

## **Spirit and Intent**

### **Background**

The *Nunavut Land Claims Agreement* (NLCA) is many things, a modern day land claim, a treaty within the context of Section 35 of the *Constitution Act*, a contract or agreement between the Inuit of Nunavut, Government of Canada, and Territorial Government. Each of these different constructs has different legal implications, especially in their interpretation within the legal system. In addition to binding the signatories to the NLCA, it also binds third parties through the *Nunavut Act*, *Nunavut Land Claims Act*, *Constitution Act, 1982* and *Charter of Rights and Freedoms*.

The NLCA is a result of over 20 years of negotiations. At the time, there was often confusion about what each was entitled to with respect to land rights, social and cultural rights or programs and services, and much more. Because of the lengthy time, there were a number of Inuit negotiators who came and went over the 22 year period. Often articles were negotiated one at a time, and once an article was finally agreed to, it was signed off and the negotiators moved onto the next article. It is important to know which negotiators were involved in negotiating which articles and whether there were differences in positions they held and whether these changed with the addition or change of new negotiators.

Both sides had their own intentions and agendas to bring to the negotiating table and their own way of interpreting what each side meant.

Often, what people got and what they thought they were getting were two different things. Even within the Inuit side, it was possible that different Inuit negotiators had their own understanding of the written text.

Many parts of the NLCA are written in broad and general terms. While there are some benefits from this kind of language, there are also problems. Specifically, broad language promotes inclusiveness and a variety of interpretations. Most implementers were not negotiators and not privy to the negotiations or have supporting documentation that explains the spirit and intent behind the NLCA provisions, at least not from the Inuit perspective.

### **Current Situation**

Since the NLCA was ratified in 1993, the parties moved from the negotiation phase to the implementation phase. While many think the negotiation stage was difficult, full of struggles, compromises, much of which is true, many believe that the real challenge comes in implementing the agreement.

What many didn't expect, especially this early on in the implementation phase, was the different in opinion in interpretation of specific provisions within the NLCA. Yet, that is exactly what has happened or is happening. There has, and continues to be, differences of opinion regarding

interpretation of what constitutes an Inuit owned business, assignment of harvesting rights, principles of adjacency for fish quota allocation, the authority of the Nunavut Water Board, whether Inuit are exempt from the firearms legislation and many other articles and provisions of the NLCA.

The Government of Canada and the Government of Nunavut often put forward their interpretation based on legal conventions and principles around contract, treaty, statutory development and interpretation rules. These include ordinary meaning (common sense within immediate and broader context), plain meaning (no ambiguity accept simple meaning), textual interpretation (drafters are linguistically competent and careful), principal of tautology (statement that is extrinsically true), examination of stated definitions, purposes, objectives, to assist in understanding the intentions of the parties and what their understanding was at the time of the contract.

No matter how carefully the parties to the NLCA drafted the text, there are often conflicts or differences of opinion regarding what the written term means. Generally, all interpretations are equally valid until a court of law makes a final determination, based on the parties' arguments, legal rules and evidence.

### **Uncertainty/Conflicts**

It is extremely important that Inuit and their Designated Inuit Organizations (DIOs) have access to the Inuit negotiators' understanding of the NLCA. What did the article and the provision mean to them? Does the English text/legalese reflect their intention? What were the considerations and compromises made? What did extinguishment mean to the negotiators? Was the trade of extinguishment of land title for specific rights, monetary compensation and other benefits worthwhile? Why choose a public government model over self-Aboriginal government? Are there any special protections or wording to ensure Inuit negotiations intentions were strengthened or supported? Why are there little or no cultural rights or benefits within the NLCA? How and why did they choose the Inuit Owned Land?

### **Purpose**

To create a legal tool through the documentation and spirit behind key articles and provisions of the NLCA.

It is important to understand the challenges and obstacles the Inuit negotiators faced during negotiations. What were their original positions on particular subject matters and did they change their positions over time and why?

We need the Inuit perspective to strengthen our understanding of the NLCA and how to interpret provisions in such a way that support the Inuit position and perspective. While the government or

others may have their own interpretation, Inuit need documented evidence to strengthen our interpretation.

Our Inuit land claim negotiators will not be here forever and as time passes, memories fade and the evidence will be eventually lost if not recorded now. It is also extremely likely that there will continue to be issues of interpretation of the NLCA provisions in the near and distant future.

By having solid documented evidence from the Inuit negotiators, it will help avoid or defuse conflict around competing interpretations and possibly litigation. Even if conflict, mediation, litigation results, at the very least Inuit have physical evidence to assist in their legal arguments.

### **Benefits**

Any party or persons involved in NLCA implementation will benefit from having the original Inuit perspective behind the articles and provisions.