James Bay Hydroelectric Development Project. The project was justified on the basis of job creation and the need for electricity.

May 1971. Cree, through Attorneys, alert the Minister of DINA to issues of Indian land rights posed by the project.

June 1971. Minister of DINA makes known his concerns about Indian Rights to the Provincial Minister. As a result, the work of a Tripartite Committee on general issues, formed in 1969 of Fed/Prov IQA representatives, is accelerated.

1 July 1971. First of meetings of the Cree to discuss the Project, held in Mistassini.

July 1971. Bill 50 in National Assembly of Quebec constitutes the SDBJ; the SEBJ is subsequently incorporated in December 1971.

October 1971. DINA extends a subsidy to IQA for purpose of informing the population of James Bay about the Project.

January 1972. Provincial Minister of National Resources refuses to discuss a claim for compensation put forward by IQA.

February 1972. Joint (Fed/Prov) Committee on Ecological Effects of the Project publishes report, notes a substantial impact on Indians.

April 1972. Meeting of Cree, under IQA auspices at Fort George. Billy Diamond raises possibility of a court case to stop project and a general mandate for this purpose is extended to IQA. Cree set up Cree community liaison workers.

May 1972. Minister of DINA meets with Province to talk of impacts of the Project on Indians.

3 May 1972. IQA forms a Task Force and calls upon a number of McGill University researchers to conduct ecological and social studies.

5 May 1972. **Indians and Inuit initiate action in injunction.**

8 May 1972. **DINA reveals subsidy to IQA for preparation of Court case and other research.**

16 May 1972. Province announces switch from NBR to La Grande (LG) as the first phase of the Hydro developments.

23 October 1972. Province announces policy of no modifications.

23 October 1972. Meeting in Montreal of Cree Chiefs, Inuit representatives and Executive of IQA, to review work of Task Force.

25 October 1972. **This group meets with Bourassa; very unsatisfactory meeting; Cree resolve to pursue court actions including interlocutory injunction.**

7 November 1972. **Indians and Inuit file an amended writ seeking interlocutory injunction.**

8 December 1972. **Mr Justice Malouf of Quebec Superior Court grants a hearing on the petition by the Cree and Inuit.**

11 December 1972 through 24 May 1973. **The trial on the interlocutory injunction begins. It will see 71 days of testimony including 167 witnesses of whom nearly 100 were Inuit and Cree hunters.**

15 November 1973. **Mr Justice Malouf accords the interlocutory injunction on the basis of 'prima facie' evidence of Indian rights over these lands effectively occupied by the Cree and Inuit in the pursuit of their traditional subsistence activities.**

19 November 1973. *Bourassa submits his 11 point proposal for a settlement to the IQA executive and the Cree and Inuit representatives.*

22 November 1973. **Quebec Court of Appeals suspends the Malouf Judgment on the basis of the 'balance of convenience' without specifically treating issues of Indian title to lands.**

10 December 1973. *Cree chiefs meeting in Val d'Or agree to enter negotiations, extend a mandate to the IQA to seek funds for and to undertake negotiations. Cree also set requirement that IQA must consult with the villages prior to negotiations.*

21 December 1973. The Cree make a request to the Supreme Court for leave to appeal the suspension of the Malouf Judgment. This leave is denied.

1 January 1974. The Indians and Inuit request leave from Quebec Court of Appeals to proceed with matter of permanent injunction.

24 January 1974. Bourassa makes public his 11-point provincial offer.

January 1974. Cree Chiefs meet in Fort George, develop counter position entitled 'Our Land, Our Demand' (undated). Diamond then announces to press that Cree reject the offer, that the 'lands are not for sale'.

January 1974. The Minister of Indian Affairs threatens to cut off funds if the Cree do not seriously consider the Bourassa proposal, but he later backs down.

13 February 1974. Mr Justice Crete refuses leave to proceed with permanent injunction until the full appeal on the Malouf Judgment has been heard.

February 1974 through July 1974. Negotiations undertaken; Cree represented on IQA team. Negotiations proceed by main committee and subcommittees.

March 1974: IQA undertakes consultations with all communities regarding offers and negotiation positions.

2 April 1974: On petition from Indians and Inuit, Supreme Court of Canada refuses leave to appeal Mr Justice Crete's ruling.

April 1974: Cree Chiefs meet in Fort George. As a result of dissatisfaction with IQA in the negotiations, mandate withdrawn and three-man Cree negotiation team is constituted. 'Our Land, Our Demand No. 2 for Crees' is drawn up.

10 June 1974. Quebec Court of Appeals proceeds with the matter of the appeal of the Malouf Judgment.

July 1974 through November 1974. Major work of main committee completed, work proceeds by subcommittees.

16 August 1974. Cree Chiefs form 'The Grand Council of the Crees (of Quebec)'.

14-15 October 1974. Final offers between Cree and Province exchanged.

October 1974. Cree undertake another extensive consultation with communities.

15 November 1974. Signature of Agreement in Principle. Cree leaders call it a victory for the Cree. IQA denounces Agreement in a press conference.

21 November 1974. The Quebec Court of Appeals overturns the Malouf Judgment, based on the 'balance of convenience'. The justices hold that Indian rights were extinguished at the time of HBC Charter or were at best 'rights to live on the territory'.

January 1975 through July 1975. Negotiations start on Final Agreement taking the form of subcommittees, working groups and task forces.

August 1975. General Assembly of Crees decides to proceed with Negotiations to reach an Agreement and GCCQ is empowered to sign on behalf of the Cree.

September 1975. Main committee moves to a Montreal hotel to review, edit and negotiate final matters prepared by the sub-committees and working groups.

15 October 1975 through 11 November 1975. All Cree Band Councils converge on Montreal for close review of Agreement and signature of Agreement.

11 November 1975. After last minute negotiations, the James Bay and Northern Quebec Agreement is signed in Quebec.

15-18 December 1975. Cree communities circulate a 70-page text of the Agreement and hold ratification vote: 24% of population voted, 922 for, 1 against.

NOTES

1. I am indebted to Ignatius LaRusic for permission to reprint this chronology from LaRusic et al. (1979).
2. For a discussion of some aspects see Diamond (1977), Feit (1979, 1980, 1982) LaRusic et al. (1979), Scot & Feit (in press); and from the point of view of 'selling' the agreement to the Quebec National Assembly and the public, see Ciaccia (1976).
3. This paper does not review the specific conditions under which the Northeast Quebec Agreement was completed, so as to integrate with and extend the JBNQA to the Naskapi of Quebec.

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