

Spirit and Intent: John Merritt

MR: What years were you involved in negotiating the land claim?

JM: I worked first at Inuit Tapirisat of Canada (ITC) in 1979 until things were then handed off to the Tungavik Federation of Nunavut (TFN) until 1984. Then I worked at the Department of Indian Affairs and Northern Development (DIAND), David Cromby's office, and came back in 1989. I began to work at NTI in 1999.

MR: What was the negotiating team look like?

JM: ITC's National Board of Directors was in charge at the beginning, and then eventually there was an executive committee made up of the regional Boards. They essentially had delegated authority to make policy, they had moral carriage. Then TFN got set up to deal with negotiating Nunavut. There was a chief and assistant chief negotiator, a combination of an older chief negotiator and a younger, bright understudy. There were regional negotiators. There were five core negotiators and whatever legal research back up. There was no formal notice to announce who was chief negotiator. We went through a lot of regional negotiators. I was there at the front end and the back end. The land selection sucked in all sorts of people because people went from community to community with elaborate structure to allow for participation.

MR: This claim is a very land and resource focused agreement. I'm wondering why this is the case.

JM: The negotiations got reconstituted in 1979 after there had been a lengthy stand-off. I was hired with zero knowledge or experience. There had been an Inuit Land Claim Commission (ILCC) set up after the wreckage of the Unified Proposal in 1976. The Inuvialuit decided to go their own way. The ILCC was set up with John Amagoalik. It was set up to rethink Nunavut. It didn't generate a whole lot in terms of written positions or materials, but it drew up a broad statement of objectives. That was oriented to more fundamental issues of political change. They were interested in Inuit collective rights, in the sense of entitlements, Inuit self-government, and customary law. It looked more left wing. The federal government essentially was unsympathetic. The government rejected the Dene Declaration. The government's position was that it's all about land and money and said get real. Essentially, it was a stand-off. There were lots of internal issues at ITC, personality conflicts. Eventually the ILCC got closed down. A number of people told me when I arrived in 1979 that the ILCC was closed down illegally, contrary to the wishes of the ITC annual meeting. The ILCC didn't fight back. I was hired in this vacuum.

There was a signal sent to the feds that ITC was ready to negotiate again. It was a complicated issue about where Nunavut fit in again. One thing that came out of the 1976 proposal that the commission liked and sustained was the creation of Nunavut for 1970s and 1980s. It was like a holy grail. Different people could read different things into that. Some people said it could be a territory like other territories, or some kind of political unit that incorporated Inuit self-government, some vehicle for cultural change. There are issues of self-definition in every different generation. The concept of Nunavut had a hold in the imagination and we had to deliver something on that front. A big issue for ITC was what about Nunavut and if you dumped it,

where's the credibility? Correspondence with Munroe, all officials at DIAND thought it was a fig leaf and that at some time Inuit would get real. That stand-off played out for 15 years. In the end, Inuit called the federal bluff. That stand-off could have blown up the whole thing. The federal government thought in the end it was a painless concession to restart negotiation, but in the end the federal government had to go where it originally had no intention of going. It was a really interesting history.

The other issue was social policy. Nunavut was going to be a vehicle for policy change and with Inuit population at 85 per cent, you had a good chance to effect social policy. There was a lot of interest to negotiate big social policies up front, including education, health, communications. We had a big communications policy which got rejected. The social policy was about 200 pages long, a lot of orientation toward standards of services. This is similar to federal and provincial health care accountability. We knew that we wouldn't be able to go in and demand \$300 million dollars for health care. You needed rational standards and measurements against gaps. It got tabled and the feds said forget, we don't negotiate social policy change. The James Bay agreement was a one off. The appetite from the 1970s changed when there was a federal deficit. They weren't going to do it. If we can't get real social policy change then it is better to drop it all. There was a back and forth around that.

You end up with Article 32 with the Nunavut Social Development Council and preferred access on participatory role in social and cultural issues. It's never been fully implemented. There's some conflict about what consultation means. Nobody thought there was much value in Article 32. Social policy, despite best efforts, never happened.

The Board gave the research and negotiating team a year to develop policy on land and resources, which the federal government allowed without cutting back the funding. It resulted in working through positions about land ownership and management. This led to setting up co-management Boards. It set the precedent that the Inuit team would always lead with the Inuit paper on the table first. You negotiate on the strength of knowing how far you get pushed off your original position. There are a lot of groups that don't have position papers. They allow the federal side to potentially offer up a position. If you don't know what your position, then it is extremely hard.

MR: So if you go in with a position, then it allows you to set the agenda.

JM: This was the practice. The only limitation was that you don't put positions forth that are silly. I remember John A reacted badly when we had a communications paper that was over the top. I remember that he was very unhappy about that. The federal government likely thought all our positions were over the top. But John A thought it was very extreme. Essentially he said that we need to make an argument that is reasonable. Reputation and credibility is very important, it can't be just ideology. This became a disciplining factor. The rule after that was that with your opening position you go to the outer edge of what you think is the most sympathetic political position in Canada and try not to beyond that.

MR: It seems as if there are different cultural values and approaches in negotiations and implementation with Inuit asking for what they want but not getting it, when you look at how

other groups in Canada, like Quebec, push for more.

JM: Those dynamics are relevant in negotiation. You can create and sustain momentum. The creation of Nunavut was a long shot. There was always that debate. Do we cash in our chips now, do we pull back, do we settle for that? I think that was the undercurrent. They have a territory to play with and you can make a lot of interesting law. One billion dollars is a lot of money to play with or waiting a generation until people are comfortable with that. What do you do with that power once you get it? John A gave a speech in Iqaluit essentially saying how can Inuit liberate themselves if they are at the wrong end of the power balance in society.

MR: While there are obligations at the federal level, there are many more obligations at the territorial level. I often hear that Inuit want and expect change, to have services and programs delivered in Inuktitut in an Inuit way, but often Inuit are now being told that this is a public government.

JM: I think you are right about that. I think vocabulary is very important. Language is the ultimate driver in political discourse as well as values. In 1982, the Constitution was repatriated and the Charter and the entrenchment of Section 35 collective rights and individual rights. There were interesting debates about rights. Every government has to be accountable to a public. For Inuit to surrender that use of that adjective is an enormous limitation of their own agenda. The concept of public government is so central to what they belong to, to give it up without a fight. I think Nunavut is a hybrid. It's a unit of Canadian confederation that offers all of its residency certain political guarantees. Nunavut was deliberately conceived and launched as an active instrument of Inuit distinctiveness. Why else did it happen? You can't say that it's a territory like any other in Canada. It only exists because Inuit signed the land claim with the Crown. It was given birth out of a treaty. It has all these special features, 20 per cent Inuit ownership, Inuit guaranteed nominations to management Boards, Article 23 is front and center to active recruiter and employer, you can't say that this isn't ethnically flavourless. You can't taupe Nunavut. It would be a betrayal of this whole history of this whole period. It's a huge, huge mistake. Don't go there by saying it's a public government or self-government. The whole thing becomes artificial and damaging. Inuit leaders are saying that. The political agenda becomes stale very fast.

MR: Even though there is guaranteed Inuit representation, many Inuit are being told that they're not to represent Inuit as Inuit on an IPG, or even value Inuit employees for their Inuit identity.

JM: These things are important and not inconsequential. No thoughtful person would say that Quebec is not important for the preservation of French identity in North America or their reason for supporting French programs. People in Quebec reject that cultural typecast. The *Nunavut Act* is very important but that is the down payment. We know from all sorts of decolonization that if you get the superficial stuff without the real stuff you get some very weird politics. When you get power changing hands, it doesn't get distributed to all regions, all communities, groups. Some people do a whole lot better than others. You get those economic indicators. Power shift is not a leveler. It deliberately creates power imbalance on the society that is getting a better deal. That is still playing itself out. Great effort for decentralization. You get more volatile politics short term. Nunavut is supposed to be an agent of change, and an Inuit presence in Canada. If it

doesn't get there, then it doesn't meet that objective. I would be amazed if anybody said there aren't difficult social issues. It's not a situation that screams for the status quo.

MR: I keep hearing that there were periods of exhaustion during negotiation and there is a sense that a lot of Inuit now feel that the negotiations are done, the land claim has been signed and that it is now up to the government to implement the claim and change will happen. It seems people are passive or apathetic. However, it is possible to effect change, just look at Quebec. It decided to radically change its government, legislation, policy to protect its culture and language.

JM: There are consequences to change. There are costs. How much are you prepared to pay? Two hundred thousand people left Quebec because they didn't feel welcome when it instituted its language policy. These things don't self fulfill with passivity. You have to make choices. I went to one conference and saw people put together about a list of 300 happy thoughts, but that is not all going to happen. Politics is always about triage. It's a question of resources and what is important, what is most important and where we going to invest our resources? If you are going to have discussion without an economic analysis, it is not honest. People can't make choices because they aren't given the hard realities. All these workshops where people paper the walls, it's not politics.

We talked about how much the Berger report is going to cost. That is a fair question. He says he can't predict those costs, but bring someone who can. It's important to maintain realistic choices and most realistic choices are hard. There were elements in the claim that were hard choices. The hard choice would have been in 1990-1992 if the Government of Canada wouldn't have supported the creation of Nunavut, if it said it didn't want it, can't support it. I wonder what would have happened. My assumption is that John A would have walked away from the whole thing. I wonder if the Board would have accepted it because there were hunting rights, land, etc. It was amazing that Inuit came through without fracturing their own politics. If you end up in a situation where government renounced the whole project, with a 60/40 vote, you could end up with screwy politics forever. It came out reasonably intact. A few people voted no, but they aren't forever incumbent in how you voted. That is really important. You can become a prisoner of your own history. The Irish did that for several generations. That is a very strong thing Inuit have going for them.

MR: The federal government transfers about \$690 million a year to the Government of Nunavut. The federal government says that this transfer includes monies to implement the claim, not just the basic social programs and services.

JM: NTI has a party line: That the federal government is the party to the agreement and has the main responsibility to implement its obligation. The NLCA has a troubling anomaly in that it is a tripartite, trilateral agreement and one can argue the Crown is the Crown is the Crown. The Government of Nunavut doesn't have adequate resources. The Auditor-General gave a bad report. There are people at the federal government who say that if the GN spent its money better, there would be money to implement Article 23 and get the federal government off the hook. When asked to produce evidence, they won't because they don't have any, other than the AG's report. Back to the crude politics. If you are getting \$690 million a year for 30,000 people, you do the math and that doesn't sit well with a person in Mississauga. The government is spending a

huge amount of money for a small population. You can't ignore that at the Nunavut end of the equation, you've got to deal with that. I've heard some Inuit leaders say that Inuit pay taxes. It's an element of pride. It's a way of Inuit saying we don't believe in a free ride. And I respect that. But I think it gets you into an accounting equation that is impossible to get out. It is very bad news for 80 per cent of the country. I'm always very apprehensive about that and I don't think you win hearts and minds of Canadians. You have to construct arguments in a particular way. You need to make an intelligent case to middle-class Canadians. The Article 23 stuff, it's not rational economics. There is a time dimensional problem. The bureaucrats work within a 12-month funding cycle. Any significant problem can't be solved overnight. There is an element of people having to step outside of the box, thinking about the future, not today. But the problem in implementing Article 23, there is 43 per cent Inuit employment when it should be 85 per cent. It's going sideways, big society problems, got to fix the education problem, what are you going to do about it?

MR: There are no enforcement provisions in the claim and the arbitration provision is not legally binding, is weak and never works. It seems as if we don't have the political clout or influence to bring Canada to the negotiation table for implementation.

JM: We need a ten year plan that shows how it is good for Canada and how it will save money.

JM: Did you ever hear about Plan C? We were asked to work on land and resources. We were concerned about geographical roulette, you either win big or lose. Under common law, you don't need to own the land to hunt. Plan A was what it is. Plan B was to refuse to play that game. Plan C was to create a new type of title in Canada with the Crown and Inuit pooling and investing both their titles. There is nothing that survives that. Then create a co-administered land ministry, economic rents and eventually start saying that money is put back in Nunavut based on priorities. There were certain advantages. You avoid the roulette aspect, windfall, wipe out aspect.

MR: Both share in the wins and losses.

JM: You avoid land selection process. Government and Inuit are in it together. Get away from symbolic relinquishing of title. You would have to invent a title. Crown doesn't have fee simple title or proprietary rights or interests. You have to describe it in a form of title because you are dispensing with common law assumptions that you are carving out of Crown title. Everything else can remain conventional, for carving out leases. That idea didn't get worked out in detail. There was a long debate.

MR: I've never heard of this kind of title existing anywhere in the world.

JM: The feds got a clean release. Fee simple is either granted or acquired under statutory acquisition from Crown land.

MR: Crown retains underlying title to allow it to expropriate land for military or national interests.

JM: It would have been interesting but we never took it out of the box...The funny thing is that

the federal government didn't want Nunavut, but they couldn't put the genie back in the bottle. Essentially it got away from them. You get Article 4, but get rid all this co-management crap. They could have tried to shut down the Boards by saying do you want Nunavut or these Boards. These Boards were intended to be the Inuit voice. They could have tried to shut it down because it is expensive. I think it might have been very clumsy of them and maybe it didn't occur to them to shut it down.

MR: There seems to be a difference of opinion about the IPGs roles and functions. There doesn't seem to be any problem with implementation until there is a conflict, like with the Nunavut Water Board and the Nunavut Wildlife Management Board.

JM: There are abhorrent results. Water rights were statutorily extinguished in 1970 under the *Inland Waters Act*. I was waiting to see whether this would become an issue because there are no Aboriginal water rights.