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NUNAVUT TERRITORY: ABORIGINAL GOVERNING IN THE CANADIAN REGIME OF GOVERNANCE

Charles J. Marecic*

On April 1, 1999, the current Northwest Territories divided into two separate territories creating the territory of Nunavut, whose capital is located in Iqaluit.¹ Nunavut, which means "Our Land" in the Inuit language, Inuktitut, is the culmination of decades of negotiations between the Inuit people and the Canadian government. Some, particularly indigenous and aboriginal groups worldwide, herald the creation of Nunavut as a "bold political experiment," which creates the "first full territory in a modern nation ever to be governed and administered by aboriginal people."² Others see Nunavut as a potential drain on limited Canadian tax dollars and the birth of a territory drawn along racial lines.³

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1. Nunavut will consist of the eastern and central portions of the former Northwest Territories while the remaining (rump) territory will retain the name Northwest Territories. The capital of rump Northwest Territories will remain in Yellow Knife. See Colin Nickerson, *For the Inuit New Territory is 'Our Land,'* BOSTON GLOBE, Mar. 23, 1998, at A4.

2. *Id.* However, support of Nunavut's creation is by no means unanimous within the aboriginal community. The Dene and the Metis of the Northwest Territories have opposed the creation of Nunavut because, for among other reasons, the Inuit secession from the NWT will give non-aboriginals the majority in rump Northwest Territories. See Kevin R. Gray, *The Nunavut Land Claims Agreement and the Future of the Eastern Arctic: The Uncharted Path to Effective Self-Government*, 52 UNIV. OF TORONTO FAC. OF L. REV. 300, 308 n.21 (1994). These groups are also unhappy because the Nunavut Agreement may have foreclosed them from asserting aboriginal title over lands (specifically Contwoyto Lake and Thelon Game Sanctuary) in dispute with the Inuit in the Nunavut region. See *id.*

3. Nickerson, *supra* note 1, at A4. Critics fear that the Canadian government will "subsidize" a territory with "nearly 30% unemployment" and communities "plagued by an array of social problems, from epidemic alcoholism to illiteracy." *Id.* Also, "anxious whites in the region fear that the territory will be radically redrawn along racial lines — with the majority Inuit handed every plum government job and contract while taking every seat in the territorial legislature." *Id.*

See also Dwane Wilkin, *Nunavut Tackles Issue of French-language Services*, GAZETTE (Montreal), Mar. 31, 1998, at A10 ("[A]lthough French speakers make up more than 10 percent of the population of Iqaluit — Nunavut's future capital — virtually no public services at the territorial level are available in French.") (emphasis added).

Ironically, the Inuit have not fared so well in the Province of Quebec, either. With respect to the James Bay Northern Quebec Agreement, "[a]s control at the community level has been undermined, the Inuit have also suffered from a pronounced language and cultural barrier in Quebec. The integration of Inuit values and ideals is problematic in a province that vigorously upholds the linguistic and cultural integrity of French Canada." Gray, *supra* note 2, at 314 (emphasis added).

Along with hopes and fears, Nunavut also raises a number of potential legal questions. These questions take primarily two forms. The first, concerns whether Nunavut has, in fact, permanently altered the nature of aboriginal rights as understood and applied in Canada. In other words, how will the creation of Nunavut alter the relationship between the Inuit (and the First Nations peoples of Canada) and the Canadian federal government with respect to existing aboriginal rights — such as native self-government, land claims, and traditional hunting and fishing rights? Is this bold political experiment the new look of Canada's relationship with First Nations peoples?⁴

The second concerns the impact that Nunavut's Inuit majority will have on Canadian law. If the Inuit have retained (any of) their aboriginal rights, and if they also maintain a clear majority population, what will the creation and administration of Nunavut law look like? Specifically, does Nunavut create a "racial province" as some fear? What impact will Nunavut have on the Canadian Charter of Rights, the Indian Act, and, generally, mineral and other development within the Canadian North?

The purpose of this article is threefold. Part I will provide a brief history and description of Nunavut — including population demographics and natural resource wealth. This part will also include a brief description of the Inuit and their culture. It is important to understand the substance of Nunavut. This Canadian territory in the Far North has a very unique physical and cultural landscape which shapes and textures its political composition.

Part II will provide the political definition of Nunavut. This part will include descriptions of the Nunavut Land Claims Agreement, the Nunavut Land Claims Agreement Act, the Nunavut Act, and relevant provisions of the Canadian Constitution. Also, this section will describe the aboriginal and Canadian "rights" implicated in the creation of Nunavut. Canadian courts and government appear to be moving in quite opposite directions with respect to the definition, retention and extinguishment of aboriginal rights in Canada.

Part III will describe the potential intersection of these various aboriginal and non-aboriginal (Canadian) rights. This intersection contains at least two areas of potential conflict. The first relates to whether Nunavut will realize First Nation sovereignty, or whether it will "Westernize" aboriginal self-government. In its efforts to accommodate the "Canadian system" by adopting a public government model for Nunavut, the Inuit may have in fact authorized their own cultural assimilation. Although the Inuit and the First Nations of Canada are separate and distinct aboriginal entities, one must consider the implications of Canadian "status" drawn along the

4. For example, the Quebec Inuit have been negotiating with the Quebec and federal governments over aboriginal self-government for an area in Northern Quebec called Nunavik which "will follow the example set by . . . Nunavut . . ." Allan Swift, *Self-government Deal Near: Quebec Inuit*, GAZETTE (Montreal), Mar. 31, 1998, at A10.

aboriginal/non-aboriginal lines. Cultural sensitivity has not been a hallmark of European relationships with indigenous populations in the western hemisphere. Direct government administration and participation within Canada's constitutional framework will not likely convert the Euro-Canadian tradition to Inuit tradition any time soon. One example of this is the potential threat to the Inuit's language, Inuktitut, in light of bureaucratic efficiency within the Canadian system.

The second involves maintaining traditional practices versus upholding Canadian law. One area where this has become noticeable was during Nunavut's gender parity debate. In 1997, an initiative to have one male *and* one female representative from each electoral district failed in a plebiscite. Apparently one of the reasons for this failure was that traditional Inuit culture has been somewhat male dominated. Some, particularly the Inuit leadership, believed that the initiative could remedy such past disparity. Here majoritarian impulses, albeit traditional or cultural impulses, in the region may come into conflict with the Canadian Charter. This is not necessarily a bad thing. Perhaps the long term benefit would outweigh any short term conflict within the Inuit community. However, many within the Inuit communities chose the traditional point of view that a desire for a strong family outweighed the desire for gender parity.

I. Nunavut

A. Inuit

All of Nunavut Territory lies above the sixtieth parallel in the northern region of Canada. The territory includes roughly two million square kilometers, or one fifth of Canada's total land mass.⁵ From the east coast of Baffin Island to Nunavut's western border is about 2400 kilometers.⁶ From its southern border with Manitoba to Ellsmere Island is about 2700 kilometers.⁷ For a comparison, from London, England to Istanbul, Turkey is approximately 2400 kilometers.⁸ Forty-five percent of the Nunavut land area lies on Canada's northern mainland, while the remainder of its land mass consists of hundreds of islands including Baffin Island, Ellsmere Island, Axel Heiberg and Devon islands.⁹ Nunavut Territory also includes Sanikiluaq and other islands in the Hudson Bay and James Bay.¹⁰

5. See Olav Loken, *Physical Geography* (visited May 12, 2000) <<http://www.arctic-travel.com/chapters/geopage.html>>. Canada's land mass consists of 9,970,610 square kilometers and Nunavut consists of 1,900,000 square kilometers. See *Maps of Nunavut* (visited May 12, 2000) <<http://www.geographic.org/maps/nunavut.html>>.

6. See *id.*

7. See *id.*

8. See *id.*

9. See *id.* Twelve of the 20 largest islands in Canada lie entirely within Nunavut. See *id.*

10. See *id.*

Winter (January) temperatures range from -20C to -37C, and summer (July) temperatures range from 10C to 2C.¹¹ Due to such low mean temperatures, Nunavut retains continuous permafrost with only fifteen to 150 centimeters of soil thaw every summer.¹² Nunavut receives between 100 to 600 millimeters of annual rainfall.¹³ Due to continuous ice cover, the northwestern part of Nunavut near the Arctic Ocean "receives less precipitation than parts of the Sahara Desert, and can be described as a polar desert."¹⁴ Nunavut is primarily tundra.

Polar ice caps and glaciers cover approximately 150,000 square kilometers — most of this on Ellsmere Island "where ice covers an area larger than the province of New Brunswick."¹⁵ Nunavut has numerous lakes and rivers, primarily on the mainland, that are generally ice free during the summer.¹⁶ The Arctic Ocean is perpetually ice covered. This facilitates "travelling with dogteams and snowmobiles and during the winter and early spring the area is more like a continuous landmass than an archipelago."¹⁷ Some areas, known as polynyas, remain relatively ice-free even during the winter.¹⁸ These areas, such as North Water, provide excellent wildlife habitat for whales, sea mammals, marine plants and animals, and seabirds.¹⁹

Despite the permafrost and the Arctic conditions, Nunavut is not necessarily a barren wasteland. Before the ink had dried on the Nunavut agreement, members of the mining industries and Inuit negotiators began settling deals to mine copper, zinc, gold and other base metals, and, to a lesser extent, diamonds from Arctic mineral fields.²⁰ Also, the Inuit land claim deal created three new national parks in Nunavut that many believe will encourage much ecotourism in the territory.²¹ Proponents hope that

11. *See id.*

12. *See id.*

13. *See id.*

14. *Id.*

15. *Id.*

16. *See id.*

17. *Id.*

18. *See id.*

19. *See id.*

20. *See Canada: Inuit-Metall Talks a Model for Nunavut*, REUTER TEXTLINE FIN. POST, Nov. 5, 1993, available in LEXIS, News Library, Canada file; *Canada: Agreement Gives Inuit Interest in Mining Nunavut's Resources*, REUTER TEXTLINE FIN. POST, Nov. 17, 1992, available in LEXIS, News Library, Canada File.

21. *See Louise Kinross, Canada: New National Parks Will Draw More Tourists to High Arctic*, REUTER TEXTLINE FIN. POST, Nov. 17, 1992, available in LEXIS, News Library, Canada File. The three national parks will be Auyuittuq National Park Reserve on northeastern Baffin Island; Ellesmere Island National Park Reserve just south of the North Pole; and a third area on northern Baffin Island. *See id.* The types of tourism will include back country hiking, wildlife watching (beluga whales, walruses, seals, polar bears, arctic fox, caribou, and over 40 species of birds. *See id.* Tourists will also get an opportunity to meet with and observe the Inuit "carrying out traditional hunting of marine mammals and caribou," as well as learn about Inuit culture in

these parks will produce "spin-off economic benefits for the community" that will both generate income and preserve Inuit land, culture and traditions.²²

B. Inuit

Our luck was to inhabit a land that no one coveted.

— John Amagoalik, Inuit political leader

The Inuit people make up the vast majority of the Nunavut population. Most estimates calculate that they make up between eighty to eighty-five percent of the 22,000-person population.²³

The Inuit are a people who live in the far north of Canada above treeline.²⁴ They generally live in small communities along coastlines which "reflects a historical lifestyle tied to marine harvesting."²⁵ Historically,

[t]hey hunted seal, whale, and walrus in the waters of the north but would also travel inland for caribou, fish and waterfowl. Most Inuit lived in small groups of related families, sometimes coming together at fishing or sealing camps. Sharing the results of their hunt was a key aspect of the Inuit culture: some communities had formal distribution systems for sharing out the catch.²⁶

Their traditional homeland "encompasses the western and central Arctic, the Keewatin region of the barren lands, the coasts of Hudson Bay, northern Quebec and Labrador, Baffin Island, and the high Arctic as far north as Ellesmere Island."²⁷ Canadian Inuit total roughly 38,000 people, and

nearby communities. *Id.* More adventurous tourists can actually hunt polar bear, caribou and muskox outside the park. *See id.* The only real problems are that it is expensive (the average tourist spends roughly \$1500 per day) and, to a lesser degree, the parks are difficult to get to. *See id.* As a result, only the wealthier tourist set would be attracted to Nunavut. *See id.* On the other hand, having national parks in Nunavut will economically benefit the local Inuit — printmaking, carving and weaving (souvenirs), preferential hiring and training — and also provide environmental and cultural benefits. *See id.* National parks would be another way of preserving Inuit land, old hunting grounds, and culture. *See id.*

22. *Id.*

23. *See* Nickerson, *supra* note 1, at A4; Wilkin, *supra* note 3, at A10; Galen Rowell, *Inuit Territory: When Canada's Arctic Wilderness Becomes a Territory in its Own Right, Tourism Will be a Mostly Local Affair*, VALLEY NEWS, Mar. 29, 1998, at E6, E8. The total population of Canada is 27,296,860. *See Nunavut Facts and Figures*, *supra* note 5.

24. DUANE CHAMPAGNE, *NATIVE AMERICA: PORTRAIT OF THE PEOPLES* 346 (1994).

25. *Id.*

26. *Id.* These traditions would most likely be considered part of the Inuit "aboriginal rights package." The rest of the package would consist of aboriginal title, customs and practices. *See generally* Delgamuukw v. British Columbia [1997] 3 S.C.R. 1010.

27. 4 ROYAL COMM'N ON ABORIGINAL PEOPLES, REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES: PERSPECTIVES AND REALITIES 430 (1996) [hereinafter REPORT].

throughout the circumpolar north, there are between 115,000 and 128,000 Inuit.²⁸ While they comprise the largest ethnic majority in the North, they are the smallest group of aboriginal people in Canada.²⁹ Also, they are not an exclusive aboriginal population in the North. Many other peoples including Tlingit, Innu, Cree, Gwich'in and Metis inhabit and claim aboriginal title to lands in the North.³⁰

In most Inuit territories, however, Inuit create the majority population; therefore, the Inuit language, Inuktitut, remains widely spoken, and they retain "considerable confidence in their ability to maintain cultural cohesion as they work with and through the institutions of the larger Canadian society."³¹ Most likely, their physical isolation in the far North accounts for preserving this cultural integrity.³²

II. The Nunavut Territory

The Inuit had never signed a treaty with the government of Canada.³³ In fact, other than commercial whale hunting and fur trading, the Inuit had very little contact with the rest of Canada until the 1940s when the fur trade collapsed (the whaling industry had earlier collapsed).³⁴ At that point, the Canadian government intervened to alleviate hunger and disease that overtook Inuit communities.³⁵ This reality and a 1939 Canadian Supreme Court case, *Re Eskimos*, [1939] S.C.R. 104, provided the Canadian

28. See *id.* Other Inuit populations live in Alaska, Greenland and Siberia. See *id.*

29. See CHAMPAGNE, *supra* note 24, at 333.

30. This list is not exhaustive; it is merely illustrative. See 4 REPORT, *supra* note 27, at 390. Nearly 10% of Canada's aboriginal people live in the far North, which includes Yukon, Northwest Territories (including Nunavut), northern Quebec, and Labrador. See *id.* at 391.

31. *Id.* Most communities of the North are small, and the smaller the community, the greater the population of Aboriginals. See *id.* at 391. The North also has a larger proportion on aboriginal speakers than the rest of Canada. See *id.* at 395. In 1991, 70.2% Aboriginal adults and 63.7% children spoke their aboriginal language in the North, while 54.9% adult and 35.9% children in the mid-North, and 32.1% adult and 8.6% children in the South spoke their aboriginal languages. See *id.*

The Baffin Region, which is the most populated region in Nunavut has, according to the 1991 Census of Canada, a total population of 11,385 (9263 Inuit; 26 Dene; 39 Metis; 2057 Non-Native). In Iqaluit, the future capital, the total population was estimated at 3,552 (2,255 Inuit; 11 Dene; 9 Metis; 1,277 Non-Natives). According to the 1991 Census of Canada, the estimated population of the entire Northwest Territories was 57,649 (21,565 Inuit; 9647 Dene; 4090 Metis; 22,347 Non-Natives).

32. Along with the harsh physical conditions of the Arctic environment, Nunavut is also blessed with a population density of .01 persons per square kilometer, compared with Canada's 2.90 persons, Ontario's 11.00, China's 120.4 and Germany's 220.00 persons per square kilometer. See *Maps of Nunavut*, *supra* note 5. Nunavut has 20 kilometers of highway. See *id.*

33. See MAGDALENA A.K. MUIR, COMPREHENSIVE LAND CLAIMS AGREEMENTS FOR THE NORTHWEST TERRITORIES 13 (1994).

34. See CHAMPAGNE, *supra* note 24, at 347.

35. See *id.*

government with de facto jurisdiction over the Inuit.³⁶ The Inuit, were not considered Indians, and therefore, were not specifically included in the Indian Act. Section 4(1) states that "[a] reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Inuit."³⁷

A. Land Claims Negotiations

In 1971, the Canadian Inuit created the Inuit Tapirisat (Brotherhood) of Canada (ITC) as "the voice of the north."³⁸ The purpose of the ITC was to negotiate land claim deals for the Inuit.³⁹ In 1973, the Canadian government entered into negotiations with the Inuit.⁴⁰ In 1976, the ITC submitted a proposal on behalf of the Inuit of Nunavut.⁴¹ Negotiations stalled when the ITC insisted that any comprehensive claims⁴² agreement include a proposal to create a new political territory called Nunavut.⁴³ In 1982, Tungavik Federation of Nunavut (TFN) assumed the negotiator's role for a land claims settlement.⁴⁴ In 1992, TFN and the Canadian government settled the

36. *See id.*

37. Indian Act, R.S.C. ch. I-5, § 4(1) (1985) (Can.).

38. *See* CHAMPAGNE, *supra* note 24, at 348. Originally, the ITC considered the possibility of negotiating a comprehensive land claim agreement for all Inuit living in Labrador, Quebec and the Northwest Territories. However, this provided unrealistic because "[b]ringing all the parties, the provincial governments, the territorial government, the federal government, and the Inuit from the three different jurisdictions, to the same table to negotiate one claim, was just too difficult." It decided to pursue regional negotiations instead. John Amagoalik, *The Nunavut Land Claim* (visited May 12, 2000) <<http://www.arctic-travel.com/chapters/landpage.html>>.

39. *See id.* Since the mid-1970s the Inuit have negotiated the James Bay and Northern Quebec Agreement in 1975, Inuvialuit Final Agreement in 1984 (Western Arctic), and the Nunavut Land Claims Agreement in 1993. *See Information: Inuit* (last modified Jan. 1998) <<http://www.inac.gc.ca/pubs/information/info114.html>>. Currently, the Labrador Inuit Association is negotiating a land claims settlement with Canada and the Province of Newfoundland and Labrador, and the Makivik Corporation (Inuit of Northern Quebec) is negotiating its claim with Canada and the Northwest Territories. *See id.*

40. *See id.* at 349.

41. *See id.*

42. The government, through the Indian Claims Commission, has three ways to address aboriginal claims. A comprehensive claim is one "based on unextinguished Aboriginal title, is, in effect, a negotiation of a [modern] treaty." 2 REPORT, *supra* note 27, at 536. A specific claim is "based on a 'lawful obligation' of Canada to Indians." *Id.* at 544. It is a claim for compensation that is not based in unextinguished Aboriginal title. *Id.* It has a subset of claims called "claims of a third kind." *Id.* at 548. These claims are those not otherwise "suitable for resolution, or cannot be resolved, through the Specific Claims process." *Id.* This system has many critics. *Id.* at 556.

43. *See Tungavik Federation of Nunavut (TFN) Comprehensive Claim: Northwest Territories (Information Sheet) May 1994* (visited May 12, 2000) <<http://www.inac.gc.ca/pubs/information/info08.html>>. Once ITC separated the creation of Nunavut from the land claims forum, negotiations resumed in 1980. *See id.*

44. *See* CHAMPAGNE, *supra* note 24, at 349.

Nunavut Land Claims Agreement. In the Nunavut Agreement, the Inuit acquired title to the largest land claim in Canada's history in addition to the creation of the political entity, Nunavut.

The impetus to enter into and complete the negotiation process came from Inuit political organizing in the "late 1960s and early 1970s, and the struggle for control for natural resources."⁴⁵ This political awareness grew out of "the boom and bust of the '60s' High Arctic oil exploration."⁴⁶ Managing oil and gas development has been a federal government responsibility in the Canadian Arctic. "The period of intense exploration in the 1960s made Inuit realize just how little control they had over their traditional lands. They discovered that governments and big business could do just about whatever they wanted in the homeland of Inuit."⁴⁷

In 1973, the Canadian Supreme Court decided the Calder Case, *Calder v. Attorney-General of British Columbia*,⁴⁸ in which the Canadian government recognized the existence of aboriginal title to land in Canada.⁴⁹ This provided the Canadian government with an incentive to come to the bargaining table with aboriginal peoples.⁵⁰ They needed to clear title.

B. The Agreement

In the Nunavut Land Claims Agreement, the Inuit received title to 355,842 square kilometer of land, of which 35,257 square kilometers include mineral rights, and a share of the federal government's oil, gas and mineral exploitation royalties.⁵¹ Other land and resource based benefits include the right to "harvest wildlife on lands and waters throughout the Nunavut settlement area," a wildlife management board which will devise and promote long-term economic, social and cultural interests of Inuit harvesters, a right of first refusal on sport and commercial development of renewable resources in Nunavut, and Impact and Benefit Agreements negotiated, in advance, of major development projects "that could have a detrimental impact or provide benefits to the Inuit."⁵² Finally, the Agreement will provide "capital transfer payments of 1.1 billion, payable over 14 years beginning in 1993," a training fund of \$13 million, procurement preferences and labor hiring benefits.⁵³

45. Amagoalik, *supra* note 38, at 1.

46. *Id.*

47. *Id.*

48. [1973] S.C.R. 313 (Can.).

49. See Gray, *supra* note 2, at 305 n.12.

50. *Id.*

51. Amagoalik, *supra* note 38, at 4.

52. *Id.*

53. *Id.*

In exchange for these (and other) benefits, the Inuit have agreed to the "surrender of any claims, rights, title and interests based on their assertion of an aboriginal title" to the Nunavut land.⁵⁴

C. Aboriginal Rights in Canada

Aboriginal rights are higher than politics or legal jargon. They are a part of natural law.

— Oren Lyons, Iroquois Confederacy⁵⁵

Currently, the Canadian Supreme Court understands aboriginal rights as a spectrum of rights.⁵⁶ On one end of the spectrum lie those aboriginal rights "that are practices, customs, and traditions that are integral to the distinctive aboriginal culture of the group claiming the right."⁵⁷ In the middle are those

activities which, out of necessity, take place on land and indeed, might be intimately related to a particular piece of land. Although an aboriginal group may not be able to demonstrate title to the land, it may nevertheless have a site-specific right to engage in a particular activity.⁵⁸

On the other end of the aboriginal rights spectrum lies the aboriginal title to the land itself.⁵⁹

According to the Canadian Supreme Court,

Aboriginal rights arise from the prior occupation of land, but they also arise from the prior social organization and distinctive cultures of aboriginal peoples on that land. In considering whether a claim to an aboriginal right has been made out, courts must look at both the relationship of an aboriginal claimant to the land *and* at the practices, customs and traditions arising from the claimant's distinctive culture and society. Courts must not focus so entirely on the relationship of aboriginal peoples with the land that they lose sight of the other factors relevant to the identification and definition of aboriginal rights.⁶⁰

In order for the Canadian government to comply with section 35(1) of the Canadian Constitution Act of 1982, it "must recognize and affirm both

54. Nunavut Land Claims Agreement pmbl. (1993) (Can.).

55. See Kerry Abel, *Introduction to ABORIGINAL RESOURCE USE IN CANADA: HISTORICAL AND LEGAL ASPECTS* 3, 5 (Kerry Abel & Jean Friesen eds., 1991).

56. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 138.

57. *Id.*

58. *Id.*

59. See *id.*

60. *Id.* at para. 141 (citing *R. v. Van der Peet*, [1996] 2 S.C.R. 507, at para. 74).

aspects of [aboriginal] prior presence — first, the occupation of land, and second, the prior social organization and distinctive cultures of aboriginal peoples on that land."⁶¹ In other words, the Canadian Supreme Court recognizes that aboriginal rights are separable, and that by extinguishing one — particularly aboriginal title — other aboriginal rights are not necessarily extinguished.

D. Extinguishment and Agreements

Extinguishment of aboriginal rights has caused much controversy within the Canadian aboriginal community.⁶² Many within the aboriginal communities do not accept the very notion of extinguishment.⁶³ Treaty nations have maintained "with virtual unanimity that they did not agree to extinguish their rights to their traditional lands and territories but agreed instead to share them in some equitable fashion with the newcomers."⁶⁴ The Royal Commission on Aboriginal Peoples believes that the

[i]nsistence by Crown agencies that Aboriginal title was largely extinguished by the treaties has the potential to be highly destructive to the process of reconciliation. The text of the post-1850 treaties clearly provides for the extinguishment of Aboriginal title. *But the people of the treaty nations reject that outcome. It is unlikely that any court could ever change their minds on this central issue.*⁶⁵

Land is the focal point to aboriginal cultures; "nothing is more fundamental to their cultures, their identities and their economics."⁶⁶ However, according to one commentator, this controversy and "confusion" is unfounded because

61. *Id.* Section 35 pertains to the rights of the aboriginal peoples of Canada. It reads:

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby 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 so be acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Canada Act 1982, including the Constitution Act, 1982, R.S.C. (1985), App. II, No. 44 (Can.). Subsections (3) and (4) were added by Constitutional Amendment Proclamation, 1983, No. 46.

62. Extinguishment of aboriginal rights is the exchange of rights to traditional land and waters for "financial compensation, land ownership, participation in government, and administrative responsibility." Gray, *supra* note 2, at 303.

63. 2 REPORT, *supra* note 27, at 44.

64. *Id.* at 45.

65. *Id.* (emphasis added).

66. *Id.* at 44 (citation omitted).

[t]he courts are continually expanding the parameters of aboriginal rights, which might counterbalance what was given up in [this particular case] the [Nunavut Land Claims] Agreement since the rights surrendered under it relate primarily to land. Additionally, because land claim agreements are recognized in s. 35 of the Constitution, entitlement to benefits flowing from aboriginal rights as well as government programs is constitutionally guaranteed.⁶⁷

This perspective assumes that whatever inherent aboriginal rights aboriginal peoples cede in land claims agreements will be *granted*, through the wisdom (and magnanimity?) of the courts and legislature, back to the aboriginal people. However, this observation may, in fact, side step the fundamental issue of aboriginal rights which is that these rights, including aboriginal title, predate Canada, its Constitution and its Supreme Court. Therefore, many First Nations peoples may not accept a *grant* of rights from the Canadian government.

The changing outward character of the aboriginal demands over time (first equality, then land claims, and ultimately self-government) tends to hide their fundamental unity. In many ways, each was a different manifestation of the aspiration of the aboriginal peoples to regain control over their own destinies. . . . Aboriginal peoples did not seek equality, for example, in order to be treated precisely the same as all other Canadians; they had differences they wanted to preserve, and their conception of equality involved equal respect for these differences, not their obliteration. . . . Aboriginal peoples wanted to be recognized as distinct societies, with their own character, and having an *inherent right* — *not a right conferred by others* — to shape the development of that character through time. This did not mean separation from Canada. . . . [b]ut they wanted to preserve a sphere which they could control, in which discussion and decision would occur through the institutions of their own communities, not through those of a much larger society in which they formed a small minority.⁶⁸

Under Canadian law, aboriginal title can be extinguished in two ways; by constitutional amendment, and by agreement of the aboriginal people concerned.⁶⁹ According to the Report of the Royal Commission on

67. Gray, *supra* note 2, at 304 (citations omitted).

68. JEREMY WEBBER, *REIMAGINING CANADA: LANGUAGE, CULTURE, COMMUNITY, AND THE CANADIAN CONSTITUTION* 72-73 (1994) (emphasis added).

69. See RICHARD H. BARTLETT, *RESOURCE DEVELOPMENT AND ABORIGINAL LAND RIGHTS* 28 (1991). Procedure for amending Constitution of Canada is in §§ 38(1)-49 of the Canada Act

Aboriginal Peoples, the government's original land claims policy "specified that an Aboriginal group must surrender *all Aboriginal rights* in return for a *grant* of rights specified in a settlement agreement."⁷⁰

As a result of aboriginal dissatisfaction with these terms (as noted in the 1985 Coolican Report) the federal government amended its policy to create an alternative.⁷¹ The Coolican Report "noted a fundamental difference in the aims of the parties to an aboriginal rights claim."⁷² To no one's surprise, the government wanted to extinguish rights and to "achieve a once in-for-all settlement of historical claims," and the aboriginal peoples wanted to "affirm the aboriginal rights and to guarantee their unique place in Canadian society for generations to come."⁷³ Many aboriginal peoples see treaty making as a beginning and not an end.⁷⁴ Treaties (new and historical) should reflect the beginning of a nation-to-nation partnership, not a final resting place for aboriginal rights.

According to the Royal Commission's Report, aboriginal groups have not retained rights after negotiating an agreement. All benefits are then considered as conferred upon the aboriginal group by the federal government. Only recently has the federal government, through the Department of Indian Affairs and Northern Development (DIAND), recognized the aboriginal "inherent right of self-government."⁷⁵ Under the current policy, aboriginal peoples can negotiate self-governing agreements, but they are separate from the land claim agreements with separate enacting legislation. Furthermore, until the Canadian government passes a constitutional amendment, these self-government agreements have no constitutional protection.⁷⁶

Apparently the Canadian government has a somewhat schizophrenic aboriginal rights policy. On one hand, the Indian Land Claims Commission considers extinguishment of aboriginal title necessary and sufficient for total extinguishment of aboriginal rights. On the other hand, DIAND claims that the aboriginal right to self-government is itself an inherent right. On still

of 1982.

70. 2 REPORT, *supra* note 27, at 537 (emphasis added).

71. The alternative has been used only once, and current policy allows for only "minimal divergence from the basic position of requiring total surrender of all aboriginal rights." *Id.* at 537-38.

72. *Id.* at 539.

73. *Id.*

74. *See id.* at 58.

75. INAC and Canadian Polar Commission 1996-1997 Estimates: *Plans and Priorities: Part A: Historical Introduction* 1.6 (visited May 12, 2000) <<http://www.inac.gc.ca/pubs/estimates9697/plans/historical/index.html#1.0>> ("Self-Government"). The Royal Commission defines self-government as "one path Aboriginal people may take in putting the principle of self-determination into effect. . . . In its most basic sense, it is the ability to assess and satisfy needs without outside influence, permission or restriction." 2 REPORT, *supra* note 27, at 108. Aboriginal peoples have differing perspectives on what self-governance means. *Id.* at 108-17.

76. *See* 2 REPORT, *supra* note 27, at 538.

another hand, the Canadian Supreme Court holds that aboriginal title is only a part of the vast, albeit heretofore undefined, concept of aboriginal rights. Even though an aboriginal people may not have retained aboriginal title, they may in fact retain other aboriginal rights. At this point, it is unclear what rights the Inuit of Nunavut have retained as opposed to what rights that they have been granted. Most likely, this will not be determined until they bring the question into court — an action that land claims agreements were supposed to circumvent. *Delgamuukw*, however, may have changed that aspiration.

It appears that the Canadian Supreme Court and the Canadian government's policy on land claims and aboriginal rights are moving in opposite directions. These conflicting perspectives *within* the Canadian government create uncertainty for both aboriginal and non-aboriginal Canadians.

However, it is not the only source of uncertainty. Aboriginal peoples may have less effective participation in managing lands and resources than anticipated. Although agreements provide for the creation of managing boards, "the [government] policy requires that any arrangements recognize the overriding powers of non-Aboriginal governments."⁷⁷ The self-management that aboriginal peoples believe that they are receiving from the government may, in reality, be illusory.

E. Nunavut Acts

The creation of the new territory of Nunavut required two Acts of Canadian Parliament — the Nunavut Land Claims Agreement Act and the Nunavut Act. The former is essentially Parliament's assent to the Nunavut Land Claims Agreement.⁷⁸ This Act recognizes the extinguishment of the Inuit claim of aboriginal title. The second Act concerns the positive creation of the Nunavut Territory.⁷⁹ The Nunavut Act establishes the official boundaries of the Territory and its government. This includes creating an executive, a legislature and judiciary. The executive, the Commissioner of Nunavut, will be appointed by the Governor in Council. The Commissioner of Nunavut will have the same powers and duties (as applicable) as the Commissioner of the Northwest Territories. The Commissioner will appoint an Executive Council on advice of the Nunavut Legislative Assembly.

77. *Id.*

78. See Nunavut Land Claims Agreement Act (visited May 12, 2000) <<http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/N/N-28.7.html>>.

79. See Nunavut Act (visited May 12, 2000) <<http://canada.justice.gc.ca/STABLE/EN/Laws/ap/N/N-28.6.html>>.

F. Public Government in Nunavut

Non-ethnic forms of government are attractive for their potential to ensure control and management over Crown lands in Inuit traditional territory as well as Inuit settlement lands. Inuit control through non-ethnic forms of government is premised upon the existence of an Inuit majority in territories concerned (for example, Nunavut) or alternatively, structures of government that will ensure a strong Inuit voice even in a minority situation . . . [Nevertheless] there is a desire to leave open the option for so-called ethnic forms of self-government.⁸⁰

The Legislative Assembly will consist of at least ten persons elected from electoral districts established in Nunavut. Since the Inuit make up roughly eighty-five percent of the population, an Inuit majority is virtually assured, at least in the beginning.

The Legislature (Commissioner and Legislative Assembly) may make laws, subject to "any other Act of Parliament," including

23(1)(e) the administration of justice in Nunavut, including the constitution, maintenance and organization of territorial courts, both of civil and of criminal jurisdiction, and procedure in civil matters in those courts;

. . .

(l) property and civil rights in Nunavut;

. . .

(n) the preservation, use and promotion of the Inuktitut language, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the English and French languages;

. . .

(w) the imposition of fines, penalties, imprisonment or other punishment in respect of the contravention of any law made by the Legislature . . .⁸¹

Section 23(2) restricts the Legislature in that it shall have no more power than those that are "given to the legislatures of the provinces by sections 92 and 95 of the Constitution Act, 1867."⁸² Also, laws passed by the Legislature are subject to disallowance by the Governor in Council.

80. 4 REPORT, *supra* note 27, at 430-31 (quoting Wendy Moss, *Inuit Perspectives on Treaty Rights and Governance Issues*, in *ABORIGINAL SELF-GOVERNMENT: LEGAL AND CONSTITUTIONAL ISSUES* 104 (1995)).

81. Nunavut Act, *supra* note 78, at 4-5.

82. *Id.* at 4-5. <https://digitalcommons.ilr.edu/ailr/vol24/iss2/1>

Nunavut will have a public government as opposed to either the nation model or the community of interest model of traditional aboriginal governance.⁸³ Part of the reason, no doubt, is that the Inuit hold an overwhelming majority of the population in the Territory, and part because it is probably the most palatable choice for the administration of such a large Territory. Both sides appear to gain from this arrangement. The Inuit maintain a popular mandate that exceeds their exclusive land base (355,842 square kilometers), and the Canadian government maintains ultimate constitutional and administrative control (through veto power and incorporation of Inuit governance via public government model).

The public government model "expresses self-determination through an Aboriginal-controlled public government rather than an Aboriginal-exclusive form of self-government."⁸⁴ Essentially it is similar to non-aboriginal governance (for example Northwest Territories) in Canada which "may be adapted to reflect Aboriginal customs, culture and traditions."⁸⁵ These adaptations might include, allowance for the aboriginal majority "to retain constitutionally protected Aboriginal and treaty rights, including the right of self government," certain "exclusive" economic rights such as renewable resource harvesting activities, and cultural property rights such as right to language and culture.⁸⁶

A public government's power may be limited by aboriginal or treaty rights.⁸⁷ "Both shared and differentiated rights of Aboriginal and non-Aboriginal citizens would be set out in a constitution or laws of the public government."⁸⁸ Also, the Canadian Charter of Rights and Freedoms and other appropriate human rights codes would apply to aboriginal public governments.⁸⁹

On the surface, this appears to be a quite workable option. However, this arrangement is predicated on both trust and patience. It is based on trust because the federal government must provide the space for the Inuit legislature to change, if it so desires, the "Canadian" paradigm — a paradigm⁹⁰ which is rooted in British common law, not Inuit tradition. Inuit

83. See generally 2 REPORT, *supra* note 27, at 245-78; see, e.g., *id.* at 264-72.

84. *Id.* at 264.

85. *Id.*

86. *Id.* at 267.

87. See *id.*

88. *Id.*

89. See *id.*

90. For example, the traditional paradigm would include such aspects as the centrality of land, individual autonomy and responsibility, the role of elders, the role of family and clan, and consensus in decision making. See *id.* at 116. What is most important here is, not so much what factors constitute the aboriginal paradigm, but how those factors are perceived and weighed within a community.

In our effort to expand the role of elders in society . . . we must be careful not to isolate elders gratuitously from the mainstream or emphasize their roles to the

tradition, like other aboriginal traditions, is "an evolving body of ways of life."⁹¹ It is not some "exoticized state depicted in books and displayed in museums," rather it is "everyday actions of northern individuals . . . a set of practices engaged in by Inuit of both the recent or distant past."⁹²

The Inuit-Canadian arrangement is also based on patience because this change could not happen over night. The Canadian federal government must resist the temptation to intervene too soon. The Nunavut Act makes laws passed by the Legislature subject to Governor in Council approval. This could either advance aboriginal governance, or it could stalemate it. Also it could distort aboriginal tradition through yet another imperial lens.

III. Aboriginal Justice: The Inuit Will Have Nunavut

The Governor in Council appoints the superior court judges — Court of Appeals and Nunavut Supreme Court. Supreme court judges in the Northwest and Yukon Territories are also judges of the Supreme Court of Nunavut. The Governor in Council may repeal judicature provisions — these sections appear to be of limited duration "to be fixed by order of the Governor in Council."⁹³

The Nunavut Act currently calls for a territorial court structure similar to that which is in existence in the Northwest Territories. In fact, this structure is in place throughout Canada, except in Quebec and New Brunswick.⁹⁴ However, some argue that this structure may not "be culturally relevant and workable" for Nunavut.⁹⁵

Some critics argue that the current system is so foreign to Inuit culture and traditional problem-solving methods that it aggravates divisions within the community caused by crime rather than helping the situation. Others hold that the current system, or

extent that their relationships to their *ilagiit* [kin group] are undermined or jeopardized. Rather, we must first endeavor to promote traditional extended family values, decision-making structures, authority relationships, etc. at the grassroots level, where these features are given value and meaning.

Id. at 127 (quoting MARC G. STEVENSON, *TRADITIONAL INUIT DECISION-MAKING STRUCTURES AND THE ADMINISTRATION OF NUNAVUT* ii (1993)).

91. *Id.* at 117.

92. *Id.*

93. Nunavut Act, *supra* note 79, at 9. Sections 32-36 are the sections in question. They deal with Judges of the Supreme Court of Nunavut, deputy judges, exercise of power of provincial court judge or stipendiary magistrate, and Court of Appeal sitting.

94. See *Options for Court Structures in Nunavut* (visited May 12, 2000) <<http://canada.justice.gc.ca/en/cons/ocsn/nunav.html>>. Quebec criminal court (Territorial Court equivalent) has broader jurisdiction, and New Brunswick has no justices of the peace. See *id.* at Part A.I.A.

95. See *id.*

some variation of it, is essential to providing adequate protection to unempowered groups within the community.⁹⁶

While not excluding the possibility of a "totally different justice system" in the future, the Canadian Department of Justice discussion paper (Paper) on Nunavut court structures bases its discussion and suggestions on two premises: (1) that Nunavut courts will operate under the existing legal and constitutional framework of Canada; and (2) that this framework will not significantly change in the near future.⁹⁷ Nunavut court structure "must be consistent with protections guaranteed to accused persons by the Canadian Charter of Rights and Freedoms."⁹⁸

Along with guaranteed rights such as "procedural and substantive protections which meet the requirements of fundamental justice, . . . [t]here are also constitutional limits on the degree to which a court system in Nunavut can be modified to reflect traditional Inuit responses to crime."⁹⁹ Nunavut courts must provide accused persons with the "benefits and protections of the law equal to those enjoyed by other Canadians."¹⁰⁰

The Federal Policy Guide on Aboriginal Self-Government (FPGAS-G) states that

[a]s a right which is exercised within the framework of the Canadian Constitution, the inherent right [to aboriginal self-government] will not lead to the automatic exclusion of federal and provincial laws, many of which will continue to apply to Aboriginal peoples or will co-exist alongside validly enacted Aboriginal laws.¹⁰¹

The basic principle of aboriginal self-government negotiations is that "those federal and provincial laws of overriding national or provincial importance will prevail over conflicting Aboriginal law."¹⁰² FPGAS-G also provides that the federal government is prepared to constitutionally protect, as section 35 rights, any negotiated rights from public government arrangements provided all parties agree. Similarly, aboriginal groups are not precluded from choosing another form of self-governance at some future date, "provided that all parties concerned are in agreement."¹⁰³ These federal

96. *Id.*

97. *See id.* at 3-4. Although they always leave open the possibility of Constitutional amendment.

98. *Id.*

99. *Id.* at 4.

100. *Id.*

101. *Federal Policy Guide: Aboriginal Self-Government* (visited May 12, 2000) <<http://www.inac.gc.ca/pubs/selfgov/policy.html>>.

102. *Id.* at 9.

103. *Id.* at 14.

restrictions create a significantly modified version of *self*-government. The paternalism (or is it colonialism?) bleeds through.

As already mentioned in this article, the structure of the Nunavut agreement presents potential problems. The Inuit have ceded their aboriginal rights and title in exchange for a grant of rights from the Canadian government.¹⁰⁴ This undermines the notion that aboriginal peoples are nations,¹⁰⁵ albeit nations subjected to a more powerful sovereign. On one hand, this may be merely a distinction of semantics. On the other hand, however, it creates the opportunity for rapid assimilation, and dissolution of traditional communities. Traditional institutions such as language, consensus, and clan leadership may be the first to go in the name of political expediency.

Consider language as an example. A majority of people in Nunavut speak Inuktitut, but a majority of Canadians speak English, and a large number of Canadians speak French. The Inuit make up only a fraction of a percentage point of the Canadian population. The Canadian Charter has enshrined the English and the French language as official public languages of Canada.¹⁰⁶ It has not done so with Inuktitut. Nor is it ever likely to do so. As a public government, Nunavut will be obligated to conduct business so that the rest of Canada can participate.¹⁰⁷

While the Inuit have the right to speak Inuktitut,¹⁰⁸ it seems quite unlikely that using it as the language of public discourse will last more than a generation. In order for individuals to participate in government in a meaningful way, they will need to understand a common language. Not everyone in Nunavut speaks Inuktitut. Perhaps this demography will continue to change now that land title issues are settled and natural resource extraction contracts have begun. People will move to where there are jobs. Canadian citizens have a right to live anywhere in Canada and participate in local government.¹⁰⁹

In Nunavut, this will cut two ways. The Inuit will need to understand the laws of Canada in order to participate under the terms of the public government model. Participation includes voting, running for office and working in the bureaucracy. The territorial government can either translate Canadian law into Inuktitut or it can leave them in English, or French. Given the realities of governance with limited budgets, the potential to choose the latter becomes more appealing as pressures to deliver other social services

104. Despite signing on to them, the Inuit leadership has questioned the legitimacy of the extinguishment clauses. See 2 REPORT, *supra* note 27, at 63.

105. Although the Inuit consider themselves as a people, not a nation, the Royal Commission on Aboriginal Peoples argues that they would fit that criteria. See *id.*

106. See Canada Act of 1982 §§ 16-20.

107. See *supra* note 80 and accompanying text.

108. This too is enshrined in the Charter, in section 23 and, perhaps, section 35.

109. See Canada Act of 1982 § 6 (mobility rights).

take precedence. This issue may be more crucial in the public government model because popular participation is an essential element.

The government of Nunavut will also need to accommodate the needs of non-aboriginals living in Nunavut. The cultural nuances of the Inuktitut language may be too subtle for non-speakers to learn adequately to participate in public fora. Already, French speakers are pressuring Nunavut leaders to offer services in the French language.¹¹⁰

This is not to say that the Inuit should not speak Inuktitut. Language is, after all, culture. What it does suggest is that such an incorporation of aboriginal governance into a public type of government may ultimately undermine *self-government* for the Inuit. Thus they may destroy what they have set out to preserve.

A second potential problem for the Inuit involves the majoritarian support for Inuit tradition versus Canadian Constitutional law. This is the reverse situation from the above. However, it is no less important a consideration for the Inuit government of Nunavut.

On May 26, 1997, the inhabitants of the Nunavut region held a plebiscite to determine whether the first Nunavut Legislative Assembly (NLA) should have equal numbers of men and women MLA's (Members of the Legislative Assembly), with one of each elected to represent each electoral district.¹¹¹ With much debate and little voter turnout across the region, the plebiscite was defeated. On one hand, analysts argued that the plebiscite's failure was due to its *per se* controversial nature — it was too innovative, this has never been tried *anywhere*.¹¹² On the other hand, critics also argued that its failure was due to traditional values; more specifically, "the culturally determined relationship between men and women in the modern Inuit society."¹¹³ Whatever the actual reason for its defeat, it did spark much debate across Nunavut about the role of women in the Inuit traditional society.

One of the issues which had been touched on by many perspectives was if electoral gender parity of men and women was in agreement with traditional Inuit ideas and values. And what is tradition and what is not? Are the consequences of equal representation of men and women in the legislative assembly in accordance with traditional Inuit values, or do they break with the old customs? Does the proposal represent an attempt to

110. See *supra* note 3.

111. See Jens Dahl, *Gender Parity in Nunavut?*, at 1 (visited May 12, 2000) <<http://arcticcircle.uconn.edu/ArcticCircle/SEEJ/Nunavut/gender.html>>.

112. See *id.*

113. *Id.*

return to traditional, valued Inuit ideals, or is it a product of modern times?¹¹⁴

Many leaders of the Tungavik Federation of Nunavut, who also negotiated the Nunavut Land Claims Agreement, supported the plebiscite and campaigned throughout Nunavut for its adoption.¹¹⁵ Nevertheless, the proposal failed.

Many reasons for its failure surfaced — from inter-regional competition to campaign intimidation to putting politicians in their proper place to the threat toward the male's position in Inuit society.¹¹⁶ The threat to the male's position in society is interesting because it reflects aspects of modern Inuit life clashing with tradition. In Inuit society,

[t]he man is the traditional hunter who comes home with the catch; he is the provider. After hunting, he comes home not only with food but with experiences, information and new knowledge about other people and about nature. It is the man who passes on his knowledge — the woman listens. In many ways the last decades have witnessed a break in this monopoly. Women have become wage earners; many have a good education; and it is now often men who are unemployed and must stay home.¹¹⁷

Perhaps this issue would not have been as significant had the Inuit maintained a vital hunting economy. In that case, men would probably have been out hunting, trapping, or fishing (and earning income) and the women could have run the domestic show (including running the government). However, economic reality has altered both the workplace and the family dynamic of the Inuit. The fur trade has all but disappeared and whaling is nonexistent. Neither ecotourism nor mineral resource extraction have been fully realized yet.

Other changes came from the redefinition of the role of the family during the 1950s. As traditional jobs dissipated, many families were forced to move from family-based camps to settlements. Children went to schools run by non-aboriginals who, often, imposed new values on the children.¹¹⁸ This created a crisis of authority: who was responsible for teaching values to the children, the parents or the school? This crisis was compounded by the fact that often both sets of values were in conflict with each other.

In any event, what exists now in Nunavut, is that the Inuit culture, like many of the First Nations cultures, must straddle two cultures — their own and Euro-Canadian. This has been a mixed blessing since the interaction has

114. *Id.* at 3.

115. *See id.* at 4.

116. *See id.* at 5.

117. *Id.*

118. *See* 4 REPORT, *supra* note 27, at 20.

provided more opportunity for the individual Inuk, but it has done so often to the detriment of the Inuit community as a whole. The reality in Nunavut now exists that women are more likely to attend and complete high school, obtain and hold jobs, and are less likely to develop drug, alcohol, or crime problems.¹¹⁹ They are now more likely to be the primary wage earners. Unfortunately, women are also now, more than ever, victims of domestic violence.¹²⁰

Some analysts explain this turn of events on the current imbalance of power between men and women. While men are losing status and identity, women are gaining it by going outside their traditional roles in Inuit society.¹²¹ Men compensate by using physical force against women.

This problem, in the Inuit context, has two potential solutions. The short term solution, is to enforce the Charter rights — particularly equal protection (both the general provision, section 15, and the aboriginal provision, section 35(4)) in Nunavut. However, this alone will not resolve the problem. Serious job prospects and respect (self-respect included) for *neo*-traditional male roles (including, its re-definition within the community) are needed. Ultimately, a balance needs to be restored between spouses, family members and the genders throughout society.¹²² Then, perhaps the need, real or perceived, for gender parity will not be necessary.

IV. Conclusion

The creation of Nunavut is an exciting and ambitious prospect for the Inuit of Northern Canada, aboriginal peoples of the world and all communities who value self-determination and self-government. However, the Inuit have many hurdles to overcome to make Nunavut a viable reality (not the least of which is financial solvency). Among those hurdles are the tensions that still exist between Inuit aboriginal rights and their constitutional replacements, the impact of the dominant Canadian society on the Inuit version of self-government (public government model), and the impact of Inuit values on the Nunavut model of governance in the Canadian system. Nunavut has unique resources (human and natural), unique problems and unique opportunities. Hopefully, Nunavut will come forth and survive.

119. *See id.*

120. *See id.*

121. *See id.* 20-21.

122. *See id.* at 19.