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# Explaining Aboriginal Treaty Negotiation Outcomes in Canada: The Cases of the Inuit and the Innu in Labrador

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## Introduction

From 1921 to the early 1970s, the federal government refused to negotiate any new land claims agreements with aboriginal peoples in Canada. In 1973, in *Calder*, a majority of the Supreme Court of Canada affirmed the existence of aboriginal title. The Court ruled that aboriginal title was not a creation of the Crown, but rather stemmed from aboriginal possession of ancestral lands from time immemorial (Macklem, 2001: 268–269). Six months after *Calder*, the federal government invited aboriginal groups who had not yet signed a treaty with the Crown to enter into negotiations with them under a new federal comprehensive land claims process (RCAP, 1996: 533; Scholtz, 2006: 68–71).

This process, which still exists today, is designed to replace undefined aboriginal rights with a new set of specific treaty rights. To do so, aboriginal groups must prove to the federal and provincial governments that their rights to their claimed lands have never been extinguished; that they traditionally and currently occupy and use their lands largely to the exclusion of other groups; and that they are a clearly identifiable and recognizable aboriginal group (INAC, 1998). Once this is accomplished the three parties negotiate a Framework Agreement, setting out the process,

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the issues and the timeline for negotiations. Once a Framework Agreement is achieved, the parties negotiate a non-legally binding Agreement-in-Principle (AIP), and then a Final Agreement. The Final Agreement must be signed and ratified by all three parties.

In 1977, the Inuit and the Innu in Labrador each submitted statements of intent to the federal and provincial governments to begin comprehensive land claims negotiations. On 22 January 2005, the Labrador Inuit Association (LIA) and the governments of Canada and Newfoundland and Labrador concluded 28 years of negotiations by signing the Labrador Inuit Land Claims Agreement. The Innu, however, are nowhere near to completing their agreement. Although the Innu were able to complete a Framework Agreement in 1996, an Agreement-in-Principle (AIP) remains elusive.

What explains this variation in comprehensive land claims (CLC) negotiation outcomes? The common explanation among politicians, bureaucrats, negotiators and observers is that a large-scale economic development project is a necessary condition to “get a deal.” This paper challenges this explanation by looking at two separate cases located in the same province and virtually ignored by the literature: the Inuit and the Innu in Labrador. To do so, this paper relies on primary and secondary sources, including 28 interviews with Innu, Inuit, and federal and provincial politicians, negotiators, bureaucrats, lawyers, elders, advisors and citizens from Nain, Makkovik, Natuashish, Sheshatshiu, North West River, Happy Valley-Goose Bay, St. John’s, Cornerbrook and Ottawa.<sup>1</sup> The main findings of this paper are that a set of internal and external factors relative to the First Nation provides a better explanation for: (a) whether a CLC negotiation outcome is obtained; and (b) at what speed an outcome is obtained.

### **Setting the Stage: Preferences and Incentives**

Politics is mainly about rival actors competing for scarce resources (Hall and Taylor, 1996: 937). These actors have preferences that structure their relationships with other actors. If the preferences of negotiating actors are similar, then an agreement may be easier to achieve. If actors have different preferences, then an agreement may be more difficult to achieve. Federal policy states that the federal government is interested in ensuring certainty and finality for the purposes of economic development, and in fostering aboriginal capacity for governance and self-sufficiency (INAC, 1998: 5). However, a number of Inuit, Innu and federal officials have argued that the federal government’s main goal is to foster and encourage large-scale economic development projects, usually to reap the revenues generated from them. Government actions to facilitate economic

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**Abstract.** In 1977, the Inuit and the Innu in Labrador each submitted statements of intent to begin treaty negotiations with the federal and provincial governments under the federal comprehensive land claims process. On 22 January 2005, the Inuit, the federal government, and the province of Newfoundland and Labrador signed the Labrador Inuit Land Claims Agreement. The Innu, on the other hand, are nowhere near to completing their agreement. This paper seeks to explain why the Inuit were able to complete their agreement, whereas the Innu were not. It challenges the conventional explanation that an economic development project is a necessary condition for completing a treaty by arguing that a number of internal and external factors need to be taken into account.

**Résumé.** En 1977, les Inuits ainsi que les Innus du Labrador ont respectivement annoncé leur intention de lancer des négociations en vue de conclure un traité avec les gouvernements fédéral et provincial en vertu du processus des revendications territoriales globales. Le 22 janvier 2005, les Inuits, le gouvernement fédéral et la province de Terre-Neuve-et-Labrador ont conclu l'Accord sur les revendications territoriales des Inuit du Labrador. Les Innus, de leur côté, sont encore loin d'une entente. Cet article cherche à expliquer pourquoi les Inuits ont pu signer un accord alors que les Innus n'y sont pas parvenus. L'article remet en question l'explication souvent avancée voulant qu'un projet de développement économique soit une condition nécessaire à l'achèvement d'une entente et soutient plutôt qu'un ensemble de facteurs intérieurs et extérieurs doivent être pris en compte.

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development have not always respected aboriginal concerns or interests (Angus, 1992: 68–69; Miller, 2000: 365–366; Nuke, 2006; Penikett, 2006).

Newfoundland and Labrador's goals are similar to federal goals. Although there is no official provincial land claims policy, statements made by provincial actors indicate that the province is mainly interested in economic development. According to Minister Ernest McLean (2001), "successful land claims negotiations with the LIA and the Innu will ensure economic, legal and social certainty for governance and business and social development." Settling these claims is necessary because Labrador is the key to the economic health of the entire province (Rideout, 2004). Moreover, economic development should benefit all provincial citizens and should not necessarily be at the expense of aboriginal peoples in the province (Pelley, 2006; Lush, 2001; Executive Council, 1997).

Yet the actions of the provincial government bring into question whether the province believes economic development should benefit both aboriginal and non-aboriginal peoples. During the 1970s to the 1990s, the provincial government engaged in commercial logging, the development of hydroelectric projects, fishing, low-level flying, and mining in Labrador, all without consulting the Innu or the Inuit (Nuke, 2006; Rich, 2006; Tony Andersen, 2006). According to members of both aboriginal groups, the proportion of revenue that governments and businesses have derived from these projects dwarfs the amount that the aboriginal groups have received (John-Pierre Ashini 2006; Nuke 2006; Ben Andrew 2006; Riche 2006; Tony Andersen 2006; Jararuse 2006).

In terms of the Innu and the Inuit, they both want to maximize their control over their traditional lands to protect their traditional ways of life

and practices, to protect their interests in and derive revenues and jobs from economic development, and to take control over their lives in areas such as education, health, law enforcement, environmental protection, culture, heritage, fishing and hunting (Samson et al., 1999: 30–34; Wadden, 1991: 200; Jack, 1990: 23; Andrew, 2006; Nuke, 2006). There are some differences between the goals of the Innu and the Inuit. The most important difference is the way in which each group views their position relative to Canada. The Innu originally came to the table with the notion that any agreement had to recognize Innu sovereignty (Andrew, 2006; Innes, 2006; Wadden, 1991: 200; Innu Nation, 1995: 175; Pelley, 2006). Their desire for sovereignty has softened over time, but there are still some Innu leaders who continue to hold sovereignty as the end goal for their comprehensive land claim. Contrast this to the Inuit, who have rarely, if ever, invoked the language of sovereignty. They have always preferred to negotiate an agreement that safeguards their traditional ways of life and interests in economic development, and that allows them to take control over important policy areas through some form of self-government *within* the federation. The language and strategies used by Inuit leaders (LIA presidents, vice presidents, board members, negotiators and elders) have always been based on conciliation, compromise and accommodation (Tony Andersen, 2006; Barbour, 2006; Hibbs, 2006; Pain, 2006; Haysom, 2006; Rowell, 2006; Toby Andersen, 2001; Andersen III, 1990).

In addition to preferences, actors are subject to incentives regarding whether or not to work towards completing an agreement. These incentives, according to Douglass C. North (1990: 3), are shaped by the institutional framework that actors operate within. The institutional framework structures each actor's incentives to engage in exchange and trade by determining the costs and benefits of cooperation versus non-cooperation. Ideas such as rights also have a role in structuring incentives, but in the case of treaty negotiations, they tend to be pushed into the background by more practical considerations (McCormick, 1997).

During comprehensive land claims (CLC) negotiations, the federal and provincial governments have few incentives to complete an agreement. The CLC process and its formal rules and procedures place aboriginal groups in a weaker position relative to the federal and provincial governments. The burden of proof is on the aboriginal groups, who must adopt Western standards of knowledge, proof, discourse and dialogue if they want negotiations to proceed (Samson, 2003; Michel, 2006; Andrew, 2006; John-Pierre Ashini, 2006). Aboriginal groups have little power to influence the agenda, as they can only negotiate those responsibilities and jurisdictions that are listed under the federal CLC policy (INAC, 1998: 7–8). Moreover, the government can at any time declare that certain lands are no longer on the table for discussion.

Government dominance of the CLC process is enhanced by the Constitution Act of 1982, which gives both levels of government a wide range of powers over the land, water bodies and peoples in Labrador. Both governments have frequently exercised these powers without consulting aboriginal peoples (Nui, 2006; Rich, 2006; Andersen III, 2006; Tony Andersen, 2006; Andrew, 2006; Napes Ashini, 1992: 124; Marshall, 2006). For instance, according to Wadden (1991: 45), “Canadian governments have always acted as though the Innu, and their land rights in Nitassinan, do not exist. Mines, hydroelectric projects and pulp and paper mills have sprouted up all over the Innu homeland during this century, enriching the coffers of provincial governments and multinational companies but wrecking havoc with Innu lives.”

Government incentive structures are also affected by the negotiation stakes. In Newfoundland and Labrador, the key negotiation stakes are held by the province, resulting in most of the negotiations occurring between the aboriginal group and the province (INAC, 1998: 6–7; Hawco, 2006; Rowell, 2006). The federal government, for instance, has an interest in cash transfers, taxation, implementation costs, fisheries, migratory birds and environmental protection. The province, on the other hand, has jurisdiction over inland water, economic development, renewable and non-renewable resources, land, environmental protection and local governance (Pelley, 2006; Carter, 2006; Haysom, 2006). The fact that the province controls the key negotiation stakes is important because provinces are usually reluctant negotiators who “jealously guard their power” over land and resource management, favouring established economic interests over aboriginal ones (Scholtz, 2006: 8).

Canadian courts, on the other hand, have provided governments with mixed incentives. In *Delgamuukw v. British Columbia* (1997), for instance, the Court ruled that constitutionally protected aboriginal rights can be infringed upon for the greater good of economic development. However, the ability to engage in economic development is not unfettered, since the Crown is still bound by its fiduciary duty to aboriginal peoples (Macklem, 2001: 252–253). This also applies to provincial governments, who have a duty to consult and accommodate those First Nations affected by proposed economic development (Penikett, 2006: 140–141).

Other incentives to negotiate come from a growing awareness of aboriginal rights and justice. For instance, former Deputy Minister of INAC Scott Serson (2006) mentioned that some bureaucrats and negotiators felt pressure to get a deal done after the publication of the Royal Commission on Aboriginal Peoples (RCAP, 1996) and the federal government’s response, *Gathering Strength*.<sup>2</sup> They felt they had to demonstrate that *Gathering Strength* could successfully accommodate the concerns raised in RCAP.

In contrast to the mixed incentive structures facing governments, the Innu and the Inuit face powerful incentives to work towards a final agreement. First and most importantly, they have no better options to adequately satisfy their preferences within the current institutional framework. Members from both aboriginal groups have mentioned that the CLC process is the “only game in town” for achieving the type of control they want over their land (Rich, 2006; Riche, 2006; Jararuse, 2006; Hibbs, 2006; Andersen III, 2006). Aboriginal groups in Labrador and throughout Canada have considered and used litigation, but judicial outcomes are unpredictable and can be as damaging as helpful (Macklem and Townshend, 1992: 78–79; Penikett, 2006). Others have used protesting, but this option, at least in the Innu case described below, does not in the end let aboriginal groups gain the type of comprehensive control they want over their land.

Both groups also face another incentive to negotiate, mainly that “once it became clear that development was going to happen even in the absence of a settlement, pressure began to grow at the community level to resolve claims and to ‘catch a ride’ on the development that was occurring” (Angus, 1992: 71). Both the Inuit and the Innu realize that governments will engage in economic development anyway, so coming to an agreement is necessary to ensure they have a voice in how governments and businesses undertake those developments (Rich, 2006; Jararuse, 2006).

In summary, the institutional framework governing comprehensive land claims negotiations in Canada gives the federal and provincial governments a significant advantage over participating First Nations. All three negotiating parties face incentive structures that pressure them to negotiate, but the federal and provincial governments are also subject to stronger incentives that make them want to delay negotiations as much as possible. In the context of these preferences and incentives, comprehensive land claims (CLC) negotiations can take two roads. The first is the long road where aboriginal groups negotiate with governments according to the pace set by governments. On this road, negotiations tend to be slow and laborious. The second path is the shorter road, when a factor or convergence of factors creates an “opportunity window.” This is a moment in time when reluctant government actors are most vulnerable to being convinced to speed up their efforts to complete an agreement. The most common factors triggering an opportunity window in CLC negotiations tend to be large-scale economic development projects, a change in federal/provincial leadership, or an influential court case.

Opportunity windows by themselves, however, do not automatically lead to a completed treaty. A window is merely an *opportunity* for an aboriginal group to push negotiations forward. The group still needs to find a way to *take advantage* of a window. Also, the emergence of a window is neither a necessary nor sufficient condition for completing a

treaty; a group can still complete a treaty without a window, but it may take longer. The rest of this paper looks at the experiences of the Innu and the Inuit in Labrador to determine the factors that best explain variation in comprehensive land claims negotiation outcomes.

### **The Innu and the Inuit: Two Divergent Paths**

#### *The Inuit: 1977–1996*

In 1977, the Labrador Inuit Association (LIA), on behalf of the Labrador Inuit, submitted their claim, *Our Footprints Are Everywhere*. The federal government accepted the claim, praising it “as a model for other claim submissions by native peoples in Canada” (DIAND, 1990). The province, however, initially balked at the claim until 1980, when Premier Peckford decided to accept the Inuit claim for negotiations subject to two preconditions: negotiations had to lead to extinguishment, and the federal and provincial governments had to come to an agreement about cost-sharing (Borlase, 1993: 310). These pre-conditions were problematic at first but would later be temporarily set aside to facilitate negotiations.

Despite keen interest from the LIA, no active negotiations occurred until 1989. This was because the federal government had a policy of only engaging in active negotiations with up to six claimant groups at one time (Rowell, 2006; Haysom, 2006). In 1984, a spot opened up for the Labrador Inuit. Labrador Inuit negotiations that should have started in mid-1985, however, were delayed until January 1989, because the federal and the provincial governments became entangled in policy and program reviews. Once these reviews were finished, Framework Agreement negotiations began in January 1989 and were completed by March 1990 (Haysom, 2006). Agreement-in-Principle (AIP) negotiations, however, were much slower, especially during the first six years (1990–1996). By spring of 1996, six years of negotiations had generated one initialled chapter (eligibility and enrollment), and some progress on other matters (Pain, 2006; Carter, 2006).

#### *The Innu: 1977–1996*

In 1977, the Naskapi Montagnais Innu Association, on behalf of the Innu in Sheshatshiu and Davis Inlet, submitted their statement of claim to the federal and provincial governments. The federal government initially rejected the claim on the basis that the Innu land use and occupancy study was incomplete. It would not be until 1991 that the Innu would submit a study that was acceptable to the federal government. In the meantime, the Innu focused on protesting, litigating and seeking international sup-



port against the federal and provincial governments (Innes, 2006; Innu Nation, 1995, 1998). They were also struggling with a wide range of social and economic problems that would prevent them from successfully submitting a claim (Backhouse and McRae, 2002).

During the 1990s the Innu continued to protest and lobby against low-level flying, but leaders in Sheshatshiu were becoming more interested in negotiating because of the mixed results of protesting. In 1991, the Innu decided on the basis of community consultations to begin negotiations with the federal government under the CLC process. Negotiations were slow because of persisting and increasing internal distress (i.e., alcoholism, drug abuse, Third World living conditions), all of which were highlighted by suddenly interested media. As a result, Innu leaders focused mainly on solving these problems, as well as struggling with the federal and provincial governments over policing, the judicial system, relocation to Natuashish, logging, mining and other economic development activities (Wadden, 1991; Innu Nation, 1995, 1998). Political turmoil also hindered Innu negotiations, as leadership was constantly changing and rival factions with radically different views about negotiations began to emerge along family lines. However, the Innu were able to negotiate a Framework Agreement in 1996, mainly because they had elected a set of leaders who were committed to negotiations.<sup>3</sup>

### *Voisey's Bay and a New Premier: An Opportunity Window Opens*

The pace of negotiations changed for both groups as a result of two events. The first event occurred in 1994, when a \$4.3 billion nickel deposit was discovered in Voisey's Bay, a region that both the Innu and the Inuit had previously claimed. The discovery created a huge mineral rush in Labrador and both governments were keen on accelerating land claims negotiations to clear the way for mineral exploration and the Voisey's Bay development (Innes, 2006; Haysom, 2006; Shafto, 2006). This was especially true of the province, which saw the discovery as a crucial opportunity to increase its economic wealth.

The second factor triggering the opening of an opportunity window was the election of Brian Tobin in January 1996. Tobin brought his federal-level experience to the provincial table and made settling the claims a priority for his government. He set out clear provincial parameters for each of the items under negotiation, ratified them in cabinet, and authorized provincial negotiators to get a deal done using those parameters (Marshall, 2006). The election of Brian Tobin was a real opportunity to make significant progress towards an Agreement-in-Principle (Haysom, 2006; Hawco, 2006; Marshall, 2006; Barbour, 2006; Chesley Andersen, 2006; Warren, 2006).

By spring of 1996, Inuit negotiations had stalled and become strained. A number of critical issues, such as land quantum, resource-revenue sharing and self-government, remained unresolved. The Inuit had become frustrated with the federal negotiator and had for a number of years asked the federal government to bring in an external negotiator to represent the federal government. Negotiations had also become more difficult and conflictual because of the discovery of Voisey's Bay. Once nickel was discovered in Voisey's Bay, the provincial government immediately excluded the area from negotiations. Ignoring Inuit objections, the province quickly approved Inco's application to begin building roads, an airport, a dock and a campsite in the area. In response, the Innu and the Inuit conducted joint protesting campaigns and applied for, and eventually received, on appeal, a court injunction to stop development. The result was stalled negotiations and an atmosphere of confrontation and mistrust.

Despite its initial slowdown effect on Inuit negotiations, Voisey's Bay was also an opportunity for the Inuit to speed up negotiations. In July 1996, the federal and provincial governments and the Inuit agreed to fast-track negotiations. The federal government also finally agreed to appoint an external negotiator, Jim Mackenzie, a law professor from Carleton University, as chief federal negotiator. Although the parties made substantial progress on a number of issues, a set of critical issues continued to hinder negotiations. In the fall of 1997, the parties agreed to hold a three-day senior officials' meeting in Ottawa to resolve these issues. On the federal side, INAC Deputy Minister Scott Serson was brought in to sit beside Jim Mackenzie. On the provincial side, Premier Brian Tobin, who stayed in Ottawa for the duration of the meetings, appointed Harold Marshall, a senior provincial civil servant, and Bill Rowat, a former federal civil servant, to sit beside the provincial negotiators, with a mandate to resolve the critical issues. Finally, the Inuit negotiators had the LIA president, vice president and board members on call by phone to make immediate decisions. The three days stretched into eleven and on 28 October 1997, the three parties signed a three-page agreement resolving the major issues that had held up negotiations (land quantum, resource revenue sharing, Inuit participation in development, financial compensation, self-government, cost-sharing, and the national park and settlement areas). From there, negotiations moved quickly to an initialed AIP in 1999, and ratification in 2001.

With a completed AIP in hand, Final Agreement negotiations progressed relatively quickly but not without some significant problems. For example, one difficult issue was land selection, the process governing how the parties decide which pieces of land are to be included in the land claims agreement. The Inuit were asked to provide a preliminary land selection proposal and present it to the governments for their consideration. The province's reaction to the Inuit's proposal was quite negative; in 1994, the province had offered seven small rectangular blocks

of land to the Inuit. The Inuit's proposal, however, contained a series of large "ribbons" along water ways and along much of the coastline of Labrador. In the end, the Inuit ended up accepting some land that they were not really interested in, and giving up some land that they originally wanted. The province compromised by accepting the Inuit "ribbon" concept and giving up more of the coastline than they originally intended. A Final Agreement was eventually reached in 2004 and ratified in 2005.

The Innu, on the other hand, were unable to capitalize on the Voisey's Bay discovery or on the election of Brian Tobin. Although the Innu did negotiate a Framework Agreement in 1996 and entered into fast-tracked negotiations in 1997, very little progress on the AIP occurred. In 1999, the federal and provincial governments eventually withdrew from the Innu negotiating table due to unreasonable Innu demands. When negotiations resumed in 2001, they were no longer fast-tracked (Backhouse and McRae, 2002). Rather, negotiations reverted to a pace of three to five times a month. Progress remains slow and a number of critical issues continue to paralyze negotiations (Riche, 2006; Nui, 2006).

### **Economic Development: A Necessary Condition?**

Would the Inuit have completed their treaty if Voisey's Bay had not been discovered? The evidence above suggests yes, although the timeline for completion would have been much longer than January 2005. Innu negotiations, on the other hand, have shown little promise for completion before, during, or after Voisey's Bay. Since the Innu began comprehensive land claims (CLC) negotiations in 1977, there has been little to indicate that a treaty was ever forthcoming.

This paper proposes a more comprehensive and nuanced framework for explaining CLC negotiation outcomes in Canada. As illustrated in Table 1, explanatory factors for CLC outcomes can be divided into four quadrants. These quadrants are: internal and external factors that affect whether an outcome is obtained (quadrants 1 and 2) and internal and external factors that affect the speed at which an outcome is obtained (quadrants 3 and 4). The factors listed in the four quadrants below determine outcomes and speeds on both the long (i.e., the CLC process under normal conditions) and the short (i.e., opportunity windows) roads of CLC negotiations.

### **Quadrant 1: Internal Factors Affecting Outcomes**

#### *Congruent Goals*

Congruent goals have a powerful effect on whether a treaty is completed. By congruent goals, I mean the matching of government and First

TABLE 1  
 Matrix of Explanatory Factors for CLC Negotiation Outcomes<sup>4</sup>

	Factors affecting whether an outcome is obtained	Factors affecting the speed at which an outcome is obtained
Internal factors	<b>Quadrant 1</b> — Congruency of goals — Choice of tactics — Internal cohesion	<b>Quadrant 3</b> — Trust relationships — Tactical timing
External factors	<b>Quadrant 2</b> — Government perceptions	<b>Quadrant 4</b> — Governmental and external negotiators — Land value and location

Nation goals with respect to the purposes of a Final Agreement. Congruent goals were clearly present in the Labrador Inuit negotiations. For example, during Final Agreement negotiations over the certainty and finality provisions, the federal government preferred to use its usual cede, release and surrender provision, negotiate a new alternative, or use a provision found in another agreement in Canada. The LIA, on the other hand, was unwilling to accept any provision that included “surrender,” but it was willing to adopt the certainty provision in either the Dogrib or the Nisga’a agreements. The province, on the other hand, insisted on cede, release and surrender. Despite these differences, the parties were able to come to an agreement. The shared goal among the parties was to avoid future conflict, protests and litigation by creating certainty in land management and development in the areas that the Inuit had claimed. In the end, the agreed-upon certainty provision satisfied all three parties. The Inuit were able to keep their aboriginal rights in their Inuit Lands (their core lands), subject to the terms of the agreement. In exchange, they ceded and released (but did not surrender) their aboriginal rights to Inuit Settlement Lands (lands to which all three parties have extensive shared jurisdiction) and all lands previously claimed by the Inuit that were not included in the treaty. According to all three parties, the result was a certainty formula that cleared the way for economic development, while satisfying the concerns of all three parties.

Contrast these experiences with the Innu. The Innu originally came to the table with the notion that any agreement had to recognize Innu sovereignty over their traditional lands; both the federal and the provincial governments, however, have refused to recognize Innu sovereignty (Andrew, 2006; Innes, 2006; Wadden, 1991: 200; Innu Nation, 1995: 175; Pelley, 2006). By the early 1990s, the Innu’s use of the term “Innu sovereignty” during negotiations occurred much less frequently, culminating in a completed Framework Agreement in 1996.

Although the use of the concept of “Innu sovereignty” has basically disappeared from the negotiation table, it remains a powerful force among some Innu leaders and community members. For instance, one community member has said, “The Innu should have total control on Innu Lands—no sharing of control with government” (Innu Nation, 1998: 44). A former Davis Inlet chief has remarked, “The Innu government should have full power in Innu lands” (Innu Nation, 1998: 44). Another member has said, “On the core lands, how are we going to manage the land if the government can still overturn Innu Government decisions?” (Innu Nation, 1998: 45). The persistence of Innu sovereignty at the community level has hindered the ability of negotiators to complete an Agreement-in-Principle. This is because Innu negotiators must continually undertake extensive public consultations with Innu community members before any agreement can be signed. As a result, negotiators are constantly torn between satisfying federal and provincial demands that an agreement not recognize Innu sovereignty, and satisfying community demands for recognition and protection of Innu sovereignty.

### *Tactics*

In general, governments are more interested in negotiations because the costs (money, reputation and political capital) of the alternatives (i.e., litigation, protests and international lobbying) are perceived as being much higher. As such, governments are more likely to work towards an agreement with those First Nations that show a commitment to negotiations. Conversely, governments are less likely to work towards a Final Agreement with those First Nations that are confrontational.

Since 1977, the Inuit have consistently used a strategy of compromise and negotiation. The strategies of protest, litigation, media and courting recognition from international legal and political bodies were rarely considered or used by LIA presidents, vice presidents or board members (Barbour, 2006; Andersen III, 2006; Tony Andersen, 2006; Pain, 2006; Hibbs, 2006). All of the LIA politicians, board members, citizens and negotiators whom I interviewed indicated that leaders, negotiators and even community members were consistent over time in their desire for an agreement through negotiations as opposed to other tactics. Government actors recognized the Inuit’s commitment to negotiating and were willing to work with the Inuit towards a completed treaty, even during difficult times or through difficult issues.

Contrast this with the Innu, who have tended to favour protesting, media campaigns, litigation and courting recognition from international bodies. In the words of the Innu Nation’s Davis Inlet Inquiry Commission, “Protests are a good way to get our voices heard. We need to use strong tactics, vocal speaking out [sic] against unwanted developments

and in support of our rights.... We need to do this to get their [white people] support to help us fight governments. If other people understand our position, it will be good. We also need to lobby foreign governments on our human rights” (Innu Nation, 1995: 179). For much of their involvement in the CLC process, the Innu have engaged in confrontational strategies rather than negotiating. They have fought the federal and provincial governments over hunting regulations, military flights over their land, poor administration of police and judicial services, and a lack of resources to combat domestic ills, unemployment and poor housing. Since 2001, however, negotiations have become the main tactic of choice for the Innu; nonetheless, negotiations have moved very slowly, with little indication that an Agreement-in-Principle or a Final Agreement is ever forthcoming.

### *Cohesion*

Another variable affecting whether a CLC outcome is obtained is the cohesiveness of the aboriginal community (Whittington, 2005; Shafto, 2006; Serson, 2006; Warren, 2006; Backhouse and McRae, 2002: 42, 50). In general, the Innu are a people beset with divisive leadership, internal division and strife. According to a Sheshatshiu elder, “I think a lot of good things could come out from the agreement if only all the Innu worked cooperatively, that is, if Innu do not fight with each other. That is the biggest headache in this community today, because a lot of people hate each other. They just don’t get along” (Innu Nation, 1998: 23). An Innu Nation community consultation report states, “Some people complain that the Band Council and the Innu Nation only help some people, like their relatives, and not others. They don’t see some people as their responsibility, even if they really need help.... They [Innu respondents] say our leaders are money-chasing and become blindfolded by the dollar sign” (Innu Nation, 1995: 171).

Moreover, since the 1950s, the Innu have suffered from severe social and economic problems. In the words of a Davis Inlet elder, “There are too many suicides, too much gas sniffing and overdosing, too much vandalism, too many people in jail. Young people especially are ruined” (Innu Nation, 1998: 21). Between 1965 and February 1992, for example, 47 out of 66 deaths were alcohol-related; 23 of those deaths involved people under the age of 20, and 32 were under the age of 40. From 1989 to February 1992, there were 17 alcohol related deaths. From February 1991 to February 1992, 90 per cent of provincial court cases were a result of alcohol abuse. Finally, in terms of children, there were 43 cases of solvent abuse in 1990 and 66 cases in 1991 (Innu Nation, 1995: 187).

The point here is that domestic problems have overtaken any sustained community interest or effort to negotiate a CLC agreement. Indeed, the Innu have been divided since 1977 on whether they should negotiate

a CLC agreement at all. Some leaders and community members believe that negotiations are moving too fast and that there should be more of a focus on solutions to community problems. Others see a CLC as a solution to these problems.

Contrast this to the Inuit, who have not had the same divisions or domestic problems that the Innu have had. Federal and provincial interviewees have identified the Inuit's clear and consistent leadership, strong capacity and relatively few internal problems as key factors for their completed agreement. Community support and cohesion have also been strong. All of the Inuit people I interviewed mentioned that the communities have always supported negotiations throughout the entire process. Inuit negotiators were able to come to the table with the knowledge that they had the support of the people. They were not distracted by severe community divisions or severe economic and social problems. Having a cohesive community allowed the Inuit to negotiate in confidence and with their full attention and resources. Community cohesion is important because a negotiated Agreement-in-Principle and Final Agreement must be ratified by the entire population of each aboriginal community through a referendum. Without community cohesion and support for the negotiating team, ratification of any initialled agreement becomes almost impossible.

## **Quadrant 2: External Factors Affecting Outcomes**

### *Government Perceptions*

Another factor affecting whether a CLC outcome is obtained is government perceptions of the aboriginal group. As Peter Russell has noted, governments are not only primarily interested in facilitating economic development, they also have a secondary interest in avoiding international and domestic embarrassment. Governments are aware of the negative publicity that can occur if they devolve powers to a group that is not ready to take on the responsibilities. In light of this, government perceptions determine the willingness of governments to devolve land management and self-government responsibilities to the aboriginal group, both on the long and short roads of negotiations. Three types of perceptions matter: financial accountability, capacity for negotiations and self-government and acculturation. If an aboriginal group is perceived poorly on these indicators, then it is unlikely that an agreement will get completed in either the long- or short-road scenarios.

Governments are keen on negotiating agreements with those First Nations that have a demonstrated record of financial accountability and capacity for negotiations and self-government. The Inuit were able to dem-

onstrate both of these attributes. LIA negotiators came to the table prepared and skilled at negotiating with government officials according to the terms and the procedures of the CLC process (Marshall, 2006; Haysom, 2006; Rowell, 2006; Shafto, 2006; Warren, 2006). They also brought to the table a record of financial accountability and capacity for governing themselves (Shafto, 2006; Andersen III, 2006; Marshall, 2006; Barbour, 2006). According to former LIA President William Barbour, for instance, during a visit to Nain in the late 1990s, government officials remarked to him that the LIA “have the cleanest books in all of Atlantic Canada” (Barbour, 2006). Others have admired the LIA’s administration of post-secondary support programmes and non-insured health services (Andersen III, 2006; Tony Andersen, 2006; Barbour, 2006).

Contrast these positive perceptions with the negative ones that the governments have regarding the Innu. A number of interviewees have characterized government perceptions of the Innu as paternalistic (Michel, 2006; Andrew, 2006). The media and the federal government have all observed the difficulties that the Innu have had in managing their fiscal affairs (CBC, 2005; Nui, 2006; Backhouse and McRae, 2002; Shafto, 2006). At the First Ministers Constitutional Conference on Aboriginal Rights in March 1987, Premier Brian Peckford told Innu participants: “I’m not sure you’re being as smart as you think you’re being” (quoted in Wadden, 1991: 117). In a meeting with then Minister of Indian Affairs Pierre Cadieux, Peter Penashue remarked, “Could you get the mandate to treat us like adults? ... We have to find a way for the Canadian government to treat us like adults” (quoted in Wadden, 1991: 166). According to Backhouse and McRae (2002: 50),

it is not clear that the federal or provincial governments see self-government for the Innu in the foreseeable future. There is a strong sense among some officials that the Innu do not have the capacity to engage in self-government or to manage education or health services. Some [government officials] consider that a period of operating under the Indian Act will be a valuable “capacity-developing” experience for the Innu. Under this view, self-government is postponed even further into the future, perhaps indefinitely.

Elsewhere, Backhouse and McRae mention that some government officials believe that a land claim will cause more problems than they will solve. Other officials question the ability and capacity of the Innu to take on the responsibilities of land management under a CLC agreement (Backhouse and McRae, 2002: 42).

Another government perception variable that seems to matter is acculturation. In the context of CLC negotiations, the term refers to the level at which a group is familiar with Western institutions, processes, ideas, culture and languages. The government’s perception of a group’s level of



acculturation may be a factor in the willingness of government to negotiate towards a settlement. Paul Nadasdy (2003: 5) argues:

If Aboriginal peoples wish to participate in co-management, land claims negotiations, and other processes that go along with this new relationship, then they must engage in dialogue with wildlife biologists, lawyers, and other government officials. First Nations people can of course speak to these officials any way they want, but if they wish to be taken seriously, then their linguistic utterances must conform to the very particular forms and formalities of the official linguistic fields of wildlife management, Canadian property law, and so forth. Only through years of schooling or informal training can First Nations people become fluent in the social and linguistic conventions of these official discourses. Those who do not do so are effectively barred from participation in these processes.

In general, the Inuit are much more acculturated to Canadian society than the Innu, partly because they were influenced and settled by the Moravian missionaries several hundred years ago. A good example of Inuit acculturation is language. Most Inuit in Labrador have been educated in Western schools and now speak only English. According to 2001 Census data for the five main Inuit communities on the coast of Labrador, English was the first learned and solely understood language among 81.1 per cent of the Inuit population, while 0.4 per cent spoke French and 18.5 per cent spoke Inuktitut. Contrast this to the Innu: according to 2001 Census data, only 13.2 per cent of Innu members speak English and 86.8 per cent speak Innuaimun, the Labrador Innu language. According to some government observers, the Innu face a real capacity problem, in which they have few leaders who can successfully navigate Canadian institutions and negotiation processes. They also face a communication problem, as Innu leaders have at times found it difficult to explain the land claims process and land claims terminology such as “quantum” to community members. Many land claims concepts do not have an equivalent word in Innuaimun. Although the evidence is not as conclusive about the effect of acculturation on negotiations, several interviewees did mention that it seemed to play a role in the willingness of governments to negotiate a settlement.

### **Quadrant 3: Internal Factors Affecting Speed**

#### *Tactical Timing*

One internal factor that can affect the speed at which an outcome is obtained is the decision on *when* to use confrontational tactics during negotiations. Confrontational tactics, if used sparingly and in situations

where an opportunity window emerges, can lead to accelerated negotiations. When nickel was found in Voisey's Bay, the Inuit, who had claimed the area prior to the discovery, quickly made their consent to the project contingent upon the settlement of their land claims. According to former Deputy Minister of INAC Scott Serson (2006), "Some of my colleagues in other departments were concerned that failure to open these mines [Voisey's Bay] in a timely manner would hurt Canada's international reputation and hurt future investment. I believe this helped spur on Newfoundland and helped me with federal Central Agencies." The LIA recognized that Voisey's Bay was an opportunity to speed up negotiations because of the importance that both governments placed on the discovery. When the province approved the mining company's application to build "exploration infrastructure" in the mid-1990s despite Inuit objections, the Inuit held protests and filed for a court injunction against the province and the company. The message the Inuit gave to the parties was that they would do whatever was necessary to stop the project unless their land claim was completed (LIA, 1998: 10). By creating uncertainty with threats to disrupt a major economic development project unless their land claim was settled, the LIA created powerful incentives for the governments to quickly negotiate a settlement (Tony Andersen, 2006; Barbour, 2006; Andersen III, 2006; Pain, 2006; Rowell, 2006). The LIA was able to take advantage of the Voisey's Bay discovery to force governments to settle their claim before development could move forward.<sup>5</sup>

On the other hand, the Innu failed to link the Voisey's Bay project to the completion of their land claim. Although they too held protests and filed for a court injunction to stop the Voisey's Bay development, they would eventually complete the Voisey's Bay chapter of their AIP as well as an impact benefits agreement (IBA), all before signing an AIP. According to Backhouse and McRae (2002: 42), some Innu were concerned that completing side agreements on Voisey's Bay would "cause the Government to lose interest in completing the full land claims negotiations." This is exactly what happened. After the Voisey's Bay chapter and the IBA were signed, the federal and provincial governments shifted their focus from land claim negotiations to addressing specific Innu domestic problems. The Innu have realized that they missed an opportunity when they signed the various Voisey's Bay agreements before completing an AIP. According to Backhouse and McRae (2002: 42), "The Innu are [now] apparently not prepared to conclude an agreement on Lower Churchill [hydroelectric project] until land claims negotiations are completed."

### *Trust Relationships*

Another important factor affecting speed is the ability of First Nations negotiators and officials to develop professional trust relationships with

their federal and provincial counterparts. According to all of the negotiators, the trust built between negotiators post-1996 was an important factor for completing the Inuit agreement (Mackenzie, 2006; Serson, 2006; Warren, 2006; Pain, 2006; Haysom, 2006). Trust allowed the negotiators to propose ideas to each other outside of the formal negotiating process, without fear that these proposals would be used against them in future formal negotiation sessions. There was also trust between Inuit leaders and federal and provincial executives at critical junctures. The success of the October 1997 meetings, for instance, was partly due to the strong relationships between Scott Serson, deputy minister of INAC, Chesley Andersen of the LIA and Harold Marshall from Newfoundland and Labrador. Relationships between Innu negotiators and their counterparts, on the other hand, have not been as productive. According to government sources, some Innu negotiators have been confrontational and combative, with highly unreasonable expectations and demands.

Trust relationships affect speed as opposed to whether an outcome is obtained. If the Inuit had not built trust relationships with the federal and provincial governments, other factors would have resulted in a completed treaty. This is because government negotiators are subject to higher political authorities, who, on the basis of congruent goals, the First Nation's choice of strategies, the First Nation's internal cohesiveness, and government perceptions, can direct their negotiators to complete a deal. Or, they can decide to simply replace the government negotiators. Therefore, trust relationships do not determine whether an outcome is obtained; rather, they affect the speed of negotiations.

#### **Quadrant 4: External Factors Affecting Speed**

##### *Government and External Negotiators*

Government negotiators matter in two specific ways. First, a non-bureaucrat negotiator is important because he or she is not subject to the same constraints imposed on a bureaucrat (Warren, 2006; Rowell, 2006; Pain, 2006; Haysom, 2006; Whittington, 2005). In the fall of 1996, the federal government appointed Jim Mackenzie, a non-bureaucrat, as chief federal negotiator to sit beside the senior federal negotiator (a bureaucrat) at the Inuit table. Mackenzie was effective because he initially had direct access to the minister of Indian Affairs and was not subject to the bureaucratic hierarchy that bureaucratic negotiators face. Contrast this with the previous bureaucrat negotiator. During her tenure, very little got done, partly because she was trapped within the bureaucratic lines of authority. She constantly had to clear negotiation items with her superiors, which frequently delayed negotiations and annoyed aboriginal negotiators.

The federal government did appoint an outsider as chief federal negotiator for the Innu in the late 1990s. However, he has focused on other issues, such as registration and reserve creation, policing, justice and healing services. So far, he has had little to do with the land claims negotiations, meaning that the Innu continue to deal solely with bureaucrat negotiators (Innes, 2006).

Second, the commitment and personality of the negotiator seems to matter. Provincial and LIA interviewees agreed that the provincial negotiator, Bob Warren, was extremely important in getting a deal done. Although Warren was a provincial bureaucrat, it was clear he believed in the LIA and was willing to “go the extra mile” within the provincial bureaucracy. According to one anonymous observer, Warren was at one point seen by his colleagues in the provincial bureaucracy as being more committed to the Inuit than the province. Yet Warren had both the necessary expertise and the respect within the provincial bureaucracy to work effectively on behalf of Inuit concerns. This is not say that Warren was not tough or mindful of provincial concerns at the negotiating table. However, it was clear that his commitment to the Inuit, and his expertise, energy and the respect he commanded in the bureaucracy, were invaluable in moving Inuit negotiations forward.

These two factors affect speed as opposed to whether an outcome is obtained, because government negotiators, whether they are bureaucrats or third-party negotiators, are subject to higher political authorities; if the deputy minister, minister, premier, or prime minister are not interested in a deal, then it does not matter if an external negotiator is present or if a provincial negotiator is committed to a deal. Moreover, an agreement could be reached without the presence of an external negotiator or a provincial negotiator who believed in the aboriginal group. For instance, the October 1997 Inuit meeting would have taken place and resolved the critical issues delaying Inuit negotiations even if there was no third-party negotiator or pro-Inuit provincial negotiator present.

### *Land Value and Location*

The value of the actual land being claimed also affects the speed at which an outcome is obtained. Compared to the Innu claim, the Inuit wanted land that had less potential for economic development. Besides Voisey’s Bay, Inuit negotiations revolved mainly around hunting, fishing, forestry and control over some subsurface resources. Innu negotiations also involved Voisey’s Bay, but also included a number of other multimillion-dollar development projects, including iron ore, nickel, uranium, forestry and, most importantly, the massive hydroelectric energy projects in Upper and Lower Churchill. So there was less at stake in the Inuit claim in terms of economic development potential than in the Innu claim.

The location of the land is also important. Michael Whittington, Yukon chief federal negotiator from 1987 to 1993, observed that “the more remote FNs [in the Yukon] settled earlier because their land selections were less constrained by competing uses” (2005). This dynamic was also in play for the Labrador groups. The Inuit claim involved mostly remote and homogenous regions in the province, where the Inuit were by far the majority. As such, the provincial and federal governments had fewer non-Inuit third parties to accommodate in the final agreement. The Innu claim, on the other hand, involves land in central and southern Labrador where they are the minority, meaning that the federal and provincial governments are subject to substantial non-aboriginal public and stakeholder pressure. Since the Innu are a minority and any agreement will have an impact on the lives of the majority in the area, crafting a deal that satisfies the non-aboriginal majority is important for both governments (Pelley, 2006; Warren, 2006).

These factors affect speed rather than whether an outcome is obtained, because in the presence of positive government perceptions, good choice of tactics and congruent goals, negotiating parties can still come to an agreement that overcomes land value complications and satisfies the concerns of third-party interests. The fact that the Inuit completed their deal despite the discovery of Voisey Bay, a piece of land that is both valuable and subject to significant third-party interests, is compelling.

## **Conclusion**

The findings of this paper are significant for drawing attention to the important role that First Nations play in influencing CLC negotiation outcomes. Previous literature has tended to focus on the federal and provincial governments and the negotiation processes that they have created, finding that such processes place First Nations at a distinct bargaining disadvantage (see RCAP, 1996; Penikett, 2006; de Costa, 2003). As such, students of CLC negotiations have tended to offer prescriptions centred on governmental reform; these include flexible mandates, increased funding to First Nations, changes to negotiation policies and practices, and the introduction of alternative forms of dialogue and knowledge, among other things. This paper agrees with the previous literature that the current institutional framework privileges the federal and provincial governments over participating First Nations. However, in the absence of large-scale institutional reform at the federal, provincial and territorial levels, scholars and practitioners need to pay more attention to the role of aboriginal agency in affecting CLC negotiation outcomes.

## Notes

- 1 These individuals were initially contacted by phone or e-mail, in which the purposes of the study and informed consent were explained. They were then sent informed consent forms. Before each interview began, the purpose of the study and informed consent were again explained to each participant. At the end of each interview, each participant was given the opportunity to change or delete anything said. They were also given the opportunity to see my interview notes and could request that I send them a copy of any material prior to submission to a journal or publication. Some passages in this document are based on anonymous interview data provided by participants listed in the bibliography, but also by participants who declined to be identified in the text or in the bibliography.
- 2 For details on the relationship between *RCAP* and *Gathering Strength*, see Abele, 1999: 450–453.
- 3 The Framework Agreement was also completed because the stakes involved were much lower; a Framework Agreement merely sets out the process by which an Agreement-in-Principle (AIP) is to be negotiated. Indeed, most, if not all, groups that enter into the CLC process are able to complete a Framework Agreement. In contrast, an AIP is more difficult to negotiate because it involves substantive issues like land and resource control.
- 4 Thanks to one anonymous reviewer for suggesting this table.
- 5 It should be noted here that the LIA did allow Voisey's Bay to move forward before their claim was completed. This was because they had already signed their AIP and had received assurances from high-level federal and provincial executives that their land claim would be completed as quickly as possible. This is related to the trust relationships described later in the paper.

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