

Court file no. .

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

**THE INUIT OF NUNAVUT AS REPRESENTED BY
NUNAVUT TUNNGAVIK INCORPORATED**

Plaintiff

- and -

**THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY
THE ATTORNEY GENERAL OF CANADA**

Defendant

NOTICE TO THE DEFENDANT(S)

1. You are hereby notified that the Plaintiff (or Plaintiffs) may enter judgment against you in accordance with the attached Statement of Claim, or such judgment as may be granted under the *Rules of the Nunavut Court of Justice*, without further notice to you unless within 30 days after service of the Statement of Claim on you, you cause to be filed in the office of the clerk of the Nunavut Court of Justice either:
 - (a) a Statement of defence, or
 - (b) an Appearance,and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or the Plaintiff's lawyer.
2. The attached Statement of Claim is to be served within 12 months from the day on which it is issued.
3. Every Defendant should consult his or her lawyer, or refer to the *Rules of the Nunavut Court of Justice*, to determine his or her rights.

The attached Statement of Claim is hereby issued out of the office of the Clerk of the Nunavut Court of Justice at Iqaluit, Nunavut, on _____, 2006.

Clerk of the Nunavut Court of Justice
Address of court office:
Nunavut Justice Centre, Building #510
P.O. Box 297
Iqaluit, Nunavut X0A 0H0

TO:
John H. Sims Q.C.
Deputy Attorney General of Canada
Department of Justice
234 Wellington St., East Tower
Ottawa, ON K1A 0H8

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Defendant

NOTICE TO THE DEFENDANT

This Statement of Claim is issued by:

Dougald E. Brown

whose address for service is:

c/o Nunavut Tunngavik Incorporated

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Solicitor for the Plaintiff

Address of the Plaintiff:

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Address of the Defendant:

John H. Sims Q.C.

Deputy Attorney General of Canada

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STATEMENT OF CLAIM

Parties

1. The Plaintiff, Nunavut Tunngavik Incorporated (“NTI”) is a non-profit corporation with head office in the City of Iqaluit, Nunavut. NTI represents the Inuit of Nunavut (“the Inuit”) in this proceeding.
2. The Defendant represents the Queen in right of Canada (hereinafter “the Crown”) pursuant to section 23 of the *Crown Liability and Proceedings Act*, R.S.C. 1985 c. C-50.

Nunavut Land Claims Agreement

3. In 1993, the Queen in right of Canada entered into an agreement with the Inuit entitled *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* (“the Agreement”).
4. In consideration of the rights and ongoing benefits promised by the Agreement, the Inuit surrendered their aboriginal title to lands and waters in the Nunavut Settlement Area.
5. In the negotiations that culminated in the Agreement, the Inuit were represented by the Tungavik Federation of Nunavut. NTI is the successor to the Tungavik Federation of Nunavut.
6. The Agreement was ratified by the Inuit by vote. For the Crown, the Agreement was ratified, given effect and declared valid by enactment of the *Nunavut Land Claims Agreement Act*, S.C. 1993, c.29 and, in particular, by sub-section 4(1) of that *Act*.

Contract

7. The Agreement is an enforceable contract between the Crown and the Inuit.
8. Pursuant to section 2.3.1 of the Agreement and section 5 of the *Nunavut Land Claims Agreement Act*, the rights and benefits of the Inuit in the Agreement have not merged in any statute or other law.

9. Pursuant to the *Nunavut Land Claims Agreement Act*, 1993, c. 29, the Agreement is binding on the Crown.

10. The Agreement is a land claims agreement within the meaning of section 35 of the *Constitution Act*, 1982. Accordingly, all rights of Inuit under the Agreement, including the promises of ongoing rights and benefits, are recognized and affirmed pursuant to sub-section 35(1) of the *Constitution Act*, 1982.

Honour of the Crown

11. The Crown has a duty to act in a manner that is consistent with the honour of the Crown in the interpretation, implementation and performance of its promises and obligations under the Agreement.

Breaches of the Agreement

12. The promises made to the Inuit in the Agreement have not been fulfilled and the terms of the Agreement have been breached in the following respects:
 - (a) since 2003, proper and adequate funding has not been provided to the Nunavut Planning Commission, the Nunavut Impact Review Board, the Nunavut Water Board, the Nunavut Wildlife Management Board and the Surface Rights Tribunal, in breach of sub-section 37.1.1(e) of the Agreement;

 - (b) adequate funding has not been provided to Hunters and Trappers Organizations, in breach of section 5.7.13 of the Agreement;

- (c) a general monitoring plan has not been developed and there has been no general monitoring and data collection, in breach of section 12.7.6 of the Agreement;
- (d) initiatives required under section 23.2.1 to increase Inuit participation in government employment have not been undertaken;
- (e) there has been no cooperation in the development and implementation of adequate employment and training under section 23.2.2 of the Agreement;
- (f) an Inuit labour force analysis has not been carried out under section 23.3.1 of the Agreement;
- (g) Inuit employment plans have not been prepared to increase and maintain the employment of Inuit at a representative level, in breach of section 23.4.1 of the Agreement;
- (h) the specific measures required to be undertaken as part of Inuit employment plans under section 23.4.2 have not been undertaken;
- (i) the required second independent five-year review of the Inuit employment plans under section 23.7.1 has not been carried out;
- (j) procurement policies pursuant to section 24.3.2 have not been established or maintained;
- (k) the implementation of section 24.8.1 has not been monitored or evaluated;
- (l) funding levels allocated to the implementation of the Agreement pursuant to sub-sections 37.2.2(d) and (e) have never been identified;

- (m) Inuit Impact and Benefit Agreements have not been entered into despite the requirements to do so;
- (n) funding required to permit Inuit Impact and Benefit Agreements to proceed has been withheld;
- (o) funding for implementing the Agreement after the initial 10-year period following its coming into force has not been agreed upon pursuant to section 37.2.2;
- (p) consent to use the arbitration process provided for in the Agreement to resolve funding and other issues relating to the implementation of the Agreement has been unreasonably withheld.

Crown's Fiduciary Obligations

- 13. For the Inuit, the Agreement is of fundamental importance and the ongoing rights and benefits promised in the Agreement are critical to achieving the broad economic, social and cultural objectives of the Agreement.
- 14. Various provisions in the Agreement require the Crown to take governmental initiatives in order to fulfil promises made to Inuit in the Agreement. The Crown's power to design, select and implement such initiatives affords it power to control the manner and degree to which the Crown's own obligations under the Agreement are performed.

15. As a consequence of the Crown's dominant power in this regard, the Inuit are placed in a correspondingly vulnerable position where obtaining the benefit of the Agreement is dependent on the exercise of discretionary power by the Crown.
16. In order to honour its ongoing obligations under the Agreement, the Crown is also obliged to provide sufficient funds to provide for the activities required to fulfill the promises made by the Crown in the Agreement. Implementation of the governmental obligations in the Agreement are wholly dependent on funding from the Government of Canada.
17. In dealing with funding for implementation of the Agreement, the Crown is in a dominant position because the steps necessary for the appropriation and allocation of funds to carry out the Agreement are outside the control of Inuit and are entirely within the control of the Crown. The Inuit are thereby placed in a vulnerable position where performance of the ongoing rights and benefits promised in the Agreement is dependent on the willingness of the Crown to provide sufficient funding.
18. In the context of the special relationship between the Crown and aboriginal peoples, the Crown is not entitled to use its dominant position to avoid or minimize ongoing governmental obligations under the Agreement. The Crown has an obligation to ensure that its interest in other policy objectives, including limiting public expenditures, does not interfere with its obligation to take governmental initiatives and to provide adequate funding on an ongoing basis to permit the promises made to Inuit under the Agreement to be fulfilled. These circumstances give rise to *sui generis* fiduciary obligations on the

Crown's conduct in establishing governmental initiatives required by the Agreement and place limits on how the Crown may exercise its powers over funding necessary for implementation of the Agreement. Specifically, in relation to the issues in this proceeding, the Crown has the following obligations:

- (a) It is obliged to engage in good faith negotiations with the Inuit for the purpose of reaching agreement on the funding necessary to fulfill the promises made to Inuit in the Agreement;
- (b) It cannot unilaterally exercise its power over the appropriation of funds so as to erode, delay, or minimize the scope and substance of the benefits promised to Inuit in the Agreement;
- (c) In the event of an impasse over the funding necessary to fulfill the promises made by the Crown in the Agreement, it is obliged to have the matter determined by submission to the arbitration procedure provided under the Agreement or by another neutral dispute resolution process agreed on by the parties;
- (d) It is obliged to seek the agreement of the Inuit on governmental initiatives it proposes to establish for the purpose of fulfilling its obligations under the Agreement;
- (e) It is obliged to design governmental initiatives required by the Agreement in a manner that is intended to achieve and is reasonably capable of achieving the objectives set out in the Agreement.

Breaches of the Crown's Fiduciary Obligations

19. In its dealings for the purpose of providing funding and taking governmental initiatives to carry out the Crown's obligations under the Agreement, the Crown has breached the fiduciary obligations set out in sub-paragraphs 18(a) through (e) in the following respects:

- (a) it has failed to appoint a representative with authority to participate in meaningful negotiations concerning funding levels for implementing the Agreement in multi-year periods after 2003;
- (b) it unilaterally withdrew from negotiations on the Implementation Plan for the period after 2003;
- (c) it failed to disclose relevant information, including the amount of funding for implementation of the Agreement during the first 10 years after ratification;
- (d) it refused to respond to expert reports and studies and detailed evaluations tabled by Inuit;
- (e) it failed to conduct any relevant studies, reports or evaluations;
- (f) it failed to involve its own departments, agencies and officials having knowledge and expertise relevant to specific issues;
- (g) it refused to address funding in the context of the specific requirements of the Agreement;

- (h) it refused to discuss anything other than a minimal adjustment to existing funding levels;
- (i) it insisted on continuing to use an annual inflation adjustment formula that it knew or ought to have known did not reflect circumstances in Nunavut;
- (j) it adopted a “take it or leave it approach” throughout the discussions;
- (k) notwithstanding that its own conduct created an impasse over the funding and other steps necessary to implement the Agreement, it consistently refused to resolve any impasse over funding or other implementation measures through arbitration under Article 38 of the Agreement or through any other impartial process;
- (l) it declined to act on the recommendations of a conciliator and responded to those recommendations in a way that demonstrated fundamental misunderstanding of the responsibilities and obligations of the Crown;
- (m) it failed to seek the agreement of Inuit on governmental initiatives required for the purpose of fulfilling its objectives under the Agreement or to design such initiatives in a manner that is reasonably capable of achieving the objectives of the Agreement.

Arrangements for Ongoing Implementation of the Agreement

- 20. Promises made to Inuit in the Agreement were to be delivered on behalf of the Crown in accordance with the procedures and arrangements in Article 37 of the Agreement and in a

manner that is consistent with the guiding principles set out in section 37.1.1 of the Agreement.

21. Part 2 of Article 37 required the development of an ongoing Implementation Plan to identify the specific actions and funding arrangements required to fulfill the promises made to Inuit in the Agreement.
22. Section 37.2.3 of the Agreement required that the actions and funding identified in the Implementation Plan were to be consolidated into a contract appended to but separate from the Agreement. This secondary contract may supplement but cannot amend or derogate from the Agreement.
23. With the exception of specific capital transfers made to Inuit under the Agreement, the funding required to fill all other promises made by the Crown was not to be capped but was expected by the parties to be fixed from time to time.
24. Pursuant to sub-section 37.2.2(d) of the Agreement, the funding necessary to implement the Agreement for the first 10 years after the coming into force of the Agreement was to be identified in the Implementation Plan developed at the outset of the Agreement. Thereafter, the updated Implementation Plan is to identify the funding required for successive multi-year periods, as provided for in sub-section 37.2.2 (e) of the Agreement.

25. Day-to-day oversight over the operation of the Implementation Plan is to be provided by an Implementation Panel established pursuant to Part 3 of Article 37. The Implementation Panel is composed of representatives of Inuit and Government.

26. On May 25, 1993, the Inuit, the Government of Canada, and the Government of the Northwest Territories signed a Contract Relating to the Implementation of the Final Agreement (“the Implementation Contract”). Pursuant to section 37.2.3 of the Agreement, the Implementation Contract was a consolidation of the provisions of the initial Implementation Plan.

Funding for NPC, NIRB, NWB, NWMB and SRT

27. The Implementation Contract set out levels of funding required by the various bodies that are required under the Agreement to carry out specific functions and responsibilities, including the Nunavut Planning Commission (“NPC”), Nunavut Impact Review Board (“NIRB”), Nunavut Water Board (“NWB”), Nunavut Wildlife Management Board (“NWMB”), and the Surface Rights Tribunal (“SRT”). As provided for by sub-section 37.2.2(d), the Implementation Contract identified the required level of funding for these bodies only for the first 10 years of the life of the Agreement.

28. The continued funding of these bodies at a level adequate to permit them to discharge their functions under the Agreement is essential to ensure that the Inuit enjoy the rights promised to them under the Agreement.

29. Sub-section 37.1.1(e)(ii) of the Agreement provides that funding for these bodies shall

provide those institutions with sufficient financial and human resources to plan for and carry out the duties and responsibilities assigned to them in the Agreement in a professional manner with appropriate public involvement.

30. The funding provided to these bodies since 2003 has been inadequate. As a result, they have been unable to fulfil a number of key responsibilities, including the following:

- (a) acquisition and maintenance of appropriate staffing levels;
- (b) provision of adequate housing that is required to recruit and retain staff;
- (c) performance of their work in Inuktitut and both of Canada's official languages;
- (d) provision of adequate levels of training and professional development;
- (e) participation in the work of a Nunavut Marine Council.

31. In addition, the NPC has been unable to carry out a number of its responsibilities under or flowing from the Agreement, including:

- (a) development of a general monitoring plan and the direction and coordination of general monitoring and data collection;
- (b) establishment and maintenance of the Nunavut Resource Centre;
- (c) production of map biographies, which are essential in the land use planning process.

32. Due to inadequate funding, the NIRB has been unable to cover its essential logistical costs, including costs relating to NIRB internal meetings and meetings with government agencies.
33. The NWMB has been unable to conduct essential research, including periodic harvest studies and research into Inuit traditional knowledge.

Inadequate Funding For Hunters and Trappers Organizations

34. Article 5 of the Agreement deals with matters relating to wildlife and wildlife management within the Nunavut Settlement Area.
35. Part 2 of Article 5 establishes the Nunavut Wildlife Management Board (“NWMB”) and identifies the NWMB as the main instrument of wildlife management in the Nunavut Settlement Area.
36. Part 7 of Article 5 goes on to provide that, in addition to the functions given to the NWMB, the exercise of harvesting by Inuit shall be managed by Hunters and Trappers Organizations (“HTOs”).
37. Section 5.7.13 of the Agreement provides that adequate funding for the operation of HTOs shall be provided by the NWMB.
38. Section 5.2.19 of the Agreement further provides that:

The costs of the NWMB shall be the responsibility of Government. The NWMB shall prepare an annual budget subject to review and approval by Government.

39. The Implementation Contract identified funding for HTOs in the initial 10 years' operation of the Agreement in the amount of \$48,000 per HTO annually (adjustments for inflation not included).
40. The 10-year experience with this approximate level of funding demonstrated that it was not adequate to permit the HTOs to effectively fulfill their roles and responsibilities under the Agreement. This level of funding permitted the staffing of HTOs with only a single employee, typically hired on a non-permanent part-time basis. This was insufficient to permit HTOs to carry out adequately their role and responsibilities.
41. The NWMB has determined that, to achieve a minimal level of effectiveness in carrying out its obligations, each HTO requires staffing equivalent to at least one full-time employee. The NWMB has determined that, given administrative costs and the cost of office space, the costs associated with maintaining staffing levels at one full-time employee, the annual HTO funding supplied to each HTO must be increased to \$119,000 (adjustments for inflation not included).
42. The Crown has failed to provide adequate funding for HTOs, in breach of its obligations under sections 5.7.13 and 5.2.19 of the Agreement. As a consequence of the breach, NTI has been required to spend approximately \$265,000 to date to provide basic managerial and organizational support to HTOs across Nunavut. Further as a result of the inadequate funding of HTOs, Inuit have lost the opportunity to respond to land management and

wildlife management issues, and Inuit interests have been prejudiced on important matters because HTOs lack organizational capacity.

General Monitoring Obligations

43. Section 12.7.6 of the Agreement provides as follows:

There is a requirement for general monitoring to collect and analyse information on the long term state and health of the ecosystemic and socio-economic environment in the Nunavut Settlement Area. Government, in co-operation with the NPC [Nunavut Planning Commission], shall be responsible for developing a general monitoring plan and for directing and co-ordinating general monitoring and data collection...

44. The Crown has failed to develop or to fund the development of a general monitoring plan and to direct and co-ordinate general monitoring and data collection, including matters of vital importance to Inuit such as the rate and impact of climate change, airborne and waterborne contamination and demographic changes. Although it has developed a general workplan as to how it would satisfy its obligations under section 12.7.6 of the Agreement, the workplan does not meet its obligations under the Agreement, and, in any event, the Crown has not proceeded to complete the various tasks so itemized, nor has it taken other substantive steps to collect and analyze information on the long-term state and health of the ecosystemic and socio-economic environment in the Nunavut Settlement Area.

45. As a result of the Crown's failure to develop or fund the development of a general monitoring plan as required by the Agreement, the Nunavut Planning Commission and

other bodies have not had the benefit of this information. The viability and efficacy of the integrated management system established by the Agreement have been compromised and Inuit well-being has thereby been prejudiced.

Inuit Employment Obligations

46. Section 23.2.1 provides that the objective of Article 23 of the Agreement is to increase Inuit participation in government employment in the Nunavut Settlement Area to a representative level. This objective applies to the federal and territorial public service. To that end, the Agreement requires that specific steps be undertaken, including the undertaking of a detailed analysis of the labour force of the Nunavut Settlement Area and the preparation of Inuit employment plans to increase and maintain the employment of Inuit at a representative level.
47. Section 23.1.1 defines “representative level” as a level of Inuit employment reflecting the ratio of Inuit to the total population in the Nunavut Settlement Area. Attaining the representative level requires Inuit participation in the federal and territorial public service in Nunavut at a level of approximately 85%.
48. Article 23 requires initiatives to effect the transformation of the federal and territorial public service in Nunavut into a predominantly Inuit public service. The Crown’s obligation under Article 23 requires that concrete and specific initiatives be undertaken and that the necessary funds be provided for such initiatives for the purpose of achieving Article 23’s defined objective.

49. In the period between the coming into force of the Agreement on July 9, 1993, and the coming into existence of the territory of Nunavut on April 1, 1999, the Crown, in collaboration with NTI, took initiatives to increase the level of Inuit participation in the federal and public service in Nunavut. These initiatives were valued at \$39.5 million and reflected a commitment to a minimum Inuit participation rate of 50% at April 1, 1999, and the ultimate achievement of full Inuit representation level of approximately 85% by 2020.
50. At the coming into existence of the territory of Nunavut on April 1, 1999, the Inuit participation rate was less than 50% and has remained less than 50% from that date to the present.
51. The initiatives instituted by the Crown in the period 1993 to 1999 came to an end on April 1, 1999. The Crown's initiatives since April 1, 1999, have been wholly inadequate to meet its obligations under Article 23, and the Crown has refused to provide funding for initiatives to increase Inuit participation in the federal or territorial public service. The Crown has rejected all initiatives proposed by NTI or recommended by third parties.
52. Section 23.4.1 provides as follows:
- Within three years of the date of ratification of the Agreement, each government organization shall prepare an Inuit employment plan to increase and maintain the employment of Inuit at a representative level.*
53. Section 23.1.1 defines "Inuit employment plan" as a plan designed to meet the objective of the Article 23 provisions.

54. No Inuit employment plans have been developed to increase and maintain the employment of Inuit at a representative level as required by Part 4 of Article 23. The Crown has consistently refused to fund any measures that would serve as the basis for a realistic Inuit employment plan to achieve the goal of Inuit employment in the federal and territorial public service in Nunavut at a representative level.
55. As a result of the failure of the Crown to undertake and fund the required initiatives to increase Inuit participation in government employment in Nunavut to the representative level, the failure to develop Inuit employment plans required by Part 4 of Article 23, and the failure to fund measures that would serve as a basis for realistic employment plans to achieve the goal of Inuit employment in the federal and territorial public service at a representative level, the Inuit have suffered loss of direct employment income in the amount of approximately \$130 million per year.
56. Section 23.3.1 required, within six months of the ratification of the Agreement, that “a detailed analysis of the labour force of the Nunavut Settlement Area to determine the availability, interest and level of preparedness of Inuit for government employment” be undertaken. The data in the labour force analysis was also to be maintained and updated on an ongoing basis.
57. No detailed labour force analysis as required by section 23.3.1 of the Agreement was completed and no analysis has been maintained on a current basis.

58. Section 23.7.1 requires the Implementation Panel to arrange for an independent review of Inuit employment plans and other measures required under Article 23 every five years. The Crown, through its representatives on the Implementation Panel, refused to permit the Implementation Panel to obtain an independent review for the period following 1998 as required by section 23.7.1.

Procurement Policies

59. Section 24.3.1 requires the Crown to develop and maintain procurement policies respecting Inuit firms for all contracts required in support of the Government of Canada's activities in the Nunavut Settlement Area. The Agreement further provides as follows:

24.3.2 The Government of Canada shall develop or maintain its procurement policies in close consultation with the [Designated Inuit Organization], and shall implement the policies through legislative, regulatory or administrative measures.

24.3.3 The measures referred to in Section 24.3.2 shall be binding on the Government of Canada, and shall be given effect:

(a) in all cases, no later than one year following the date of the ratification of the Agreement; and

60. The specific objective of Article 24 is to provide business and employment opportunities to Inuit.
61. The Crown has failed to establish or maintain procurement policies for Nunavut as required by the Agreement or to adapt its policies for Nunavut in accordance with section 24.3.5.

62. Section 24.8.1 of the Agreement obliges the Crown to take measures to monitor and periodically evaluate the implementation of Article 24.
63. No such measures have ever been undertaken.
64. As a result of the Crown's failure to develop, adapt or monitor procurement policies in accordance with Article 24 of the Agreement, Inuit have lost business and employment opportunities.

Inuit Impact and Benefit Agreements

65. Articles 8 and 9 of the Agreement require the Crown to conclude Inuit Impact and Benefit Agreements ("IIBAs") for all parks and conservation areas in Nunavut.
66. The Crown has refused to provide adequate funding to allow implementation of the Umbrella IIBA for Territorial Parks in Nunavut. As a consequence, this IIBA, which was concluded in May, 2002, remains unimplemented.
67. In 1995, the Crown established two new National Historic Sites without entering into IIBAs as required by sections 8.4.4 and 9.4.1 of the Agreement.

Disclosure of Funding Levels for Implementation

68. Sub-sections 37.2.2(d) and 37.2.2(e) require that the Implementation Plan identify the funding levels for implementing the Agreement in the initial 10 years after its ratification and for successive multi-year periods thereafter.
69. The Crown refused to identify in the Implementation Contract or thereafter the funding levels allocated to federal departments and agencies for implementing the Agreement. In response to all requests from NTI to identify all funding levels allocated to implement the Agreement, the Crown has disclosed only that departmental budgets were increased to facilitate implementation of the Agreement. The Crown's refusal to identify the funding levels dedicated to implementation is in breach of the terms of the Agreement and has prevented meaningful and informed negotiation of the amount of funding necessary for successive multi-year periods under sub-section 37.2.2(e).

Crown's Conduct in Dealing with Funding for Ongoing Implementation

70. Section 37.2.2 of the Agreement provides as follows:

37.2.2 The Implementation Plan shall identify

(d) the funding levels for implementing the Agreement for the ten-year period following the ratification of the Agreement;

(e) as agreed to from time to time by the parties to the Plan, the obligations and funding levels for implementing the Agreement for successive multi-year periods.

71. In addition to the implementation contract with the Inuit of Nunavut covering the first 10 years after ratification from 1993 to 2003, the Government of Canada also entered into bilateral agreements with the Government of the Northwest Territories (“GNWT”) that fixed the amount of funding to be transferred from the federal government to the territorial government for purposes of implementing the Agreement. NTI and the Inuit of Nunavut were excluded from the negotiation of these bilateral agreements. When the bilateral agreements were entered into, it was known that the GNWT would have no responsibility for implementing the Agreement after the establishment of Nunavut in 1999.
72. Pursuant to these bilateral agreements, the Government of Nunavut (“GN”), which in 1999 succeeded the GNWT as the territorial government under the bilateral agreements, received approximately \$2 million per year for purposes of implementing the Agreement. Of this amount, approximately \$1.25 million was earmarked for training Municipal Lands Officers and the balance of approximately \$750,000 per year was to be applied to other territorial government costs of implementing the agreement. These included negotiating and implementing IIBAs for territorial parks, park management plans, IIBAs for conservation areas, developing new wildlife legislation to conform with the Agreement, developing and implementing Inuit employment plans, and taking measures to increase Inuit employment in the public service.
73. The funding provided to the GN pursuant to the bilateral agreement was grossly inadequate to fund the ongoing responsibilities under the Agreement that the Government

of Canada had purported to assign to the territorial government by way of the bilateral agreement.

74. Inuit made reasonable and sustained efforts to negotiate adequate funding levels on a consensus basis. In 2001, in anticipation of the expiry of the Implementation Contract in 2003, NTI requested the Crown to negotiate revisions to the contract in the form of new funding arrangements. NTI sought, *inter alia*, adequate funding for the NPC, NIRB, NWB, NWMB, and SRT; establishment of a general monitoring program; adequate funding for IIBAs; an annual adjustment formula relevant to experience in Nunavut; and funding for measures that would lead to measurable and significant progress in increasing Inuit employment in the federal and territorial public service.
75. In response, NTI was informed by the Department of Indian Affairs and Northern Development (“DIAND”) that it would appoint a negotiator to meet with NTI. However, the DIAND negotiator was given authority only to discuss a modest accounting adjustment to the amounts in the 1993 Implementation Contract. The DIAND negotiator refused to discuss funding for NPC, NIRB, NWB, NWMB, and the SRT in light of their responsibilities or experience over 10 years; refused to discuss the appropriateness of the annual adjustment formula that had been used for the initial 10 years; refused to discuss the funding needed to establish a general monitoring program; and refused to discuss the funding for initiatives to increase Inuit employment in the federal and territorial public service.

76. The Crown also disclaimed any responsibility for providing GN with funds to carry out measures required under the Agreement, notwithstanding that the GN is wholly dependent on transfers from the Crown for funding. In particular, the Government of Canada refused to discuss the funding necessary for the GN to carry out measures required under Article 23 of the Agreement to increase Inuit employment in the territorial public service.
77. By January 2003, negotiations had reached an impasse as there had been no change in the position of the Crown and it refused to provide any justification for its position. It also refused to engage in an evaluation of original funding assumptions or to acknowledge responsibility for the obligations in Article 23. No further meetings were scheduled.
78. When NTI complained that the negotiations had not been carried out in good faith, it was induced to resume negotiations by an offer, in May 2003, of certain short-term initiatives with funding attached.
79. After negotiations resumed, NTI was informed that DIAND had sought to obtain funding for the promised short-term initiatives under Article 23 but had not been successful. The DIAND negotiator continued to assert that he had no mandate to negotiate funding for initiatives required by Article 23. As a result, the Crown's position was not materially different from its position when the impasse was reached in January 2003.
80. On November 5, 2004, the Crown disengaged itself from negotiations. DIAND wrote to NTI, advising it that DIAND had exhausted the mandate available to it.

Arbitration

81. Article 38 of the Agreement provides for consensual arbitration of any matter concerning the interpretation, application or implementation of the Agreement. Disputes are to be arbitrated by a person or persons selected from an Arbitration Board established under the Agreement. The Arbitration Board established by the parties in Article 38 of the Agreement is the most appropriate forum for determining impasses over funding and implementation of the Agreement.

82. The Crown does not have unfettered discretion to refuse its consent to submit matters for arbitration. When there is an impasse over the funding necessary for performance of the Crown's obligations under the Agreement, the Crown has a fiduciary obligation to refrain from unilaterally deciding the funding to be made available to implement the Agreement. In these circumstances, the Crown has an obligation to exercise its discretion to permit such an impasse to be submitted to arbitration for determination. In the alternative, it is an implied term of the Agreement that neither party may unreasonably withhold its consent to use the agreed-upon arbitration process when an impasse has been reached in attempting to arrive at a negotiated resolution of a matter relating to the implementation of the Agreement.

83. In breach of its obligations, the Crown has since the inception of the Agreement adopted an inflexible policy of refusing its consent to have any matter related to the Agreement resolved through arbitration.

84. NTI has sought to refer the disputes that are the subject of this action to arbitration in accordance with Article 39 of the Agreement. The Crown has refused to consent to arbitration.
85. Since July, 2003, the Crown has unilaterally determined whether, and in what amount, to fund the implementation of those benefits promised to Inuit in the Agreement that are dependent on government initiatives and activities. In the absence of good faith negotiation and in the absence of consent to have impasses over funding determined by arbitration, the Inuit of Nunavut have been deprived of a meaningful opportunity to secure the full performance of the promises made to them in the Agreement.

Relief Sought

86. The Plaintiff seeks the following relief:
- (a) (i) a Declaration that the Crown is in breach of the obligation to provide proper and adequate funding to the Nunavut Planning Commission, the Nunavut Impact Review Board, the Nunavut Water Board, the Nunavut Wildlife Management Board and the Surface Rights Tribunal;
 - (ii) a Declaration that the Crown is in breach of the obligation in section 5.7.13 to provide adequate funding for the operation of HTOs;
 - (iii) a Declaration that the Crown is in breach of the obligation under section 12.7.6 to develop a general monitoring plan and to direct and coordinate monitoring and

data collection on the long-term state of the ecosystemic and socio-economic environment of the Nunavut Settlement Area;

- (iv) a Declaration that the Crown is in breach of the obligations under Article 23 to take initiatives or to provide funding for initiatives to achieve the objective of increasing Inuit participation in government employment in the Nunavut Settlement Area to a representative level;
- (v) a Declaration that the Crown is in breach of the obligation under section 23.2.2 to cooperate in the development and implementation of employment and training;
- (vi) a Declaration that the Crown is in breach of the obligation in section 23.3.1 to conduct a labour force analysis;
- (vii) a Declaration that the Crown is in breach of the obligation under section 23.4.1 of the Agreement to prepare Inuit employment plans to increase and maintain the employment of Inuit at a representative level, in breach of section 23.4.1 of the Agreement;
- (viii) a Declaration that the Crown is in breach of its obligations to undertake the specific measures set out in section 23.4.2 as part of Inuit employment plans;
- (ix) a Declaration that the Crown is in breach of the obligation under section 23.7.1 to carry out the required second independent five-year review of Inuit employment plans;

- (x) a Declaration that the Crown is in breach of the obligation to establish and maintain procurement policies pursuant to section 24.3.2;
- (xi) a Declaration that the Crown is in breach of the obligation to monitor or evaluate the implementation of section 24.8.1;
- (xii) a Declaration that the Crown is in breach of the obligation under sub-sections 37.2.2(d) and (e) to identify funding levels allocated to the implementation of the Agreement;
- (xiii) a Declaration that the Crown is in breach of the obligation to enter into Impact and Benefit Agreements;
- (xiv) a Declaration that the Crown is in breach of the Agreement by withholding funds to permit the implementation of Impact and Benefit Agreements;
- (xv) a Declaration that the Crown is in breach of the Agreement by failing to agree or take reasonable steps to obtain agreement on funding for implementing the Agreement after the initial 10-year period from its coming into force, pursuant to section 37.2.2;
- (xvi) a Declaration that the Crown is in breach of the Agreement by unreasonably withholding its consent to have disputes resolved by the Arbitration Board established under Article 38 of the Agreement;

- (b) an Order for Specific Performance requiring the Crown to carry out the obligations set out in sub-paragraphs (a) (i) through (xvi) of this Statement of Claim and an Order providing for continuing supervision by this Honourable Court to monitor and supervise the Crown's performance and to resolve any differences over the Crown's compliance;
- (c) an Order requiring the Crown to consent to refer to arbitration in accordance with Article 38 of the Agreement the disputed matters that are the subject of this action, or such of the disputed matters as the Court determines;
- (d)
 - (i) a Declaration that the Crown is in breach of its fiduciary obligation to engage in good faith negotiations with Inuit for the purpose of reaching agreement on the funding necessary to fulfill the promises made to Inuit in the Agreement;
 - (ii) a Declaration that the Crown is in breach of its fiduciary obligations by unilaterally exercising its power over the appropriation of funds to erode, delay and minimize the scope and substance of the benefits promised to Inuit in the Agreement;
 - (iii) a Declaration that the Crown is in breach of its fiduciary obligation to have impasses over the funding necessary to fulfill the promises in the Agreement determined by submission to arbitration under the Agreement or by another neutral dispute resolution process;
 - (iv) a Declaration that the Crown is in breach of its fiduciary obligation to seek the agreement of the Inuit on governmental initiatives it proposes to establish for the purpose of fulfilling its obligations under the Agreement;

- (v) a Declaration that the Crown is in breach of its fiduciary obligation to design governmental initiatives required by the Agreement in the manner that is intended to achieve and is reasonably capable of achieving the objectives set out in the Agreement;
 - (vi) a Declaration that the Crown has failed to interpret, implement or carry out its promises under the Agreement in a manner that is consistent with the honour of the Crown;
- (e) damages in the amount of one billion dollars (\$1,000,000,000);
 - (f) special damages, including out-of-pocket amounts expended in negotiations on implementation from 2001 to 2006;
 - (g) punitive damages;
 - (h) costs;
 - (i) such further and other relief as the Court deems just.

Place of Trial

87. The Plaintiff proposes that this action be tried in Iqaluit.

DATED at Ottawa, on December 5, 2006 and delivered by Dougald E. Brown, solicitor for the Plaintiff, whose address for service is c/o Nunavut Tunngavik Incorporated, Igluvut Building #921, P.O. Box 638, Iqaluit, Nunavut X0A 0H0.



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TO:
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Department of Justice
234 Wellington Street, East Tower
Ottawa, ON K1A 0H8

No.

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

THE INUIT OF NUNAVUT AS
REPRESENTED BY
NUNAVUT TUNNGAVIK INCORPORATED

Plaintiff

and

THE QUEEN IN RIGHT OF CANADA AS
REPRESENTED BY
THE ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

This Statement of Claim is issued by:

Dougald E. Brown

whose address for service is:

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