The Land Claims Agreements Coalition Presents:

MODERN TREATIES 101: A CRASH COURSE

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WORKSHOP NOTES

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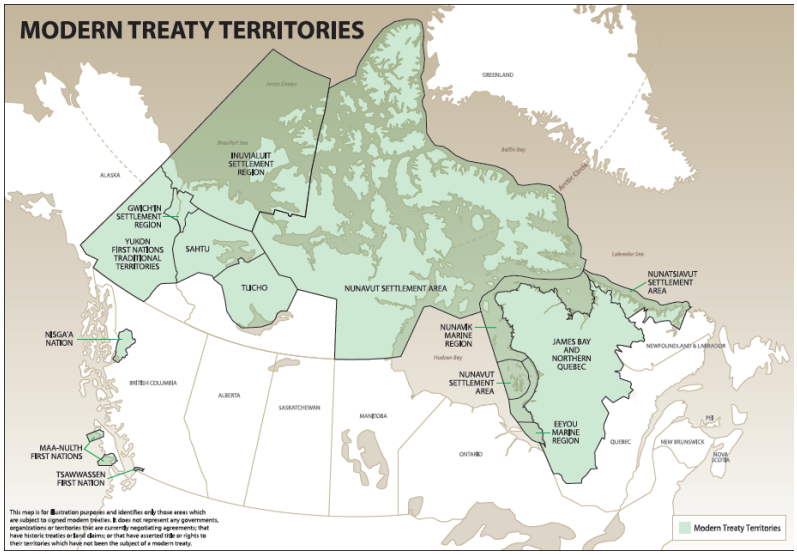
Introduction to Modern Treaties

Presented by: Alastair Campbell and Terry Fenge

Alastair Campbell, Senior Policy Liaison, NTI

This is a snapshot presentation about land claim agreements and where they come from. Initially, the British signed treaties of friendship and alliance with First Nations and Inuit in Canada. Aboriginal peoples were very important in the early history of Canada. Without them Canada would not exist today. In 1763 a Royal Proclamation was issued, aboriginal lands were declared to be set aside, had to be negotiated by the Crown. This was the roots of the later treaty-making system which involved lands in exchange for benefits.

This map shows the main **historic treaties**, including the Maritime **"Peace and Friendship" treaties** (in red), numerous land-related treaties in Ontario (pale yellow and light brown), the Robinson treaties (in orange) and the post-confederation "numbered treaties" (in green).



The map above shows areas covered by **Modern Treaties**, also called **comprehensive land claims agreements**, dating from the James Bay and Northern Quebec Agreement of 1975.

This map shows where **Modern Treaties** are currently under negotiation. The Eeyou Marine Region (Cree), shown here as "in negotiation" was finalized in 2011. Some overlaps between claims under negotiation and existing treaty areas are shown.

There were various land ceding treaties in the Great Lakes Region, then on into the west. As relationships changed Aboriginal people became less politically and economically important, and were seen as a problem, not allies. In 1927 the Indian Act made it illegal to pursue a land claim. Though there were treaties signed after 1927, they could not be initiated by Aboriginal people. In 1973 the Nisga'a

went to court to establish their Aboriginal rights. Following that, Pierre Trudeau and the Government of Canada adopted a land claim negotiation policy.

James Bay 1975: provoked by the Government of Quebec development of Hydro Resources. Naskapi, Cree and Inuit were not part of the development and an injunction was secured to stop development, which started negotiations.

Naskapi 1978: Agreements now cover from Labrador to British Columbia and a big chunk of the North. Most of British Columbia, southern NWT and parts of Yukon, Quebec, Eastern Ontario and the Dene from Northern Manitoba are involved in negotiations to some degree.

Nunavut Land Claims Agreement, 1993 - Land claim agreements are based on Aboriginal rights and title.

Modern Treaties, otherwise known as comprehensive land claims agreements, are generally signed where Aboriginal title and rights have not been dealt with.

Modern Treaty signatories:

- James Bay and Northern Quebec Agreement (1975)
- North-Eastern Quebec Agreement (1978)
- Inuvialuit Final Agreement (1984)
- Gwich'in Comprehensive Land Claims Agreement (1992)
- Yukon Umbrella Final Agreement (1993)
- Yukon First Nation Final Agreements:
    - Champagne and Aishihik First Nation (1995)
    - First Nation of Na-Cho Nyak Dun (1995)
    - Teslin Tlingit Council (1995)
    - Vuntut Gwitchin First Nation (1995)
    - Little Salmon/Carmacks First Nation (1997)
    - Selkirk First Nation (1997)
    - Tr'ondek Hwech'in (1998)
    - Ta'an Kwachan Council
    - Kluane First Nation (2004)
    - Kwanlin Dun First Nation (2005)
    - Carcross/Tagish First Nation (2006)
- Nunavut Land Claims Agreement (1993)
- Sahtu Dene and Metis Comprehensive Land Claim Agreement (1994)
- Nisga'a Final Agreement (2000)
- Tlicho Land Claims & Self-Government Agreement (2003)
- Labrador Inuit Land Claims Agreement (2005)
- Nunavik Inuit Land Claims Agreement (2008)
- Tsawwassen First Nation Final Agreement (2009)
- Eeyou Marine Region Land Claims Agreement (2010)
- Maa-nulth Final Agreement (2012)

Objectives of Modern Treaties:

- "Greater certainty over rights to land and resources therefore contributing to a positive investment climate and creating greater potential for economic development and growth"

- "Greater control for Aboriginal people and Northerners over the decisions that affect their lives"

Modern Treaties – Nunavut Land Claims Agreement Objectives:

- Certainty and clarity in land ownership;
- Inuit participation in management of lands and resources, including the offshore;
- Inuit wildlife harvesting and management rights;
- financial compensation and economic opportunity; and
- Inuit self-reliance and social and cultural well-being.

Terry Fenge, an Ottawa-based consultant, with many years' experience with negotiating and implementing modern treaties

Much of what you'll hear in the next two days will be about problems with implementation. However, we have achieved great things compared to other countries.

People do not often consider the implementation plans that accompany the agreements, but they are very complex documents, often larger than the treaty documents. These treaties are complex because they are comprehensive. They encompass land, royalties, social and cultural provisions, political development, resource management, etc. They require extraordinary commitment to fulfill all of the obligations and duties that were negotiated. Not an easy task.

There are significant difficulties in negotiating these agreements, which is why we have come together as a coalition over the past 10 years. Back in the 1980s we formed a coalition, and that brought together the original six organizations as well as two others who were beginning their negotiations. That coalition had some modest success. Now, we have a coalition of all of the modern treaty organizations, trying to persuade Ottawa to honour its commitments.

There is a school of thought that suggests that once the agreement is done, it's up to the Aboriginal people to implement them. This is erroneous. The agreements are effectively marriages between the government of Canada and the various groups across the country, in which a new relationship is defined and expected.

Treaty Making in Canada: An Overview

Presented by: Jim Aldridge

Jim Aldridge, General Counsel, Nisga'a Lisims Government, Partner, law firm of Rosenbloom, Aldridge, Bartley & Rosling

The history of treaty making between the Crown and Aboriginal people is the history of Canada. It defines who and what we are. There are many theories about this, but the Supreme Court says the purpose of treaties is to reconcile the pre-existing Aboriginal sovereignty with the sovereignty of the Crown. It's been looked at in different ways over the years, but that is the core.

From the earliest days when Europeans found that the land was occupied, and they were outnumbered, they needed peace and friendship with the people here already. So, we have a series of such peace and friendship treaties. They made deals to get along, work together. Then they made military alliances with Europeans. Then, when the British established overall control of British North America, after the Plains of Abraham, and the treaty of 1761, King George found himself with a lot of heavily armed Aboriginal allies.

The Royal Proclamation of 1763 established the basis for British rule of North America. King George promised that before land could be acquired by the Crown (and only the Crown), there must be the consent of the Indian people. The focus changed from peace and friendship to acquiring the right to enter territory and settle it. That was the second phase of treaty making. A number of treaties were entered into, where the Crown acquired land for settlement.

The first big treaties that presaged the next era were in 1850, when the province of Canada decided to acquire the land around Lake Huron and Lake Superior, and sent Mr. Robinson to negotiate with the Ojibway. According to these treaties, hunting and fishing could carry on but there was a promise to establish reserves, and to pay annuities. There was an upfront payment, and an agreement to pay one dollar per year per person. However, if the land produced wealth the annuities would be increased to up to $4. After Confederation in 1867 we saw what has become so familiar; the federal government and the provincial governments having a fight over who pays the annuities. This went to arbitration, then led to a court decision that the Federal Government were on the hook. There have been several such federal/provincial disputes.

No sooner was the ink dry on the 1867 British North America Act than Canada negotiated a deal with the Hudson's Bay Company to buy a huge chunk of Canada from them, to which they had private title. However, no one spoke to the Aboriginal people who lived on the land. Surveyors then went into the Red River area and started laying out plots of land. The Métis objected and were afraid, for good reason.

When the surveyors arrived, one of the Métis stood on the surveyor's measurement chain and caused an argument. This commenced the Red River Resistance, when the Métis did not consent to the annexation of the land. So, John A. Macdonald asked to meet with them, and made a deal with them. That agreement became known as the Manitoba Act. July 1870, that agreement allowed the west into Canada, but now the federal government had the burden of negotiating with the rest of the Aboriginal groups in Canada. Treaties then became more like real estate deals.

History was unfolding on the west coast in quite a different way. Governor Douglas entered into a number of treaties on Vancouver Island. They were local, very simple treaties. But he was dealing with people who had a long history of sophisticated trading relationships and they were driving a hard bargain. Douglas did not have the resources to provide the compensation they were demanding. He wrote back to the Crown in England that he needed more money. London wrote back, agreeing that, yes, he had to negotiate treaties, but they provided no money. So he unilaterally established reserves and had them surveyed.

Douglas left office in 1865, replaced by Joseph Trutch. He was a racist. He did not believe that Indians had rights to land. They were less than human, treaties were not necessary. Reserves were far too large, so he had them reduced in size and refused to negotiate. He gave land to white settlers. He was a negotiator of the 1871 Terms of Union. Shortly after confederation, the feds were negotiating treaties and B.C. said they did not negotiate treaties. They told the feds that they had to buy the land from B.C. if they wanted to give it to the Indians.

In 1887, the Nisga'a sent a delegation to Victoria to meet with the Premier. They had a long talk, it was recorded. They said they wanted a treaty. The Premier said he didn't know what a treaty was and refused to discuss it. In the 1880s, Nisga'a formed the Nisga'a Land Committee, for the purpose of settling the land question. In 1913, they commissioned a petition to the Privy Council. It looked as though it was a demand to enter into a treaty, said there was a duty to enter into a treaty. It was very public and was picked up by the media. There was pressure on the Canadian Government. Duncan Campbell Scott proposed to refer the issue to the Exchequer Court on whether or not Aboriginal people had title, on three conditions:

- If you do have title, you must agree to extinguish it;
- In return for the same benefits given to the people of the Prairies; and
- We (the government) will hire and instruct your legal counsel.

Nisga'a refused, and eventually there was a committee meeting. Then, in 1927, the Government of Canada made it illegal to pursue a land claim. There was a hiatus, and the issue didn't resurface until the 1970s. There was uncertainty; a negotiation policy was established, with the purpose of resolving the uncertainty.

However, previous to that, the purposes were always to establish relationships. This was a shift in perspective. It was the beginning of the modern treaty process.

Those of us who've spent decades at the negotiating table have not appreciated one important fact: the day the land claim settles is "the day the hard work begins."

The Legal and Constitutional Status of Modern Treaties

Presented by: John Merritt and Jim Aldridge

John Merritt, Legal Counsel, Nunavut Tunngavik Inc.

There are two things we can say:

1. there has been a lot of evolution in the past, and it is continuing; and
2. modern treaties have multiple legal personalities

Common law is buttressed by executive interventions (Royal Proclamation of 1763, Indian Act). The Nunavut Land Claim Agreement (NLCA) is a contract, and is part of the public law of Canada. Various provisions only make sense if it has the force of public law. These agreements prevail against other laws.

The Nunavut Land Claim Agreement also has the force of an interpretation statute, because it prevails against any other conflicting law of Parliament. Other modern treaties have similar rules of interpretation. These agreements have international stature, like the UN Declaration on the rights of Indigenous People. That's how the world sees them, that yardstick exists.

Canadian courts can and have used the UN Declaration to help them interpret Canadian land claim agreements. This single document, a treaty, has personalities, relationships and implications on many levels. There are a variety of tools available to enforce them.

What are the broad legal and Constitutional contexts of modern treaties in Canada? "Everything begins in religion and ends in politics" …yes, and touches on history, law, administration, etc.

What figures in those broad contexts?

- Settler societies encroaching on Aboriginal societies
- Assertions of sovereignty in the international arena (law and politics)
- In the Anglosphere, development of common law principles through case law (both Constitutional and proprietary rights common law)
- Common law buttressed by executive and legislative interventions (e.g. Royal Proclamation of 1763, The Indian Act)
- A kinder and gentler contemporary Canada …?

Case law throws up some animating, and sometimes motivating, general principles, for example:

- Aboriginal title and rights to lands and resources
- Fiduciary relationship between the Crown and aboriginal peoples
- The crystallization of that relationship into fiduciary duties in some circumstances
- The "Honour of the Crown", and invocations against such things as "sharp practice"
- The Nowegijick rule of interpretation favouring aboriginal treaty parties
- "Reconciliation" as a fundamental guide/objective in Crown/aboriginal legal conflict
- A duty of consultation/accommodation

In this rather yeasty, and still shifting, broad legal and constitutional context, what are the multiple personalities of these modern treaties? Let's use the Nunavut Land Claim Agreement as an example.

- First, the Nunavut Agreement is a contract between the Crown in right of Canada and the Inuit of Nunavut. The obvious intention of the parties was to enter into binding obligations. It was signed by parties having legal capacity. It is supported by valuable consideration. On the Crown side, any legal imparities were removed by ratification legislation. So, if it walks like a duck and talks like a duck…
- The Nunavut Agreement is part of the public law of Canada. This is not said explicitly in the Agreement. However, several of its provisions and its ratification legislation only make sense if the Agreement has this force. For example, the Agreement being binding on third parties; statutory vesting of powers and duties; and interpretive primacy with respect to inconsistent legislation.
- The Nunavut Agreement has the force of an interpretation statute against all other (non-Constitutional) public law (see sections 2.12.2 and 2.12.3). Its ratification legislation has similar status to an interpretation statute. Other modern treaties have similar rules of interpretation.
- …Non-derogation, or, more appropriately, derogation clauses anyone?
- The Nunavut Agreement is a treaty for the purposes of the Constitutional protection afforded by section 35 of the Constitution Act, 1982:

    - "35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are recognized and affirmed.
    - (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.
    - (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired."

The Nunavut Agreement is part of what defines the relationship of the Inuit of Nunavut to the Canadian state for purposes of international as well as domestic law. Inuit are a "people" under international law, and for international human rights purposes, as well as under domestic law. The treaty and other rights of Nunavut Inuit fall within a range of provisions of such international human rights instruments as the United Nations Declaration on the Rights of Indigenous Peoples (2007). Implementation, and respect for the provisions of the Nunavut Agreement and other modern treaties, is a yardstick of Canada's respect for international human rights obligations.

Canadian courts can use international law to interpret Canadian law. It could be suggested that it is not reasonable to believe that a single modern treaty can support all these various legal and Constitutional personalities. However, the text of the Nunavut Agreement does not speak against this possibility and there is no compelling reason to come to such a conclusion.

What are some of the practical consequences of modern treaties having multiple legal and Constitutional personalities?

- Most importantly, a variety of legal and Constitutional tools become available to enforce them.
- For example, different remedies: declarations of non-Constitutionality; injunctive remedies against public officials to carry out public law responsibilities; contractual remedies such as an award of monetary damages for non-performance.

- Tracking a variety of potential remedies provides the opportunity for a variety of judicial arenas, such as Federal Court of Canada; provincial/territorial superior courts; international tribunals?

SPECIFIC TOPICS:

Some Possible Legal Questions Regarding Contractual Status of Modern Treaties

- Full range of contractual remedies available?
- Monetary damages for breach?
- Specific performance?
- Could there be fundamental breach of such a quality as to amount to repudiation; to open up the possibility of rescission or some other form of contractual failure?
- Capacity issues as to consent? Parties not ad idem? Failure of consideration? Frustration?
- Could an aboriginal title be revived? Why not? How could Humpty Dumpty be glued together and put back on the wall? For example, would compensation moneys have to be repaid?
- How would a contractual analysis stack up against the fact that at least some modern treaties have the force of public law?
- Is their public law force impliedly dependent on their remaining contracts in good standing, or would their public law force remain, in whole or in part, even if contractual status was removed?
- Faced with these complexities, would courts be willing to be creative in supplying remedies to aboriginal parties where agreements have been breached, which would avoid the full application of contract law? This might be particularly important in areas involving access to renewed flows of public funding.
- Mandatory arbitration?
- Supervisory role of court?
- Others?

MORE SPECIFIC TOPICS:

Possible Legal Issues Surrounding the Periodic Update of Implementation Measures — What Happens in the Absence of Consensual Renewal?

- Does nothing happen?
- Does each party bear the risk of parts of treaties becoming, at a practical level, inoperative or unenforceable?
- Would that conclusion as to voluntary assumption of risk require a finding that such a result was actively contemplated by both parties?
- If not contemplated by both parties, would a court be driven to conclude that the parties might not have been sufficiently ad idem to have entered into a binding contract at all?
- Alternatively, would an extensive exercise in severability follow?
- How would the inoperativeness, or unenforceability, or severability, of parts of the treaties stack up against the public law dimensions of the treaties? Public law analysis would support the proposition that no part of the public law should be left meaningless.

MORE SPECIFIC TOPICS:

What Legal Principles Guide the Flow of Crown Funding to Public Bodies/Processes in the Absence of Consensual Renewal?

- A key item of time limited business found in modern treaties is the funding of a set of institutions and processes intended to create new systems of governance over settlement areas.
- These can take the form of explicit self-government arrangements, regional public government arrangements, joint land, resource, and wildlife management and regulatory bodies, or special purpose bodies with mandates in relation to education and health services.
- All depend on the ongoing flow of funding from the Crown, or, perhaps more accurately, from the Crown acting in concert with Parliament.
- What happens if there is no consensus renewal?
- Do all these obligations become entirely hostage to unilateral decision-making by the Crown, in the absence of provisions in treaties (conventionally absent) that allows the aboriginal party access to binding arbitration?
- If so, are there any theoretical limits on the power of the Crown in this regard? Could these bodies be, in effect, reduced to meaninglessness through starvation budgeting?
- What does the overlay of the fiduciary analysis and the concept of the honour of the Crown add to the analysis?
- Is there a point where the judiciary would remove the ability of the Crown to act unilaterally by either imposing its own judgment as to funding flows and arrangement or insist on access to arbitration or some other involuntary form of dispute resolution?

We are left with many things to consider. Where and how does the Crown's duty to consult and accommodate fit? We will have to stay tuned to find out.

Jim Aldridge, Partner, law firm of Rosenbloom, Aldridge, Bartley & Rosling

Modern treaties are many things; this adds a dimension to their application. Often they are erroneously regarded as checklists of things that must be done.

Constitutional Nature of Land Claims Agreements
1982: Charter of Rights and Freedoms; Section 35 in respect to the rights of Aboriginal people. Section 1 said the rights of the charter are guaranteed, subject to certain limitations. This does not reach into section 35. There was a sense that Aboriginal and treaty rights had a greater degree of constitutional protection than the Charter. In those days, the feds would not call land claims agreements treaties. There was some question as to whether sec 35.1 included land claims agreements. This was augmented with sec. 35.3 which clarified them as treaties.

Sparrow Case: rights under section 35 are not absolute. They invented a test; they said that Aboriginal rights are capable of being infringed upon, if there is a valid legislative objective or if it's justifiable in accordance with the honour of the Crown.

Regina and Badger: They said that what held for Sparrow held there too. Treaty rights can be infringed upon. We now have Aboriginal rights, historical treaty rights, and modern treaties. But there is no difference between the modern and historical treaties, other than in their length and sophistication. It is likely that the justificatory standard will be modified. Fortunately, we have not yet had any litigation in which there has been a breach of a modern land claims agreement and an application of the Sparrow Agreement.

NTI is suing her majesty the Crown for a number of breaches, and the action is brought in contract, not public law. The litigation has been going on for some time. One of the breaches is true, they did breach it. They were supposed to establish a general monitoring plan, and didn't. There is an admission that they didn't do it, and a calculation of costs. NTI asked for summary judgement on this one issue. As a result, there was an alternative approach employed to the calculation of damages. The defendant is required to disgorge their profits as restitution. It's quite rare in contract law, but happened in this case. The court granted disgorgement. It is under appeal, now it goes to the Nunavut Court of Appeal, will be heard some time next year. It's a powerful tool because there is a tendency to try to save money by not doing certain things. This sends a message that the courts are going to deny them that saving.

What is Self-Government?

Presented by: Daryn Leas, Bertha Rabesca Zoe and Toby Anderson

Daryn Leas, Legal Counsel for the Council of Yukon First Nations

Eleven of the 14 Yukon First Nations are self-governing. We have had more than a decade of self-government experience. From our perspective, self-government has been working; it is sputtering along but positive in the big picture. Like other claim groups, Yukon First Nations were involved in a long and costly negotiation process. This was primarily focused on land and resources. The need for Aboriginal people to have more control over programs and services in their communities has been a big problem, historically.

The first part was land and resources. Then they negotiated a self-government agreement. They have the ability to enact laws in a broad range of services. Can enact tax laws, have financial transfer agreements, local service agreements and local government agreements. Next is programs and services. We can identify certain programs and services and take them over. These are difficult negotiations.

What is self-government? It is allowing communities to take responsibility for delivering programs and services in accordance with their culture, values, etc. It's also accountabilities, dispute resolution, enforcement of First Nation laws, citizenship code, and acknowledging the rights of First Nations. There are different self-government structures, designed to meet the needs of different communities, such as clan structures. For example, a lot of the communities don't like elections, as it divides them and creates opposition within communities.

These agreements are working; however, there is a need for renewal. We must have positive working relationships with governments.

Considering dispute resolution, we need consent of the other party, and this might lead to litigation, eventually. Only since 1979 has the Yukon had true representative government. There is a capacity issue at the territorial level. Also, at the federal level, there is not the implementation experience.

Bertha Rabesca Zoe, Legal Counsel, Tlicho Government

Our agreement took 13 years to negotiate. I've been involved since before 2005 when it became effective. We signed Treaty 11 in 1921. The governance system is based on the system that was there before Treaty 11. Unity is integral to our society: one people, one language, one land. They have an agreement with self-government and land claim combined. It's a three-party agreement. These land claims are to provide more than just certainty, they wish to preserve a way of life for future generations. Other agreements are attached: financing, tax sharing, GST, intergovernmental services agreement, implementation plan, etc.

Chapter 7.4: Powers of Tlicho Government is quite general and broad. We've decided what structure we'll have. It lays out other powers as well, including renewable and non-renewable resources, and the powers to enforce laws.

There are three geographical areas in the Tlicho, which is about half the size of Nova Scotia: the **traditional territory** is where the hunting, fishing and trapping rights are exercised. There is also a **resource management area** as well. We have a 39,000 sq. km of land in a single block, both surface and subsurface ownership. These lands are not available for development right now, pending completion of a land use plan, due in May 2013. There are **four communities** within these lands: Behchoko, Gameti, Wekweeti, and Whati.

The Constitution is the nation's highest law. It sets out the powers, authority and purpose of government. It also provides for the following:

- Annual Gathering: every year the four chiefs and eight councillors gather
- Chief's Executive Council: Grand Chief and four Chiefs
- Each Grand Chief is successor to Monfwi, the Chief who signed Treaty 11

Recently, three former chiefs challenged the validity of a law passed by the assembly. The courts recognized the Tlicho government as an order of government in Canada, whose constitution cannot be disregarded by other courts, and they were unable to pursue their case through that outside court. We were recognized as self-governing, and they were not allowed to "shop around" for a court.

As for achievements, there are many to list. More information can be found on our website: www.tlicho.ca

Toby Andersen, Deputy Minister of Nunatsiavut Affairs, Nunatsiavut Government

Labrador Inuit Land Claim Agreement (LILCA): I was part of the Labrador Inuit negotiating team for 19 years and Chief Negotiator for 15 years. The LILCA includes a self-government agreement and provides benefits to people who live immediately adjacent to the area. It came into effect December 1, 2005 and the Nunatsiavut Government (NG) was created. We are the new kid on the block. There are great challenges in implementing our Agreement. We are a third order of government in the Province of NL. The nunatsiavut Government is an ethnic form of government at the regional level and a public forum at the Municipal or ICG (Inuit Community Government) level.

The NG has adopted over 40 pieces of legislation, or Inuit laws, that set out how the government will work. It also sets out parameters for industry: "We're open for business, but we'll do it our way." We have a fiscal financing agreement is renegotiated every five years and which provides funding to the NG for provision of programs and services and administration of the ICG's. There are many challenges.

What is self-government? Basically, it's what we make it, but we need to have the tools to realize our vision.

Chapter 17 of the land claims agreement sets out the authority of the Nunatsiavut Government and allows the NG to provide programs and services to residents of the Inuit Communities. It gives the NG jurisdiction over Inuit language, and allows them to provide programs in Inuit culture throughout the Province..

The self-government chapter was negotiated with the intent that over time Labrador Inuit would become economically self-sufficient. This is only achievable with the support and cooperation of provincial and federal governments; they have to pull their weight and live up to their obligations under the LILCA. To date we do not have their support in some aspects of the Agreement. The self-government chapter allows the Nunatsiavut government to "take down" federal and provincial programs and services. They (provincial and federal governments) want to pass them on to us, for us to deliver them, but the reason we not ready to take down certain programs and services is that we need to make them better, more applicable to our people, not just to continue to implement them without first making changes to them. We have taken on some programs in health and social services. We are moving forward slowly, because the NG has a lack of human resources and expertise. We are moving forward more quickly on some health issues. The Nunatsiavut Government delivers the Non-Insured Health Benefits (NIHB) program to beneficiaries throughout Canada.

Our people are seeing the benefits of self-government, what it can do. There is a lack of coordination and internal communication regarding the LILCA within the Government of Canada, and within the province as well. The government of Canada seems to think they can implement the LILCA under existing policies; ratification implementation is being ignored. This will be discussed further in another session.

Unique features of the LILCA:

a) First land claim in Atlantic Canada;
b) Includes a self-government agreement;
c) Provides specific benefits to beneficiaries who reside adjacent to the LISA;
d) Has a commercial fisheries component; and
e) Has an implementation fund complemented by a comprehensive IP.

There are implications and frustration as well:

a) The north of sixty funding application issues (the LILCA was intended to fix the problem)
b) Inexperience of our elected officials, therefore we needed to take time to orient/train them
c) Lack of understanding by our ICGs of their roles, responsibilities, jurisdiction and powers
d) Municipalities act; and
e) Failure of governments to fulfill their obligations under LILCA.

The lack of co-ordination and internal communication by government regarding their obligations is paramount and I will be speaking to these issues later today. In a nutshell, governments seem to think that they can implement our land claim agreement under old policies and ignore implementing legislation that exists.

Restructuring Public Government: The Nunavut Example

Presented by: John Amagoalik and Alastair Campbell

John Amagoalik, Executive Policy Advisor, Qikiqtani Inuit Association

The creation of Nunavut started in the 1960s, when people realized the homeland was in serious trouble. Inuit land and culture was in real danger. They were concerned about losing control over lands, resources, and the environment they depended on. Mining and oil and gas companies visited in waves. Resolute Bay became one of the busiest airports in Canada.

1971: The original proposal to create Nunavut. Right from the beginning it was stated that it was their intention to negotiate a land claim and create an Inuit territory in the Eastern Arctic. This was during a time when Inuit were very concerned about the survival of their language and culture. They were concerned about losing control of their land and resources as well as the wildlife and environment on which they depended. Mining and oil and gas companies were being allowed to do whatever they wanted by the federal government. They did a lot of damage to our homeland.

1974-75: The proposal was presented to the federal government, then withdrawn because more consultation was needed with communities, everyone needed to understand the process. Inuit did not understand why they had to claim their own land. Southern Canadians needed to be educated as well; they knew very little about the Inuit people. Inuit had to educate southerners that they were a distinct society.

A revised proposal was given to the government in 1976. It took almost 30 years to negotiate that settlement. The road was not easy. Right from the beginning the Government of Canada did not want to discuss political development at the land claims negotiation table. Inuit wanted to discuss both land and government issues. They eventually agreed to a parallel process where the land claim and political development would be discussed at separate tables. The Inuit made it clear that they would not sign an agreement that did not include an agreement to create Nunavut. Long years of negotiations ensued and, in the end, the two processes came together to include Article 4 in the Nunavut Land Claims Agreement, committing the government to create Nunavut. The political process was controlled by the Nunavut Constitutional Forum (NCF) – responsible for consulting with the Inuit and communities in the east, and the Western Constitutional Forum (WCF) – responsible for Western communities.

1982: They held a plebiscite to confirm that they had the support of their people. When the vote came, the people of the west stayed at home, they did not want to interfere with the Eastern Arctic. In the east, participation was high, support was strong. Things became a lot easier after that vote. The result was clear; the Prime Minister no longer questioned Inuit support of Nunavut.

People in government think once an agreement is negotiated, that's it, but this is not the case. Implementation is a huge process, and there are steps beyond implementation. In my mind, Nunavut is a four step process:

1. Creation;
2. Implementation;
3. Devolution; and
4. Provincial Status, some years down the road.

Alastair Campbell, Senior Policy Liaison, NTI

The Building Blocks Example, Article 4:

We will cover the legal and agreement side of establishing the Nunavut government:

- **1976:** re-tabling of the proposal
- **1982:** Plebiscite supports division
- **1991:** John Parker recommends boundary between Inuit and Dene-Metis, this was put to a plebiscite and approved by the people as a political boundary.

In the Agreement in Principle, they agreed to support the creation of the Nunavut Government outside of the land claims agreement.

NLCA Article 4.1.1: Government of Canada recommends to Parliament the establishment of a Nunavut territory, with its own legislative assembly and public government, separate from the Government of the Northwest Territories.

NLCA Article 4.1.2: spells out the Nunavut political accord to handle the establishment of Nunavut.

NLCA Article 4.1.3: Says the Nunavut political accord is not part of the land claims agreement

The Nunavut political accord was negotiated between Tunngavik Federation of Nunavut (TFN), Canada and NWT.

It was designed to be similar to the NWT Act, but modernized, and to continue until changed by Nunavut Legislative Assembly.

TFN and The Government of the Northwest Territories (GNWT) were to be consulted on all matters to be in the Nunavut Act before the bill was recommended to Parliament

Powers of Nunavut Government: like those in NWT, Nunavut Government has sufficient authority to meet its obligations under the land claim agreement.

Devolution is also spelled out: “The Nunavut Act shall include provisions regarding the authority to transfer administration and control over public lands to the Nunavut government”

Nunavut implementation Commission was created: Nine commissioners and one chief commissioner, to provide advice.

Nunavut Political Accord: formula financing was recognized as desirable, training and human resources planning were emphasized; the accord was to continue for three months after the Nunavut Act came into effect.

Nunavut Act: assented to in 1993, all that part of Canada north of the 60th parallel. Question: does that include marine areas? Feds have attempted to make it more restrictive, that their jurisdiction ended at the high tide mark. Inuit have resisted this.

The Negotiating Process

Presented by: Daryn Leas, Terry Fenge and Brian McGuigan

Daryn Leas, Legal Counsel for Council of Yukon First Nations

CYFN Negotiations:

Background about the Yukon experience: at one end is the 1902 letter sent by the Chief to Indian Affairs regarding impacts from Gold Rush, asking for a treaty. One-hundred years later the Lake Laberge people signed their treaty. Eleven of the 14 Yukon First Nations now have land claims. How did we get here?

After the stampeders left the Yukon, things started to dramatically change for Aboriginal peoples. Residential schools began in the 1920s, and the Alaska Highway was built, really opening up the Yukon. In the 1950s there were roads built, new mines built, steamboat service stopped, and people moved to communities. At this point many were forced into wage economies, causing social and economic difficulties.

In the 1960s there were discussions around the need of a treaty. They felt marginalized and ignored while development occurred.

1973: a vision of where we wanted to go. Agreement was accepted and became the basis of negotiations from 1974 to 1979.

1973: There was mutual disgust between whites and Aboriginal people. The document **Together Today for our Children Tomorrow: A Statement of Grievances**, speaks of self-government, and the need for central and community governments.

In 1995, the Yukon Umbrella Final Agreement established parameters for individual agreements, which allows Yukon First Nations to customize their agreements, but has created divisiveness among Yukon First Nations.

The Negotiation Process is dynamic, interesting, frustrating, and protracted; it requires making tough decisions.

Jim [Aldridge] mentioned that the Government looks at treaty negotiations as a divorce; while First Nations and Inuit look at them as a marriage. This disparity is quite problematic.

The land claim IQ of the public is improving, and this is a positive sign.

Negotiators have to be prepared to bargain, they can't get everything. Also, the negotiation process has to be community based, so there is a sense of ownership and real knowledge of the agreement at the community level.

Terry Fenge, an Ottawa-based consultant, with many years' experience with negotiating and implementing modern treaties

NTI and other negotiations:

The government and aboriginal peoples always approach the negotiating process with three S's in mind:

- self-determination;
- self-government;
- sustainability.

The federal government is motivated by legal concepts of finality and certainty. They seek to minimize risk, duties and responsibilities. Despite that, we have come to several agreements over the years that define a middle ground.

People make a difference. Individuals make a difference. Tom Siddon was the Minister of Indian Affairs and Northern Development in the 1970s. His relationships with Inuit were critical in the furthering of the claim and territory.

There have been instances where one side does not believe the other. It's important that the negotiators have confidence in their partners.

Because negotiations take so long, the political, legal and economic contexts can change dramatically during that period. One must really understand the context within which you are negotiating.

- One set of negotiations: good guys, bad guys;
- Other set: on one side, with board of directors and staff;
- Other set: federal negotiators with their own people, in different departments.

That's why an external federal negotiator is important; they're not part of the federal system. An example: the bowhead whale harvest agreement, where cooperation was essential.

There is always a link between what happens at the table and external processes. An example: National Parks. ATFN had invested a lot of effort in wildlife management and traded their consent to National Parks for federal assent to wildlife provisions.

In Nunavut: they were lucky, they had relatively few third parties. Once they had an agreement in principle, they knew they had to deal with the mining industry. They had a full day meeting between miners and negotiators and came to a deal.

Land: when we were doing the land ownership negotiations, there was a lot of potential. We got good advice about what they should own. If you look at the map of what is now owned by Inuit, they have some excellent prospects. This was the result of hiring someone to advise them.

Brian McGuigan, former chief federal negotiator

Brian began his presentation with a video of cowboys herding cats (found on YouTube under 'Herding cats video"). He explained that the video illustrates a lot of what he does.

The role of a federal negotiator is not much different from that of an Aboriginal negotiator. A chief federal negotiator is on contract, and has to be comfortable being in the middle, being a bridge between the two parties. They must build understanding and trust on both sides.

You need to be a Deal Sniffer: you spend a lot of time looking for common ground between the two parties. You spend time getting to know the communities you're working with. This is true on the federal side and Aboriginal side.

On the Aboriginal side: What are the challenges that this community needs to have addressed?

On the federal side: There are unique federal challenges: This goes back to the "Herding Cats" video – it's a huge organization with a lot of interests and needs. The internal process is not necessarily about building consensus, but about addressing the concerns of every person in the hierarchy who has a "no."

Building credibility: Before tackling the difficult issues, the negotiating table has to have some credibility. People get to know each other, and are trusted by the communities behind them.

Lobbying by the community makes a difference to the federal negotiator. At all stages, this applies. In the mandating process: we must stay in contact and keep a dialogue open.

There is a certain way that things happen in Ottawa. Sometimes things move forward because no one objects, rather than all assenting.

Implementation Challenges

Presented by: Matt Mehaffey, Toby Andersen and Tom McCarthy

Matt Mehaffey, Consultant to Several Yukon First Nations, Principal, Mehaffey Consulting

In reference to the fiscal system, Matt explained that they are like marriage counsellors dealing with all the problems. We view them as problems when we should actually be looking at them as challenges. Land claims agreements have completely rearranged legal and jurisdictional landscapes and it is to be expected that the day after an agreement is made everyone will not necessarily have the exact same understanding of what was meant. This is especially made difficult when many of the negotiators involved leave immediately after and a whole new set of people come in and try to interpret what was meant. In the case of the Yukon, not just one, but eleven agreements were created, all with independent jurisdiction. Eleven different governments, dealing with 30,000 people, within the same land mass; it would clearly take some time to sort out how those agreements are supposed to work.

When we encounter struggles and challenges with implementation, this demonstrates that self-government is in fact working. However, progress has been slower than what most First Nation communities had anticipated and the amount of work has quite possibly been underestimated. A big part of the challenge has been expectations. Expectations that life is going to be completely different, you're going to be able to create an entirely new government, with support and requirements to make good policy decisions, produce legislation, and hire the right people. The amount of work required cannot be underestimated, and it probably was, which is why we are facing what we are right now.

On the flip side, the biggest challenge to self-government is the lack of recognition from federal, provincial and territorial governments that these are legitimate, genuine governments. This underlying lack of recognition is the foundation of many of the issues we face. Matt saw an example of this in one of his first meetings, which was a negotiation session for CYFN in an old residential school. It was an ongoing negotiation with the department of Human Resources and Skills Development Canada. Halfway through the meeting, the director general for the BC /Yukon region said the land claim didn't apply, so they left the meeting.

Years later, the department changed its mind and set up a group to deal with skills training. It accomplished the same goals the First Nations in the area were trying to accomplish. The First Nations were unsuccessful because they were asking for an intergovernmental agreement, but the terms did not include self-governing First Nations. They had to apply a separate set of regulations, which were much more restrictive and did not allow parties to implement what both sides thought would be a beneficial arrangement. This example underlies this issue of recognition.

For success, other governments in Canada and the public have to recognize that these are legitimate governments and they have to understand what level of jurisdiction has been agreed to. It is not a junior government or municipality. Until this shift happens, institutionally there will still be challenges and obstacles. Even when you are dealing with committed people who have the same goals in mind.

When asked the question from an audience member if he has seen an appetite from treasury board secretariats to change the definition of government, Matt responded, no, no concerted effort. The

difficulty is that central agencies, including many federal departments, take the position that the only department authorized to talk to Aboriginal groups is the department of Indian affairs (INAC/AANDC). Some talk directly to them, but central agencies tend to shy away with dealing directly with Aboriginals.

Toby Andersen, Deputy Minister of Nunatsiavut Affairs, Nunatsiavut Government

Trust: before delving into his topic, which is largely centered on the positives and negatives that have transpired in regards to implementation challenges, Toby wanted to outline the concept of trust, and its importance. He outlined an example where negotiators came up north for Land Claims negotiation sessions . Upon their arrival, the Inuit negotiators met with them and then took them out on the land on a caribou hunting trip overnight. The next tuime they went back to the table, and talked about the Inuit and their relationship to the land. The negotiators looked back at them and said "We understand." It took five years before I could look across at the other chief negotiators and say "I trust you." This made the difference with coming to a consensus.

We lost that trust and relationship as part of the implementation process. There is a tripartite Implementation Committee established under the LILCA but the Federal representative does not know anything that happened during the negotiation. Ruby Carter is the provincial representative on the committee . She was a member of the provincial LILCA negotiation team so she understands what /how things were negotiated. Toby was the Inuit Chief negotiator so he understands the LILCA . On the federal side though, there is nobody on the implementation committee who was involved in our negotiation. WE lost that continuity when our Agreement was signed. They change representatives every year and we are back to square one, having to reorient and bring them up to speed. This is an inconsistency on the part of the federal government.

Interpretation is another negative aspect. We've run into some real issues with the federal government around interpretation. He explained that basically they say: "this is what it says; this is what we think it means." So there is no consistency from negotiation to implementation. All we hear from federal representatives is "We'll have to take this issue back to justice and we'll get an answer for you." After several attempts, we still have not heard from justice. Bring them to us, or we'll go to them.

We have run into problems more with the federal than the provincial government. Government departments don't seem to be aware of the fact there is a Land Claims Agreement with the Labrador Inuit. They're just going ahead trying to implement our agreement under laws of general application. We have to try to orient them. The NG came to Ottawa and held an orientation session with senior officials (Deputy Ministers) from five federal departments.. We explained our agreement and introduced our Deputy Ministers from each department of the NG. Our Deputies gave overviews of their departments and what they were doing and planning. We explained that it seems that within your federal departments staff don't seem to realize that we have a Land Claims Agreement and that your department has obligations under the LILCA.

A result of these meetings was that the Department of Fisheries and Oceans set up an implementation working group. The department of Environment, Canadian Wildlife Service scheduled a couple sessions with their field staff, the province and NG and we went through the different chapters of the agreement

with them, and this was positive. The challenges can be overcome, and there are ways we can work together to achieve what the agreement intended.

Another problem or frustration is that it seems as though in the federal system, which is so large, that federal departments think that INAC/AANDC is responsible for the implementation of Land Claims Agreements. In actuality, there are many federal departments that have obligations under the agreements. The message we have been giving the government of Canada is that we cannot implement our Agreement without you understanding and fulfilling your obligations . If this happens, we can work together and make good things happen.

There are positive things we can look at. As deputy minister of Nunatsiavut Affairs our responsibilities cover Implementation of LILCA, Justice, Transportation, Housing amd enrollment of Beneficiaries . There are three federal and provincial departments responsible for these issues within their respective governments . If we encounter a problem it merges its way up through the system to my attention. It doesn't need go to his Minister. I can contact my counterpart and call them by name and we try to solve the problem. This is a result of our orientation sessions with federal and provincial senior officials and is an example of a positive outcome of a self-government relationship.

We can develop programs that we know are the best fit for our people. The question is, what to do we do about the lack of implementation efforts by the federal government ?

In closing, the regions should look at trying get the federal government to establish a committee of senior officials of all departments who are responsible and have obligations under land claims and self-government agreements. This committee would be responsible for Implementation of Land Claims and Self Government Agreements.

Implementation Issues:

- Lack of departmental communication and understanding of the Labrador Inuit Land Claim Agreement (LILCA);
- Lack of consistency in federal representatives from negotiation of agreements to implementation;
- Interpretation of the LILCA;
- Awareness of LILCA and governments constitutionally protected obligations (they must be continually reminded);
- Government departments seem to think that one department is responsible for implementation of LILCA;
- Governments seem to think they can implement LILCA under existing policies and ignore the LILCA implementing legislation;

How to Address the Above Issues:
The best option is for the coalition to attempt to convince the Government of Canada to establish an independent division which has a clear mandate and is responsible solely for implementation of Land Claims Agreements.

Tom McCarthy, Director of Public Services, Tsawwassen First Nation

The federal government's approach to risk and liability with respect to Treaty First Nations:
Tom asked the audience to humour him and engage in an experiment. Before it began, he provided a preamble regarding the energy and promise of treaties. Treaties, at least in BC, are a great modern venture of our time. Designed, when the process initially got going, to resolve the most pressing public policy challenge in Canada today, they are such an exciting thing to be working on. They are an extremely innovative approach to mend disparities between Aboriginal and non-Aboriginal communities.

According to the treaty commission in 1993, every nation was supposed to have a treaty. Only two are in place now. There was such energy surrounding the process; we were all ready to be risk takers. It's a bold vision, treaties, and there are a huge number of risks, more for First Nations than the provincial government.

He asked everyone, close your eyes and pretend for a second that you will not ever be taxed. Now we're going to introduce you to a legal vacuum. We don't really know what the fallback position is. In this new situation, if your First Nation makes a dollar, we're going to tax it, because we're going to start this process called decolonization. We are changing your fund status as a person in the eyes of the law. This is the package we offer you, but you have to pay taxes. How many of you would say yes to this deal?

He explained that Tsawwassen said yes, because they saw energy and opportunity. Tsawwassen can thus be considered successful. There is no reward, economically speaking, without taking that risk.

The first sign that things were not going to go as they thought, was when they had to register all of their parcels of land, yet the federal government did not allow them to pre-sign 6,000 legal documents. Does that seem reasonable? One of 23 did not have the authority to pass one of these acts. There is no basis.

There is a new approach to treaty negotiations. Tom recently went over some quotes in a federal PowerPoint on the new approach to treaty negotiations. There was no evidence of the respectful relationship that should be present. When you deal with treaty First Nations and self-government, remember the sense of hope that made that FN members agree to the trade-offs inherent in those agreements. Please approach a problem with that sense of inspiration; we're trying to address Canada's most pressing policy challenges.

How Modern Treaties Affect Resource Development and the Regulatory Process

Presented by: Dick Spaulding, Berta Rabesca Zoe and Wayne Johnson

Dick Spaulding, Lawyer, Nunavut Tunngavik Inc.

1. The NLCA's resource management measures

The NLCA contains four main resource management tools:

i. Inuit land ownership gives Inuit certain rights to control access to parcels of land, and how they are used.
ii. Inuit have rights to negotiate impact and benefits agreements directly with industry where a major development project is proposed anywhere in the settlement area, subject to arbitration.
iii. The Agreement establishes institutions to share resource management decisions with government, which apply on public and Inuit lands ("co-management boards").
    - There are four of these - a wildlife management board, land use planning commission, impact and review board, and water board
iv. Inuit also have certain rights to participate in establishing and managing Parks and Conservation Areas.
    - These rights are exercised through distinct roles that the co-management boards have respecting Parks and Conservation Areas, and through a distinct right of Inuit to negotiate impact and benefit agreements with government when a Park or Conservation Area is established

My presentation looks mainly at the third of these tools, the co-management boards, and their relationship with the regulatory agencies that were managing resources before the Agreement was made. You'll hear more about impact and benefits agreements in the next session on the agenda, and I believe my co-presenters in this session will have more to say about Aboriginal land ownership as a management tool.

2. The NLCA co-management boards – Nunavut Wildlife Management Board, Nunavut Planning Commission, Nunavut Impact and Review Board, and Nunavut Water Board

a) Purpose of co-management

The purpose of the co-management system in the Nunavut agreement is stated in the Agreement's preamble: to "provide …rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore".

A companion commitment is specific to wildlife: to "provide Inuit with rights to participate in decision-making concerning wildlife harvesting."

I think it's fair to say that the Agreement parties recognized this Inuit right to participate in decision-making in response to two facts:

1. Canada had agreed to negotiate on the basis of an Inuit claim to Aboriginal title in the whole settlement area; but
2. Canada was only prepared to recognize Inuit ownership in a minority portion of the area.

Co-management is the ingredient in the package that responds to the Inuit demand for some control over how resources would be used in the three-quarter-odd portion of the settlement area where they would exchange their title claim but not be recognized as the land owner. Also, within Inuit Owned Lands, where Inuit ownership is limited to surface title, this right responds to the Inuit demand for a strong say in development of the subsurface. Subsurface rights-holders are entitled to explore for and gain access to minerals, subject to arbitration about the terms of access if the Inuit surface owners withhold their consent.

b) Structure and powers of the boards

The four co-management boards are standing institutions of public government, funded by the federal government. As a rule, all follow a 50:50 membership formula – half of the members nominated by Inuit; half by government, and a chair nominated, or at least vetted, by the other members.

Their powers are also similar in some basic ways. All do their work independently of Ministers responsible. All have a defined relationship with other government actors in influencing outcomes - none is simply an advisory body. Also, they are all mandated to make decisions through a transparent, accountable process: Inuit participate in their decisions not just through membership in them, but also at the community and regional levels, by taking part in their consultations and hearings.

Turning to their specific powers:

The Wildlife Management Board works mainly in a distinct field, the regulation of harvesting. We'll be looking at that later this morning. The wildlife board also has a role in managing wildlife habitat. The establishment of Conservation Areas by government is subject to NWMB approval if the Board chooses to play that role. The NWMB can also

- review and approve draft plans for the management of wildlife habitat anywhere in the settlement area that are generated by government;
- make habitat-related planning recommendations to the planning board, and
- advise the impact review board regarding habitat mitigation measures.

Decision roles in the assessment and mitigation of impacts on wildlife habitat, project by project, are assigned by the Agreement to other co-management boards, so concern for wildlife habitat has a prominent place in the decision mandates of the planning commission and impact review board, in particular.

The Planning Commission writes land use plans that direct where and on what basic terms development may occur. Plans have to be developed in consultation with the people affected, and the drafts have to be reviewed in a public hearing before the Commission can submit them for government approval.

The process of plan development happens independently of the approval of any particular resource project. Once a land use plan is approved by government, the Commission joins the regulatory system, so to speak, and decides whether each project proposed in the planning area conforms to the plan. Where an approved land use plan is in place, it's mandatory that project proposals be put to the Commission to determine the project's conformity with the approved plan. It's also mandatory that the

project conform to the plan, unless the plan allows the Commission to grant a minor variance and the Commission does so, or unless the proponent asks for and receives an exemption from the Agreement's conformity requirement from the Minister responsible. The impact and review process can't proceed otherwise, and regulatory permits can't issue.

- The Commission was established in 1996. To date, two regional land use plans have been approved. In those regions the Commission is doing conformity determinations based on the plans. Currently the Commission is working on a Nunavut-wide plan. In the three planning regions for which an approved land use plan is not in place yet, the Commission does not take part in the assessment of project proposals.

The job of the Nunavut Impact Review Board is entirely project-specific. First, NIRB screens most project proposals to decide whether or not a public review is necessary. Second, NIRB holds most public review hearings, assessing the likely impact of projects and recommending to government whether or not the project can proceed, and if so on what terms and conditions. Some relatively minor projects are exempt from NIRB screening unless the Planning Commission decides that there are cumulative effects concerns with the proposal. When NIRB decides there must be a review, the federal Minister can send the review on an exceptional basis to a federal panel, instead of NIRB, if the project involves an important national interest or if the footprint of the project reaches outside the settlement area. The Agreement sets out the terms of reference for any federal panels of that kind, including a requirement of 1/4 Aboriginal representation. While a project proposal is being screened or reviewed by NIRB, permits cannot be issued for the project without NIRB's approval.

- Since 1996, NIRB has done many screenings and conducted five reviews. I believe there are least four projects currently in the review process, if we include the Mary River mine project on which NIRB has delivered its recommendations. So far the federal government has not referred a project to a federal panel instead of NIRB, and NIRB has been responsible to review some very large projects, such as Mary River and the Bathurst Road and Port project that are on hold right now.

The NWB licenses uses of fresh water or deposits of waste into fresh water. As do most other regulators in Nunavut, NWB decisions have to follow any approved land use plan that's in place for the area, and any project certificate containing the results of a NIRB review. That means that the NWB can't license a water use that does not conform to both the land use plan and the project certificate, and that the NWB has to make sure that the conditions it attaches to licenses implement the terms of land use plans and project certificates. Again, the same rule applies to most other Nunavut regulators.

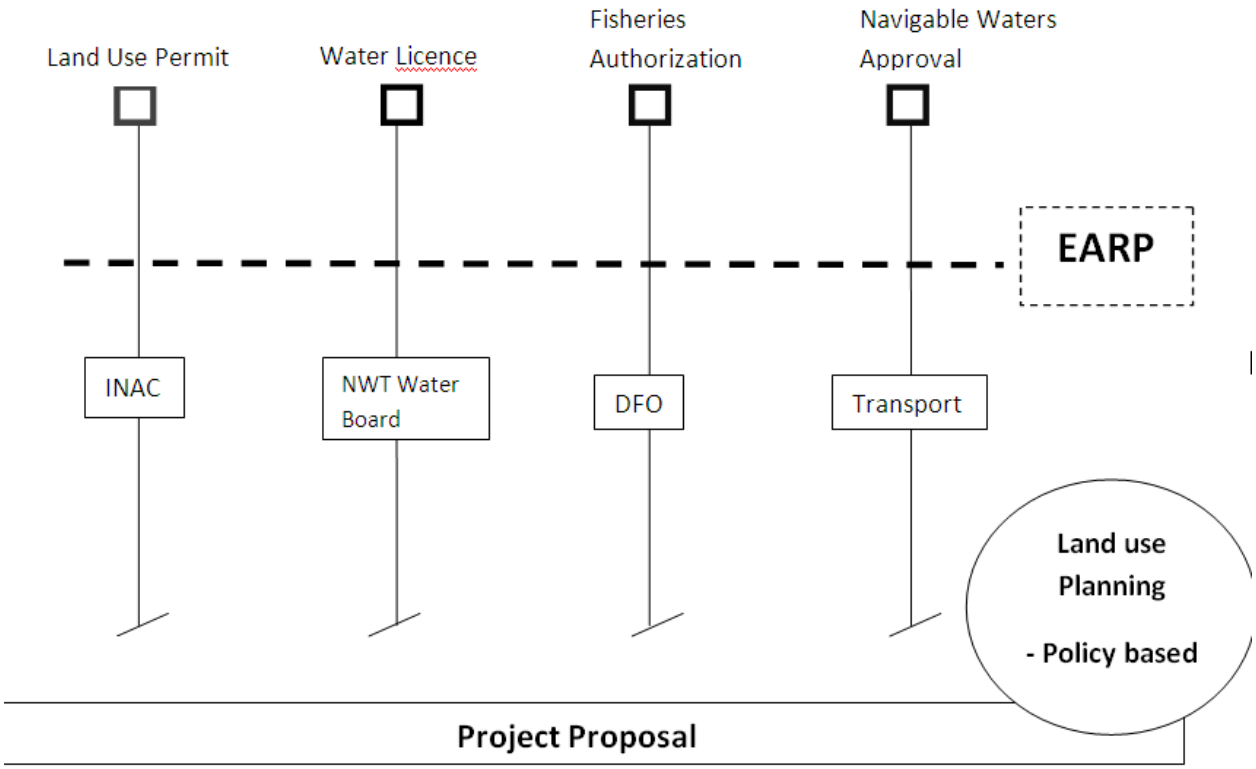
The water board also has a new function that it hasn't had to exercise yet, which is to arbitrate compensation for Inuit Land Owners if their water rights are going to be impaired by a licensed water use, and the Land Owner and proponent have not been able to reach a compensation agreement.

Stepping back, and asking how these bodies work together, we can think of them as producing three filters through which a Nunavut project proposal has to pass in order for the project to proceed. The basic mesh is the land use plan. NIRB's project certificates contain a project-specific screen, and the NWB, together with most other regulators, produces the finest mesh in the system, implementing the terms and conditions in plans and project certificates in its licenses, and attaching more stringent terms and conditions of its own.

c) Changes intended

I've done up a "before "and "after" chart to show, in an abstract way, how the new co-management system changed the regulatory status quo.

Pre-NLCA regulatory process (sample)



In the period of NLCA negotiations, regulators, for the most part, acted separately when deciding whether to issue their various authorizations, each one responsible for a different dimension of the project's impacts. Most regulators could issue their authorization even if another authorization required for the project had been denied. No regulator was responsible for viewing the impacts of the project as a whole, and there was no other body active in the regulatory process that clearly had legally binding authority to look at a project that way.

- I've pictured land use planning at that time as occurring to the side of the regulatory process. At the time, regional land use planning had begun in what was then the NWT, with Inuit representation. Two regional plans were being worked on in what is now Nunavut. But the system depended on federal policy rather than legislation for its mandate, and there wasn't a public process in place to ensure that projects would conform to land use plans. At the end of the day there was no legal requirement that a project has to conform to a land use plan in order to receive approval.

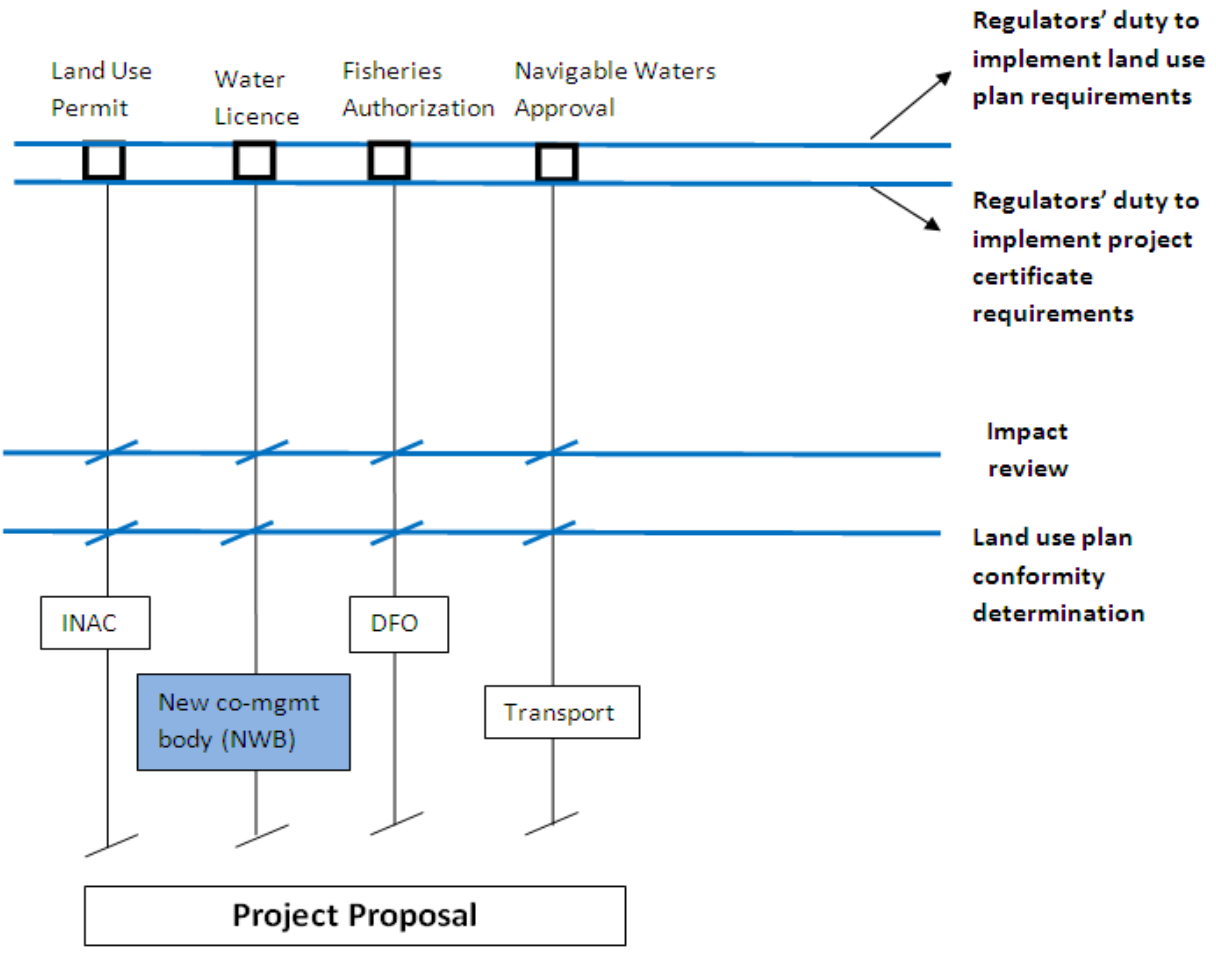
- There was also environmental assessment being done, under federal Cabinet guidelines called EARP Guidelines. I've drawn the role of e.a. in the regulatory scheme using

dotted lines. The Guidelines were being followed by regulators as a matter of practice, but it was uncertain at the time whether the federal environmental assessment process was legally mandatory. In the Guidelines process, screening was not done by a specialized body – each permitting agency screened its own permit application. There was also no standing body to conduct public reviews – each time a review was called for, the Minister would strike an ad hoc panel.

- There was an NWT Water Board in place, but there was no assurance of Aboriginal representation on the Board.

Here is the "after" picture:

Post-NLCA Regulatory Process (sample, with land use plan approved)



Under the NLCA, the whole regulatory system gets tied together, or 'integrated', by the land use planning and impact review functions, each of which is legally binding.

Integration happens at two stages:

- At the assessment stage, planning and impact review each integrate the regulatory system by assessing project proposals as a whole
- Near the end point, when regulators decide whether to approve projects and on what terms, integration also happens as a result of the new legal duties placed on regulators to implement 1) the requirements of land use plans, and 2) the terms and conditions of project certificates.

The 'before' and 'after' perspective shows, I think, that in the process of introducing co-management with an Aboriginal people into the resource management system, the parties also agreed to reform the system as a whole.

d) Key elements of the NLCA co-management bargain

To recap how the right of Inuit to participate in decision-making ends up being embodied in the co-management bargain, I think it's useful to break-out six ingredients:

I. Inuit representation in important decision-making bodies. Usually 50:50.
II. Importance to Inuit of the decision mandate of those bodies. In the result, the decisions that Inuit take part in involve wildlife, water, and – by means of the broad planning and impact review mandates - most aspects of regulatory decision-making regarding resource development that impact on community life, including the regulation of socio-economic impacts. [comment on NIRB qualifier under 12.2.3 if there is time].
III. Weight of the role played by those bodies (in other words, the balance of power struck between the co-management bodies and government in the making and implementing of decisions). I think it is fair to say that the balance of power struck in each case is delicate. Government generally has the last word on outcomes, not necessarily on process. In most cases government is legally bound to implement approved decisions.
IV. Inclusion of Inuit values and priorities in decision criteria. A less obvious element, but significant.
V. Real opportunities for input by affected Inuit individuals and communities - the opening up of the resource management process to participation on behalf of affected Inuit individuals and communities.
VI. Assurance of capacity for the boards is another factor – that falls into a discussion later on today, I believe.

3. Some points of comparison with other modern treaties

i. Mode of implementation of the co-management system– land claims agreement plus legislation (NLCA) or legislation alone (Sahtu lca and Gwich'in lca))
    - NLCA – the planning and impact review boards could open in 1996 without waiting for the federal government to introduce their implementing statute.
        - but without the statute in place as yet, the two boards have had to operate for more than 15 years without the legislative clarity that had been promised Inuit.
    - MVRMA - Sahtu and Gwich'in settlement areas. By comparison, the Sahtu and Gwich'in Boards could expect to work from a more fully articulated mandate from the outset, but they had to wait for passage of the MVRMA's enactment

before starting their work. There was delay – the Gwich'in brought court action before the MVRMA was enacted. The stakes for the Aboriginal party in the drafting of the implementation statute may also be higher under that approach.

ii. Scope of mandate of the co-management boards that licence water use. (Limited to water licensing in NLCA; includes land use permitting under MVRMA, on public lands and, in some settlement areas, First Nation lands).

iii. There are also differences in the planning and e.a. board mandates in other agreements. We can get into examples if there is time for questions.

Bertha Rabesca Zoe, Legal Counsel, Tlicho Government

We will talk about the Mackenzie Valley Resource Management Act and the devolution that is occurring. Yesterday we talked about what agreements intend to achieve; we talked about certainty, harmonization of laws, etc. The agreement deals with land and along with that comes regulatory systems.

Tlicho feel responsible for their land. Under their agreement, chapter 22 sets out the land regulatory system in the territories. There is to be an integrated system of land and water management. One of the ways of making sure that the Tlicho have their say is to participate in co-management. The Tlicho are not opposed to devolution, but it must respect the co-management provisions in the agreement.

Devolution is a devolving of authorities and responsibilities. In our case, it's a transfer of public lands. I have been involved in negotiations since 2003, on behalf of the Tlicho. Agreement in Principle was signed in 2011, even though all aboriginal treaty groups opposed the signing of that. There are many different authorities involved. Since then some have signed on. Tlicho have chosen not to participate in the negotiations thus far, and have not signed.

We want to ensure that the interests and concerns are represented fully; we do not want to simply be consulted. In the agreement, there is a cap on how many resources will flow to the North.

The Tlicho have developed a proposal outlining the conditions under which the Tlicho will sign the agreement. They want the government to say that after devolution, the WLWB (Wek'eezhii Land and Water Board) will continue to exist. There is a need for a tool that will manage devolution for the existing organizations.

We talk about land claims creating uncertainty, but recent changes are creating more uncertainty. There is nothing wrong with the current system/regulatory regime. It's the federal government's agenda to fast track development and to limit the role of Aboriginal governments.

Our co-management is not for sale.

Wayne Johnson, NTI; President, Wayne Johnson Associates Inc.

I'll frame my two talks this morning around the objectives of the NLCA as set out in the recitals. In this talk, I will discuss the regulatory regime that applies to mineral exploration and mining projects – in

particular how it relates to minimizing impacts. I will describe the regulatory process that a mineral exploration or mining company will go through to explore for minerals in Nunavut and, if successful, to mine those minerals.

NLCA Objectives:

- to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to **participate in decision-making concerning the use, management and conservation of land, water and resources**, including the offshore
- to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting
- to provide Inuit with financial compensation and means of participating in economic opportunities
- to encourage self-reliance and the cultural and social well-being of Inuit

In his presentation, Dick [Dick Spaulding] has described the role of the NPC, NIRB and NWB in dealing with the impacts of resource development.

These boards are critical in allowing Inuit to limit the impacts of development. However, they only comprise a part of the regulatory regime.

By "regulatory regime" or "regulatory process", or I am referring to all of the requirements that a company must deal with, not just those prescribed by statute.

Minimizing impacts:

- Land use planning (NPC), environmental impact assessment (NIRB) and water licensing (NWB) work together to give Inuit an important voice in resource development in Nunavut.
- The outcome of these processes is primarily to limit the impacts of resource development on the environment as well as to deal with socio-economic matters.
- But there is more to the regulatory regime than the IPGs: I consider the "regulatory regime" to consist of all of the requirements that a company must deal with in order to carry out exploration or mining in Nunavut.

Here is a list of the most prominent players involved in the regulatory process:

- **NTI and the RIAs**
    - NTI "family" – HTOs, Development Corporations
- **The IPGs**
    - Nunavut Planning Commission (NPC)
    - Nunavut Impact Review Board (NIRB)
    - Nunavut Water Board (NWB)
- **Government of Canada**
    - Aboriginal Affairs and Northern Development Canada (AANDC)
    - Natural Resources Canada
    - Environment Canada
- **Government of Nunavut**
    - Economic Development and Transportation
    - Department of Environment

Before I go further, I want to introduce Inuit Owned Lands. These are lands to which Inuit were granted title under the NLCA.

There are two categories of IOL—for convenience, NTI refers to these are "Surface IOL" and "Subsurface IOL".

- 18% of land in Nunavut (~NSA) is Inuit Owned Lands (IOL) – 350,000 sq. km. – RIAs hold title to the land
- "Surface IOL" – surface rights only – 944 parcels – Crown holds title to minerals
- "Subsurface IOL" – surface and subsurface rights – 150 parcels – about 10% of IOL (2% of Nunavut) – selected mainly for minerals – NTI holds title to minerals

The first step for an exploration or mining company is to acquire the mineral and surface rights to the land it wishes to explore.

Depending on the type of land, it acquires these rights from NTI, the RIA, or AANDC (Aboriginal Affairs and Northern Development Canada).

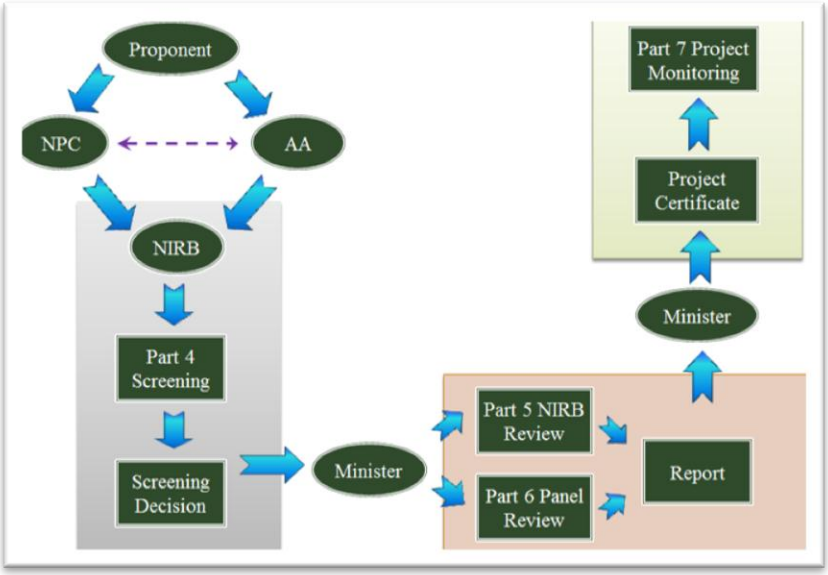
If a land use plan is in effect for the region in which the company wishes to work, it must also send its application, along with a completed questionnaire, to the Nunavut Planning Commission for a conformity determination. The authorizing agency will also do this. Here is a summary of the steps:

- Acquire mineral rights from NTI or AANDC
- Acquire surface rights (right of access) from RIA or AANDC
- Application for surface rights gets forwarded by the authorizing agency or the company to NPC for a conformity determination, where a land use plan is in effect
- An application forwarded to the NPC must also include a completed questionnaire

NPC reviews the proposal and makes a determination.

- If the NPC determines that a project proposal is not in conformity and does not approve a variance, the proponent may apply to the Minister for an exemption from the conformity requirement.
- A non-conforming proposal or one that is not approved pursuant to a variance or not exempted by the Minister cannot proceed.
- If the project is in conformity, has been exempted or the NPC approves a variance, NPC forwards the proposal to NIRB for screening.

We will assume that the project has been forwarded to NIRB for screening.



The top left part of this slide shows the process so far, with NIRB in receipt of the project proposal. (This chart, and the following two are courtesy of NIRB.)

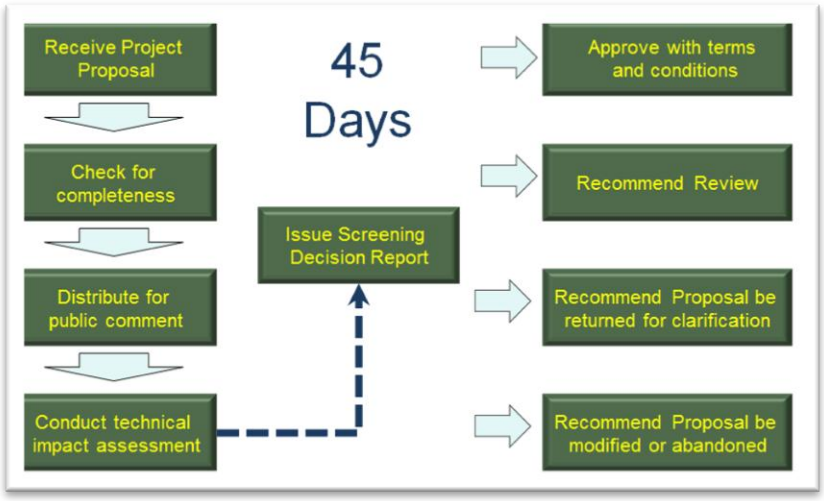
This initiates the Screening process.

Under Part 4 of the NLCA, NIRB screens project proposals to define the extent of the regional impacts of a project and in order to determine whether or not a review of the project is required.

If NIRB recommends that a review be undertaken, the Minister will determine whether it should be a Part 5 or a Part 6 review, as shown in the pink box.

If it is a Part 5 review, NIRB will conduct the review and will then determine whether the project should proceed and under what terms and conditions. (We will look at the Part 5 Review process in more detail below.)

It will then send a report to the Minister with its determination.



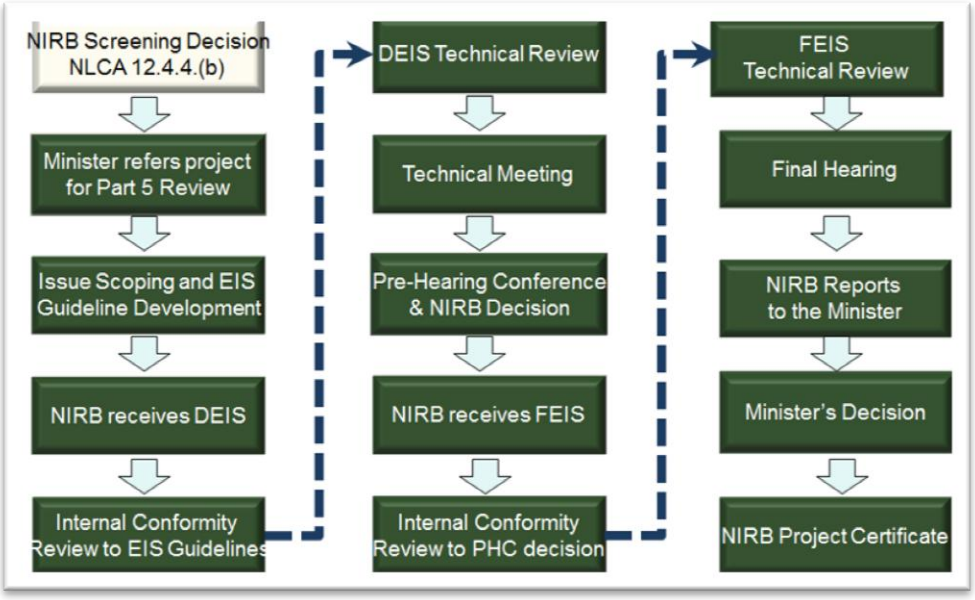
This slide shows the screening process – the part in the grey box in the first chart. The screening includes a technical impact assessment as well as an opportunity for public comment

As shown, NIRB must issue a screening decision report within 45 days.

The report must make one of four recommendations, as set out in Part 4 of the NLCA.

Most exploration projects are approved with terms and conditions, as shown in the top right box.

However, for more advanced projects, such a mine development, NIRB will likely recommend to the Minister (of AANDC) that the project be subject to a review.



This chart shows the stages of a Part 5 review carried out by NIRB.

I won't go into any detail here other than point out it follows a system similar to most other jurisdictions in Canada, with the development of EIS Guidelines, submission of a draft and final Environmental Impact Statement, technical reviews, and public hearings.

At the end of the process NIRB reports to the Minister and if the Minister approves the project, NIRB issues its authorization, a Project Certificate.

If the Minister recommends that the project is to be subject to a federal environmental assessment panel—that is, a Part 6 review—he refers the proposal to the Minister of the Environment, who will select the panel that will conduct the review.

In this review process NIRB acts separately from the Panel, and the Panel is directed to consult with NIRB at several steps.

Once the panel reports to the Minister, the Minister forwards the report to NIRB for a 60 day review before a decision is made.

If the Minister approves the project, NIRB will issue its authorization, a Project Certificate.
Here is a summary of the steps in a Part 6 Review:

- Selection of a Panel
    - Appointed by Minister of Environment
    - ¼ nominated by DIO (+ aboriginal groups), ¼ by GN
    - NIRB members may be nominated
- Panel coordinates and conducts review
    - NIRB has separate, discrete role
- Panel issues guidelines, reviews EIS, holds hearings, reports to Minister
- Minister forwards Panel's report to NIRB for 60 day review
- Minister approves project
- NIRB issues Project Certificate

There are two situations where the NLCA requires a Part 6 Review. These were clarified in an amendment to the NLCA dated May 29, 2008.

The two situations are: first, where a proposal involves a matter of important national interest; or second, where a project is partly within and partly outside the Nunavut Settlement Area.

Although several Part 5 reviews related to mining have been done or are in progress, no Part 6 Panel Review has yet been called for.

Here is a summary of some features of a Part 6 Review:

- Part 6 (Panel) Review when "a proposal involves a **matter of important national interest**"
    - "shall only occur on an exceptional basis"
    - Determination to be made within 90-180 days
    - Determination only to be made after consulting with federal and territorial Ministers of Environment and NIRB
- Part 6 (Panel) Review when a project is to be carried out **partly within and partly outside the Nunavut Settlement Area**

- unless it is agreed that the proposal is to be reviewed pursuant to Part 5 (NIRB Review)

Most mineral exploration projects do not require a review.

After screening, the next step is for the company to apply for a water licence, if it has not already done so.

NIRB screening and the processing of a water licence can be done at the same time.

To apply for a water licence, the company must submit an application as well as a completed questionnaire.

In his presentation, Dick [Spaulding] has described the role of the NWB in regulating the use of water under Article 13 of the NLCA.

I'd like to comment on two other matters related to water licensing. The first concerns security deposits.

- The NWB may require security with respect to a water Licence.
- Security, which is held by the AANDC Minister, may be used to compensate an RIA or any other party that is entitled to compensation for loss or damage.
- It may also be used to reimburse the Government for costs it incurred to "prevent, counteract, mitigate or remedy" the adverse effects.
- Currently both the NWB and the RIA require a security deposit to protect against damage done to land or water where the project is on IOL. The parties are trying to resolve this overlap problem.

The second matter is Inuit Water Rights.

Dick [Spaulding] referred to the Inuit Water Rights under Article 20, which are separate from the Article 13 provisions that created the Nunavut Water Board, and I'd like to add the following points.

- Article 20 provides that the DIO – the relevant RIA – has the exclusive right to the use of water on, in or flowing through IOL.
- The RIAs include an application for water use and the requirement for payment of a fee as part of an application for a Land Use Licence or a Commercial Lease.
- If the activity has the potential to substantially affect the quality, quantity or flow of water, the RIA may require a compensation agreement.

Having now received authorization to go on the land and explore for minerals and for the use of water in connection with this, the proponent will likely need other permits or licences related to its proposed activities. Some of these will incorporate the terms and conditions recommended by NIRB. The following will apply:

- The proponent will need to comply with "general" regulations relating to Workers' Compensation, health and safety, use of explosives, etc.

- If the exploration is for uranium, the project is subject to the Uranium Mines and Mills Regulations (and related regulations) and is overseen by the Canadian Nuclear Safety Commission.
- For projects that involve development and production, the provisions of Articles 26 and 27 will apply with respect to impacts and benefits, as we will discuss in my next talk.
- Oil and gas projects would be subject to the same processes we have described as well as the requirements of Canadian Petroleum Resources Act (CPRA) and Canada Oil and Gas Operations Act (COGOA).

To summarize, the regime is a mix of requirements from different sources:

- Mineral rights and surface rights – NTI/the RIA/AANDC
- Environmental assessment, water licence and land use conformity through the NLCA or implementation legislation – the IPGs
- Obligations stated only in the NLCA: Articles 21 (relating to title), 26 (IIBA), 27 (relating to Crown land) – NTI or the RIA
- Laws of general application: health and safety, dangerous goods, explosives, wildlife, migratory birds, etc. – government agencies/departments
- "Special" regulations – Canadian Nuclear Safety Commission for uranium and National Energy Board for oil and gas

We have shown the important role played by the NLCA in establishing the regulatory regime in Nunavut.

Benefit Agreements and Relations with Industry

Presentation by: Carl McLean, Wayne Johnson and Bertha Rabesca Zoe

Carl McLean, Deputy Minister of Lands & Natural Resources, Nunatsiavut Government

As many of you know, the Nunatsiavut Government was established in 2005 as a regional Inuit government within the province of Newfoundland and Labrador. Nunatsiavut, which means "our beautiful land", is comprised of the five Inuit communities of Nain, Hopedale, Postville, Makkovik and Rigolet in northern Labrador.

The Labrador Inuit Land Claims Agreement established the Labrador Inuit Settlement Area, which includes areas designated as Labrador Inuit Lands (LIL). Inuit own Labrador Inuit Lands in fee simple excluding subsurface resources, comprised of 15,799 square kilometres of land including a 25 per cent interest with the Province in all subsurface resources with rights as set out in the Land Claims Agreement.

Our Agreement enables the Nunatsiavut Government to be directly involved in decisions about projects on our land. For projects in the Settlement Area, or LISA, which is comprised of 72,520 square kilometres and is subject to the land use plan, the provincial government consults the Nunatsiavut Government on decision making. The Province retains permitting authority over mining and other development projects. However, on Labrador Inuit Lands (LIL) joint approvals are required and surface access is granted by the Nunatsiavut Government. Our Land Claims Agreement gives us the ability to ensure that traditional knowledge is considered and incorporated into all land use decisions. There are several areas of the Agreement that allow us to do that.

Chapter 4 of our Agreement deals specifically with land and non-renewable resources. Chapter 6 deals with ocean management; Chapter 7 deals with economic development; Chapter 8 is specific to the Voisey's Bay area; Chapter 10 is related to land-use planning; and Chapter 11 is environmental assessment. Traditional knowledge is a theme in all of these chapters. There are other areas within our Agreement that touch on this issue as well.

Some tools we've developed specifically to assist us in incorporating traditional knowledge and land use into our decision making:

- Our **Exploration and Quarrying Standards**, which is joint legislation with the Government of Newfoundland and Labrador, applies to mineral exploration on Labrador Inuit Lands. Under the Standards, companies must submit exploration work plan applications to the Nunatsiavut Government for review and approval. Part of our review process includes seeking comments from established community land and resource committees. These committees are made up of community members who are knowledgeable of land use and traditional activities in their respective areas. It is necessary to consult with these committees to ensure that before we make decisions we are aware of any local issues and concerns that may exist with respect to a particular exploration project. We also understand the importance of making decisions in a

timely manner for exploration projects. We strive to make a decision on complete exploration work plan applications within 14 days.

- For major resource development projects on Labrador Inuit Lands, such as a mine, our newly-adopted Environment Protection Act will apply. Bill 2010-07, to *Provide Protection of the Environment in Labrador Inuit Lands and the Inuit Communities, and to Provide for the Environmental Assessment of Initiatives on Labrador Inuit Lands*, was enacted earlier this year. It sets out the process to be followed for environmental assessments, and provides for Inuit participation in environmental decision making by the Nunatsiavut Government. The legislation applies to projects on Labrador Inuit Land.

Our land claim agreement gave us the authority to establish this legislation for LIL. When we considered the need for this legislation we did not want to duplicate provincial and federal processes, but we felt that provincial and federal processes did not do a good job in assessing the impacts to Inuit traditional use and cultural values. Our legislation attempts to fill this gap. It also allows opportunities to coordinate our process with the processes under federal and provincial legislation on a case by case basis. Our process relies heavily on the traditional knowledge of Inuit that will be impacted by the project.

A few examples of how we are incorporating Inuit knowledge into our decision-making process outside of environmental assessments:

As you are probably aware, Newfoundland and Labrador's energy corporation, Nalcor, is proposing to develop a multi-billion dollar hydroelectric project on the Lower Churchill River at Muskrat Falls. The Churchill River flows into Lake Melville. The Labrador Inuit Settlement Area extends to the south of Lake Melville.

The Nunatsiavut Government, through its participation in the environmental assessment panel process felt that the project will have adverse impacts and will infringe on Inuit land and resource use in Lake Melville and the Labrador Inuit Settlement Area. The proponent's position is that there would be no impacts beyond the mouth of the river. The review panel disagreed with the proponent's assertion and agreed that Inuit could be significantly impacted.

To defend our position in the assessment process we relied on sound scientific and traditional knowledge to make our case. We prepared a digital storytelling video that documented the downstream impacts of the Upper Churchill project, based on the experiences of our elders.

In order to study the downstream impacts of this proposed development on Inuit community health and wellbeing, we have taken the lead on the first comprehensive research and monitoring project ever established for Lake Melville. The two main goals of this project are:

- to establish base conditions for Inuit health, community wellbeing and ecosystem function and integrity in and adjacent to the estuaries prior to the proposed development if it is built; and
- to develop the science for monitoring the downstream effects of industrial activity on a subarctic estuary and coastal Inuit communities.

To ensure we have the expertise in our project team, we are partnering with others from various fields. This will be in addition to the significant Inuit expertise component that will be engaged through the communities themselves.

The research will be used to gather social, cultural and ecological information about Lake Melville, including:

- Inuit knowledge on resources and changes over time;
- community health and wellbeing;
- sea ice characteristics and change;
- oceanographic properties;
- ringed seal and fish biology; and
- mercury levels and bioaccumulations.

We have also begun a 10-year review of the Voisey's Bay project, to carry out an assessment of the socio-economic and biophysical perspective. Specifically, the review will allow us to better understand the local, on-the-ground impacts of a major mine development on our territory a decade after it went into operation.

During the course of the review, we will reflect on the monitoring and indicators of change that have been used and identify long-term trends and impacts and identify gaps in our understanding.

We will also identify how to improve the science of monitoring (using both Western and Inuit knowledge) for future phases of this development or other developments in Nunatsiavut. We will conduct a critical evaluation and lessons learned from a landmark Impacts and Benefits Agreement between Labrador Inuit and Vale. And, we will make broad recommendations that will inform future approaches to development decision making in the region – especially potential mineral-related development. Vale has agreed to cooperate in this review process.

Quest Rare Minerals is focused on the identification and discovery of new world-class Rare Earth deposits, one of which is located at Strange Lake, in northeastern Quebec, adjacent to the Labrador Inuit Settlement Area. The proposed option is to construct a road east to the Labrador coast across the Labrador coast across the Labrador Inuit Settlement Area and establish a port site.

In our experience, we have not always been satisfied how industry has conducted Inuit knowledge studies and traditional land use considerations. Quest has proposed an Inuit knowledge study as part of its feasibility for the project.

The Nunatsiavut Government has worked with Quest to jointly develop the work scope. A regional steering committee will be created and the lead researcher is to be well connected to Inuit and to Nunatsiavut, as there must be an established level of trust between the participants and the lead researcher to get maximum benefit from this work.

Our participation on this project will hopefully ensure that Inuit knowledge that is gathered will bring maximum value to the assessment. This is another example of how we are incorporating traditional knowledge and land use in to modern planning.

Chapter 10 of the Labrador Inuit Land Claim Agreement outlines the process to be followed in establishing a land use plan for the Labrador Inuit Settlement Area. Once approved, the Land Use Plan will guide future development in LISA.

We believe the final plan drafted by the Land Use Planning Authority, with minimum modifications, has given us and the Government of Newfoundland and Labrador a good foundation for land use decisions in Nunatsiavut. We feel that the plan strikes the appropriate balance between environmental and economic development and considers the cultural values of Inuit at this stage of the maturity of LISA.

The approval process for this plan has its challenges. The provincial government has the approval authority for the Land Use Plan as it applies to water use and land in the settlement area outside of Labrador Inuit Lands. The Nunatsiavut Government has the approval authority for the plan as it applies to Labrador Inuit Lands.

We feel the vision of Chapter 10 of our Land Claims Agreement was to have one plan for the whole settlement area. At this stage the Province has different ideas from the Nunatsiavut Government for several areas of the proposed plan. We have told the Province that we would like them to approve the same plan as us for the whole settlement area.

For Inuit and the Nunatsiavut Government the wealth of our land is not only dollars. Wealth also includes the ability to ensure food security, protect our cultural values and traditional use of the land for the long term, while at the same time realizing that we need a certain amount of economic development to bring jobs and economic prosperity to Labrador Inuit. We feel that the Land Use Plan with a few modifications will accomplish this for us.

Finally, I encourage you to review the chapters of the Labrador Inuit Land Claim agreement to gain a better understanding of the main tool we have been given to manage our territory.

With regards to major developments in Nunatsiavut, companies are also required to negotiate impact benefit agreements with our government. Once developments get to this stage we will use this tool improve the economic prosperity of Nunatsiavut and our communities.

Nakummek

Wayne Johnson, NTI, President, Wayne Johnson Associates Inc.

In my first presentation, we looked at the first objective of the NLOCA as stated in the recitals and how it was implemented.

We also looked at how—to a lesser extent—Inuit control resource development through their role as land and mineral owners. In this talk, I will consider two other objectives of the NLCA.

NLCA Objectives

- to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore
- to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting
- to provide Inuit with financial compensation and **means of participating in economic opportunities**

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

As we can see from the third and fourth objectives, Inuit also wanted to participate in economic opportunities and to achieve self-reliance.

There are several features of the NLCA that promote these objectives by giving Inuit an opportunity to receive benefits from resource development.

In this presentation we will look at how benefits flow to Inuit through two sources: Inuit ownership of land (IOL) and provisions in the Agreement that provide benefits from resource development on Crown land. In this talk, I will discuss oil and gas development as well as mineral development.

One of the means of promoting economic self-sufficiency—but not the only—is through benefits from resource development on IOL.

This statement from Article 17 picks up the thread of economic self-sufficiency stated in the recitals and applies it to IOL.

We consider there to be two main categories of benefits from resource development:
(a) Resource Revenue that goes directly to NTI (or Nunavut Trust) and
(b) jobs and business opportunities that flow to Inuit through an IIBA and other mechanisms.

Most of the benefits from resource development accrue from Inuit ownership of land. We introduced Inuit Owned Lands in the first talk, but we should repeat what we said for this talk.

Inuit Owned Lands

- 18% of land in Nunavut (~NSA) is Inuit Owned Lands (IOL)
    - 350,000 sq. km.
    - RIAs hold title to all IOL
- "Surface IOL"
    - does not include mineral rights
    - 944 parcels
- "Subsurface IOL"
    - Includes subsurface rights, to which NTI holds title
    - 50 parcels – about 10% of IOL (~2% of Nunavut)
    - selected mainly for mineral potential

There are other kinds of lands and rights in Nunavut:

Other Lands or Rights

- Crown land
    - 82% of Nunavut – Land and minerals are owned by the Crown and administered by AANDC
    - 16% of Nunavut – Crown owns minerals on Surface IOL
- "Grandfathered" rights on Subsurface IOL
    - Areas on Subsurface IOL that are subject to mineral rights that were in place before the NLCA came into effect

- NTI owns minerals but the rights are administered by AANDC
- NTI receives all revenue, including royalties collected by Government
- Includes Meadowbank Mine, Mary River #1 deposit, etc.

There are also Commissioner's Lands in the settlements.

NTI has established several policies to help it realize its objectives with respect to IOL.

- Mining Policy
- Water Policy
- Reclamation Policy
- Uranium Policy
- Resource Revenue Policy

The Mining Policy is the first such policy. This statement taken from the Guiding Principle encompasses the two themes of maximizing benefits and minimizing impacts, as we described earlier.

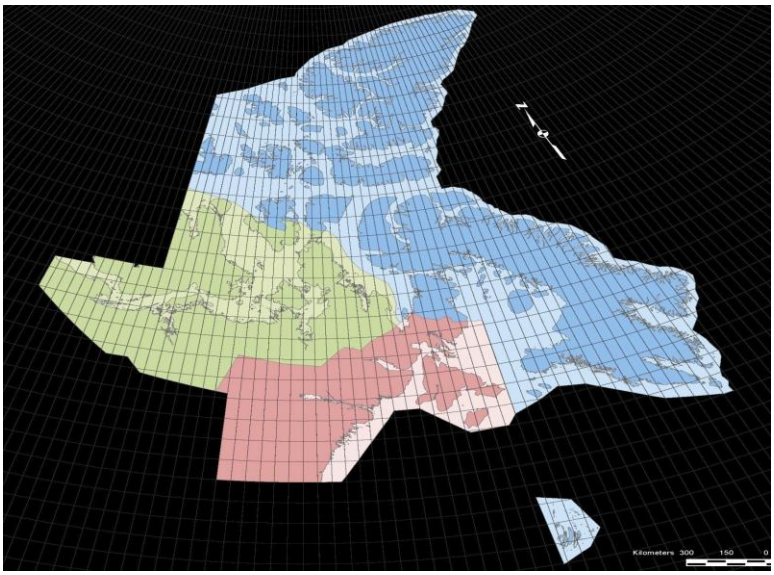
Guiding Principle: NTI will support and promote the development of mineral resources if there are significant **long-term social and economic benefits** for Inuit and the development is "consistent with **protecting the eco-systemic integrity**" of Nunavut.

There are five objectives and several policy statements. The policy can be found on the NTI website under "Publications – Mineral Resources", along with one or two of the other policies.

At this point, I need to introduce the three Regional Inuit Associations, which fall under the NTI "umbrella".

- Qikiqtani
- Kivalliq
- Kitikmeot

The following map shows the areas where each RIA holds the title to IOL and has other responsibilities under the NLCA.



RIAs Grant Surface Rights

- The RIAs administer access through the issuance of:
    - Land Use Licences
    - Commercial Leases
    - Quarry Rights, etc.

  … each of which is referred to as a "Surface Right".
- Terms and conditions provide for environmental protection of IOL and for the receipt of revenue through fees, rentals and quarrying royalties.
- Inuit water rights (Article 20) attached to Surface Rights also provides revenue from fees and compensation.

NTI Grants Subsurface Rights

- NTI enters into agreements with companies wanting to explore and mine on Subsurface IOL (except Grandfathered leases).
- It receives annual fees and bonus payments under Exploration Agreements.
- Production Leases include a royalty of at least 12% of net profits from production.
- Some agreements also provide for an NTI option to participate in a Joint Venture.

Advanced Projects in Nunavut

Stage	**Kitikmeot**	**Kivalliq**	**Qikiqtani**
Operating (suspended)	Jericho (C) Lupin (C)		
Operating		**Meadowbank (IOL)**	
Permitted	**Doris North (IOL)**		
Applied for permitting	**High Lake (IOL,** C) **Hackett River (IOL) Hope Bay (IOL,**C) **Izok Lake** (C)	**Kiggavik (IOL,** C)	**Mary River (IOL)**
Deposit	**Ulu (IOL)** **George Lake (IOL)** **Goose Lake (IOL)**	Ferguson Lake (C) **Lac Cinquante (IOL)** **Meliadine (IOL,** C)	
Closed	Robert's Bay	North Rankin Cullaton/Shear Lake	Nanisivik Polaris

This table shows the one existing mine and most of the advanced exploration projects in Nunavut. We apologize if we have omitted someone's project.

The projects that are in bold text are at least partly on Inuit Owned Lands where Inuit own the minerals.

You can see that there are several advanced projects in the Kitikmeot and the Kivalliq, but only one in the Baffin or Qikiqtani region. However, that one project --Mary River--dwarfs all the others in scope.

Revenue Exclusive of Royalties
NTI receives money from annual fees, bonus payments and lease rentals.

- Revenue of $1.2 to $1.5 million per year from exploration agreements and grandfathered leases
- Over $15 million received since 1993

This revenue roughly covers the cost of running the Lands and Resources Department.

In the meantime, NTI can wait for the big revenue, which will come from mining royalties.

In our presentation, we showed a slide is based on an analysis done for NTI. Because it is somewhat out of date and it is likely that the numbers are now different as some projects have changed, we have not included that slide in this summary.

However, it gives a sense of the amount of royalties NTI might receive from four projects described previously.

The projected revenues from the Mary River project make a very substantial contribution of nearly $200 million per year over several years. The other projects are each projected to contribute between about $5 million and $45 million per year for several years. The actual revenues may be greater or less. <u>These figures should be considered very speculative.</u>

What will NTI do with this revenue?

A year ago (November 2011) at the Annual General Meeting, NTI adopted the Resource Revenue Policy.

- Provides for the creation of a Resource Revenue Trust
- All revenue split 50/50 between two funds
- Operating Fund: income and capital distributed annually to NTI and RIAs
- Endowment Fund: income distributed annually after value exceeds $100M; capital never distributed
- All distributions: 30% NTI; 10% each (of 3) RIA; 40% to RIAs on a *per capita* basis

An Endowment Fund is an excellent way of creating lasting benefits from resource development—theoretically, the fund can provide benefits to Beneficiaries forever. By providing for future generations, it embodies the idea of sustainable development.

A preliminary estimate projects the fund to grow to over $1.3 billion in about 20 years.

Of course, this is subject to the mines going into production and paying a royalty and the fund managers receiving a reasonable annual rate of return—and there are a lot of uncertainties in all of this.

If we assume that the outcome will be something like this graph shows and the fund managers are able to generate a 4% annual return, the annual "dividend" in 20 years would be around $50 million or about $1,000 to $1,500 per beneficiary if it were to be distributed.

Another way Inuit can benefit from ownership of land is through IIBAs.

Article 26 IIBAs

- An Inuit Impact and Benefit Agreement required for any Major Development on IOL
- "Major Development" would include all mines
- Agreement is between the proponent and the RIA
- Schedule 26-1 lists the matters for consideration

Schedule 26-1

An IIBA can touch on many topics, but the focus is on employment and business opportunities for Inuit. Here are some of what we think are the most important topics:

- Inuit **training** at all levels;
- Inuit **preferential hiring;**
- **Scholarships**;
- **Business opportunities** for Inuit including:
  a) provision of seed capital;
  b) provision of expert advice;
  c) notification of business opportunities;
  d) preferential contracting practices.
- Particularly important **Inuit environmental concerns** and **disruption of wildlife**, including wildlife disruption compensation schemes.
- **Any other matters** that the Parties consider to be relevant to the needs of the project and Inuit.

Several IIBAs have been completed for mining projects and more are in the works. Agnico-Eagle and Kivalliq Inuit Association signed a revised IIBA in October 2011 for the Meadowbank Gold Mine.

We'll take a quick look at the IIBA that Agnico-Eagle and the Kivalliq Inuit Association signed last year. This was an update of an earlier IIBA that applied to the project.

This is available on the Mining North website—without some of the important schedules, of course. http://www.miningnorth.com/wp-content/uploads/2011/11/MEADOWBANK-IIBA.pdf

Purpose of Meadowbank IIBA

The IIBA sets out the following purposes:

- contribute to the well-being of Inuit
- provide for training, employment and business opportunities for Inuit
- address any detrimental impacts on Inuit and provide benefits for Inuit
- establish a positive working relationship and effective channels of communication
- achieve any other goal that is consistent with Section 26.3.3 of the NLCA

Most of the detail in the IIBA is set out in schedules, as shown in this list.

SCHEDULE	TOPIC
A	IMPLEMENTATION
B	MEADOWBANK IIBA COORDINATOR
C	KIA IIBA COORDINATOR
D	TRAINING AND EDUCATION
E	INUIT EMPLOYMENT
F	CONTRACTING
G	ACCESS TO MEADOWBANK MINE FACILITIES
H	RESEARCH AND DEVELOPMENT
I	OPTION TO ACQUIRE MAEDOWBANK MINE ASSETS
J	FUNDING AND IMPLEMENTATION COSTS
K	WILDLIFE
L	ECONOMIC, SOCIAL AND CULTURAL WELLNESS
M	ARBITRATION

Schedule E relates to Inuit employment—perhaps the topic that receives the most attention.

Here is a list of some of the main topics in Schedule E.

- Advance notice of opportunities;
- Equivalent qualifications;
- Preferential hiring;
- Minimum Inuit employment goals;
- Work and rotation schedules;
- Inuktitut in the workplace; and
- Employment support system.

You can see that a lot of effort is made to provide employment opportunities.

Crown Lands

We'll now look at benefits that might flow from provisions in the NLCA that relate to Crown land. First, we'll look at royalties Inuit can receive.

Inuit Rights related to Development on Crown Land

Article 25 – Inuit receive a share of the Crown royalty

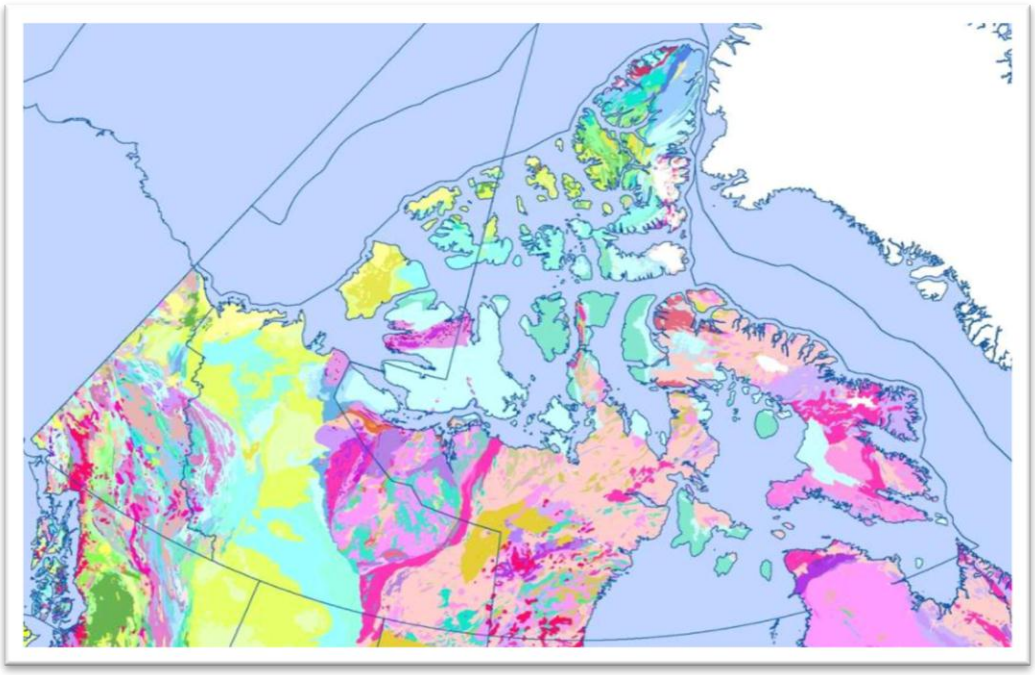
- This applies to all lands on which the Crown owns the minerals

- 50% of first $2 million and 5% of the remaining royalties collected by Government each year from resource development is paid to Nunavut Trust (which funds NTI)
- This includes royalties from oil and gas in the offshore within the boundaries of the NSA
- Some royalties have been paid (3 mines and the Bent Horn oil field)

Article 27 – the DIO (in some cases NTI) is consulted with respect to development on Crown land

- S. 27.2.1 requires the proponent to consult the DIO prior to development or production of "resources other than petroleum" with respect to the matters listed in Schedule 27-1.
- Can be considered a "watered-down" IIBA – provides for consultation, but not an agreement

Oil and Gas Potential in Nunavut



Here is a geology map of the Canadian Arctic.

Most of the Oil and Gas potential in Nunavut is considered to be in the high Arctic Sverdrup Basin (shown in yellow – it crosses into the NWT) and in the Eastern Arctic in Baffin Bay adjacent to Baffin Island but beyond the Nunavut boundary.

Most of the oil and gas potential in Nunavut is offshore—that is, under the sea bed.

Because Inuit hold the subsurface title to only a few parcels of IOL on the southeastern edge of the Sverdrup Basin, all or nearly all of the direct revenue Inuit would receive from oil and gas production in the Sverdrup Basin would flow to the Nunavut Trust through royalty sharing under Article 25.

As for the Baffin Bay Basin, most of the area with oil and gas potential is outside the Nunavut Settlement Area. Thus, Inuit would receive no royalty revenue under the NLCA.

Aside from the question of royalties, Inuit might benefit from oil and gas development through Article 27.

Benefits from Crown Land

I want to look at the only two NLCA provisions that refer to oil and gas—or as the NLCA refers to it, petroleum—exploration and production.

Section 27.1.2 requires consultation prior to the opening of lands.

*"Prior to opening any lands in the Nunavut Settlement Area for petroleum exploration, Government shall notify the DIO and provide an **opportunity for it to present and to discuss its views** with Government regarding the terms and conditions to be attached to such rights."*

"opening lands" in the context of petroleum exploration means the process by which the Northern Oil and Gas Branch of AANDC issues a Call for Nominations. If lands are nominated for exploration, this would be followed by a Call for Bids process, after which the NOGB would issue an Exploration Licence, under the Canadian Petroleum Resources Act.

To date the "terms and conditions" referred to have included restrictions related to potential environmental impacts, as we will see in the next slide.

The opportunity to discuss benefits is limited—in part because of the limited scope of exploration activities.

27.1.2 – Prior to Exercise of Rights

Section 27.1.2 requires that the DIO—in this case, NTI— be consulted with respect to the preparation of a benefits plan before the operator can proceed with exploration, development or production.

*"Prior to the initial exercise of rights in respect of exploration, development or production of petroleum on Crown lands in the Nunavut Settlement Area, and in order to prepare a **benefits plan** for the approval of the appropriate regulatory authority, the proponent shall consult the DIO, and Government shall consult the DIO, in respect to those matters listed in Schedule 27-1."*

What is a "benefits plan"?

- 5.2(1) of the *Canada Oil and Gas Operations Act* (COGOA) defines "**benefits plan**" as "a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan."
- Some people refer to this as a "Canada Benefits Plan".

It is defined in the Canada Oil and Gas Operations Act (COGOA) as a plan to provide employment and business opportunities for Canadians.

COGOA goes on to say that a benefits plan may include special provisions for "disadvantaged individuals or groups" but does not define this term.

*COGOA 5.2 (3). "The Minister may require that any benefits plan submitted pursuant to subsection (2) include provisions to ensure that **disadvantaged individuals or groups** have access to training and employment opportunities and to enable such individuals or groups or corporations owned or cooperatives operated by them to participate in the supply of goods and services used in any proposed work or activity referred to in the benefits plan."*

The Call for Bids document attached to the Arctic Islands of Nunavut Call for Nominations builds on the COGOA definition – it refers specifically to Inuit—presumably as disadvantaged individuals or groups.

- The Cakk for Bids document says there must be provisions in the Benefits Plan:
    - to **ensure that Inuit have access** to training and employment opportunities
    - to **facilitate their participation** in the supply of goods and services.
- The Call for Bids document also refers to the *Northern Benefits Requirements Associated with New Exploration Programs.*
- This document applies only to exploration.

Also, the first draft of the "Canada Benefits Plan Guidelines", which the NOGB is developing, makes special provisions for "Aboriginal individuals and groups" and "northerners".

The draft Guidelines would apply to exploration, development and production of oil and gas.

There have been no benefits plans completed to date in Nunavut.

NTI is reviewing benefits plans done in other jurisdictions in preparation for future oil and gas activity.

Summary

In my first talk, I discussed how the NLCA addresses the potential impacts of resource development.

- On all lands – through the land use planning, environmental assessment and water licensing processes (IPGs)
- On IOL – through terms of surface and mineral rights, water compensation and IIBAs (NTI and RIAs)
- On Crown land – through Article 27 consultation and benefits plan (NTI)

In this talk, I discussed how the NLCA can bring benefits to Inuit from resource development:

- On IOL – royalties, fees, direct participation, rentals, etc. through mineral agreements and the terms of Surface Rights and IIBAs (NTI and RIAs)
- On Crown land – royalty sharing under Article 25; consultation and the terms of benefits plans under Article 27 (Nunavut Trust and NTI)

Bertha Rabesca Zoe, Legal Counsel, Tlicho Government

1996: Tlicho signed an IBA (Impact Benefit Agreement) with BHP. The Minister ordered that the company deal with Aboriginal groups; he gave 60-90 days to do this. Since then, we have signed two other agreements with Diavik and DeBeers.

Each IBA deals with different issues. BHP deals with employment targets, and sets targets for the number of Tlicho to be employed in that mine. The second agreement deals with contracts with Tlicho-owned companies. The DeBeers agreement is mostly involving funding for cultural programming.

The Tlicho government allocates the funding appropriately. One major contribution was to scholarships. To date, over $6 million has been put into scholarships. Starting in 1997-98, over 600 Tlicho have received financial support through scholarships, which has resulted in over 30 university degrees, a couple of master's degrees and many who received training and apprenticeships.

There have also been businesses developed. On effective date the four bands ceased to exist, and all assets of the existing 40-50 companies with an asset value of over $100 million came into the possession of our new Tlicho government. IBAs are business relationships as well.

IBAs deal with many areas, including cultural. Our mission statement: you can still be who you are as a Tlicho person, exercise those treaty Aboriginal rights, yet be able to function in today's world. Educational institutions use that concept to be strong in those ways.

There are many elder Tlicho speaking their language fluently. Many meetings are in Tlicho language. We also have many students who are learning our culture and language and are able to be strong in both worlds. We are trying to make sure that our youth are strong - like two people.

IBAs have benefitted the Tlicho in many ways. People employed at the mines have benefitted financially. But there are also negative impacts on culture and families; more alcohol, and shift work create havoc.

The Tlicho leadership work closely with mining companies to ensure that issues are resolved. The Tlicho agreement talks about entering into these agreements. If there is a major mining project, they are required to enter into negotiations with Tlicho government. The government was supposed to develop measures, but the implementation committee is still dealing with that and working on it. This is an ongoing implementation issue they're trying to work out.

The company Fortune Minerals Limited, proposes to open a mine in the heart of Tlicho lands. The process is ongoing, however, they have timelines to meet. We're pretty sure that an agreement will be worked out shortly.

Hunting Rights and Wildlife Management

Presented by: Dick Spaulding, Carl McLean and John Cheechoo

Dick Spaulding, Lawyer, NTI

I'm going to outline the terms of the Nunavut Land Claims Agreement that address harvesting rights and wildlife management. I'll also talk a bit about one of the implementation challenges that NTI has encountered since those terms came into effect in 1993.

Wildlife was the first topic negotiated at the table. The Wildlife Article is the most detailed in the agreement, covering about 190 sections and 35 pages.

The overall objective of the Article is nothing less than "the creation of a system of harvesting rights" and "the creation of a wildlife management system". (For simplicity I'll refer to these as one new system.) In the earlier session on resource management I described co-management under the Agreement as a set of reforms to the system that came before. I think it's fair to say that the parties intended the Wildlife Article to accomplish a deeper level of change – replacing what came before in many respects; a transformation as much as a reform.

The Preamble to the Agreement as a whole puts the overall objective in terms of Inuit rights, committing the Agreement: "to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting".

A detailed preamble to the Wildlife Article identifies more specific objectives. One of the prominent themes there is that the new system is intended to have a strong cultural component, and a strong economic component. A successful system (assuming it is properly interpreted and applied) is going to support Inuit culture and support Inuit economic reliance on wildlife.

It's also made clear in the lead-in to the Wildlife Article that the bargain is forward-looking: the goal is to secure rights for the future, and to be able to adjust for change.

We can shed a bit more light on the purpose of the new system if we ask, what was the status quo that the negotiators were trying to replace?

- The old system of wildlife management treated hunting and fishing as a privilege. With a few exceptions, wildlife laws prohibited hunting without a licence.
    - Under the NWT Wildlife Act, for example, a native person had to have a General Hunting Licence in order to hunt lawfully.
    - Under the NWT Fishery Regulations, there was a licence exemption for native persons, but it was narrow: in effect, "An Inuk may only fish w/o a licence for food for himself, his family, or his dogs."
        - As far as what an Inuk could <u>do</u> with fish caught, there could be no barter or sale to anyone without a commercial licence – the only transaction that an Inuk could engage in with his or her catch without a commercial licence was to give fish to another Inuk or native person. Not much support there for fishing as an economic activity.

- On the decision-making side, government Ministers and officials did not have to involve Inuit at all in the decisions that governments made about where Inuit could hunt and when or how much wildlife could be taken.
    - A well know example of what could happen in that situation is the history of the Migratory Birds Convention Act. When the NLCA was being negotiated, the MBCA still prohibited Inuit from hunting ducks and geese in the spring, the season in which Inuit traditionally hunted geese as a staple food. The 1916 treaty that the Act implemented had been negotiated without any consultation with Inuit. The restriction was a source of tension between Inuit hunters and game officers for many years.

The new system has four parts:

1. Inuit harvesting rights for all types of wildlife, including fish and plants, and including marine species;
2. Inuit self-regulating organizations - Hunters and Trappers Organizations (HTOs) and Regional Wildlife Organizations (RWOs);
3. The Nunavut Wildlife Management Board (NWMB), a co-management board through which Inuit participate in government's wildlife management decisions;
4. Standards for government restrictions on Inuit harvesting (which flow logically from the fact that government retains ultimate responsibility for wildlife management in the bargain).

1. Inuit harvesting rights

a) The basic harvesting right of an Inuk under the Agreement is to harvest as much wildlife as he or she needs where a Total Allowable Harvest (TAH) is not established for the stock or population.[1] The needs identified here are an Inuk's "economic, social, and cultural needs".
    - The effect of this right is that the quantity of Inuit harvesting cannot be restricted unless the entire harvest of the population in question has been capped.

b) A companion right is that, when a total allowable harvest has been set, due to limited supply, Inuit have the right to harvest a priority share of the total called the Basic Needs Level (BNL). It's a historical level, calculated on the basis of a Harvest Study, according to negotiated formulas.
    - The BNL is distributed between communities by RWOs, and between Inuit in communities by HTOs. The job of dividing the Inuit share among Inuit is not a government role. Among other things, this means there is no longer any place in the scheme for quantitative government restrictions on Inuit individuals, such as bag limits or possession limits.
    - If there is a surplus in the TAH after the BNL is struck, a negotiated set of priorities is used to distribute it.

c) Inuit also have the exclusive right (along with certain General Hunting Licence holders) to harvest furbearers - bears and fox, for example - subject to HTO authority to allow others to harvest furbearers. There are also species for which Inuit are presumed to need the entire TAH, including muskox and bowhead whales.

d) A number of features of Inuit harvesting are also set out. Some of the key features are:

[1] The basic right is expressed as the right to harvest the stock or population "up to the full level of his or her … needs" where a TAH has not been established (5.6.1). In this context, "full level of needs means full level of harvest" (5.6.2)).

- An Inuk has the right to sell harvested wildlife to any person inside or outside the settlement area – a major change to the previous system, setting aside the conventional distinction between harvesting for commercial and subsistence purposes. Accompanying the right to sell is the right to receive any export permit that might be required, unless the permitting agency has good cause for refusing it.
- Inuit have rights of access for harvesting anywhere in Nunavut, including parks and sanctuaries, subject to stated safety restrictions.
- With a few exceptions, an Inuk has the right to harvest without a licence - also a major change.
- An Inuk, HTO or RWO has the right to assign a share of the Inuit harvest to any qualified harvester – another important economic feature.
- Subject to stated limitations, an Inuk also has the right to harvest by any method.

2. Inuit self-regulating bodies - HTOs and RWOs

a) As I mentioned, HTOs and RWOs have the exclusive power to distribute regional and community Basic Needs Levels among their members.

b) They also have the power to regulate the harvesting practices of their members.

It seems to me that this second role can be understood either as a collective expression of Inuit harvesting rights, or a management role. By regulating their members' harvesting practices, HTOs and RWOs can prevent conditions from developing that might justify government restrictions on Inuit harvesting.

3. The Co-management board – NWMB

a) Structure
   - similar to other NLCA co-management boards, but Inuit members are appointed rather than nominated by Inuit organizations, and government members are appointed by their Cabinets.

b) Powers
   - it is the main instrument of wildlife management. Its wide powers include research functions, and powers to approve wildlife management plans.
   - sole authority to establish harvest limitations, whether quantitative (TAHs), or non-quantitative, such as seasons. This role applies to limitations for all harvesters, Inuit and non-Inuit.
   - it is also the transition manager in the scheme, for harvest limitations that applied to Inuit when the NLCA came into effect. The Agreement deems these to be continued by the Board until the Board considers modifying them. At that point the Board and Government have to apply the Agreement's decision standards, and decide whether the limitation, or a modification, can be justified.

c) Process, and weight of decisions
   - the Board has power to hold public hearings, and does so regularly on important issues.
   - Board decisions are final unless Minister disallows or rejects.
   - if Minister disallows a Board initial decision, the Board has the right to reconsider it.

d) Government role in Board decisions
   - Minister has power to reject initial Board decision with written reasons
   - power to reject or vary final decision (i.e. retains ultimate authority)

e) Finally, it's the duty of Government under the Agreement to do all things necessary to implement final Board decisions.

4. Standards for government restrictions on Inuit harvesting

The last component in the system is a set of standards prescribed by Article 5 that government decisions – including Board decisions - must meet, no matter how well Inuit are represented in the process of making the decision.

These standards are legally binding; decisions of the Board and Minister can be reviewed by a court to ensure compliance with them.

The main standard closely resembles the one that the courts use to assess whether government limitations on Aboriginal or treaty harvesting rights are justified under the Constitution. Article 5 was revisited by the negotiators after 1990 in order to take into account the Supreme Court of Canada's first judgement on that issue, the Sparrow decision.

5.3.3 (paraphrasing)

'Board and Minister may restrict Inuit harvesting

i. only to the extent necessary, and
ii. only where necessary to give effect to a valid wildlife management purpose (namely conservation; public health, public safety) or to the system being established by the NLCA itself.'

These standards apply to any type of limitation on Inuit harvesting. For TAHs, they mean that a TAH cannot be set unless the supply of wildlife is truly limited. Given the paramount importance of conservation to this kind of management decision, the Agreement lays out a detailed set of conservation principles to guide the Board and government.

These standards, and the third component of the system, the right to participate in decisions through the Board - act as a check and balance on each other. Inuit harvesters have the safeguard of enforceable constraints on all the decision-makers in the system, but also the knowledge that Inuit have a role in applying those constraints.

Once this last part of the scheme is considered, it's fair to describe the core Inuit harvesting right in the bargain as the right to harvest free from unnecessary interference. The system provides Inuit harvesters with a significant degree of autonomy.

<u>Implementation challenge – conflicting instructions in legislation</u>

I've emphasized that the changes called for by the NLCA regarding wildlife are extensive. Until the rule books that policy officials and enforcement officers use for their everyday work are rewritten to reflect the Agreement, government officials will be working from two sets of instructions that are often in conflict.

The fact that the Agreement takes precedence in cases of conflict is a neat solution to this problem as a matter of law, but leaving the managers of wildlife with conflicting instructions across a wide range of matters is a recipe for confusion 'on the ground'.

The exercise has been slow at the federal level. The Department of Fisheries has been consulting with NTI and other parties on draft Nunavut Fisheries Regulations for more than ten years. To NTI's representatives, the Department's proposals have tended to look more like the pre-land claims approach to managing fisheries than the new system intended by the Agreement.

Fortunately, legislative jurisdiction over wildlife is primarily territorial in Nunavut, and the Nunavut assembly has led the way in Canada in rewriting its Wildlife Act to reflect the land claims agreement that applies within the jurisdiction. Nunavut's new Wildlife Act came into effect in 2007. Most of the limitations on harvesting that flow out of the new Act will be contained in Regulations, so the NWMB has examined systematically all of the limitations that are contained in the draft Wildlife Regulations under the NLCA's decision standards, and delivered its initial decisions. That process is also the first of its kind in Canada. Once it is complete, Nunavut Inuit should be able to have confidence that their harvesting rights are recognized under territorial laws.

Carl McLean, Deputy Minister of Lands & Natural Resources, Nunatsiavut Government

In the session before this one, I gave you a brief description of the Labrador Inuit Settlement Area. The Nunatsiavut Government was established in 2005 to manage the rights given to the Labrador Inuit under the Labrador Inuit Land Claim Agreement.

Chapter 12 of our agreement, Wildlife and Plants, established our jurisdiction and responsibilities for managing wildlife and plants in the Labrador Inuit Settlement Area. This chapter also established the Torngat Wildlife and Plants Co-Management Board. I will elaborate on our respective responsibilities.

The Nunatsiavut Government, through legislation, established our Department of Lands and Natural Resources and outlined the organizational structure for the department.

The department has a large mandate, responsible for implementing a large part of our land claim agreement. We are responsible for land administration and management, wildlife, fisheries, land use planning, research, environmental protection and assessment, oil and gas, mineral exploration and resource development, and we also coordinate our impact benefit agreements. As you can see we don't have much responsibility.

Seriously, we have a large mandate and tremendous responsibility. The sustainable use of our wildlife, fish and land and resources is of utmost importance to Labrador Inuit. Maintaining an adequate supply of country food is crucial to the food security in our communities and our beneficiaries want us to ensure that this critical food supply will continue.

I would now like to get in to more specifics around wildlife management and advisory boards in Nunatsiavut. The domestic food fishery and the commercial fishery is also important to us, however,

today I will focus my talk on wildlife management and the Torngat Wildlife and Plants Co-Management Board.

The Board is a Co-Management Board established under Chapter 12 of the Agreement. The board consists of 7 members;

- 1 chairperson
- 3 members appointed by the Nunatsiavut Government
- 2 members appointed by the Government of Newfoundland and Labrador and
- 1 member appointed by the federal government.

Where possible, all decisions of the Board are to be arrived at by consensus. Where necessary decisions can be by majority vote but that's after all reasonable attempts have been made to achieve consensus.

The Board has a staff to support their work. Staff is employed by the secretariat. The secretariat is support for the wildlife and plants board and the fisheries board that are set up under the agreement.

The board has a long list of powers and responsibilities. I will now speak to some of these responsibilities.

The Torngat Wildlife and Plants Co-Management Board have responsibilities with respect to conservation and management of wildlife and plants and habitat in the settlement area;

- They can establish, when necessary, Total Allowable Harvests for non –migratory species of wildlife and for plants and to modify or eliminate those total allowable harvests
- They can recommend to the Minister (provincial or federal), Conservation and management measures for wildlife and plants, including;
    - Total allowable harvests for caribou and migratory game birds
    - Harvesting restrictions
    - Research respecting the conservation and management of wildlife.
    - The establishment of protected areas.
    - Matters related to species or populations at risk.
- A decision by the board to establish a total allowable harvest may be varied or disallowed by the Minister
- If the Board intends to establish or vary a TAH for non-migratory species they shall consult the Nunatsiavut Government before doing so.

Chapter 12 of our agreement also stipulates requirements for the Inuit Domestic Harvest.

Inuit have the right to harvest wildlife and plants throughout the settlement area at all times of the year, subject to,

- Inuit laws (we have not established any laws to date)
- A restriction on seasons imposed for conservation under laws of general application
- Federal laws on firearms control

If no TAH has been established, Inuit have the right to harvest up to their full level of needs for food, social and ceremonial purposes.

If a TAH is established, Inuit have the right to harvest up to the Inuit harvest level.

With regards to polar bears Inuit have the exclusive right to harvest the full TAH.

An Inuk may transfer their right to harvest to;

- That Inuk's spouse;
- That Inuk's parent or child;
- A person to whom that Inuk stands in the position of a parent;
- A person who stands in the position of a parent to that Inuk;
- Another Inuk; or
- Another Aboriginal individual.

If a TAH is established, the Minister (provincial or federal (in the case of migratory birds)) shall establish an Inuit Harvest Level (IHL) for that species of wildlife. The IHL constitutes a first demand against a Total Allowable Harvest. For non-migratory species this is manageable but for migratory species such as the George River caribou there are many other factors that come in to the picture. I will elaborate on these shortly.

Once an IHL is established the Nunatsiavut Government is responsible to establish measures to ensure that the quantities of wildlife taken in the Inuit domestic harvest do not exceed the IHL.

The NG shall base its recommendation for an IHL on all relevant information including; any data including Inuit traditional knowledge with respect to the Inuit domestic harvest, historical data, information on the availability and access to the species of wildlife.

The Minister shall establish the IHL that is recommended by the Nunatsiavut Government, however, if the Minister determines that the recommendation is not supported, and after consulting with the NG for the purposes of reaching agreement on the IHL, the Minister may establish an IHL that differs from the IHL recommended by us.

If for a species of wildlife for which a TAH is established and the TAH is less than the IHL, the Minister shall allocate the entire TAH to Inuit. There is a complication when dealing with the migratory species, e.g. George River caribou and involvement of other Aboriginal people.

Chapter 12 of our agreement gives the Nunatsiavut Government the authority to make laws in relation to several matters including;

- The allocation among Inuit the IHL and other quantities of wildlife where we are entitled.
- The issuing of licences, permits or other authorizations to harvest wildlife.
- Transfers of hunting rights
- The management and administration of Inuit harvesting rights.

The agreement gives the Minister the power to disallow an Inuit law related to wildlife harvesting and management.
Currently, we have not established any Inuit laws with regards to harvesting and wildlife management. To do this we need to first adopt a Harvesting Act. This option has been considered and is still being discussed.

At the present time there are Total Allowable Harvests established for two species of wildlife; polar bears and moose. For these two species, the full TAH has been allocated to the Nunatsiavut Government.

Moose is a fairly new species that have expanded their range in to Nunatsiavut. The IHL for moose is 35 animals. For polar bear we have an IHL of 12 animals (2012).

In the absence of Inuit laws, we are managing the IHL's by allocating a specific number to each of the 5 Nunatsiavut communities and to the Upper Lake Melville (moose only). In these instances, the province has allocated licences to the NG and the NG redistributes the licences through a draw and eligibility system in each community. The Nunatsiavut Government determines additional licence conditions for polar bear and moose.

For those species where no Total Allowable Harvest has been set, we allow people to harvest up to their level of need. In instances where there may be a management concern, the Nunatsiavut Government has made recommendations to our beneficiaries for the harvest. For example for the spring migratory bird hunt we recommended bag limits and a spring season as there were concerns that birds were being harvested after they had nested and laid eggs.

In Nunatsiavut, we have run in to several challenges and issues in our discussions on options for managing our wildlife harvest;

- Finding the balance between the customary ways with the requirements to sustainably manage wildlife. Many of our Inuit beneficiaries envisioned that when the agreement was signed, they would be able to harvest in their traditional ways up to their level of need without the need for permits and licences. This is especially challenging for us when a TAH has been established and an IHL has to be managed.
- For the most part, Inuit respect the need for conservation and the sustainable use of our resources. However, as we all know there are instances where Inuit harvesting does not always respect these values.
- In the absence of Inuit laws for wildlife management and a process / system for the enforcement of our laws we presently can only recommend measures to our harvesters and hopefully they will respect these recommendations.
- We do have full time conservation officers in our communities. Our communities are small so community pressure and peer pressure does help ensure our harvesters respect our traditional; values and recommendations made by the NG.

It will take substantial resources to develop harvesting laws, a wildlife management system, enforcement mechanisms and a system to enforce Inuit laws. More importantly we need further discussion within our government to define what we truly need to ensure the sustainable management of our wildlife to ensure this vital food source is accessible and available for generations to come.

It is a work in progress for us. It certainly is challenging. As mentioned earlier, there are additional challenges in dealing with migratory species such as the George River caribou as there are other Aboriginal groups and harvesters that also access the caribou across provincial jurisdictions.

Hopefully I have given you some sense of what we are dealing with today in Nunatsiavut as it relates to wildlife management.

John Cheechoo, Director of Environment and Wildlife, Inuit Tapirit Kanatami

There are four Inuit land claim areas in Canada

- Inuvialuit Final Agreement;
- Nunavik Inuit Land Claim Agreement;
- James Bay Northern Quebec Agreement;
- Labrador Land Claim Agreement.

Labrador and Nunavik are more recent.

ITK is a national organization, not a land claim organization, representing Inuit at a national level. Inuit land claims agreements are important to ITK and their relationships with the regions. ITK provides a national unified voice for Inuit in Canada.

The Inuvialuit Regional Corporation is part of the board, but not directly involved with the board. All Inuit land claim agreements have wildlife related provisions and provisions on international processes affecting Inuit rights and interests. Inuit are involved in the convention on biological diversity.

Inuit are involved in the Migratory Birds Act, and International Humane Trapping Standards. ITK works with many organizations across the country. On the regional level they are connected to the Inuvialuit game council, NTI, Makivik, and the Nunatsiavut Government.

- Many co-management boards
- National level: ITK is the national organization that works in the regions
- International: ICC (Canada)
- Federal: Environment Canada, Fisheries and Oceans, Parks Canada, Foreign Affairs
- Territorial Governments: Northwest Territories and Nunavut
- Provincial: Quebec and Newfoundland/Labrador
- Other Organizations: Domestic/International Networks

Wildlife Coordination is a fluid and flexible process, and requires frequent communication. ITK focuses on concerns at a national level, where there is a need to work together. International developments can affect Inuit rights.

Monitoring domestic rights and international issues is another area of work.

Using the Polar bear example: Inuit are primary harvesters in Canada; it is a local, regional and national issue. Environment Canada plays a role. There are 13 management units in Canada alone, and much complexity around the setting of limits, which is decided at the territorial level. There are several cross-jurisdictional issues, including Circumpolar issues with Russia, Alaska, Greenland and Norway, involving 19 management units globally. The Polar bear specialist group (IUCN), also creates specific challenges.

UN CITES: an international agreement between governments (parties/members) to ensure that international trade does not threaten the survival of any species of wildlife. Three levels of Appendices exist, which outline levels of restriction.

- Appendix 1: species facing extinction, restrictive

- Appendix 2: less restrictive
- Appendix 3: least restrictive

There is a proposal to transfer the polar bear from Appendix II to Appendix I. The Inuit position is that trade is not a threat and the species is well managed.

Good wildlife management at the local and regional levels are the foundation of national and international efforts. Inuit rights must be pushed onto the national and international stages, and sound knowledge must be used to counter misinformed claims.

The Elephant in the Room – Fiscal Adequacy

Presented by Matt Mehaffey, Isabella Pain and Tom McCarthy

Matt Mehaffey, Consultant to several Yukon First Nations, Mehaffey Consulting

Basis for current funding, fiscal adequacy, and Yukon's GEB exercise:

Fiscal adequacy is one of the major hurdles that land claim groups continue to struggle with. Funding issues consume the majority of negotiating time.

When Canada started negotiating agreements they decided that no new money would be required. They would take all Band expenses, roll them into a package, add some implementation money and that's it.

What's been found is that current funding provides only 25-50% of the resources required to implement their agreements. That lack of financial capacity is having a significant impact on implementation. In Yukon, a group of seven agreements conducted a review, pursuant to funding adequacy review provisions in their agreements. After 2.5 years of wrangling, they were able to undertake a study on the costing of self-government and comparing that with other governments. Self-government agreements contain the principle of comparability, same levels of taxation and service for all. Seven of 11 First Nations undertook a study as part of their review, it took seven years to complete. As part of that process, they started to question how to measure what funding adequacy is. Comparability in the south is based on revenue generation. Equalization kicks in when the amount of revenue per person drops below a certain amount. In the North it's based on an expenditure model. There are differing views on whether expenditures are necessary or luxuries.

There have been many discussions with the federal government relating to what could be classified as necessary or luxury.

First, we had to figure out how to conduct the review. An expert was hired. He studied financial models from around the world and then started doing some costing. Then, when his numbers came out too high, they halted his work and started working directly with First Nations.

We went through all obligations, compared them to what the Territorial government was doing, line by line, item by item. They accounted for everything from desks to computers, to software, they pro-rated that to arrive at some expenditure numbers. Then the feds began to suffer from sticker shock, and simply stated they would not fund beyond a certain amount.

Yukon First Nations, in the end, were deemed to be provided 40-50% of the resources required to deliver their programs and services.

This led to some increase in funding, but has not fully dealt with the issue; there has been no adjustment to the financing. This old Indian Act model does not work. It puts the First Nation in the position of a service delivery agent, rather than an organization that is tailoring services to the community in a unique way. The gap is in being able to develop and implement programs that are

consistent with the goals and objectives of the community. The resources are not there to identify or address the issues.

To make a full transition from the Indian Act entity to self-governing status, more resources are required.

Part of the problem goes back to the issue of recognition of self-governing organizations as actual governments, which need the resources to develop policy and legislation. If the agreements are to be fully implemented, there is no way around this.

Isabella Pain, Senior Negotiator, Nunatsiavut Government

The cost of underfunding of FFA in Nunatsiavut:

They have an implementation fund built into their agreement. The Labrador agreement came into effect in 2005. It represents 7,100 beneficiaries in five communities and throughout Canada.

Fiscal financing agreements clearly state the comparability principle as related to other Labrador communities.

The first FFA ended in 2011, began review in 2010, and started negotiations with Canada. There is no negotiation with the province yet. Took into account all land claim requirements. There were proposals submitted, which were reasonable to meet the needs of the agreement. Canada only negotiated by taking into account its own fiscal policies, ignored comparability, remoteness, location or accessibility.

Costs of Underfunding
NIHB (Non-insured Health Benefits Program)

During the first three years administering this program, before the claim, we came in under budget. Since then, as people became aware of it, expenditures escalated, to deficits of up to $800,000, always covered by the feds. After the claim, Canada refused to cover any more deficits. Problems:

- Inadequate base funding;
- Increasing number of beneficiaries;
- Escalating drug costs; and
- Transportation costs.

In the first five years of the FFA they had to pay $7 million to cover these health costs

Housing:
Inuit leaders in Nunatsiavut are describing a housing crisis. It made no difference to negotiators. We showed photos of homes, but meetings went nowhere.

The Feds asserted there is no data to prove a housing crisis exists, but the existing situation violates Health Canada's own standards of overcrowding and other living conditions. Statistics Canada defines overcrowding as more than one person per room. The Canadian average is 3%, Nunatsiavut is 13%.

There are 28% of children who live in dwellings requiring major repairs. Many people are moving from home to home, “couch surfing.”

In one round of FFA they received funding to deliver some housing and capital works programs, but the funding was not sufficient to cover the costs of covering the program.

Feds offered increase in base funding, refused 100% funding. They maintained there is no money for housing, and talked about Own Source Revenue.

The new offer is inadequate and will lead to high incidence of respiratory illness, infant mortality and various types of abuse.

In Happy Valley Goose Bay there is one optometrist, and the level of service depends on where an Aboriginal person comes from; reserve or land claim.

Underfunding has created a never-ending cycle that will not end until proper levels are reached.
We can run programs well; we ask only to be given the resources needed.

Tom McCarthy, Director of Public Services, Tsawwassen First Nation

Principles of comparability and comparability gaps:

Tsawwassen is not remote, but shares some of the same issues. Comparability with surrounding areas is quite stark. We face similar issues as described by Isabella and Matt. I will focus on Own-source Revenue (OSR) and Fiscal Harmonization. On top of existing challenges, we are now being layered with these additional issues.

OSR is an agreement that is applied to every LCA. It is a tax on the revenues that a FN generates. In the case of TFN, it phases into 50 % after 20 years. OSR includes revenue that a FN generates on its own, not fee simple sales, or federal transfer, but otherwise broad and inclusive. It is probably the most repulsive element of our current agreement. A strict disincentive to earn own revenue – contravenes the intent of self-governing nations to become self-sufficient. If a FN is successful where no more federal funding is required, FNs would then be the least funded / subsidized governments in Canada - less than both provincial and municipal governments.

We are not opposed to the concept of OSR; it is the arbitrary nature of the application and the levels taken. A comparable level of services to its membership before OSR kicked in then OSR was applied. If AADNC recognized it as the tax that it is, apply as a policy instrument. We have suggested these models to AANDC, but no movement. There is a 20-page document with a dispute resolution mechanism, but so many questions surround the application of OSR that there will be huge challenges, debates, disputes, mediation, court action over interpretation of agreement. Is that what AANDC wants?

Other nations have figured out the best way to organize their OSR payments.

Fiscal harmonization will soon be a reality. Negotiations take too long, and there are a growing number of agreements in Canada. Every five years there is a new agreement negotiated on principles, which

vary, but always a nation to nation negotiation. There are now too many agreements. We can't get a consistent approach, so we've come up with a proposal called fiscal harmonization. It includes a formula base, with some inputs based on location, etc., which will spit out a number, adjusted based on inputs.

After two rounds, we haven't seen a formula, not sure we will. The formula will be designed by the feds, with an advisory panel composed of Aboriginal people. An individual nation to nation approach will be replaced with one national approach.

The plan to implement this will mean that funding will hold constant until it is in place. How convenient. This will cause difficulty for groups currently negotiating agreements. For existing organizations, Canada has said they will respect their negotiation commitments. But they're also going to invite us to the national advisory board. Canada negotiates to a number, this is no secret, and the negotiation commitment is going to be the number. We will all be pulled into this thing. It will allow the feds to unilaterally dictate funding, without even pretence of negotiation.

First Nations aren't necessarily opposed to a formula approach; it's the content and determination of the formula that are critical. The formula needs to have real measures of comparability, and needs to crack open the cheque book to real comparability and its additional costs.

What Lies Ahead: New Approaches to the Future

Presented by Jim Aldridge, Matt Mehaffey, Terry Fenge and Jessica Orkin

Jim Aldridge, Partner, law firm of Rosenbloom, Aldridge, Bartley & Rosling

In November 2003, nine years ago, all the groups with modern land claims got together. Many concerns were expressed, but it wasn't simply a session to complain, it was an opportunity to turn people's minds to the way forward, how to proceed. It was felt that what was lacking was a comprehensive federal implementation policy. They have a negotiation policy, but not much in the way of implementation policy.

Thus the coalition was formed. Not an organization that had authority over its members, but a true coalition. Nine years later there is an astonishing degree of ongoing consensus. Four points form the basis of a new implementation policy:

1. Recognition that the Crown, not AANDC, is the signatory to the land claim agreement. AANDC is responsible to Parliament but it is not the signatory to the agreement;
2. There must be a federal commitment to achieving the broad objectives of the agreements and comes up with a means of evaluation;
3. Implementation must be handled by appropriate senior officials with the federal government. In 2003, feds were low ranking with no authority other than to take the message back to their departments. They were messengers;
4. Recommended independent implementation and review body that would do annual reports, etc. to measure the efficacy of the process.

The process proceeded well, until it was handed to the Department of Justice, then the election occurred, the current government took office and there was no interest in development of a policy.

Next came the **4/10 Declaration**, presented to a Senate Committee.
We then drafted our own policy that could be embraced by the federal government. That document, in 2008, has been distributed within government, with no uptake. It is a well-articulated expression of what needs to happen.

The Coalition did receive support from the Standing Committee on Aboriginal Peoples, which wrote a report, after hearing from aboriginal witnesses and the Crown. Came up with recommendations which reflect the view put forward to it. The report cites deep, structural reasons for the failure of the implementation process. Performance of AANDC was described as "woefully inadequate." The Minister has not embraced or fully responded to this report. Until the issues are dealt with, we'll have only adhoc solutions.

Matt Mehaffey, Consultant to Several Yukon First Nations, Principal Mehaffey Consulting

It's important to look at the positive potential that land claim agreements have, and at what lies ahead. As Canadians, we need to ask how we want to see our country moving forward. This will define in some part where Canada goes economically in the next decade. The key to moving forward is for Canadians to understand that the success or failure of Canada's aboriginal people is linked to our success as a nation.

Until people outside of government care about these issues, the situation is not going to change. Aboriginal people make up only 3% of Canada's population.

On the ground, the Crown is taking significant steps backwards. Positions are becoming more entrenched and narrow, and it is putting success in jeopardy. The approach to fiscal negotiations is much less focused on solutions than on taking positions. This is not consistent with the idea of working together to reach an agreement. Across the board, these agreements have been a success. The benefits to Canada have been immeasurable. Financial, social, the change in a decade and a half has been dramatic. Higher education, better health, more jobs, etc. The three territories receive between 80 and 90 percent of their revenue from Canada, this will not change.

Refusal to meet with LCAC to look at policies developed, and other evidence indicates the spirit of cooperation is not there. This will not change until Canadians tell their elected officials this issue is a priority. The situation is deplorable and there is a solution, which will produce benefits in cold, hard dollars.

Terry Fenge, an Ottawa-based consultant, with many years' experience with negotiating and implementing modern treaties

We will try to project ahead with plausible scenarios. We must understand how we fit into a broader whole. The specific claims process is in deep trouble in this country. Comprehensive claims are becoming more difficult. A new approach is being pushed by the government of Canada; outstanding comprehensive claims. The values reflected are those of the Reform Party.

I suggest two books for further understanding of the modern treaty making process in Canada. **Our Home or Native Land: What Governments' Aboriginal Policy is Doing to Canada**, by Melvin H. Smith; and **Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation**, by Frances Widdowson and Albert Howard.

Here's what's coming:

1. Implementation will continue, but will be highly imperfect and increasingly so. Royalties will continue to flow, but partnerships and creativity will continue to decline.
2. Increased disagreement and declining dialog: The long separation/divorce, which will require a relationship rescue!
3. More litigation is coming: recent judgement on the Nunavut court case is evidence, courts are calling government of Canada "indifferent" to its obligations
4. More political action will happen: there will be a recognition that more action is required at many levels, generating coalitions and alliances that can change public policy
5. We will see a growing internationalization of these issues, which will take many forms
6. The Coalition itself is in its 10th year. It is getting stronger, not weaker. It may begin to do more.

Jessica Orkin, Grand Council of the Crees, Lawyer, Sack, Goldblatt, Mitchell LLP

How Modern Land Claims Agreements Look from an International Perspective.

The agreements are a reflection of many of international values, but implementation represents a failing.

Canada is failing to respond appropriately to what these land claims agreements offer
The right of self-determination: Aboriginal peoples have the right to self-determination, a fundamental human right.

The spirit and intent underlying modern land claims agreements…

Theme: is Canada living up to its obligations in the following categories:

- Self determination
- Equality
- Non discrimination

We have a long history of supporting and promoting international human rights, and we must learn to apply them within our borders.

Closing Comments and Final Remarks

Presented by John Amagoalik

John Amagoalik, Executive Policy Advisor, Qikiqtani Inuit Association

I want to talk to you about the slaying of a mythological beast.

In the past 500 years, whenever aboriginal peoples and governments were discussing issues or negotiating, there is always a dragon in the room. That dragon is called colonialism.

The Prime Minister of Canada, Stephen Harper, is a funny man, in a weird sort of way. Weird, because sometimes when he says something, you don't know whether you should laugh or cry. I refer to two things that he has said. Speaking about Canadian sovereignty in the Arctic, he said, "Use it or lose it". For a Prime Minister of Canada, that is a weird statement to make. Does that mean that Harper would be willing to surrender the Arctic to another country if Canada was not "using it"? What about Inuit use and occupancy? Doesn't that count for something?

The other quote. Harper was abroad when he was asked about what he thought of colonialism. His reply; "Canada has no history of colonialism." When I heard that, I nearly fell off my chair.

It is difficult to describe what colonialism feels like to people who have never experienced it. I am almost 65 years old. All my life, I have lived under Canada's colonial regime. I attended residential schools. I experienced forced relocation. My team of husky dogs was slaughtered by the RCMP. I have witnessed the destruction of the environment and the endangerment of wildlife in my homeland. I have lived under governments with policies to assimilate my people. To destroy our language and culture. I have lived under governments that insisted I must "surrender" any other rights to my homeland before they would agree to a land claims settlement. In the past, my people have been considered as "something less than human beings". The media, in the early days described the Arctic as a "wasteland where nobody lives". What about the Inuit who have occupied the Arctic for millennia?

All these things are what colonialism is. I don't like them. I don't want them. I want them to go away.

Back in the 1960s, when the exploration boom was going on in the High Arctic, DIAND was a lousy landlord. They still are. I don't want DIAND, INAC, AANDC, or whatever name they are using these days, to be our landlords anymore. I want our own elected government in Nunavut to take over that role.

As citizens of a "territory", we are still second class citizens living under third world conditions. We do not have control of our natural resources as other Canadians who live in provinces do. In this day and age, these things must end.

The recently re-elected chief of the Assembly of First Nations has stated that he wants to rid the country of colonialism. Even the Conservative and the Liberal parties of Canada have suggested changes to, or the elimination of the Indian Act. Perhaps the time is ripe to "slay the dragon".