

***Claim Overlap
Sayisi Dene First Nation: Treaty Rights North of the 60th Parallel***

***Presentation to
6th Annual National Claims Research Workshop
Quebec City, Quebec
November 1 - 3, 1998***

***Ralph Abramson, Director
Treaty & Aboriginal Rights Research [T.A.R.R.]
Centre of Manitoba Inc.***

Introduction and Overview

In 1982, discussions began between Canada and the Aboriginal people of the western portion of the Northwest Territories (NWT) concerning their rights in their traditional territory. Up until that time, there had been no concerted effort by Canada to deal with the recognition (and protection) of the Aboriginal rights of the people, the Inuit, in formal agreements, such as the treaties that had been entered into between the Crown and the Indian people in western Canada, between 1871 and 1910. Canada, up until the late 1960s, had little interest in or inclination to deal with the rights of the Aboriginal people in areas of Canada where treaties had not been signed. These areas in Canada would include large portions of British Columbia and Quebec, and most of that portion of Canada north of the 60th Parallel. Indeed, until the late 1960s and early 1970s, Canada would not acknowledge the possibility that Aboriginal rights did exist - at least to such an extent that would require any official action by the Crown.

What dramatically altered the federal position on Aboriginal rights were landmark court decisions, such as the Calder case in 1973, that indicated quite clearly that, in fact, Aboriginal rights did exist in Canada and continued to exist in territory where treaties had not been made between the Crown and the Aboriginal inhabitants of the land. After these legal pronouncements acknowledged the existence of Aboriginal rights, Canada sought to establish formal mechanisms through which discussions and negotiations could take place with the affected Aboriginal peoples to deal with these rights and the associated issues which would flow from those rights. It was this process, termed the comprehensive claims policy, that gave rise to the discussions between the Inuit and the federal Crown in 1982.

By most accounts, these discussions were long and complex. As those who have been involved in negotiations in Aboriginal land right issues in Canada can attest, even though "official government policy" may state a high ideal for an established policy or process, the federal officials involved will generally exercise extreme caution when dealing with issues that could affect the Crown's interests, liability and/or jurisdiction. In some, if not most cases, the main priority of the federal officials appears to be protection of the federal interest rather than the fair, just and equitable resolution of the issues. It is speculated that this was the case in the discussions between the Inuit of the NWT and Canada.

The main objectives in the discussions, from the perspective of the Inuit, were: first, to satisfactorily deal with the Aboriginal rights of their people in a manner that affirmed and protected those rights in the future and second, to allow for the creation of a specifically defined area in the NWT, in which the Inuit could exercise a high degree of jurisdiction over the land, resources and people therein. The discussions involved representation from the Inuit and its mandated organization (the Tungavik Federation of Nunavut [TFN]{now the Nunavut

Tunngavik Incorporated)), Canada and the Government of the Northwest Territories.

In 1990, after eight years of negotiations, an agreement in principle on the Inuit comprehensive land claim was signed. The agreement was quite extensive, covering a wide variety of issues and allowing for the creation of an area in the eastern NWT over which the Inuit would exert a high degree of control. The area was called Nunavut (see an attached map).

However, there is a portion of the land to be included in Nunavut that encompasses part of the traditional territory of the Dene people, whose primary place of residence is located within the province of Manitoba. These people, the Sayisi Dene First Nation¹, whose only Reserve is located at Tadoule Lake, Manitoba, have rights and interests in the area now defined as the NWT (and to be included in Nunavut) that will likely be adversely affected by the creation of Nunavut and the establishment of Inuit control in this area. The rights of the people of the Sayisi Dene First Nation were guaranteed and protected by an Adhesion to Treaty No. 5 signed in 1910. Although the 1990 Nunavut Agreement in Principle provides for discussions and agreements between the Inuit and groups would have interest in the area to be included in Nunavut, these issues being identified as overlaps, there has been no resolution of this issue to date. The Sayisi Dene people remain extremely apprehensive about the prospects of control by the Inuit of the NWT of land considered part of their traditional territory. An added dimension of concern relates to the strained relations that have traditionally categorized contact between the Dene, who are of the Athapaskan linguistic family and the Inuit, who are of the Eskimo - Aleut family.

This paper is intended to set out this so-called "claim overlap" issue and described in very general terms, how it has been dealt with to date. From the perspective of the Sayisi Dene people, and the other Dene people affected by this issue (see footnote 1), at the heart of the issue is a conflict between the ability of the Sayisi Dene to exercise rights in their traditional territory, rights that were guaranteed by treaty and protected by the Canadian Constitution, and the agenda of the federal government and Inuit to conclude a land claim agreement in the eastern NWT.

¹ Although there is another Manitoba Dene First Nation (the Northlands First Nation at Lac Brochet, Manitoba) and some Dene First Nations in Saskatchewan that have an interest in the Dene/Inuit north of 60th Parallel issue, this paper will concentrate only on the Sayisi Dene at Tadoule Lake, Manitoba.

Adhesion to Treaty No. 5 - 1910

In the first decade of this century, Adhesions to Treaty No. 5 were signed between representatives of the federal Crown and the First Nations inhabiting the northern portion of what is now the province of Manitoba². Some thirty-five years earlier, in 1875, the original Treaty No. 5 was entered into, the geographic area of which covered most of the middle portion of the present province of Manitoba, with smaller portions of the area also extending into Ontario and Saskatchewan. From Canada's perspective, the primary impetus for the adhesions was the intrusion of the railway into the territory which, to that point, had not been the subject of treaty. The potential for mineral and logging development in the area also played a part in the federal government's decision. The Treaty No. 5 Adhesion process began in 1908 and continued into then next three years, until 1910³. The Sayisi Dene First Nation (then known as the Fort Churchill Band⁴) signed an Adhesion to Treaty No. 5, in 1910, at Fort Churchill.

The terms of the Adhesions to Treaty No. 5 were consistent with those extended to the First Nations of the original treaty in 1875. In fact, in most cases, the exact terms were not described in the text of the adhesion. Rather, a phrase to the effect that the First Nations agreed to accept the "several benefits, payments and reserves" promised to and accepted by the First Nations that signed the original Treaty No. 5 was inserted in the text. The federal drafters of the treaty were careful to ensure that no claims for retroactive payments of annuities, etc. (to the date of the original Treaty No. 5) could be put forward by the Indian people who were entering treaty through the adhesions. Some of the other terms of treaty, either in the text of the adhesion or in the original Treaty No. 5 (1875), included a one time gift or gratuity of \$5.00 to each First Nation members; provision for yearly payments of \$5.00 to each First Nation person; provision for education; a prohibition of "intoxication liquors," etc.

The clauses of the treaty adhesion that would have the most direct bearing on the subject of this

² The northern boundary of Manitoba was not extended to its present location (the 60th Parallel) until 1912. At the time of the Treaty No. 5 Adhesions, the majority of the geographic area described in the treaty text was considered part of the North West Territories.

³ An interesting side note is that it was not only First Nations that never signed treaty that were included in the process. Three distinct groups of Aboriginal people resident on the Reserves of existing Treaty No. 5 First Nations, ie. Norway House, Cross Lake and Fisher River, took formal adhesion to treaty in 1908. The ancestors of these people were not part of the original Treaty No. 5 (they moved to these locations from areas not covered by treaty) and Canada thought it expedient that these people formally adhered to treaty as part of existing First Nations

⁴ I will use the term "Sayisi Dene First Nation" throughout this paper in all time periods.

paper are:

- *the territory covered by the treaty:* It was the intention of the Crown to deal with all the territory over in which the adhering First Nations would have an interest. Because of this intention, there were two distinct methods of describing the area over which the provisions of treaty would apply:

1) the geographic area described in the text of the treaty. There is a detailed description of this area in the text of the treaty adhesion. Generally, it describes an area running north from the northern boundary of the original Treaty No. 5, extending into parts of Ontario and Saskatchewan, with the northern limit of the area set as the 60th Parallel. The main portion of the geographic limits described are contained in the present day province of Manitoba.

2) other lands to which the First Nation would have an interest. This category of land is described in the text of the treaty adhesion signed by the Sayisi First Nation. After the geographical limits of the treaty are described, and in the standard language of the treaties, ie. all "rights, title and interest whatsoever" of the First Nations are "transferred, surrendered and relinquished" to the Crown, the following paragraph describing the additional area to which the "surrender" terms of treaty would apply.

... And also, all our right, title and interest whatsoever to all other lands wherever situated, whether within the limits of any other treaty heretofore made, or hereafter to be made with the Indians, and whether the said lands are situated in the North West Territories or elsewhere in His Majesty's Dominions, to have and to hold the same unto and for the use of His Majesty the King, His heirs and successors forever.

Adhesion to Treaty No. 5 by the Fort Churchill Band, August 1, 1910

The most logical interpretation of these sections of the treaty would be that it was intended to include all the land in which the First Nation would have an interest. It is clear that the "surrender" terms of treaty were to apply to all the described land. Conversely, the base area over which the rights guaranteed by the First Nations in treaty would apply would be this same area.

- *Reserve land:* One of the most important terms of treaty was that the Crown undertook to provide land for the sole and exclusive use of the Sayisi Dene First Nation. The specific term read as follows:

And his Majesty hereby agrees to set apart Reserves of land of a like proportion to those mentioned in the original Treaty No. 5

Adhesion to Treaty No. 5 by the Fort Churchill Band, August 1, 1910

The amount of Reserve land promised in the original Treaty No. 5 was 160 acres per family of five (or 32 acres per person).

- *hunting and fishing:* For the promise of protection of the hunting and fishing rights of the Sayisi Dene, you have to look back to the original Treaty No. 5 in 1875. The clause read as follows:

Her Majesty further agrees with Her said Indians, that they, the said Indians, shall have the right to pursue their avocations of hunting and fishing throughout the tract surrendered ... subject to such regulation as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up by settlement, mining, lumbering or other purposes, by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government.

Treaty No. 5, signed in Beren's River, by the Beren's River Band, on September 20, 1875

The effects of these provisions of treaty, it is suggested, are that 1) the Sayisi Dene people's rights to hunt, fish and trap over their traditional territory, including that part of the territory that lay to the north of the 60th Parallel, were protected and 2) the area of selection of the Reserve land promised under treaty, should likewise include that part of their traditional territory in the NWT.

Post Treaty

From the date of the treaty signing in 1910 to the mid 1950s, the Sayisi Dene lived their lives in same way they had for generations. Their lives revolved around the caribou hunt and although they did have some seasonal sites they visited on a continuing basis, included sites in their traditional territory in the NWT, no Reserve land was established for them. There were some discussions in the period immediately after the treaty was signed, in the mid 1930s and early 1950s, but these talks did not result in the Sayisi Dene receiving any extent of Reserve land as promised in the treaty. It is of note that when there were discussions on the establishment of Reserve land for the First Nation, the locations chosen were most often in close proximity to the 60th Parallel [Baralzon Lake (1939); Nueltin Lake and Nahili Lake (1950)].

In 1956, the most devastating periods in the history of the Sayisi Dene people began. The people of the First Nation were relocated from their homes at Caribou Post to an area around the town of Churchill, Manitoba, with very little prior discussion with or input from the community itself. Needless to say, this momentous disruption of the Sayisi Dene community caused devastation at all levels of their lives. To a certain extent, this period of their history still maintains a pivotal position in their current life's view. The present community at Tadoule Lake continues to seek redress of this injustice done to the community.

The relocation of the Sayisi Dene people is a story unto itself which would warrant more space than the writer can devote to it. If the reader is interested in obtaining more information on the story of the relocation of the Sayisi Dene, I would strongly recommend a recent book on the subject, co-written by the current Chief of the First Nation. Ila Bussidor. The book, *Night Spirits: The Story of the Relocation of the Sayisi Dene* by Ila Bussidor & Usten Bilgen-Reinart, University of Manitoba Press (1997), tells the story of the relocation and subsequent return to the land in the mid 1970s, in stark and graphics terms.

In the mid 1970s, after more than 17 years of social turmoil and disintegration and severe breakdowns of both community and family structures, the Sayisi Dene returned to the land. Life at the two locations at Churchill which had been home to the First Nation since its forced relocation from the land, Camp 10 and the Dene Village, had caused problems which, it was hoped by the First Nation, could be resolved in a more traditional setting, far removed from the deplorable conditions at Churchill. After examining several sites within their traditional territory and the interim establishment of a settlement at the North Knife River on an experimental basis, the First Nation decided on a more permanent location at the southern end of Tadoule Lake for their new settlement.

The Sayisi Dene First Nation has lived at Tadoule Lake, approximately 150 miles west of Churchill, since the mid 1970s. Since that time, the Sayisi Dene people, individually and collectively, have attempted to come to terms with the problems associated with the relocation to Churchill and to heal the wounds of the past. Two factors involved in this healing process has been the establishment of Reserve land for the First Nation and the return to the more traditional lifestyle, centred on pursuits such as hunting, fishing and trapping within their traditional territory. Both issues were referenced in the treaty and thereby should have been afforded a measure of protection. Both issues, however, were central to the "overlap" issue with the Inuit of the NWT.

Treaty Land Entitlement (TLE)

As of the mid 1970s, it was known that many First Nations in Manitoba had not received the full extent of Reserve land as promised under the terms of the various treaties. In 1977, the Manitoba First Nations with recognized Treaty land entitlements and those for whom TLE cases had been put forward, organized into a body to collectively pursue resolution of the issue. The body was known as the Treaty Land Entitlement [TLE] Committee. From a purely technical standpoint, TLE is a difficult and complex issue, involving detailed research into First Nation membership and the calculation of the amount Reserve land set aside for Treaty entitlement purposes. The issue is further complicated by the fact that in the prairie Provinces, both the federal and the provincial government are involved in the settlement process - the federal government through its obligations to First Nations under the treaties and the provincial governments of Manitoba, Saskatchewan and Alberta, through their obligations under the Natural Resources Transfer Agreements (1930) [now part of the Constitution Act (1982)], to provide land to Canada to enable the fulfilment of the terms of treaty.

The Sayisi Dene First Nation was among the Manitoba First Nations that formed the TLE Committee in 1977. Since the First Nation had not received any extent of Reserve land as of that date (the Reserve at Tadoule Lake was set aside as Reserve in 1981), there was never any question as to whether it was eligible to participate in the settlement discussions with Canada and Manitoba. The First Nation actively participated in the first attempt at resolution of the issues in the early 1980's. These negotiations began in 1982, soon after the release of the Report of the Treaty Land Entitlement Commission, a one man commission headed by Manitoba labour lawyer, Leon Mitchell. These negotiations represented the first concerted effort to resolve the TLE issue in Manitoba for a united group of First Nations. There had been some previous attempts to resolve the issue for individual First Nations, such as the effort in the late 1960s to settle the TLE for the Island Lake First Nation, but none of these efforts had met with success. The history of previous attempts at resolution dated back to the 1930s in a period just after the Manitoba Natural Resources Transfer Act (1930), but in most cases, because of factors such as squabbles between Canada and Manitoba on who should bear the main responsibility (and cost) for settlement and the relative lack of political strength of the First Nations, either individually or collectively, no previous effort had met with even limited success. In 1982, however, primarily because of the united efforts of the First Nations in the TLE Committee who provided the main impetus for the negotiation process, all the parties involved appeared to believe that settlement of the issue was a realistic goal.

Unfortunately, the effort did not ultimately succeed. A TLE Agreement in Principle (AIP) was

developed and initialled by each of the parties in the late summer of 1983, but final approval was subject to further consideration and acceptance by the parties. This final approval was never secured and the TLE AIP was eventually abandoned. It is the writer's opinion that the primary reason for the failure of the 1983 Manitoba TLE AIP was a shift in federal position on the matter. Shortly after the TLE AIP was endorsed in principle, a federal general election was held which put a new administration, the Progressive Conservatives under Brian Mulroney, in power. This change in federal administration, along with a failure of the federal and provincial officials to resolve some outstanding bilateral issues of concern, proved to be the undoing of the TLE AIP.

Beginning in the mid 1980s, the effort of the TLE Committee to work towards development of a comprehensive TLE agreement in Manitoba on behalf of its member First Nations was severely constrained by a lack of resources made available by the federal government. It seemed that Canada's new strategy was to attempt to deal with TLE First Nations on an isolated and individual basis and there was no support made available for TLE discussions on a provincial wide or even regional basis. The T.A.R.R. Centre, however, continued to work with the individual First Nations of the TLE Committee and with the Committee as a whole on the irregular occasions when it could meet. While part of Canada's revised TLE position that the extent of TLE acreage it was willing to recognize would be limited to the amount based on the Date of First Survey⁵ (DOFS) of Reserve land for First Nations, would not allow most TLE Committee First Nations to even consider opening discussions with Canada on the issue, there were some First Nations that could proceed with some limited land selections until such time as serious negotiations might begin. Generally, these would be First Nations that either had recognized TLEs that involved large acreages, even under a DOFS calculation, or First Nations, such as the Sayisi Dene, that had only within the last 15 years begun to receive any Reserve land under treaty.

Dene Rights in the NWT

In the discussions with the Sayisi Dene First Nation on future activities on TLE land selections it was determined that one of the most important issues for the community was protection of their rights in their traditional territory in the NWT, north of the 60th Parallel. The community was concerned over the selection of Reserve land in this area and the protection of the rights to hunt, fish and trap in territory that had been used and occupied by their ancestors for generations. At

⁵ In most cases, the initial survey of Reserve land for First Nations was done many years ago, in southern Manitoba - over 100 years. The First Nations of the Manitoba TLE Committee could and would not accept a calculation of TLE acreage based on Date of First Survey.

the request of the First Nation, inquiries were made to the federal government as to the process of Reserve land selection north of the 60th Parallel. The federal officials involved, however, being aware of the comprehensive claims discussions that were taking place with the Inuit of the eastern NWT that might involve this same area, did not want to enter into discussions with the Sayisi Dene on this matter. Instead, they referred to the issue directly to the Inuit organization, the TFN.

In November 1985, representatives of the Sayisi Dene First Nation and the Northlands First Nation, along with staff of the T.A.R.R. Centre, met with representatives of the TFN. The two Dene First Nations wanted to explore the process for securing Reserve land in the NWT. It was made obvious by the TFN representatives from the outset of the talks that the Inuit would not support the creation of Reserve land for the Manitoba Dene in territory to be included in Nunavut. It should be noted that at this time, it was the understanding of the T.A.R.R. Centre that the area of concern to the Sayisi Dene was to be included in Nunavut⁶, having had previous discussions with the federal government, the NWT government and the Dene Metis Secretariat of the NWT on the subject. It was decided, at this time, not to pursue the issue of Reserve selection in the NWT for the Manitoba Dene in the face of the demonstrated opposition of the Inuit. The Manitoba Dene were given the distinct impression by the federal government that Inuit concurrence would have to be secured before the creation of Reserve land would be considered.

At this time, in order to better document Dene traditional use and occupancy in the NWT, the T.A.R.R. Centre, in its budget submission for fiscal year 1986/87, included a modest proposal for a study on the issue. However, because of the limited extent of funds that were made available to the Centre for that fiscal year, the Dene Traditional Use and Occupancy Study could not be undertaken. In this regard, it seemed that the Manitoba Dene were at a decided disadvantage in relation to the resources which they could access to support their efforts to ensure their treaty rights were protected and the resources made available to the Inuit.

As the discussions continued, it became obvious that the TFN was interested in exploring another related issue - hunting, fishing and trapping rights, north and south of the 60th Parallel. In the negotiations on the creation of Nunavut, one of the matters that the Inuit had to deal with was so-called "overlap" issue, ie. areas over which Aboriginal groups may have an interest. The Inuit

⁶ The approximate area of concern to the Sayisi Dene is located north of the northern boundary of the province of Manitoba, to the treeline. The joint Sayisi Dene/Northlands traditional area in the NWT covers the approximate area from Hudson's Bay to the Manitoba/Saskatchewan border, then north to the treeline (see attached maps).

were very interested in obtaining support from the Manitoba Dene in their effort to secure recognition of Inuit wildlife resources harvesting rights in Manitoba, under the MNRTA (1930). As the Manitoba Dene were interested in affirming their rights as guaranteed under treaty to hunt, fish and trap in the part of their traditional territory in the NWT, the discussions proceeded with the TFN in an effort to develop an agreement on reciprocal support for hunting, fishing and trapping rights in Dene and Inuit traditional territory. The process culminated in the signing of a Memorandum of Understanding [MOU] involving the TFN and the two Manitoba Dene First Nations in July 1986. In this agreement, the Inuit agreed to support the rights of the Manitoba Dene to hunt, fish and trap in the NWT and the Manitoba Dene agreed to support the Inuit's efforts to affirm their rights in Manitoba. The agreement was subject to ratification by the parties.

Almost immediately after the MOU was signed, controversy arose concerning the conditional agreement - in particular, whether the land of concern to the Manitoba Dene was to be included in the Inuit claim area, Nunavut, or in the area under claim of the Dene/Metis of the NWT, Denendeh. The Manitoba Dene, it will be remembered, were advised by the federal government that any discussions on their rights and activities in the NWT should be undertaken with the Inuit of the TFN, within whose claim boundaries the area of concern to the Manitoba Dene appeared to be included. After the MOU was signed, it came to light that the boundary between Nunavut and Denendeh had not been decided with finality and that one of the primary areas of dispute was the land over which the Manitoba Dene would argue they had rights guaranteed by treaty. The Manitoba Dene, in light of this development, and after further consultation with the Dene/Metis of the NWT, decided to withdraw their support for the MOU of 1986. It should be remembered that the primary consideration of the Sayisi Dene in the process had been to secure Reserve land in its traditional territory in the NWT and that discussions on the reciprocal support agreement with the Inuit [the MOU] were initiated only after it was clear that the Inuit would not support the creation of Reserve land for the Sayisi Dene in Nunavut.

The Sayisi Dene (and the Northland First Nation) then began a series of meetings on the "rights north of 60" issue with the Dene First Nations in Saskatchewan and the Dene/Metis in the NWT. The interest of the Dene/Metis in the issue related to their conflict with the Inuit over the proposed boundary between the Inuit claim area (Nunavut) and the claim area of the Dene/Metis (Denendeh). The Saskatchewan Dene also had areas of traditional use and occupancy that would be affected by the creation of Nunavut. These talks were inhibited by a lack of financial resources made available for the process. Despite the concerns of the Sayisi Dene and Northlands First Nations in Manitoba, the Dene of Saskatchewan, and the Dene/Metis of the

NWT, the area of concern to the Dene was, in fact, included within the boundaries of Nunavut in the 1992 agreement.

Failing to reach a satisfactory conclusion to their talks with the Inuit, the Sayisi Dene decided to pursue a different strategy. The Sayisi Dene had not received the full extent of Reserve land as promised under treaty. Canada had formally acknowledged this fact in a letter from the then Minister of Indian Affairs, John Munro, in November 1982. The Reserve at Tadoule Lake had been set aside for them, but this did not satisfy the land entitlement terms of treaty. If further Reserve land was due and the area in which the First Nation had the right of selection was the area covered by treaty, including the traditional territory of the First Nation, it would seem to follow that the Sayisi Dene should be able to select Reserve land in its traditional territory north of the 60th Parallel as a matter of right under treaty. Therefore, the First Nation entered into discussions with the federal government on Treaty land entitlement selections in the NWT.

It was obvious from the start of the discussions with Canada that it did not support Sayisi Dene Treaty land selections in the NWT. The federal officials involved seemed to throw up every possible roadblock to the selections. Perhaps the most creative argument put forward by federal officials was that the treaty had created two distinct categories of land: the first, the geographic area described in the text of treaty, over which treaty rights could be exercised, and the second, the "other lands" referenced in the treaty to which the First Nation would have an interest, in which treaty rights would not apply. In other words, there were no treaty rights in the traditional Dene territory north of the 60th Parallel. Needless to say, this specious and self-serving argument was eventually abandoned by Canada, but only after extensive discussions demonstrated that the argument had no merit or legal basis what-so-ever. Another federal argument was that it was a matter of federal policy that there would be no more Reserves created north of the 60th Parallel. This argument was also abandoned, but Canada still contended that Reserve creation in the NWT for the Dene would be subject to approval from the Inuit.

In the early 1990s, the Sayisi Dene and Northland First Nations were able to access some limited funding to put forward a statement of claim in the Federal Court of Canada in an effort to compel Canada to protect their interests in the NWT, including the rights to select Reserve land under treaty and the right to hunt, fish and trap in their traditional territory. The case was taken on Arne Peltz, a lawyer with the Public Interest Land Centre, Legal Aid Manitoba, who has done a most creditable job considering the limited resources made available. At the present time, the case is continuing, although there is a chronic lack of financial resources to allow the case to proceed. It remains to be seen whether the Dene will be able to compel Canada to honour the terms of the

treaty signed some eighty-eight years ago. It appears that it may be necessary to obtain a court ruling to do so.

Observations and Conclusions

One of the most significant influencing factors which the Dene First Nations had to overcome in its struggle to achieve recognition and protection of its rights to the part of its traditional territory north of the 60th parallel was the disparity in the resources, financial and other, that could be secured to pursue this important matter. The Inuit of the NWT, involved in comprehensive claims negotiations with Canada since the early 1980s, had access to the resources required to pursue their rights and interests in a far more effective and efficient manner than the Dene in northern Manitoba. One example was the denial of funding to undertake land use and occupancy studies for the Dene First Nations by the T.A.R.R. Centre, using resources available for the research and development of specific claims. It should be remembered that requests were made in 1986 by the T.A.R.R. Centre for funds to undertake these studies that would have helped to document Dene use and occupation in the NWT, but these requests were denied through an insufficient level of funding being offered. It is speculated that the reason for the denial was that the issue was not perceived as fitting within the narrow parameters of the issues that could fit within the specific claims policy. This severely inhibited the Dene in the pursuit of their interests and gave the Inuit a decided edge in both the bilateral discussions on the issue and in the court case that was brought forward as a consequence of the failure of those bilateral discussions. The fact that the Dene have been able to secure only limited funds to pursue litigation in the matter, a course of action that may be the only viable one open at this time, further complicates the matter and places the Dene at a further disadvantage.

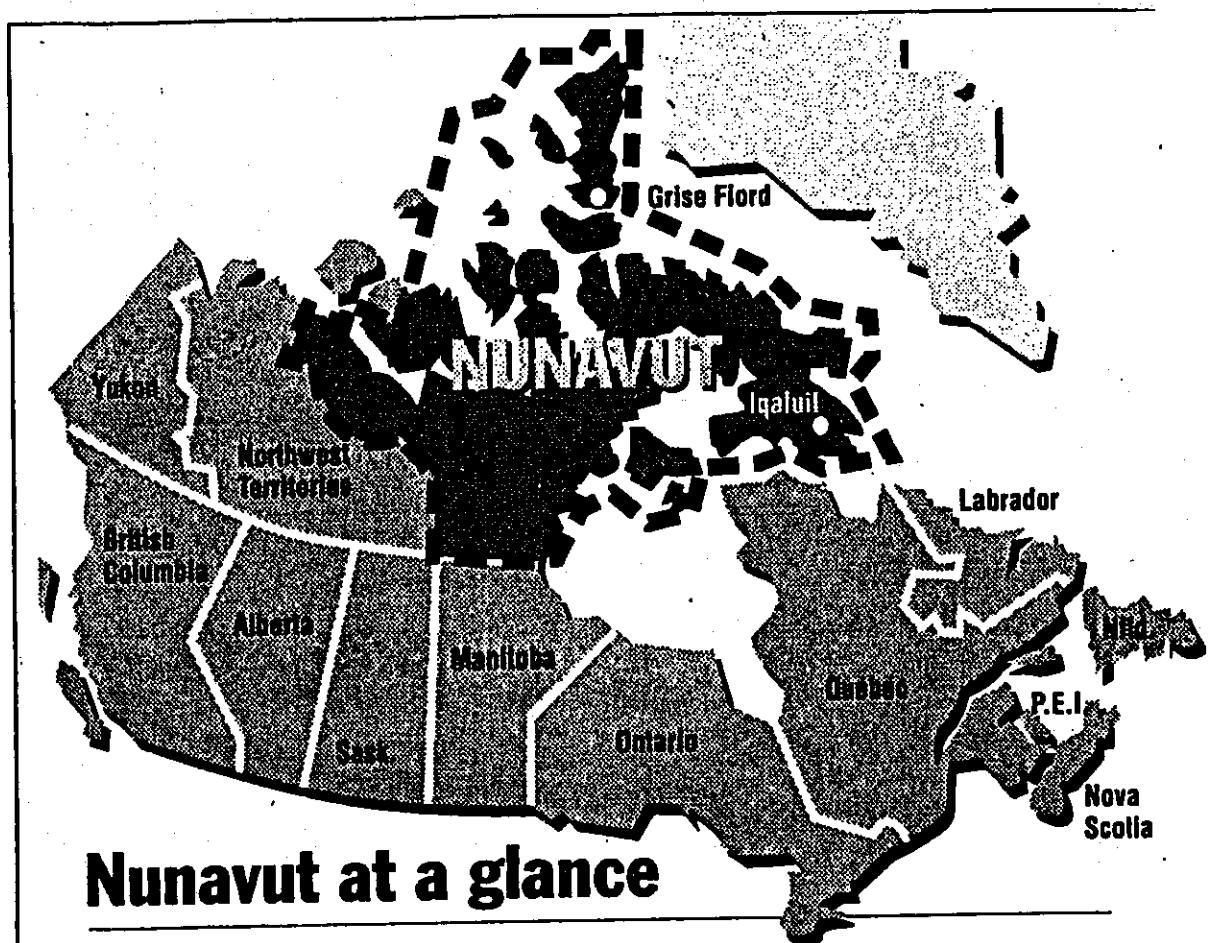
Another factor which has had a profound effect on this issue has been the actions (and inaction) of and positions taken by the federal government in this matter. Although it is clear that there is an ongoing obligation by Canada to protect the interests and uphold the rights of the Dene people in Manitoba, rights and interests that are recognized and affirmed in the treaties and embodied in the Canadian Constitution, all other competing interests seem to have taken precedent over these rights. Canada's initial reaction to Reserve land selection north of the 60th Parallel in the early 1990s, ie. the "two categories of land under treaty" argument, put forward on advice received from the Department of Justice, in the writers' opinion, borders on the ludicrous. Not only was there a court case that spoke directly to the issue of the land covered by treaty⁷ which confirmed the Sayisi Dene's interpretation of the land covered by treaty, it appeared that Canada's response

⁷R. vs Bartleman, BC Court of Appeal 1984

was motivated not by a desire to fairly and justly adhere to the terms of treaty, but rather Canada seemed to be grasping at straws to protect the integrity of the comprehensive claims discussions in the NWT. Eventually, the argument was withdrawn. The writer is still astounded that it would have been put forward in the first place.

It should be noted that nothing in this brief paper was intended to denigrate or attempt to minimize the importance and significance of the rights of the Inuit people in the NWT. Clearly, the Inuit have an identifiable extent of traditional territory over which they exercised rights that are based on their use and occupation. However, when the rights of other Aboriginal people were affected in the Inuit settlement talks it was contingent upon Canada to deal with the competing interests on a fair and reasonable basis, free from any self-serving and subjective taint. The issue should have been dealt with the competing sides having equal opportunity to put forward their strongest possible case, based on the available evidence. This was not the case, as the Dene's effort to have their rights recognized and protected were continually constrained by a lack of resources. This situation exists to this day.

Map 1



Nunavut at a glance

Area of Nunavut: 2,000,000 sq. km

Area of Canada: 10,000,000 sq. km.

Area of land claim settlement: 350,000 sq. km.

Area of mineral rights acquired in the deal: 35,257 sq. km.

Total population of Nunavut: 22,000

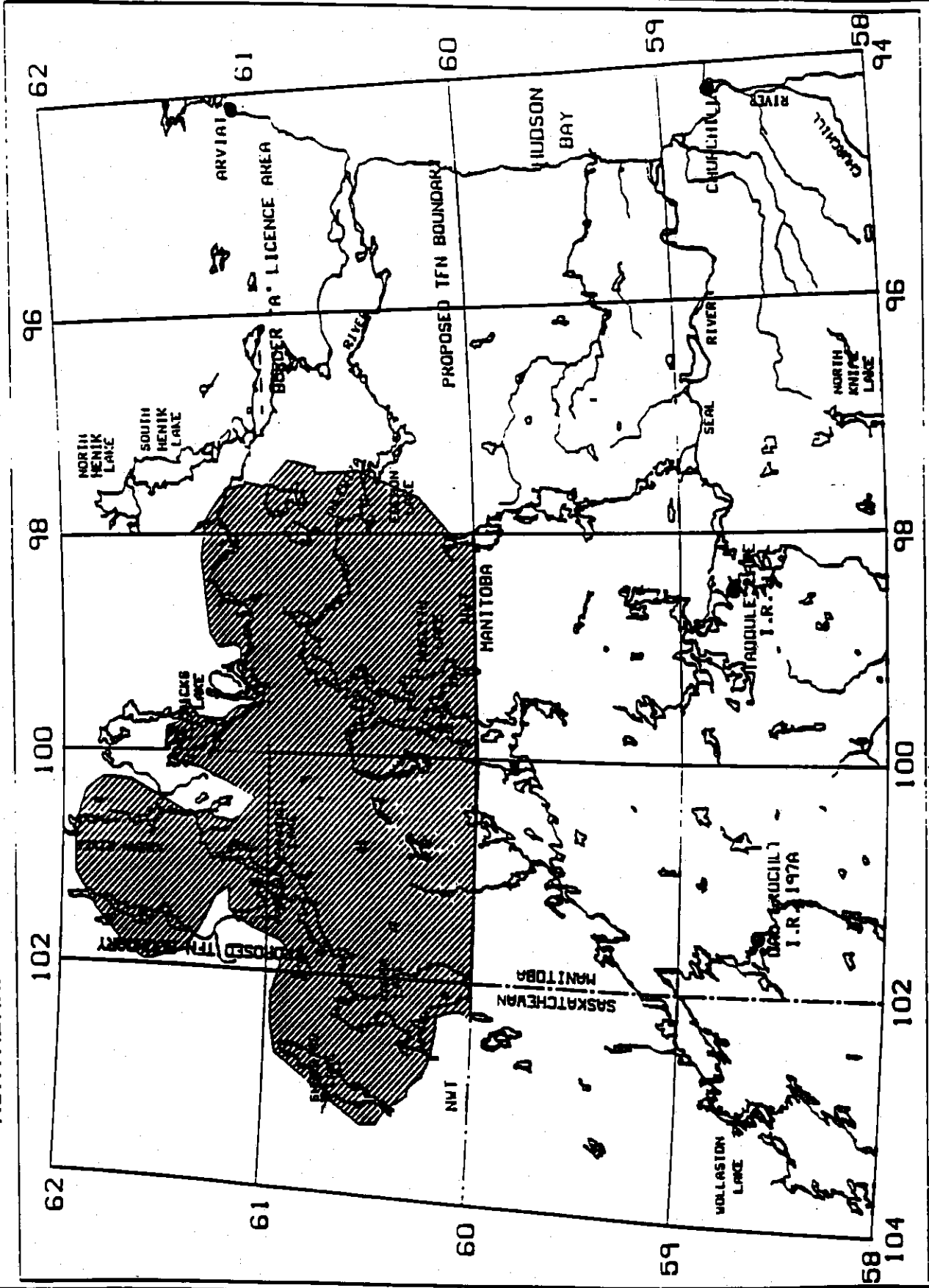
Total Inuit population: 17,500

Largest community: Iqaluit (pop. 3,552)

Future form of territorial government: Elected legislative assembly, cabinet, and a territorial court.

Map 2

NORTHLANDS FIRST NATION TRADITIONAL LAND USE NORTH OF 60



FORT CHURCHILL TRADITIONAL LAND USE NORTH OF 60

