POWER STRUGGLES

HYDRO DEVELOPMENT AND FIRST NATIONS IN MANITOBA AND QUEBEC

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A Step Back: The Nisichawayasihk Cree Nation and the Wuskwatim Project

Peter Kulchyski

IT HAS BEEN MY GOOD FORTUNE and privilege to have travelled to many Aboriginal communities in the far and mid-north of Canada, especially through the Yukon, NWT, and Nunavut territories, northern Manitoba and northern Ontario.[1] When I do so I have a set of informal issues I use to get a quick sense of where the community sits in terms of its overall well-being. While these snapshot judgments cannot replace what comes with sustained attention and longer term study, I have found more often than not that assessments based on these issues stand the tests of closer scrutiny. Notably, in the piles of statistics developed about northern communities by social scientists and government, three criteria tend to be absent. They are, firstly, are the children playing and laughing in their own Aboriginal languages? That is, not just speaking the language by rote in schools, not speaking it when they 'have to' with family members or in ceremony, but actually using the language in their day-to-day interactions with each other. This will tell me whether Aboriginal culture has much of a future in the community. Secondly, are there Elders in the community who are being treated with respect? In this case, I'm not simply looking for the presence of 'old people,' but rather for the holders of traditional knowledge—the storytellers—who are listened to in community meetings and by community leaders. This will also tell me something about the continuance of Aboriginal cultural values.

Finally, the third test is much simpler: can I drink the water? This will tell me whether the misnamed 'subsistence economy,' the traditional hunting ways, has an ecological basis and is viable in the region. That in turn indicates whether hunting as the sustainable economic basis of the culture has a future.

Hunting cultures continue to suffer from deeply biased misrepresentations. There is an assumption, which appears to cross the political spectrum, to the effect that hunters live with an antiquated set of values and an outdated way of life. Yet, if sustainability were a central standard for judging the success or failure of different social forms, hunting would clearly be seen as the most sustainable form of society invented by human beings: industrial societies have been with us for a few centuries; agricultural societies for about 10,000 years; hunting societies have persisted for over 60,000 years. The notion that continued support for hunting peoples involves a paternalistic or romantic idealization flies in the face of history. In Canada, for over a hundred years, a whole trajectory of social, political, and economic policies has been developed to assimilate hunters. The cumulative effects of these policies have been nothing short of tragic for northern Aboriginal communities. It is the modernizers, those who think they can build, in the subarctic and arctic, 'communities' that will replicate southern suburbs, who are the true paternalists and romantics here: they still have a naïve faith that sporadic wage work on projects that will last one or two decades offers a future for Aboriginal communities. On the contrary, a group of social scientists in Canada—Harvey Feit, Hugh Brody, Michael Asch, Julie Cruikshank, and many others—have taught us that hunters can adapt to modern technologies without losing their values, that hunting offers at least as reasonable a chance to achieve a 'good life' in modern circumstances as other contemporary alternatives, and that without support and against the policy trajectory, hunters have persisted and continued to reinvigorate their cultures and communities.

I take it that offering hunters from South Indian Lake and Nelson House a few words of support in their struggle against Wuskwatim is neither paternalistic nor romantic: ethically it is the least I can do. When I see the maps of the northern St. Lawrence region in Quebec, called *Nitassinan* by its

Innu inhabitants, or maps of the eastern part of Hudson Bay, *Eenu-aschee* in the language of the James Bay Cree, or maps of northern Manitoba, criss-crossed with lines that indicate electric transmission grids, dotted with triangles indicating hydroelectric dams, and showing proposals for more dams and more lines, I do not see something to be celebrated in the name of 'progress'. And I feel sad knowing that some communities have lost, and more are about to lose, the basis of an economy that has proven the most sustainable form of social life invented by human beings.

In the spring of 2002 I was part of a delegation hosted by the Pimicikamak Cree Nation and travelled along the Nelson River. I saw the erosion along the banks created by rapidly rising and falling water levels. I saw burial areas that had been exposed by flooding. I saw uprooted trees posing an insurmountable barrier all along the banks of the river. I saw what had once been clear water according to older people and Elders now opaque with silt. And I drank the bottled water we carried with us, never once daring to drink the water of what had once been a great, life-sustaining river.

While what follows is primarily an impersonal policy analysis of a very important document that is a part of the first of several major hydroelectric projects, I would be remiss not to try to convey some sense of the qualitative dimensions of the issues at stake. The quality of the water that surrounds northern Aboriginal communities is directly tied to the quality of life in those communities. It is a critical factor in determining whether they will be impoverished places hopelessly trying to emulate southern lifestyles, or whether they will be places where a way of life that allows seemingly poor people to enjoy an unmatched wealth measured in time and human relationships persists. The core of this analysis will be a look at *The Summary of Understandings [SOU] between Nisichawayasihk Cree Nation [NCN] and Manitoba Hydro with Respect to the Wuskwatim Project*, an agreement in principle dated October 2003 that outlines the terms of NCN's equity partnership in the specific hydroelectric development to take place near the community of Nelson House in northern Manitoba. Before I turn to the SOU, a few words are in order about the treaties that preceded it.

TWO TREATIES

Two Supreme Court of Canada decisions made in the last fifteen years have radically altered our understanding of the canons or protocols of treaty interpretation. In the *Sioui* case of 1990 the Supreme Court laid out criteria for understanding what kinds of documents could be interpreted as being treaties and stressed that courts must take a "liberal and generous" interpretation of treaties. Justice Lamer wrote in *Sioui* that a "treaty must be given a just, broad and liberal construction" (see Kulchyski 1994, 187) and that treaties must be read not merely in terms of the literal written language but also in terms of how they were understood by the Aboriginal signatories. Lamer quoted an 1899 decision from the United States, *Jones v Meehan*, writing into Canadian law the words "the treaty must therefore be construed, not according to the technical meaning of its words by learned lawyers, but in the sense in which they would naturally be understood by the Indians," adding in his own words that "these considerations argue all the more strongly for the courts to adopt a generous and liberal approach" (Kulchyski 1994, 188). Nothing less than "the honour of the Crown" was at stake in ensuring that a liberal and generous interpretation of treaties prevailed. The Marshall case of 1999 (*R v. Marshall* 1999) established that the oral histories of the treaties should not be treated as hearsay evidence but rather accorded equal weight with the documentary record of treaties when it came to interpreting treaty ambiguities. While the court was at pains to show this should not mean Aboriginal views of treaty rights are accepted *carte blanche*, the decisions certainly tip the scale towards Aboriginal understandings that treaties be interpreted according to the spirit and intent of the treaties rather than literally. Justice Binnie, writing in the *Marshall* decision and quoting from the earlier *Badger* case, argued that "the bottom line is the Court's obligation is to 'choose from among the various possible interpretations of the *common* intention [at the time the treaty was made] the one which best reconciles the Mi'kmaq interests and those of the British Crown" (emphasis and insertion in original, *R v. Marshall* 1999, paragraph 14). The *Sioui* case was a unanimous decision; *Marshall* involved a healthy majority (five to two). It should also be noted that in 1982 the *Constitution Act* (section 35) specifically "recognized and affirmed . . . treaty rights." Treaties are a major part of the constitutional fabric of Canada.

One key element of Treaty 5, signed on to in a 1908 adhesion by the grandparents of people now living in Nisichawayasihk, is relevant to our discussion here. Although the First Nation signatories agreed to "cede, release, surrender and yield up . . . forever all their rights, titles and privileges whatsoever to the lands included within the following limits" (the document goes on to describe the geographic extent of traditional territories), in addition to reserve lands that were promised, the First Nations also secured promises that

> Her Majesty further agrees with her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as from time to time be made by her Government of her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefore by the said Government. (Morris 1991, 346)

While a literal reading of these words does not appear to leave doubt that, effectively, 'Government' can have its unimpeded way with the 'surrendered' lands, such a view would certainly not accord with the liberal and generous interpretation proposed by the Supreme Court of Canada. It should be noted that in the speech-making preceding treaty signings, the treaty commissioners often stressed that in signing the treaties, the First Nations would not be expected to give up their hunting way of life, that the Crown would respect their cultural and economic right to live as they had lived 'for as long as the sun shines and the waters flow.' This was as key a promise to the First Nations as the land surrender clause was to the Crown. Hence, the first part of the above clause was no doubt stressed to First Nations signatories; the last part (beginning by "subject to") was something more like the fine print at the bottom of a legal document. Certainly none of the signatories, Crown or First Nations, imagined that the 'tracts' that might be required by the Crown might come to be so large as to destroy the whole basis of the hunting economy.

What would a liberal and generous interpretation of this clause look like? At a minimum, it would mean that the state has a 'bottom line' requirement to ensure that enough land base continues to exist in the Treaty 5 area to support those First Nations citizens in each community who wish to pursue their traditional economic patterns of hunting, trapping, and fishing. At another level, it might mean that treaty signatories should be seen as joint managers of their traditional territories, joint decision makers in determining what takes place: not asked to sign on to plans developed far away, but given a meaningful role in making the plans. Such an arrangement would provide some hope of ensuring that enough land was left in good shape to serve the needs of Aboriginal hunting families. A genuinely generous interpretation might even go further: to recognize that Aboriginal peoples have an inalienable inherent jurisdiction over their traditional territories and begin developing structures to implement and enable that jurisdiction.

The second treaty that needs examination before turning to the current Memorandum of Understandings is the Manitoba *Northern Flood Agreement* (NFA). I agree with the Honourable Eric Robinson, who said to the Manitoba Legislative Assembly that the *Northern Flood Agreement* is a treaty signed by Manitoba Hydro, the governments of Manitoba and Canada, and five of the Cree Nations in the north. Indeed, given the standards of assessment established by the Supreme Court of Canada in the *Sioui* case on this issue, it is difficult to sustain an argument to the contrary. That means the NFA is a constitutionally protected document and cannot be altered without using the constitutional amending formula. So-called implementation agreements signed in the 1990s, which in fact serve to extinguish rights promised in the NFA, are in my view unconstitutional and will not stand the court challenges to which they will ultimately and inevitably give rise. Schedule E of the NFA refers to "the eradication of mass poverty and mass unemployment." It is patently clear that no authority has moved to implement a liberal and generous interpretation of the NFA.

In fact, it is demonstrable and uncontestable that both Treaty 5 and the *Northern Flood Agreement* have been interpreted in a narrow and mean-spirited fashion by both levels of government and by Manitoba Hydro.

The honour of the Crown has been dragged through the mud in northern Manitoba. If we compare the NFA to the situation in northern Quebec, it becomes clear that Cree in northern Manitoba would have been better off had they never signed a treaty. Had that been the case, as with the James Bay Cree, they would have been in a position to negotiate a land surrender modern treaty in the seventies rather than the NFA. Had that been the case, Manitoba Hydro might today be forced to offer these communities deals that compare at least minimally to the *Paix des Braves* agreement recently signed in Quebec. Those who signed treaties with the Crown more than a hundred years ago, experiencing the benevolence and generosity of the Crown, should, one would think, be materially and demonstrably in a better position than those who did not. The reverse is true and will remain true as long as the narrow and mean-spirited interpretation of Treaty 5 prevails.

A NEW PLAN: AN OLD MODEL

The Summary of Understandings between Nisichawayasihk Cree Nation and Manitoba Hydro with Respect to the Wuskwatim Project (SOU), dated October 2003, should be understood in this context: it effectively involves Manitoba Hydro, with the support of governments, and one First Nation, ignoring and giving up on the principle that previous treaties should be respected as the basis of nation-to-nation understandings. It does not contemplate any significant support for the hunting way of life and, in fact, moves in a direction that diminishes the possibility of a future for northern hunters. What follows is a critical analysis of the SOU. While there are provisions that might be seen in a positive light, the overall principles and many of the details do not look favourable, particularly in comparison to similar agreements in other Canadian jurisdictions. Certainly if this is the model that Hydro intends to follow in the next wave of developments it proposes, serious concerns are raised that instead of leading the way as a jurisdiction that respects treaty and Aboriginal rights, Manitoba will be a last bastion of old colonial relations. Among the areas that appear positive are section 7(12), which deals with subcontracts and gives Nisichawayasihk Cree Nation businesses, in some cases, "first option of direct negotiation." Although transmission matters are not a part of the agreement, section 14 provides for interest on

5 percent of "eligible capital costs incurred each year in the construction of the Project Transmission Facilities" to be "distributed annually among eligible aboriginal communities" (SOU 2003, 34–35).

Not until the end of the document does the SOU make it clear that it will not be seen as a treaty. The wording that appears to protect Aboriginal and treaty rights appears at the very end of the SOU. It reads: "nothing in this Summary of Understandings or any other arrangements or agreements contemplated in this Summary of Understandings is intended to alter Aboriginal and Treaty rights recognized and affirmed under Section 35 of the Constitution Act, 1982" (SOU 2003, 36). Had the word "diminish" been used rather than the word "alter," the clause would have been stronger and would have raised the possibility that the SOU itself might be seen as a treaty. The word "alter" ensures that the SOU and agreements that flow from it are intended as mere business contracts. That is, the document is not a nation-to-nation agreement in the manner of the *Paix des Braves* between the Cree of Quebec and the Government of Quebec and contains no such sense of vision. It is rather a business agreement that, if implemented, would tie one Treaty nation to an economic strategy of hydro development. In fact, the SOU itself is actually "non-binding" (SOU 2003, 2) and must be read as a model for the binding agreement that will follow, based upon it.

The core of the SOU is that NCN will be a minority partner with a significant equity position in the Wuskwatim project that can reach a maximum of one-third ownership. The NCN will raise capital for its equity largely through loans from Manitoba Hydro. It should be noted, then, that NCN's benefit comes from two sources: the risk it will jointly assume and the political capital it provides to the project. The project may be successful and, after a lengthy period of time, begin paying dividends to NCN, or it may be less than successful, deferring long into the future when dividends are received, or it may be unsuccessful and leave NCN with a legacy of enormous debt. This is not a resource revenue-sharing model where revenue for the First Nation is generated as a result of its Aboriginal or treaty rights. Compare this with the *Paix des Braves*, an agreement signed between the Grand Council of the Crees of Northern Quebec and the Quebec Government (with Hydro-Québec) in early 2002. Under the *Paix des Braves*, the various Cree nations in

northern Quebec will gain significant financial benefit, actually $70 million a year for fifty years to a total of $3.5 billion (much more significant even if the proportions are taken into account), without financial risk. It is not my position to determine whether the financial risk makes good business sense or not; it is my position to suggest that the principles underlying the SOU mean that NCN is making a significant concession to Manitoba Hydro, effectively surrendering the struggle for getting a better deal based on either of the two treaties it signed. Financial compensation for a project, in my view, should derive from NCN treaty and Aboriginal rights to their own traditional territories rather than from taking a significant financial risk. Another core principle underlying the SOU is the structure of the financial partnership. NCN will be a minority partner in the Limited Partnership with Manitoba Hydro; it will have proportional representation—that is, a number of votes determined by the degree of ownership on the dam itself that it achieves, up to 33 percent—on the General Partner responsible for management of the project itself, but no ownership of the General Partner. This kind of shell game will serve to insulate Manitoba Hydro from complaint.[2]

Much has been made of the fact that the overall design of the project has already been influenced by NCN in order to limit its environmental impact. This is referred to in the SOU as the "Fundamental Features" of the project. The fundamental features of the project include some guarantees for NCN respecting water levels and area to be flooded, though the language in the SOU is weak (it uses the term "normally" in dealing with water levels [SOU 2003, 7]), does not include financial penalties, and, at a later part, the document reads: "Hydro will have sole control over water discharge, water levels, water level fluctuations and unit dispatch within the parameters of all relevant licenses . . . and the constraints imposed by virtue of the Fundamental Features" (SOU 2003, 31). Without clear penalties for breach of 'normal' water levels, it is hard to see how the SOU and agreements that will follow based upon it will work as strong environmental impact protections.

The training provisions in the SOU are significant and revealing of old relationships. Of the $5 million allocated to training that are specifically mentioned in the SOU, $3.75 million (75 percent) are allocated to NCN.

However, funds cannot be used for salaries, training is all oriented to manual and lower level employment (there is no contemplation of management training), no specific employment level targets are set, and the overall dollar figure is not impressive. Few jobs will be created and the designers of the SOU assume NCN participation at the most menial levels (SOU 2003, 8–9). Although the minister of energy, the Honourable Tim Sale, has taken exception to comments regarding training, suggesting the dollar figure for training is much higher, these funds must be allocated outside the scope of the agreement and therefore depend upon Government of Manitoba and Manitoba Hydro largesse rather than a contractual obligation. The SOU reads clearly: "Manitoba Hydro has committed *up to* $5 million of Project funds to be used for training for jobs on the Project" (SOU 2003, 8; emphasis added). The remaining part of the section specifies the terms through which these monies will be spent, as discussed above.

It should also be noted that an Adverse Effects Agreement to be signed is not part of the binding *Project Development Agreement* (PDA), which itself would be negotiated as the final version of the SOU. Since NCN will be a limited partner, it starts to become an objective interest of the NCN leaders to limit the liabilities of such agreements; that is, their position as partner starts to create conflicts of interest in relation to responsibility to the First Nation. Since they will need the project to be financially successful, why would they want to create an Adverse Effects Agreement that would place severe penalties on the project for violations of the agreement and for negative impacts? In effect, by becoming financial partners, a conflict of goals and interests will have to be borne by the First Nation. On the one hand, if the project is not financially successful, the First Nation will be left with a legacy of crippling debt; on the other hand, if the project has a greater negative impact on the environment, part of the sustainable future of the First Nation is jeopardized.

One of the critical weaknesses of the SOU regards provisions about community ratification. As noted, the SOU will lead to a *Project Development Agreement* (PDA), which would be legally binding and will "be submitted to NCN Members for ratification when it is finalized. Following meaningful consultation with and ratification by NCN members, the PDA will be

formally approved by NCN's chief and council" (SOU 2003, 4). The language here is telling: "following . . . ratification, the PDA *will* be formally approved" presumes acceptance. The PDA submitted for ratification is a "finalized" agreement; that is, community consultation will not contemplate changes. Experience in comprehensive claims indicates ratification usually involves a sales job. Leaders and negotiators hold community 'hearings' in which they extol the benefits of the proposed agreement. The SOU says nothing about percentage of members required (a majority of voters, a majority of the community members, or a significant majority of either are normal alternatives), the time between publication of a 'finalized' agreement and when a vote will take place (the 'finalized' agreement will be more of a legal document than the SOU), and other critical issues. Given the potential long-term impact of the project, one would hope that high standards of approval would be required; that a sufficiently lengthy period of time be specified for debate to allow citizens an opportunity to understand what will undoubtedly be a complex legal document be required; that resources are required to be allocated to proponents and opponents of the agreement within the community; that translation of the document into the Cree language be required; and that a date for a vote be established well in advance as a requirement to ensure leadership does not take advantage of particular moments when it feels it can secure ratification. The SOU does not provide any stringency in the ratification process and appears to take ratification as a *fait accompli*.

The model contemplated by the SOU is a step back from two decades of progress made in the area of Aboriginal and treaty rights. It is not a rights-based document. Its financial value for the First Nation is uncertain and based on the risk assumed by the First Nation. More troubling, it ties the First Nation to continued hydro development and limits the First Nation's ability to act as steward of its own traditional resources. Finally, the SOU contains very loose provisions regarding community consultation (none) and ratification.

SEVEN COMMENTS BY WAY OF A CONCLUSION

It remains up to NCN citizens to determine whether they support or do not support this agreement. I absolutely agree that it is their right and responsibility to

decide. One hopes they are adequately informed before ratification and that viable, credible, independently monitored voting procedures are used. Since there will be many resources deployed in selling the deal and many prominent leaders promoting it, in my view it is important that the community have access to critical comments and I have emphasized this approach in my analysis. The agreement contemplated by this SOU does not compare favorably to similar types of agreement in other jurisdictions to my knowledge. See Voisey Bay and the Innu (Lowe 1998); NWT diamond mines and the Tli'Cho (back issues of *News/North*, the Yellowknife-based newspaper, contains the most coverage); in particular compare to the recent *Paix des Braves* with the Crees of Quebec (see Saganash, Martin, and Dupuis in this book). Certainly the SOU does not contain anything innovative or indicative of a desire for a new relationship. The *James Bay and Northern Quebec Agreement* of 1975 contained a section pertaining to hunter income supplements. Recognizing that hydro development would have a negative impact on the ability of hunters to sustain themselves, it accepted the principle that some funds from the profits be allocated to ensuring that hunting families would continue to have a chance at material well-being. This model has existed since 1975. There is nothing in the SOU that would indicate a desire to support hunting families, the very basis of Aboriginal cultural values and communities.

The deal points to the fact that comparisons with other provincial and territorial jurisdictions are becoming increasingly important. Although Aboriginal matters ("Indians and lands reserved for Indians") are a federal responsibility, the role of provinces in resource development has made them key players on the ground in Indian country. Provinces such as Manitoba, which assumed jurisdiction over natural resources through natural resource transfer agreements (such as Manitoba's in 1930), will have to become key players if treaty rights are to be accorded the respect that the Supreme Court of Canada has asserted is due.

The agreement (PDA and other associated agreements) that will follow the SOU involves a critical decision that would link NCN's fortunes to those of Manitoba Hydro generally. The community will begin to have an objective interest in further developments that remove it from the land-based hunting economy

that has sustained it for centuries. Effectively, this agreement will work against the current that leaders tried to establish in Treaty 5, and will represent a further surrender of hope to ever implement the broadest promises of the *Northern Flood Agreement*. Experience has also shown that major business developments of this sort very often benefit a class of Aboriginal managers, who will gain very high paying jobs as corporate board members and will be removed from the daily realities of poverty in the community (see for example the experience of Alaska natives after the *Alaska Native Land Claim*; Berger's 1985 study, *Village Journey*, remains an excellent resource on this issue and claim), or problems of corporate misbehaviour among the Inuvialuit leaders who managed resources provided by the *Western Arctic Agreement* (Boldt, 1993, deals with the broad issue in his chapter on leadership in *Surviving as Indians*). Effectively, the project may very well create or consolidate an Aboriginal elite within the community. In that case, the poverty of community members will be exacerbated by the fact that they will have a further eroded land base that once provided an alternative means of subsistence to the welfare system. Also noteworthy is that NCN will not be a partner in ownership of the transmission line, which will have serious and additional impacts on NCN lands and land use rights.

The fundamental rationale for this project remains possible economic gain at the expense of environmental degradation. It has been suggested that continued hydro development in northern Manitoba will be a significant contribution by Manitoba to reducing greenhouse emissions, respecting the Kyoto Accord, and positively contributing to a cleaner world environment; it is also clear that the long-term costs of these developments are borne entirely by northern Aboriginal communities. If the nature of the commitment by Manitoba and Manitoba Hydro were to make such a contribution, why would it not allocate a much more significant proportion of profits to the betterment of northern Aboriginal communities? Then, only after these communities are established at levels of material well-being proximate with their southern neighbours would residual profit be deployed to the benefit of all. Since no such model is contemplated and the only way northern communities are being granted financial benefit is through their assumption of risk, it would appear that financial gain remains the underlying motive of these developments.

The SOU embodies a negative judgment about hunting as a way of life. One of the most difficult concepts to grasp is that although hunting families may look poor from a perspective of those saturated in the comforts of suburban life, if we were to measure wealth in terms of the quality of time we have in our lives as opposed to the things or money we can amass, hunters are among the wealthiest of peoples (see Brody 2000 on this point). While our society at least pretends to pay respect to preserving the family farm as a foundation for rural communities in southern areas, no parallel (even pretence of) respect is paid to hunting families as the foundation of community life in northern regions. There is virtually no program or policy that supports Aboriginal hunting families in northern Manitoba, but a wide variety of structures, programs, and policies that actively discourage the hunting way of life. Hunters are often classed as "unemployed" and are not seen as contributors to the gross domestic product. Their economy and rights are off the map of planners and economic advisors. Yet they have sustained their families, communities, and nations in northern regions for millennia. With this SOU, it appears that some Aboriginal leaders have themselves given up on the hunting economy and the treaty rights that support it.

While what is being proposed by the Summary of Understandings between Nisichawayasihk Cree Nation (NCN) and Manitoba Hydro with Respect to the Wuskwatim Project *is described as a matter of engineering, it is perhaps better seen as a generational legacy*. Three decades ago economists and engineers developed a plan that was supposed to be good for everyone: dam northern rivers, produce hydro power from them, make broad commitments to the Aboriginal communities most affected to compensate them. Within ten years, it became clear that the *Northern Flood Agreement* would be ignored, that the environment was being in many places irretrievably damaged, and that communities were falling into a spiral of misery. Many Aboriginal people in northern Manitoba came to see Manitoba Hydro as an enemy. From Grand Rapids to Pimicikamak to South Indian Lake, the words 'Manitoba Hydro' are dirty words. Small wonder there is so little trust of new promises by economists and new promises by engineers. The record of recent history in northern Manitoba is a record of pain and damage that can be attributed directly to the monumental hubris of

engineers and economists supposedly working on behalf of the public. Although anyone with a conscience must agonize over the choices that Aboriginal communities must make when faced with the serious social consequences of a colonial history, and can understand why any jobs and any so-called 'development' has a strong appeal, I have no doubt whatsoever that the model contemplated in the SOU will build an additional legacy of distrust for the generations who will follow.

EPILOGUE

Since writing this, the *Project Development Agreement* was prepared, printed, and eventually voted upon. The PDA is, in some respects, actually worse than the SOU that preceded it. It contains a clause that gave Hydro the authority to redesign any aspects of the project, including the fundamental features, in the event of environmental, engineering, or economic factors changing in a significant way. Furthermore, the language respecting Aboriginal and treaty rights is appallingly, laughably weak: the wording used could have the implication of suggesting that the PDA actually trumps treaties and Aboriginal rights. The agreement was eventually passed in a contested referendum, whose results will likely be legally challenged. Significantly, a few months before the vote, about one quarter of the voters, most of whom opposed the project, were made ineligible as the federal government inexplicably finally stepped in to create a separate band for South Indian Lake (this, after twenty years of struggle, was a bittersweet victory for that subband, but the timing was extremely propitious to Manitoba Hydro). While such chicanery may pay for a few more swimming pools among Winnipeg's bureaucratic elite, the legacy that will be handed on to NCN's future generations is not promising.

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1 This paper was first published by the Canadian Centre of Policy Alternatives, <www.policyalternatives.ca/mbÈ-nakàskàkowaàhk1>. It is dedicated to Thomas Craig Jewiss (8 April 1946 to 2 March 2004), lawyer, professor, and activist, a friend and ally who dedicated much of his life to the struggle for Aboriginal rights.

2 During construction of the Mackenzie Valley Pipeline in the mid-eighties, the owner, Interprovincial Pipelines (IPL), was shielded from complaint because the construction company that had been subcontracted was Pe Ben. During hearings Pe Ben said: "We are tourists in the north." They were not concerned about complaints since they would not remain to continue in business. IPL could defer all complaints to the subcontractor. It should be noted that quorum for the General Partner as defined in the SOU is a simple majority of directors and voting is on a simple majority basis. Hence NCN is not even guaranteed a position at all meetings—meetings can take place without anyone from NCN in attendance—and NCN has no veto powers. NCN will have a majority on a Construction Advisory Committee (sou 2003, 17), but 'advisory' committees have no real powers and, quite rightly, First Nations in the modern era have tended to avoid the word "advisory" for this reason.