

## **Spirit and Intent: Terry Fenge**

**MR:** What were the years you were involved?

**TF:** In 1982, I started work at the Canadian Arctic Resources Committee (CARC) in Ottawa. I was doing work in land use planning. Randy Ames and Simon approached me to see if I would be a representative on implementation planning in Nunavut. At the same time, they were dealing with planning issues. I kept in close contact with them, but I was not formally working with Tungavik Federation of Nunavut (TFN). I started working with Bobby and Lucasie Ivalu in 1985 as their senior research director. There was a political hiatus around Nunasi in getting loan guarantees that would flow from the land claim agreement. Most staff had resigned. I was helping to rebuild. I worked there until the end of 1992.

**TF:** We were moving on the land claim agreement. When I first joined, the people had negotiated had the wildlife provisions, but the government would not sign off on them. There was also a push to change land policy. Department of Indian Affairs and Northern Development (DIAND) Minister David Cromby couldn't get the policy through Cabinet. Bill McKnight did get it through Cabinet in 1986. In that period, nobody was thinking about Nunavut. Everybody was thinking of the land claim agreement. There was the Nunavut Constitutional Forum. That was Peter Ittinuar, John Amagoalik, Kathleen Tagoona and Allen Maghagak. While the land claim stuff was moving forward, the Nunavut Constitutional Forum came to a halt because of the impasse on the boundary. Wildlife, policy, and boundary were the big issues. When the policy got changed in 1986 and when the boundary could not be agreed upon, that left TFN doing the negotiations. The whole idea of Nunavut didn't come back into the fore until 1990-1992.

**MR:** What were the problems with wildlife?

**TF:** All wildlife negotiations pre-dated me. It was sitting on the shelf. I sat down with Bob Kadlun. They had negotiated that the Nunavut Wildlife Management Board (NWMB) would not be an advisory Board. Rather, it would be a decision-making board. The minister refused to accept this, Tom McMillon was minister of Environment. He wanted National Parks going in Baffin and Ellesmere Island. We got in touch with a CBC reporter and got her to put a microphone in front of McMillon and said that she understands that the Inuit leaders will not let you have those national parks until you agree to those wildlife provisions. It worked. People were really pissed off with us linking those issues. The wildlife provision was signed. It was an illustration of how an individual agency could hold up the land claim. The government was really a series of agencies that would come to the table to negotiate the claim.

**MR:** I understand that another large stumbling block was the removal of the social and cultural rights provisions.

**TF:** Bruce came in and originally was going to do social provisions. I don't think that Inuit leaders/Board of Directors was seriously interested in social issues. They didn't take it seriously, they didn't give any direction. It didn't attract the sort of attention in hindsight that it was due. There was resistance from the federal government about dealing with social provisions. The federal government objected and did not constitutionally entrench social provisions. You are not

going to get a constitutional right to a social program. We had amazingly limited capacity to deal with it. We didn't have people in the organization who knew about social stuff. Everybody was focused on land based issues. If you actually have a look at the size of the organization, competency of staff, the quality of the staff, what they could do and couldn't do, to do social provisions we would have had to get a few other people. There was another factor: the exhaustion factor. People were exhausted. To open up to do social provisions would have required the preparation of a document comparable to the lands and resource package. Bruce was hired to do social provisions and he moved into land selection. The team never got a coherent or consistent social package.

**MR:** Tagak said the Inuit had policy and legal advisors, but not enough economic advisors and that is why is there a fixed royalty amount.

**TF:** First of all, Tagak wasn't there. He was there at the beginning and right at the end. He wasn't there when the economic provisions were negotiated. It was only when the land claim policy change happened in 1986 that enabled royalty shares to be dealt with in the agreement. The Nunavut Agreement was the first agreement to deal with royalty sharing. We were aware that the Dene were negotiating their land claim and they wanted to get a generalized interest, and they failed at that, a significant blanket percentage royalty. The feds refused that. Paul Okalik was central to these negotiations. We put our economic eggs in the Inuit Impact and Benefits Agreement (IIBA) basket. The provisions we had tabled applied to all land in Nunavut, Crown and Inuit owned land. We weren't that interested in the royalty regime. The feds had a very lean royalty regime. We figured that the IIBA provisions would be more important. The feds came back and said they couldn't share the general royalty sharing. Then they said IIBAs would only apply to Inuit owned lands. That was a huge change. We were pissed off, but we couldn't do anything about it because we were talking about Crown land. We eventually had to agree to it and lump it. That left the royalty provisions, which were pretty weak.

**MR:** So 50 per cent of \$0 = \$0.

**TF:** The Chamber of Mines published some very good reports about economic rent and how the federal government got economic rent from mining. Those reports said the government had chosen to get its economic rent through corporate and personal income taxes. We were disbarred from sharing in that revenue stream.

**MR:** Are you aware that the federal government says that it gives the territorial government a blanket transfer for all territorial services including land claim implementation, IIBAs.

**TF:** I'm privy to only some of the debate here. The establishment of the Nunavut objective pre-dates me. Much of the conceptual work was done in the 1970s. They received minimal attention in the 1980s, which is when the majority of the details of the land claim agreement were done. It wasn't until before the Agreement in Principle (AIP) in 1990 that people re-focused on Nunavut and got Article 4, which was very, very general. I thought it was brilliant piece of strategizing. In that period of time, nobody was thinking of the details of what Nunavut may or may not look like or what funding would be. Nobody was focusing on how much this would cost.

**MR:** In 1992, on the eve of signing the claim, I've heard a people say there wasn't much work to plan or transitional period that would allow a good foundation for Nunavut.

**TF:** There is a distinction between land claim and Nunavut. The deal was finished was in 1991. The ratification tours took place in 1992. The ratification was done in 1993. The idea of what it all means to implement didn't receive any attention until 1991. No one was thinking of implementation. It was never debated in caucus. When it came time to get the first implementation plan together, Mary C and Lois Leslie, and I were involved in it a bit at the beginning.

**MR:** It seems that people simply got exhausted after negotiation and that it was anticlimactic.

**TF:** The people who were doing the implementation contract negotiations were heavily involved. On the federal side, there was a bunch of new people. They were not most the qualified people. These were mainly civil servants and bean counters with work sheets. The first time that the land claim implementation plan had been put together, it was being made up as it was going along. The basic assumptions of the Boards, number of meetings, people made it up. In hindsight, I think they did a good job. It wasn't from a rational planning process. The feds wanted everything in one package and wouldn't go into a transitional or phased approach.

There is an important connection between land management and land ownership. Back in the early 1980s when the land resource package was first tabled, negotiators made a big deal of control as opposed to ownership of land. They said they really wanted institutions in place and it is through these Boards that Inuit will control what goes on. That was an early recognition that Inuit would not own everything. In the early 1970s, Inuit wanted ownership of huge tracts of land, including parks. When it came into 1980s, the feds kept saying you don't need to own a lot of land because you have these institutions. That is the reason why the Nunavut Agreement provides about 18 per cent of area over which Inuit could prove use and occupancy. Inuit were disbarred from selecting lands in Northern Ellesmere because they couldn't prove contemporary or living memory use of those lands. If you compare the percentage, it is significantly less than the Inuvialuit agreement and James Bay. It was one of the weaker points in the agreement.

There were two sets of negotiations out in the regions. The first set was on amounts. The second set was on land parcels. I think we did a better job in the second. I think on the quantum, Inuit got what they want, high quality land. We realized that the quantum we got was a bit too small, but we wanted to ensure that the land ownership negotiation would be successful. There had been land ownership started in south Baffin. Bruce called and said that the feds weren't giving us much on the subsurface. We worked it out so that Bob Kadlun and I would go to the community land ownership meetings. Bob and I went to Resolute. The feds position was you cannot have subsurface title to lands that third party has rights and interests to. We said that is not going to work. We won't allow that. Bob came close very to walking away from negotiations and the agreement, which would have frozen the negotiations at least for a period of time. A side deal was struck. Up to one-third of Inuit land could be subject to leases or permits. That is how they got some subsurface title to some very promising mineral deposits. That was part of the trade off at the time. There was Tom Malloy in that region. This is where the Polaris mine was operating and people thought there were other valuable deposits.

**MR:** It does not seem as if land selection is divvied up equally between the three regions. I've heard Baffin gave up some of its land selection to the other regions to secure valuable subsurface land in those regions.

**TF:** Inuit have land outside of the Nunavut Settlement Area and that is why it is unique. It was against every principle of the federal policy. Many people have different pieces of the story. People were thinking of Nunavut-wide, not just regional benefits. The feds refused to talk Nunavut until very late in the game, until 1989. They maintained a policy position that was separate from the claim. Had the feds bought into the principle of Nunavut in 1970s, I think all those resource management boards wouldn't have been needed. It would have been cheaper. We have the best and the worst of all worlds. We have the Government of Nunavut and IPGs doing all sorts of things.

**MR:** I keep hearing that Inuit would have their rights realized through the creation of Nunavut and the territorial government, through Article 23 and Article 24. But what I am now hearing is that Inuit who are appointed to IPG Boards or hired within the government are told that they are not to represent Inuit or Inuit interests. There seems to be a shift from what the negotiators envisioned from what is happening now. There was an assumption that you would place Inuit who would be mandated by their own representative association to bring forward Inuit views, perspectives, values, goals, into the resource management bodies. We never gave thought to the policies that would be used by the resource management bodies themselves, but by having Inuit at the table, then it would be up to Inuit to say what they wanted to say.

**TF:** The intent and hope was you bring Inuit into these institutions, the institutions would be highly sensitive to Inuit. We never thought that Inuit would leave their Inuit identity of the door. That would be against what the negotiators intended, that Inuit would be valued members and there would be collegial debate between people representing the federal government and Inuit, and out of that would come high quality decisions. The whole question of the quality and ability of the Boards to do what they were set up to do, it all comes back to capacity building.

**MR:** We are struggling with capacity.

**TF:** There was meant to be a chief negotiator, deputy negotiator, at least one person from each of the three regions, supported by one, two, three staff. That was supposed to be the make-up of the team. We could never get a full negotiation team. The team relied heavily on Bob Kadlun, Paul Okalik and Paul Quassa, who were not there at the same time. The two or three senior negotiators and staff had to carry the day in the weak interludes.

**MR:** I've looked at the names and one of the first things is the numbers, which are quite small. The composition as you explained was rarely there.

**TF:** There was never an agreed agenda. I went back to TFN files to see what our game plan was. There was one sheet with a few things scrawled on it.

**MR:** Didn't it benefit the federal government by Inuit not having an agenda?

**TF:** The feds never came forward with their complete vision. On our side of our table, we tried and prided ourselves that we would do the drafting because who did the drafting set the agenda, invariably wins the day. I don't think either party knew the full scope or ambition until we were getting toward the AIP.

**MR:** So the majority of the text was drafted by the Inuit side?

**TF:** Yes, very much so. It was collaborative. All the resource management was drafted by Inuit and then negotiations started and then interminable backwards and forward.

**MR:** The main players were Randy and Bobby.

**TF:** Yes, Randy did most work.

**MR:** Another notable fact is the absence of women from the table.

**TF:** Yes, there were very few women at the table.

**MR:** Now, there is a significant shift in our Inuit society in that there are a significant number of Inuit women in the workforce.

**TF:** I think the key connection on the gender issue and the make-up of the agreement, would be that there would have been a greater focus on social and cultural provisions than on resource development.

**MR:** Studies and reports have shown that women's participation in contract and treaty negotiation do influence the look, feel and rights within the agreements.

**TF:** I'm easily persuaded of this view. Jeff had been around way back in the 1970s in negotiations with Dougald Brown. I saw in 1988 and 1989 when he came back to TFN. He said we've got a big problem, we don't know what proportion confers rights and what doesn't confer rights. He felt we may need to redraft the whole land claim agreement. We contracted Peter Hogg, constitutional expert. He said don't worry about this, the way you've constructed this, anything that can be interpreted as a promise can be inferred as a right. We continued in the same way.