SECTION 12

Administration of Justice

12.1 Definitions

For the purposes of this section, the following shall mean:

12.1.1 "Naskapi community", the Naskapi community contemplated by section 20;

12.1.2 "judicial district", the judicial district within which the Naskapi community is situated;

12.1.3 "native person", any person ordinarily residing in the judicial district and who is either a Naskapi or other Indian or an Inuk or who is recognized by Québec, for the purposes only of the benefits envisaged by paragraph 12.3.5, as an aboriginal person, by birth, ancestry or relationship.

12.2 Itinerant Court

12.2.1 At the request of le ministre de la Justice du Québec, the Chief Judge shall designate one or more judges required to dispense justice in the judicial district and le ministre de la Justice shall designate the other persons required for these purposes. The said judges or other persons should be familiar with the usages, customs and psychology of the Naskapis.

12.2.2 The Lieutenant-Governor in Council may, by proclamation, authorize the court, tribunals, bodies or commissions, whether or not they have been constituted by the Courts of Justice Act, to sit outside the chief place of the judicial district. In such an event, when le ministre de la Justice considers that it is appropriate to do so, the court and the judges may hold their hearings in the Naskapi community.

12.2.3 In the circumstances envisaged by paragraph 12.2.2, the judges shall be empowered and have the combined duties of judges of the Provincial Court, of judges of the Social Welfare Court, of judges of the Court of Sessions of the Peace, with powers to hear infractions punishable in virtue of the Québec Summary Conviction Act, of a magistrate under part XVI of the Criminal Code, of a magistrate under part XXIV of the Criminal Code, and of a justice of the peace appointed in virtue of section 107 of the Indian Act. They may have special or administrative jurisdictions.

12.2.4 When the courts hold their hearings in the Naskapi community, or when circumstances require it, the judges and other persons designated to render justice in the judicial district may, after consultation with the Naskapi local authority, establish rules of practice required for the proper administration of justice.

12.2.5 In order to facilitate the administration of justice and to render justice more accessible to the Naskapis, the rules of practice for the judicial district should take into consideration the particular circumstances of the district, as well as the customs and way of life of the Naskapis. The said rules of practice should stipulate special provisions respecting:

12.2.5.1) the accessibility to records and registers;

12.2.5.2) the postponement of hearings and trials;

12.2.5.3) the days and hours for hearings, trials and examinations on discovery;

12.2.5.4) the procedures for the filling of proceedings and the issuances of writs.

12.3 Personnel

12.3.1 An officer authorized to issue writs of the Superior Court will accompany the officers of the itinerant court to the places where the Superior Court is empowered to sit elsewhere than in the chief place of the judicial district.

12.3.2 When the tribunals, bodies and commissions of the judicial district sit in the Naskapi community, Naskapis, to the extent possible, will be recruited to act as judicial stenographers or secretaries, initially for the Provincial Court and eventually for the other courts, tribunals, bodies and commissions.

12.3.3 Subject to the Naskapi Native party recommending duly qualified manpower, in all civil, criminal, penal and all statutory matters in the judicial district where a Naskapi is a party to a suit, case or proceeding, or is detained or the accused, the following provisions shall apply without cost to the Naskapi party involved upon the request of such party:

12.3.3.1) interpreters shall be provided to the Naskapi party;

12.3.3.2) the motivated judgments which were not rendered orally at the time of the hearing, but in writing by the courts, tribunals, bodies or commissions, are to be translated into Naskapi, but only for the information of the Naskapi party involved;

12.3.3.3) all verbal decisions and judgments, and all pronouncements, rulings, statements and comments of the presiding judge shall be simultaneously translated into Naskapi, but only for the information of the Naskapi party involved;

12.3.3.4) the depositions, admissions, objections to evidence and the decisions thereon shall be simultaneously translated into Naskapi, but only for the information of the Naskapi party involved.

12.3.4 The judge of the itinerant court of the judicial district shall have available to him, when said judge considers it necessary or appropriate, probation officers, who preferably shall be Naskapis.

12.3.5 In the event that a suboffice of the courts of the judicial district is established in or in the vicinity of the Naskapi community, this office, to the extent feasible, shall employ native persons who shall be engaged on a full-time or on a part-time basis and trained to act as deputy clerks of the Provincial Court, of the Social Welfare Court, of the Court of Sessions of the Peace, and also as deputy-sheriff of the judicial district, and to fill other positions in the administration of justice in this suboffice, when it is appropriate to do so.

12.4 Justices of the peace

12.4.1 Justices of the peace, preferably Naskapi, shall be appointed in order to deal with infractions to by-laws adopted by the Naskapi local authority and other offences contemplated in section 107 of the Indian Act. These appointments will be subject to the approval of the Naskapi local authority.

12.4.2 With the authorization of le sous-ministre de la Justice du Québec, the Justices of the peace, contemplated by paragraph 12.4.1, shall, in addition to their usual duties, be empowered to receive oaths and informations, issue summonses, confirm or cancel appearance notices and recognizances,

issue subpoenas, proceed to the adjournment of appearances and of cases, as well as to allow provisional release of detained persons on the furnishing of a promise, undertaking or security to appear.

12.5 Crown Attorneys

12.5.1 The Attorney General of Québec shall appoint the Crown Attorneys for the judicial district on such terms and conditions that are required as a result of the prevailing circumstances in the judicial district.

12.6 Legal aid

12.6.1 The Naskapis, as individuals, are entitled to receive legal aid services in all legal matters provided they meet the criteria of the Québec Legal Services Commission. These criteria should be modified to take into consideration the cost of living, the distances involved and other factors peculiar to the judicial district.

12.7 Detention

12.7.1 A Naskapi who, after his sentence has been pronounced, is to be imprisoned, committed or detained anywhere in Québec, has the right, if he so desires, to be imprisoned, committed or detained in an institution contemplated by Section 18 of the James Bay and Northern Québec Agreement, as amended from time to time.

12.7.2 If the Minister considers it opportune and if the Naskapi local authority considers it necessary, temporary detention facilities may be established in the Naskapi community. This institution shall be administered by personnel recommended by the Naskapi local authority.

12.7.3 All Naskapis arrested or detained must be informed of their basic rights in a language they understand. Each such Naskapi has the right to communicate with his family and to obtain the services of a lawyer of his own choice.

12.7.4 Probation, parole, rehabilitation and post-detention services shall be provided to Naskapis, in Naskapi, if practicable, taking into account the age and conditions of such Naskapis as well as their culture and way of life.

12.7.5 For the purpose of promoting a better administration of justice, studies for the revision of the sentencing and detention practices of Naskapis should be undertaken, with the collaboration of the Naskapi local authority, taking into account the Naskapi culture and way of life.

12.8 Juries

12.8.1 If it proves to be necessary, the provisions of the Criminal Code and the Canada Evidence Act shall be amended so that they may be better adapted to the circumstances, usages, customs and way of life of the Naskapis and to the difficulties of the judicial district. Particularly for the case where a Naskapi is the accused, amendments shall be adopted in order to permit Naskapis to qualify as jurors notwithstanding that these Naskapis might not qualify as jurors in virtue of existing applicable laws or regulations and even if these Naskapis speak neither French nor English.

12.9 Information and courses

12.9.1 In order to ensure that the Naskapis do not misunderstand the intervention of the judicial authority or the legal system, information programs shall be established and financed by Québec.

12.9.2 One or more detention liaison officers shall be trained in order to assist Naskapis to obtain legal advice and to assist them in all phases of the judicial process and to give to the Naskapi community information concerning the law.

12.9.3 Naskapis shall be engaged to give the information and to effect the liaison, contemplated in paragraphs 12.9.1 and 12.9.2, as soon as possible after the approval of the present Agreement.

12.9.4 Courses shall be provided for non-Native persons engaged in the various aspects of the administration of justice in the judicial district and whose functions cause them to have frequent contact with the Naskapis. These courses will deal with the language, customs, needs and aspirations of the Naskapis in the judicial district.

12.10 Amendments

12.10.1 This section can be amended only with the consent of Canada and the Naskapi Native party, in matters within the jurisdiction of Canada, and with the consent of Québec and the Naskapi Native party, in matters within the jurisdiction of Québec.

Legislation enacted to give effect to this section may be amended from time to time by l'Assemblée nationale in matters within the jurisdiction of Québec and by Parliament in matters within the jurisdiction of Canada.