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Shared Citizenship and Self-Government in Canada: A Case Study of James Bay and Nunavik (Northern Quebec)

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We exercise sovereignty in our territory on behalf of Canada

(Paul Okaalik, Nunavut leader to Marcia Langton 1994)

*The objective of the treaty was not to secede or create a separate
state but to negotiate our way into Canada*

(Allen 2005)

Introduction

In Canada, treaties were the historical tool for managing competing claims. Negotiation of modern treaties or comprehensive land and self-government agreements, backed by common law recognition of Aboriginal rights and title and their constitutional protection, are now the preferred tool. The history and experience of policy, law, negotiation and implementation of this approach is vast, covering diverse locations, peoples, constitutional entities, environments, projects and populations.

In this chapter we provide an overview of this history and then examine in more detail the ever evolving treaty-making experience in relation to actual agreements, in particular the James Bay and Northern Quebec Agreement (JBNQA).² We take this agreement and briefly contrast it with self-government initiatives elsewhere, particularly in British Columbia, to examine some of the key concepts emerging from the modern treaty process: relationship building, nation-to-nation negotiations and settler governments' elusive search for certainty. We show through our case study of James Bay and Nunavik (Northern Quebec) that because of the possibilities of Aboriginal title to land including an inherent right to self-government (McNeil 2002; Morse 1999), Canadian governmental institutions are increasingly forced to recognise and even incorporate indigenous governance mechanisms. This is the case in spite of the settler state search for certainty and finality in relation to Aboriginal claims. This

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land claim settlements and self-government arrangements recedes and even the limited bilateral agreements referred to in British Columbia are mechanisms in the ongoing process of relationship building and re-imagined shared citizenship. Whether through the creation of new Aboriginal institutions of governance or through the incorporation of Aboriginal norms and principles into existing governance and regulatory institutions of the federated polity, the dynamics created by these agreements contribute to the ongoing process of reconfiguring Canada.

Notes

- 1 We gratefully acknowledge all those who participated in this research, and the assistance of Brad Morse who provided us with initial contacts in the field. We would also like to thank John Borrows and Peter Hutchins for providing comments on an earlier draft of this paper. All errors and omissions remain the responsibility of the authors.
- 2 For details of the James Bay and Northern Quebec Agreement and Complementary Agreements, see ATNS Database at <<http://www.atns.net.au/biogs/A001581b.htm>>.
- 3 For details of the *Robinson Treaties*, see ATNS Database at <<http://www.atns.net.au/biogs/A001497b.htm>>.
- 4 For details of *Treaty No 8*, see ATNS Database at <<http://www.atns.net.au/biogs/A001792b.htm>>.
- 5 The JBNQA was an outcome of protracted litigation and an eventual negotiated settlement. There was no recognition by negotiators that the negotiations were in any way framed by the Claims Policy (P Hutchins, Laywer 2006, pers comm, 23 January).
- 6 Entrenchment involves two elements of the *Constitution Act* 1982 (UK). First, s 25 of Pt I, that is, the Canadian Charter of Rights and Freedoms, reads:

The guarantee in this Charter of certain rights and freedoms shall not be construed as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

 - (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
 - (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Second, s 35, Pt II 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 Métis peoples of Canada.
 - (3) For greater certainty, in subsection (1) 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired.
 - (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.

Subsections (3) and (4) were added by the Constitutional Amendment Proclamation, 1983 reprinted in *McGill Law Journal*, vol 30, pp 741–3.
- 7 For details of the Meech Lake Constitutional Accord, see ATNS Database at <<http://www.atns.net.au/biogs/A001805b.htm>>.
- 8 For details of the Charlottetown Accord, see ATNS Database at <<http://www.atns.net.au/biogs/A001801b.htm#related>>.
- 9 It should also be noted that there is an increasing recognition that the JBNQA itself includes governance provisions throughout for specific subject matters such as education, environment, and harvesting (P Hutchins 2006, pers comm, 23 January). See also discussion of the role of the Cree Tallyman and Awashish's views on Eeyou (Cree) governance later in this paper.

- 10 For details of the Nisga'a Final Agreement, see ATNS Database at <<http://www.atns.net.au/biogs/A001630b.htm>>.
- 11 For details of the Westbank First Nation Self-Government Agreement, see ATNS Database at <<http://www.atns.net.au/biogs/A001763b.htm>>.
- 12 Public government refers to a scheme of government that is not based on a particular group or first nation but operates in relation to the broader Canadian citizenry.
- 13 For details of the Déline Self-Government Agreement-in-Principle for the Sahtu Dene and Métis of Déline 2003, see ATNS Database at <<http://www.atns.net.au/biogs/A001777b.htm>>.
- 14 For details of the Tlicho Land Claims and Self-Government Agreement, see ATNS Database at <<http://www.atns.net.au/biogs/A001611b.htm>>.
- 15 In the northern regions this approach is preferred by the Federal Government (Self-Government Negotiator, INAC 2004, pers comm, 23 June).
- 16 Although beyond the scope of this paper, thinking about incorporating Aboriginal sovereignty into the Canadian Confederation in this way goes beyond the present limited settler state approach of protection of minority rights and the rule of law and consequently has implications for democracy and inter-jurisdictional issues within the Canadian Federation (J Borrows 2006, pers comm, 14 January).
- 17 The Cree have their own form of Aboriginal government under the *Cree-Naskapi (of Quebec) Act*, SC 1984. It is beyond the scope of this paper to discuss issues relating to this Act and Cree self-government arrangements, but see Gagnon and Rocher (2002).
- 18 For details of the Nunavik Inuit Marine Region Agreement-in-Principle, see ATNS Database at <<http://www.atns.net.au/biogs/A001797b.htm>>.
- 19 In November 2005, a Final Agreement was signed and at the time of writing was awaiting ratification by the Nunavik Inuit and the Canadian Parliament (CBC News 2005).
- 20 Craik (2004) argues a new agreement is possible because of the history of effective Cree opposition to government-sponsored development projects.
- 21 See, for example, Beaulieu (2002).
- 22 For details of the Agreement Concerning a New Relationship Between the Government of Quebec and the Crees of Quebec, see ATNS Database at <<http://www.atns.net.au/biogs/A001622b.htm>>.
- 23 By virtue of the politics involved, such agreements are often tenuous – vulnerable to changes of leadership on all sides. In September 2005, Dr Ted Moses was defeated in the elections for Grand Chief and replaced by Matthew Mukash, who had been a vocal opponent of the new agreement (Roslin 2005). While Grand Chief Mukash has subsequently stated his commitment to honouring and implementing the agreement, he continues to voice his preference for alternative approaches to economic development including through wind, solar and bio-fuel energy production (Mukash 2005). Opposition to the agreement is characterised by some as an inter-generational issue, with a younger generation of 'nationalist' Cree leaders opposing the agreement on environmental and lifestyle grounds (Beaulieu 2002). The task of reconciling two seemingly inconsistent lifestyle and values systems is an ongoing and difficult one.
- 24 Also known as Partnership Agreement on Economic and Community Development in Nunavik. For details of the agreement, see ATNS Database at <<http://www.atns.net.au/biogs/A001867b.htm>>.
- 25 For details of the Political Accord to Establish a Nunavik Commission for Self-Government, see ATNS Database at <<http://www.atns.net.au/biogs/A001865b.htm>>.