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IN AREAS OF INTERNAL NATIONAL EXPANSION:
INDIANS AND INUIT IN CANADA

Copenhagen 1973
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For the Secretariat of IWGIA

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Denmark.
In the last few years there have been an increasing number of major development projects which have raised issues of native rights. The list includes the Bennett Dam, the Bighorn Dam, the James Bay project, the flooding of Southern Indian Lake, exploration and resource development in the Arctic and the Mackenzie valley pipeline. All these projects involve isolated areas with predominantly native populations. All involve projects designed to deliver energy resources to urban and industrial areas of North America. The phenomenon is not uniquely Canadian. In the United States the Black Mesa project and the Alaska oil discoveries are obvious parallels.

The purpose of this paper is to attempt a general analysis within which these geographically separated events can be understood. The focus is not on energy needs, economic nationalism or the protection of the environment, issues which are clearly raised by some of the projects. The concern of this paper is with the legal issues raised by the presence of native people in the areas where the projects are being undertaken. The paper will deal with three propositions:

I. In North America the non-native community is in a period of internal national expansion into native areas.

II. It is characteristic of secondary periods of expansion in the United States and Canada that earlier patterns of native policy will have been incompletely realized in the areas affected by the expansion.

III. As regards native people, the contemporary non-native expansion has clear parallels with the earlier periods of non-native expansion.

1. In North America the non-native community is in a period of internal national expansion into native areas.

Peter Usher, in his study of the Eskimo trappers of Banks Island, speaks of the demands made by the metropolitan areas of the country on the hinterland areas:
The impact of metropolitan values and interests on the hinterland has become increasingly pervasive, undermining the very basis of smaller and more traditional societies or communities. While the resulting homogenization of society as a whole is not totally without benefit to the hinterland, the price paid is seen by many as exorbitant. The degree of control and direction over this process by the hinterland is very limited, and the choice of whether the process should occur at all is simply nonexistent. The commonly accepted proposition that this process is inevitable and beyond individual or collective control, has never been proven. At present it is more in the nature of a self-fulfilling prophecy.¹

Because the 'hinterland' is an area that has been effectively a native area the phenomenon can be described as an extension or completion of colonialism, or as a process of internal colonialism. A strong statement is found in the "Declaration of Barbados", a document concerned with the situation of the Indians in South America:

The several states avoid granting protection to the Indian groups' rights to land and to be left alone, and fail to apply the law strictly with regard to areas of national expansion. Similarly, the states sanction policies which have been and continue to be colonial and class-oriented.²

The isolated native communities lack political power. They cannot fight the powerful national and international interest who are behind such projects as the Mackenzie Valley pipeline.

In 1968 international mining interests established operations in the Gove Peninsula in the Northern Territory of Australia. Enormous bauxite deposits lay beneath an area which was part of the vast Arnhem Land Aboriginal Reserve. The Government re-arranged the boundaries of the reserve and leased out the bauxite.³ In 1972 production began at the immense copper mine in the Bougainville area of Papua New Guinea and the world press enjoyed some pictures of "naked" natives confronting bulldozers.⁴ There was litigation from both the Gove Peninsula and Bougainville over the rights of the local native population.⁵ In Canada we are acting out the same basic scenario - native people versus major development projects.

II. It is characteristic of secondary periods of expansion in the United States and Canada that earlier patterns of native policy will have been incompletely realized in the areas affected by the expansion.

In both Canada and the United States there were three distinct
phases to initial colonial expansion. There was an early period of European settlement not involving formal acquisition of land from the native populations. During the second period, beginning for what is now Canada with the Royal Proclamation of 1763, land cession treaties were the basic legal method of validating European settlement and laying a foundation for government Indian policy. The use of land cession treaties became legal and political orthodoxy. The earlier non-treaty patterns came to be seen as anomalous. The treaty policy was supplemented in the north-west after 1870 by a companion policy, the granting of land or money scrip to "half-breeds" in settlement of their aboriginal claims.  

The policy of recognition of land claims broke down as it was extended beyond the areas of initial natural expansions. In what is now the Northwest Territories and the northern areas of the prairie provinces treaties were entered into promising reserves, but reserves were not established. The federal policy of recognition of native land rights was never extended to British Columbia because that province proved to be dogmatically stubborn on the issue. The policy was never extended to the Yukon, perhaps because of the geographical and tribal links with British Columbia. It also broke down in northern Quebec.

The federal government delegated the responsibility to negotiate treaties to the Quebec Government. The clear obligations in the 1912 Quebec Boundaries Extension Act were ignored by the province. The earlier non-treaty policy in the province prevailed over the treaty policy of the federal government.

In summary, there were three periods. There was an early non-treaty period which occurred in areas which are not of concern in this paper. They are the areas of oldest non-native settlement in Canada: the maritime provinces and southern Quebec. The second period, beginning in 1763, is one of land cession treaties. That policy was applied to half the land mass of Canada: Ontario, the prairies and the Indian areas of the Northwest Territories. The policy began to break down the farther north it was extended. The third period represents the last dregs of the cup: British Columbia, the Yukon, northern Quebec and the Eskimo areas of the Northwest Territories. No legal rationale has yet emerged for the two non-treaty periods. In keeping with the ambiguity of history, the Supreme Court of Canada has recently split three to three on the issue of aboriginal land rights in British Columbia.  

Nevertheless, it is fair to say that the stated policy of the
federal government for the major part of our life as a nation has been recognition of native land rights. Prime Minister Trudeau, who had taken a public position against any recognition of aboriginal rights, now seems to have returned to the fold of traditional federal orthodoxy on the question. The deviations from the federal policy of recognition and treaties (with the exceptions of the Yukon and the Eskimo areas) can be attributed either to the policies of colonies prior to confederation, or the resistance of particular provinces after confederation. The federal government can be blamed for not rationalizing existing Indian policy after 1867 and, later, not asserting its constitutional authority forcefully enough to prevail against the wayward notions of British Columbia and Quebec.

At the beginning of this paper a series of projects were listed affecting different areas of Canada. We will examine the issues of native claims in each area.

1. The Bennett Dam

The Bennett Dam was completed in 1968 and had the effect of reducing the water levels in the Peace-Athabasca Delta in northeastern Alberta. In the area near the Delta there are five settlements of Indian belonging to the Fort Chipewyan Band. In 1899 these Indians signed Treaty 8, which provided for land to be set aside as reserves on the formula of one square mile per family of five. It is clear from the report of the federal Commissioners who negotiated the treaty that the Indians were not concerned with the reserve land settlement. They sought the preservation of their rights to hunt and fish, access to medical services and the availability of relief in times of distress. The Commissioners stated:

"...the Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provision for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing."

The truth is that the reserve concept was being extended into a physical environment in which it made little sense. The notion that Indians would become farmers was basic to the reserve concept. But in relation to the Lake Athabasca area, the Commissioners could only foresee the continuation of a hunting and trapping economy. By 1930 the reserves had still not been established in this
area. In the 1930 Natural Resources Transfer Agreement the Province of Alberta received ownership of its natural resources on condition that it would permit lands to be selected
...to enable Canada to fulfill its obligations under the treaties with the Indians of the Province... 12
The reserve entitlement of the Fort Chipewyan band has still not been settled. The Minister of Indian Affairs has agreed to use current population figures to calculate entitlement (a more favourable position from the Indian point of view than the 1899 figures). The major problem with settling the reserve allotment proved to be alternative land use decisions already made by government. The Band wanted land that was now within Wood Buffalo National Park. Mr. Chrétien announced recently that the Band would get the land requested within the park. 13
But land was not the basic concern of these Indians in 1899, as the Treaty Commissioners reported:

Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision of the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it. 14

These commitments, far more important to the Indians than the reserve promises, have been undercut in a number of ways. One has been the impact of the Bennett Dam on the Delta.

Prior to 1968, the year of closure of the Bennett Dam, the settlement of Fort Chipewyan had already been beset by economic problems of unemployment, underemployment, and low educational levels. Cash income and prerequisites (food, clothing material, dog feed) from beaver and muskrat trapping, and from hunting and fishing formed the major indigenous economic base although there were substantial income flows from outside the community in the form of wages and social welfare payments. Persistently low water levels since 1968 moved Reinelt, et al. (1971, p. 7) to state:
"The fish and muskrat catches have been reduced substantially and wide dispersion of the muskrat population requires more travel effort, movement is made more difficult as available craft no longer suffice when lakes
fall dry, fisherman must move many miles out in order to set their ice nets, the landing wharves become unusable, boat loads must be carried to shore, etc."
Although the low water levels served to merely hasten a move from traditional forms of livelihood that had already been going on for several decades, the accelerated economic and social changes affected not only the individual, but the entire fabric of the community.¹⁵

A lawsuit was considered by the Indians affected, but never materialized. An intergovernmental task force was constituted to study the problem.¹⁶

2. The Bighorn Dam

The Bighorn Dam in the foothills in Alberta is flooding an area of Indian graves and Sundance lodges.¹⁷ A number of years earlier the Diefenbaker Dam on the South Saskatchewan River threatened to flood a sacred rock. A campaign to raise funds to move the rock failed. The rock was dynamited and pieces were preserved. The Nabalco bauxite operation in northern Australia resulted in the destruction of a site sacred to an aborigine clan, an important element in the early protests about the project.

We accord great deference to religion. Freedom of religion is protected by the Canadian Bill of Rights and the Constitution of Australia.¹⁸ Although an academic in Australia has suggested the assertion of rights to sacred sites on the basis of the protection of freedom of religion,¹⁹ there appears to be no judicial decision in which such a claim has been successfully advanced against competing land use. The Taos Pueblo in New Mexico did secure legislative redress in such a situation. Their natural shrine, Blue Lake, was restored to them in 1970 by Congress.²⁰

The Bighorn Dam also raises more conventional questions, for which satisfactory documentation is not available. There are certain land claims made on the area by a section of the Stoney Band and by a break away group from the Hobbema reserve. The existing land use of these groups has not been regularized, though it is not clear if a legal claim exists for either group. A common feature of isolated native communities is legally irregular patterns of land use. Government seeks to classify the natives as squatters, in law, but obviously such a description is unsatisfactory from many points of view.

3. The James Bay Project

The James Bay project involves a series of dams on the La Grande River. In addition water would be diverted from the Cania-
Piscataquis, Great Whale and Opinaca rivers into the La Grande channel. Storage reservoirs would be created on each of these rivers. The development of the more southerly rivers, the Nottaway, Broadback and Rubert, though part of the original scheme, has been shelved.

It is of some importance, in assessing native claims in northern Quebec, to examine the history of the boundaries of the province. Quebec can be divided into four areas. The Royal Proclamation of 1763 established a northern boundary for Quebec which angled from the south tip of Lake Nipissing (now in Ontario) to Lake St. John in Quebec and to the south western corner of Labrador. In 1774 the northern boundary was extended to the watershed of the Hudson's Bay. In 1898 the boundary was further extended to the Eastmain River. In 1912 the present northern limits of the province were established. What is the state of native rights in each area?

The federal view appears to be that old Quebec was exempted from the Royal Proclamation of 1763, and that the exemption explains the lack of land cession treaties in that area. This view finds negative support, in dicta, in the Judicial Committee's decision in the Star Chrome case:

...the operation of the Act appears to extend to lands occupied by Indian tribes in that part of Quebec which, not being within the boundaries of the Province as laid down in the Proclamation of 1763, was subject to the pronouncements of that Proclamation in relation to the rights of the Indians.

The view that old Quebec was exempted from the Royal Proclamation, does not find support in the text of the document and seems at variance with the instructions to Governor Murray in 1763 and, later, to Governor Carleton. The eastern portion of the Quebec of 1763, after it became part of Ontario, was covered by treaties in 1783, 1819 and 1923, something inconsistent with the 'exemption' theory.

In 1774 Quebec was extended north and west by the Quebec Act. The northern boundary became the watershed between the St. Lawrence and Hudson's Bay. We are told by the Star Chrome case that this new area of Quebec was covered by the Royal Proclamation. Yet there are no treaties in this area.

In 1898 a portion of the Hudson's Bay Company territories was added to Quebec. Were the Hudson's Bay Company territories covered by the Royal Proclamation of 1763? It has been argued that the Company was a "proprietary government" and therefore expressly covered by the Royal Proclamation.

In dicta, the Supreme Court of Canada have stated that the Royal Proclamation did not apply to Hudson's Bay Company territo-
Nevertheless, it was the policy of the Hudson's Bay Company to enter into treaties whenever there was colonial settlement. Since the Company was hostile to settlement, there are only limited examples of treaties. The Selkirk colony in Manitoba and the southern Vancouver Island treaties are examples of patterns of dealing in Hudson's Bay Company areas. Possibly there was a purchase of an area on the Rupert River in the portion of Quebec added in 1898.

The transactions conveying the Hudson's Bay Company territories to Canada are not silent on Indian rights. The Hudson's Bay Company Deed of Surrender of 1868, the Canadian speech from the throne of 1870 and the 1870 Imperial order in council admitting Rupert's Land and the North-Western Territory into the Union all speak of

...claims of Indians to compensation for lands required for settlement...

The responsibility for settling these claims is clearly assigned to the Canadian federal government. It seems reasonable to consider the acceptance of this responsibility as a condition of the transfer and therefore that the obligation is in the nature of a constitutional obligation.

After the transfer, the federal government embarked on the post-confederation treaty process. They covered the Hudson's Bay Company lands west of Quebec with a series of treaties negotiated over the years from 1871 to 1956. By their actions and statements during this period it is clear that the federal government did not take the view that there were no Indian rights to land that had been under the control of the Hudson's Bay Company.

In 1912 the last Quebec boundary extension took place. Identical statutes were passed by the federal and provincial governments, providing in part:

(c) That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and will obtain surrenders of such rights in the same manner, as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof, and the said province shall bear and satisfy all charges and expenditure in connection with or arising out of such surrenders;
(d) That no such surrender shall be made or obtained except with the approval of the Governor in Council;
(e) That the trusteeship of the Indians in the said territory, and the management of any lands
now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament. 35

These provisions apply to the area of the James Bay project.

Indian land rights have been recognized, in law, in the area of the James Bay Project because it was Hudson's Bay Company territory, and because of the 1912 Quebec Boundaries Extension Act. Additional legal recognition may come from the Royal Proclamation of 1763, but it is a matter of dispute whether the Proclamation applied to Hudson's Bay Company territories.

Present judicial authority is against that proposition.

No treaties have been entered into with the Indians of the James Bay project area. Certain reserves have been established in northern Quebec by provincial legislation. 36 No legal theory is available to convert that action into a settlement of native land claims.

In 1972 the Indian chiefs of the project area began a suit against the James Bay Corporation seeking an injunction halting the project. The action invokes federal jurisdiction over Indians and lands reserved for the Indians and over a number of other matters, such as navigable rivers, airports, migratory birds and fisheries. A six month hearing on an interlocutory injunction application ended in June 1973, and at the date of writing, no judgment had been delivered. The federal government have described their position as one of "alert neutrality." 37, a position that came under fairly intense criticism in the House of Commons in the first half of 1973.

4. The flooding of Southern Indian Lake

The Manitoba election of 1969 was unique in that a native issue was one of the major issues in the campaign and the new government owed its narrow victory to native votes in the northern areas of the province. The native issue was the proposed flooding of Southern Indian Lake by Manitoba Hydro as part of a diversion of water from the Churchill River into the Nelson River. The flooding threatens two native communities with a combined population of 650. The communities are unusually prosperous for northern Manitoba. For one half of the year they engage in commercial fishing on the lake: for the rest of the year they work their trap lines. Neither community receives any welfare.

The status Indians at Southern Indian Lake are members of the Rupert House Band who have voluntarily moved away from their reserve. There are Metis or non-status Indians also in the communi-
ties. The economic base for the communities is secured in two ways. Commercial fishing licences are restricted to local residents. Registered traplines give "security of tenure" to each trapper in the area.\textsuperscript{38}

After the election the new resources Minister affirmed that the government would "put humanity first" and was "above all, concerned with human welfare". An official of Manitoba Hydro was quoted as saying:

\begin{quote}
For the sake of 77 Indian families at Southern Indian Lake, should we create a situation where Hydro rates must be increased for the entire province, including all the Indian families now customers of Hydro?\textsuperscript{39}
\end{quote}

Prior to the election the Manitoba Indian Brotherhood reminded the government of the problems that followed the relocation of the Chemahawin Reserve in 1957-58 to make way for a power project at Grand Rapids:

\begin{quote}
The Forebay Committee, in a very skilled manner and without suggesting that the Indians of this Reserve consult with legal counsel, and without holding any public hearings, relocated the Indians of the Chemahawin Reserve at a place called Easterville. Although the Indians were given a choice, Easterville appeared to be the best of a very poor selection. The hardships that followed at Easterville are known by every Indian of that Reserve.\textsuperscript{40}
\end{quote}

Mr. Dave Courchene, President of the Manitoba Indian Brotherhood, referring to the Southern Indian Lake project, has stated:

\begin{quote}
We don't want our people shifted and shafted at the whim of any government. We don't want another Easter-ville.\textsuperscript{41}
\end{quote}

In December, 1972, an action was begun by native residents of Southern Indian Lake against the provincial government and Manitoba Hydro, attacking the validity of a licence granted to Hydro and seeking an injunction to stop the diversion, mainly on environmental grounds. No clear native rights argument has emerged. The Manitoba Indian Brotherhood has taken the general position that the Indian treaties were unconscionable transactions and that new settlements are needed.\textsuperscript{42} That is perceived as leading to a political, not a judicial solution. The major native opposition to the project has come from the Metis Federation of Manitoba.

5. Exploration and resource development in the Arctic.

There have been a number of localized issues in the Arctic. The community of Sachs Harbour on Banks Island resisted, then
acquiesed in seismic exploration on Banks Island in 1970. The only legal protection the community had was a group registered trapping area under the Territorial Game Ordinance which covered the whole of Banks Island. That was not sufficient ownership to prevail against oil exploration permits, though the fear was that the two kinds of land use were incompatible.43

In 1971 the settlement council of Coral Harbour, a community of about 400 people on Southampton Island, asked for an ending of underwater seismic exploration. The Minister of Energy, Mines and Resources, Mr. J.J. Greene stopped any marine seismic surveys involving explosions. The feasibility of using a compressed air gun was to be considered, though the community opposed even that kind of technology. They feared that any exploration would frighten away the walrus and seals from the local breeding grounds. The Minister of Indian Affairs and Northern Development was reported as telling the community to accept the inevitability of exploration.44

In 1972 an oil company wanted to conduct summer seismic exploration on the Cape Bathurst Peninsula, a hunting area used by the residents of Tuktoyaktuk. The opposition of the Tuktoyaktuk Hamlet Council led to a cancellation of the summer project. On October 4th, 1972, the Council unanimously opposed winter seismic exploration on the Bathurst Peninsula. The immediate impact of exploration on the cariboo and migratory birds, a major concern in the decision about the summer project, was no longer stressed. The Canadian Wildlife Service had opposed the summer project, but did not evidence any concern about the winter project. The community were looking to the future. They were afraid that the exploration might be successful. If drilling rigs and camps came to the Peninsula, they were convinced that the wildlife resource would be ended.

A petition with 251 signatures was forwarded to Prime Minister Trudeau shortly before the federal election. It sought a complete ban on seismic work on the Bathurst Peninsula. The Hamlet Council had not opposed other exploration.

We do not oppose all development. We have approved many applications. But, with this ancestral land, we cannot take a chance.

In November the Minister of Indian Affairs and Northern Development, Mr. Jean Chrétien, ordered the oil company to remove its equipment from Cape Bathurst. No seismic operations were to be permitted for a year to allow studies on the effects on hunting and wildlife.45

Banks Island, the Mackenzie Delta and Southampton Island are traditionally Inuit areas. No treaties have ever been entered into with the Inuit in the Northwest Territories.46 In 1929 a treaty
overture was apparently made by a "White Chief" a Mr. Fennie. An Inuit recounted saying to Mr. Fennie that

...five dollars a year (the amount of treaty annuity payments to Indians) was an amount not worth disturbing ourselves for...Chief Fennie answered that I was right and that the Inuit would not receive the treaty.

Inuit Tapirisat of Canada, the national Inuit organization asserted Inuit land rights in September 1972, in response to a Federal Arctic ore development announcement.

Inuit Tapirisat of Canada would like to make it clear to all Canadians that the land is still the property of all Inuit in the north. No treaties have been signed with the government of Canada to surrender the land which we have inhabited from time immemorial.

The Alaska settlement involved Indians, Eskimos and Aleut. If there are major settlements with non-treaty Indians, in Canada, it will be difficult to envisage a government refusing to recognize similar claims by Eskimos. To date no judicial actions based on aboriginal legal rights have been attempted in opposition to particular exploration or development projects in the north.

6. The Mackenzie Valley pipeline

A 3,000 mile gas pipeline costing five billion dollars may be built to convey gas from the Mackenzie Delta and the north slope of Alaska to the Manitoba-Minnesota border. Although Mr. Chrétien initially described the pipeline as inevitable the possibility of an Alaska pipeline may postpone or cancel the Mackenzie valley plan. If the Canadian route goes ahead the necessary permits from US and Canadian regulatory bodies are not expected until sometime in 1975. The head of Canadian Arctic Gas Study Limited, a consortium of twenty-five oil and gas companies, has recently stated that the most optimistic schedule envisages arctic gas passing through the pipeline in quantity by 1979.

Opposition to the pipeline has been mounted on environmental, fiscal and nationalist grounds. The Indian Brotherhood of the Northwest Territories, while not directly opposed to the pipeline, has stated that a settlement of native land claims must precede the pipeline or any other major land use projects (including Nahanni National Park). The pipeline affects four different groups of native people: the Indians covered by Treaty 11, the non-treaty Indians of the Yukon, Metis and non-status Indians and Inuit. We will examine the claims being put forward by the Treaty 11 Indians.

Treaty 11 was signed in 1921, 1922 and 1923 and purports to
cover the entire length of the Mackenzie River in the Northwest Territories. Since the Delta was not traditionally Indian land, the treaty could not be effective to extinguish land claims in that area. As in Treaty 8, the Indians expressed fears to the federal commissioner that they would be "confined on the reserves..."\(^5\)

The Indians were reassured on this point and a treaty was signed promising reserves based on the formula of one square mile per family of five, the standard prairie formula. Soon after treaty the degree of basic confusion as to the meaning of the treaty started to become obvious. No reserves were established. In 1959 a five man commission was appointed by the federal government to investigate the unfulfilled provisions of Treaties 8 and 11 in the Northwest Territories. They recounted:

> It became apparent at the first meeting, and this was confirmed by subsequent meetings, that few of the Indians had any clear understanding of the reason for the Commission's visit and the subject matter under discussion...

At a number of meetings Indians who claimed to have been present at the time when the Treaties were signed stated that they definitely did not recall hearing about the land entitlement in the Treaties. They explained that poor interpreters were used and these interpreters urged the Indians to sign, saying "It will be good for you". It was emphasized that their Chiefs and head men had signed even though they did not know what the Treaties contained because the treaty parties included high government and religious officials whom the Indians trusted to look after their interests. When the Chairman pointed out that the Chiefs of each band, among others, had received copies of the Treaties, the Indians replied that they were published in complicated English and they could not understand them.

> ...some bands expressed the view that since they had the right to hunt, fish and trap over all of the land in the Northwest Territories, the land belonged to the Indians. The Commission found it impossible to make the Indians understand that it is possible to separate mineral rights or hunting rights from actual ownership of land.\(^5\)

If it was impossible to convince certain Indians in 1959 that rights to hunt could be separated from ownership, the concept must have been equally incomprehensible in 1921. In 1921 commissioner's report refers to the question of hunting and fishing rights:

> The Indians seemed afraid, for one thing, that their liberty to hunt, trap and fish would be taken away or curtailed, but were assured by me that this would not be the case, and the Government will expect them to support themselves in their own way, and, in fact, that
more twine for nets and more ammunition were given under the terms of this treaty than under any of the proceeding ones; this went a long way to calm their fears.53

The logic of these two quotations is that the Indians would not have understood in 1921 that they were surrendering their land. This conclusion is confirmed in interviews conducted by C.Y.C. workers in the Northwest Territories in 1968.54

Since then additional interviews have been recorded by employees of the Indian Brotherhood of the Northwest Territories. The Brotherhood has stated that the treaties were understood to be peace treaties.55 The 1959 Commissioners recommended renegotiation of treaties 8 and 11.56 Mr. Chrétien has refused to renegotiate the treaties, apparently to avoid setting a precedent for the other treaty areas. He is prepared to give the Indians a choice of alternatives in settling the land entitlement claim,57 which is essentially what the 1959 Commissioners meant by renegotiation.

The Indian Brotherhood of the Northwest Territories has taken the position that Treaties 8 and 11 did not surrender Indian land rights. They have asked the Federal government for a land freeze in the Northwest Territories pending a settlement. A federally imposed land freeze in Alaska was a very effective spur to settlement there. The Canadian government indicated no interest in the proposal. On April 2nd, 1973, the Indian Chiefs representing the sixteen Indian Bands in the Northwest Territories submitted a caveat to the land titles office in Yellowknife claiming aboriginal rights to about half the land mass of the Northwest Territories. They excluded lands for which a Certificate of Title in fee simple had been issued. The Registrar of Land Titles, rather than accepting the caveat, referred it to Mr. Justice Morrow of the Supreme Court of the Northwest Territories. The reference was made pursuant to the Land Titles Act and was in words copied from section 154 of that Act:

A question has arisen as to the legal validity and the extent, right and interest of the persons making application...

In July and August of 1973 Mr. Justice Morrow held hearings in the various Indian communities in the Mackenzie basin area. The transcript of the evidence is a remarkable document, containing, as it does, the accounts of eye witnesses to the treaty. The last native witness to be heard was over one hundred years old. On September 6th, 1973, Mr. Justice Morrow ruled that the Indian Chiefs were entitled to have their caveat filed in the land titles office. Among
his conclusions were these propositions:

(3) That there exists a clear constitutional obligation on the part of the Canadian Government to protect the legal rights of the indigenous peoples in the area covered by the caveat.

(4) That notwithstanding the language of the two Treaties there is sufficient doubt on the facts that aboriginal title was extinguished that such claim for title should be permitted to be put forward by the caveators.

(5) That the above purported claim for aboriginal rights constitutes an interest in land which can be protected by caveat under the Land Titles Act.

He ordered that the caveat should not be filed until all appeals from his judgement were completed. This reduced the element of confrontation between the Indians and the federal government which had been inherent in the litigation. It has now been agreed that appeals will be postponed indefinitely and exploratory discussions begun between the Indian Brotherhood of the Northwest Territories and the federal government.

Having examined the issues of native land claims in the areas of Canada where major projects have begun or are planned, we can now turn to the third proposition set out at the beginning of this paper which focuses on the resolution of the disputes or claims.

III. As regards the native people, the contemporary expansion has clear parallels with the earlier periods of non-native expansion.

There are three parallels:

(a) the rationale for expansion is found in the non-native sector of the society,

(b) the inequality of negotiating position between the native and non-native sector is much the same, and

(c) the failure of policy in terms of the native groups is likely to be much the same.

The rationale for expansion is found in the non-native sector of the society. This is obvious and basic. It is important to realize how pragmatic our native policy has always been. Territorial land rights were recognized by the Royal Proclamation of 1763 because of the threat of Indian uprisings on the frontier. It is no coincidence that 1763 is the date both of the Royal Proclamation and of the siege of the fort at Detroit by Chief Pontiac and his allies.

There were other, more positive enduecements for the colonists
to treat with the Indians. In a passage that Professor Frank Scott once converted to poetry, Lieutenant-Governor Morris recounted the origins of the Robinson Treaties of 1850:

In consequence of the discovery of minerals, on the shores of Lakes Huron and Superior, the Government of the late Province of Canada, deemed it desirable, to extinguish the Indian title.\textsuperscript{58}

To choose a later treaty, we can quote the federal order in council of January 26th, 1891, dealing with the area to be covered by Treaty 8:

On a Report dated 7th of January, 1891, from the Superintendent-General of Indian Affairs, stating that the discovery in the District of Athabaska and in the Mackenzie River Country, that immense quantities of petroleum exist within certain areas of those regions, as well as the belief that other minerals and substances of economic value, such as Sulphur, on the south coast of Great Slave Lake, and Salt on the Mackenzie and Slave Rivers, are to be found therein the development of which may add materially to the public weal, and the further consideration that several Railway projects in connection with this portion of the Dominion may be proposed appear to render it advisable that a treaty or treaties should be made with the Indians who claim these regions as their hunting grounds, with a view to the extinguishment of the Indian title.\textsuperscript{59}

Oil discoveries were also on the mind of the Government when it decided to negotiate Treaty 11.\textsuperscript{60}

None of the projects discussed in this paper were designed to serve the communities affected by them. None have their genesis in the thinking or lives of the people of those areas. That is not to say that there will not be benefits accruing to the native populations in the areas affected. That is a separate question to which we will have to return.

We have suggested that the inequality of negotiating position between the native and non-native sector will probably be much the same today as it was in the past. The Government can easily reply that it has learned the lessons of the past. The advisers to the Indians are no longer the Red coats the Black Frocks and the half-breeds. The Indians now have white lawyers. To ensure that the Indians have these lawyers, the Government has funded native organizations in a program that is considerably more advanced than comparable programs in other countries.

There are, however, other elements in the situation. The threat of violence and the numbers of native people involved were considerably different seventy-five years ago.
Not northern lights—
Natives of North, blowing up pipelines!

Cartoon from Kainai News, Cardston, Alberta, August 1, 1972,
In 1898 the Commissioner of the North West Mounted Police

...intimated that these Indians - though few in number - were turbulent and liable to give trouble should isolated parties of miners or traders interfere with what they considered their vested rights.61

Today the natives of the north have neither the numbers nor the aggressive ways that gave other Indians a degree of real political power earlier in our history. There is probably unease in corporate and governmental circles when a leading Indian newspaper features a cartoon of an Indian and a white watching what appear to be northern lights. The Indian says:

Not norther' ligths - Natives of North blowing up pipelines.62

The threat by militant Aborigines in northern Australia to cut the overland telegraph line linking Darwin to Adelaide was comparable. A northern pipeline and the Australian telegraph line would be equally vulnerable to attack by one or two protesters. That kind of threat is a way for native people to try to equalize their bargaining position.

The natives involved in the areas of these projects are few in number. The northern areas did not traditionally sustain a large population. Pierre Nadeau, former head of the James Bay Development Corporation, once stated of the natives in northern Quebec that there were 'five thousand of them and five million of us'. Was it realistic to expect oil exploration to halt on Banks Island for the sake of an Eskimo population in Sachs Harbour of a mere 100 souls? Mr. A.B. Yates, Director of the Department of Indian Affairs Northern Economic Development Branch was recently quoted as saying:

The press for the needs of Canada, North America and the world cannot be held up awaiting the needs of a very small minority.63

The interests of small numbers of people are balanced off against the needs of large and powerful majorities. The development of the north is stated to be inevitable. That assertion of inevitability has been made on a number of occasions by the Minister of Indian Affairs and Northern Development.64

The story of Sachs Harbour is troubling. After the communities' objections to oil exploration had been voiced and reached the media in southern Canada, federal officials worked out a "compromise" plan. They had it approved by the oil companies involved and then took it to the Eskimo Community.

The meeting was called on short notice. The community's lawyer
was not in attendance.

The Bankslanders say they were told, in effect, that there was no use fighting the exploration programme and that the government's proposals were the best that could be done about it. The Bankslanders saw no alternative but to go along with them. The following day they reported to COPE and to the media that they would not proceed with the injunction, because they felt they had neither the money nor the ability to take on both government and the oil companies.65

The meeting sounds familiar. Let us revert to the negotiation of Treaty Number Four. The chief government negotiator told the Indians

...that the proposals of the Commissioners were final and could not be changed.

The chiefs then agreed to accept the terms offered and signed the treaty...66

In both instances the terms of the "agreement" were determined by the Government before they were presented to the native people. In both cases there was an assumption of the inevitability of non-native entry into the area.

An assertion of inequality of bargaining position raises a question of the motives of the superior party. Was the inequality exploited one hundred years ago? Will inequality be exploited today? What can and should we expect of the Federal Government?

The Federal Government has a special trust responsibility to Indian people. Mr. Justice Rand once stated that the care and welfare of the Indian people was "a political trust of the highest obligation."67 The 1912 Quebec Boundaries Extension Act specifically states that the "trusteeship of the Indians in the said territory shall remain with the Government of Canada."68 No other role of the Federal Government is described in this manner.

It is appropriate to inquire why responsibility over "Indians and lands reserved for the Indians" was assigned to the Federal Government in 1867. The confederation debates provide no answers: the decision must have seemed self-evident to the Fathers of Confederation. The most logical explanation is found by examining earlier British practice:

The protection of the Aborigines should be considered as a duty peculiarly belonging and appropriate to the Executive Government, as administered either in this country or by the Governors of the respective Colonies. This is not a trust which could conveniently be confided to the local Legislatures. In proportion as those bodies are qualified for the right discharge of their proper functions, they will be unfit for the performance of this
office. For a local Legislature, if properly constituted, should partake largely in the interests, and represent the feelings or the opinions of the great mass of the people for whom they act. But the settlers in almost every Colony, having either disputes to adjust with the native tribes, or claims to urge against them, the representative body is virtually a party and therefore ought not to be the judge in such controversies. Until 1860 the control of native policy in Canada was retained in Imperial hands. In 1867 it was logical to place jurisdiction in the level of government most removed from local disputes, that is, the Federal Government. The Federal Government would have the task of supporting the Indians against the local non-native interests represented by the provinces.

How has the Federal Government done as the ally of the Indians in disputes with provinces? Not very well, it seems. The Judicial Committee of the Privy Council may be taken to have undercut the Federal Government's position in the disputes that arose about Treaty 3 in Ontario. It may be fairest to say that the Federal Government did as much as it could in matters involving Indians in Ontario. One can have sympathy with the Federal Government's efforts in dealings with British Columbia, given the intransigence evident in the provinces statements. But the Federal Government failed to persevere. The alternative of judicial action to resolve the British Columbia land issue clearly considered by the Federal Government, was not pursued. A resolution of Indian land rights in unceded areas was clearly necessary, but was deferred indefinitely as the Federal Government's resolve evaporated. There is no evidence that the Federal Government even put up a fight in relation to northern Quebec. After explaining that treaties were necessary and writing that into the 1912 Quebec Boundaries Extension Act, nothing was done to force Quebec to comply with its obligations.

What would have been the proper role of the Federal Government in the recent James Bay litigation? Should it have been involved because of its constitutional and trust responsibilities? In July of 1971 a resolution passed by the Indian Chiefs of the James Bay region was forwarded to the Minister of Indian Affairs, Mr. Chrétien, asking him to stop the James Bay project. In the spring of 1972 legal action was brought by the Indians concerned against the James Bay Development Corporation. No public request was made for the Federal Government to intervene in the litigation. Discussions were held by representatives of the plaintiffs and the Federal Government about the latter becoming full petitioners in the case. That step was not taken. The Federal Government are a party to the action for
a permanent injunction, having been made a party by the Indians. They appeared on at least two occasions in the application for a pre-trial injunction.

The decision by the Federal Government not to intervene has been described by the Minister on a number of occasions as demonstrating that the Federal Government is not as paternalistic as it used to be. The Government has provided the Indians with funds for research and is paying the costs of the litigation (a standard practice in major Indian litigation). The Government has assisted the Indians but has not entered the controversy itself. Most observers feel that the Federal Government is in an uncomfortable position, politically, and interpret the "non-paternalistic" statement as the best justification of a troublesome decision. A cabinet document unofficially released in January, 1973, noted "unfavourable criticism" and a "significant weight of adverse public opinion" tending to put "Federal authorities in a bad light". The Memorandum recommended that the Federal Government express its determination to "participate fully and assist the Indians in their negotiations with the Province." This constituted a rejection of Quebec's insistence that the Federal Government only be an observer at any negotiations. The negotiations broke off last October, ending that particular issue. The document pre-dates the recent litigation and therefore the question of a federal role in court was not discussed.

The self-defined "low profile" of the Federal Government in this dispute rendered meaningless both the special trust responsibility of the Government and the justification for federal rather than provincial jurisdiction in relation to native people.

In the Northwest Territories there is a troublesome conflict of interest situation. One man serves both as Minister of Indian Affairs and Minister of Northern Development. It is abundantly clear from events over the last few years that the two roles can be in conflict. Clearly such a conflict exists in relation to the Mackenzie Valley pipeline. A trustee should not have divided loyalties.

We have suggested that the failure of policy in terms of the native groups is likely to be much the same as it was in prior periods of non-native expansion. Contrary to most assumptions the clearest historical policy of the government has been the economic development of Indian communities. The Royal Proclamation of 1763 and later references to tribal lands habitually refer to them as hunting grounds, stressing the economic use to which they were put. Indian rights to hunt and fish were to be protected to preserve the
traditional economic base. Therefore the treaties provided for ammunition for hunting and twine for fishing. When the "chase" was exhausted, the reserves were to be an agricultural economic base for the communities. Therefore the treaties provided for plows, seed, cattle, and farm instructors. The reserves were not designed to preserve a way of life for traditional native ways of life could not survive within the confines of a reserve.

The treaties and the reserves were part of a piece of social planning designed to shift the economic base of native people to facilitate non-native settlement. The Government would not "undertake to maintain Indians in idleness": therefore Indians would have to be self-sufficient in the new order that non-native settlement was introducing.

After serious initial social disorganization on the prairies the Indians were settled on reserves and the agricultural experiment began. The adaptation was successful to the extent that a stable, subsistence agricultural and gathering economy was achieved by the turn of this century. The public concern about mass starvation ended and during the next decades the economic adaptation that had been achieved was undercut. The reserve land base was reduced. Capital was not available to mechanize the farms. The Indian population began to expand. Under initial pressure the Government planning achieved an adequate adaptation of the native economy. When the pressure ended the situation stagnated. 74

Government policy shifted, after the second World War, to relocation. Economic development of reserve communities was not to be stressed. Young people were to be encouraged to urbanize. The urbanization proved tragic for many and in the last few years there has been another build-up of public pressure for Government to do something to aid Indian communities. Again an economic development program is underway.

In the isolated areas, the communities are still in the initial stages of this process. Hunting, fishing and trapping are still important components of the economy. There will be no agricultural phase, for the land will not permit that.

There is urbanization within these areas 75, but little movement to the southern Canadian urban areas. There is a serious problem of population increase. 76 Mr. Chrétien described the problem in the north:

The only alternative to more welfare or forced southern migration is to create additional job opportunities.
Since 1961 the population north of '60 has grown by 50%.
This increase, largely indigenous, is almost three times the national average - the highest rate in North America.
The Minister sees two sources of employment - the traditional occupations of hunting, fishing and trapping and the new jobs connected with resource development.

Traditional occupations will not be adequate for the increasing population. The roads, the pipelines, mining and oil exploration in general will only offer temporary unskilled jobs to native people. The projects have a relatively short labour intensive phase. Since they serve southern industry, little in the way of long term employment opportunities will be opened up in the north.

The only way to generate local economically viable and socially meaningful activity is by capital investment in the north for the north. As the Hawthorn-Tremblay report pointed out to the Federal Government a few years ago, Indian communities suffer from a lack of capital investment. This maintains the mutually reinforcing patterns of poor education, poor employment, poor housing and poor health. If a part of the problem is lack of capital, a logical role for native legal claims, such as those we have been discussing, is the provision of capital to native communities. The best current thinking on the settlement of native claims envisages economic and social development programs and not a dispersion of funds by individualized payments. The Alaska settlement represents the most recent and most relevant attempt to combine resource development, native claims and economic and social development in one scheme. It represents imaginative social planning reminiscent of that which lay behind the Indian treaties of an earlier era. It is easy to say that the Treaties failed. It is quite possible that the Alaska settlement will fail. The treaties did not have to fail. They failed because the government commitment to social and economic development proved insubstantial. We chose to have a native policy on the cheap and we are still living with the fruits of that decision. It does not have to be that way again.
NOTES


3) Some of the history of this project is set out in the lengthy decision of Mr. Justice Blackburn in Milirrpum v. Nabalco (1971) 17 F.L.R.141.

4) Some information on the Panguna Mine at Bougainville can be found in Hank Nelson, Papua New Guinea, Penguin, 1972, pp. 93 and 94.

5) Although Milirrpum v. Nabalco was an unsuccessful assertion of aboriginal rights, the question of land rights is now under consideration by a one man commission appointed by the Commonwealth (Federal) Government. In relation to Bougainville, the case Teori Tau v. Commonwealth of Australia (1969) 119 C.L.R. 564 (Australian High Court) validates state expropriation of mineral interests without compensation. A separate case also went to the Australian High Court on the valuation of land taken by the mining company: Benggong & Bougainville (1971) Australia. L.J.R. 412.

6) Manitoba Act, 1870, section 31; An act respecting the appropriation of certain Dominion Lands in Manitoba, S.C.1874, Chapter 20; Dominion Lands Act, S.C. 1879, Chapter 31, section 125(e).

7) 1912, S.C., Chapter 45, section 2.


9) Indians have more land rights than he thought, Trudeau says, Globe and Mail, February 8, 1973, p. 8.

10) Treaty 8 is unique in offering allotments of land or, alternatively, reserves at the option of the Indian people involved. One reserve has apparently been established in the delta area.


13) The use of current population figures is stated in a letter, Mr. Jean Chrétien, Minister of Indian Affairs to Mr. William Green, Executive Director Indian Association of Alberta, May 13, 1971. The decision in relation to Wood Buffalo National Park was announced on February 21st: Indians to get part of Wood Buffalo Park, Edmonton Journal, February 22, 1973, p. 8.


17) Indian Association of Alberta, Position Paper to the Tripartite Committee Meeting in Opposition to Bill 66 and Bill 67, April 29, 1971, p. 2.

18) Section 116 of the Australian Constitution reads: "The Commonwealth shall not make any laws for establishing any religion or for imposing any religious observance or prohibiting the free exercise of any religion..."


21) Quebec Act, 1774.

22) S.C. 1898, Chapter 3.

23) S.C. 1912, Chapter 45.

24) This is based on the assumption that the Royal Proclamation of 1763 is the source of Indian land rights, a proposition asserted by the Judicial Committee of the Privy Council in the St. Catherine's Milling case, (1889) 14 A.C.46 at 54. The proposition is not deductible from the text of the Proclamation itself.


28) Cumming, opus cit, p. 168.

29) Sigeareak v Queen (1966) S.C.R. 645 at 649-50. See also the statement to the same effect of Mr. Justice McGillivray in Rex v Wesley (1932) 4 D.L.R. 774 at 736, and Mr. Justice Johnson in Regina v Sikyea (1964) 46 W.W.R. 65 at 66.

30) See Hooper, Aboriginal Title in the Northwest Territories, in Cumming, opus cit. p. 132 at 142.

31) See Morris, The Treaties of Canada with the Indians of Manitoba and the North West Territories, Toronto, 1880, Chapter 1.

32) Certain of these treaties were signed by Governor James Douglas not as Governor but as Chief Factor of the Hudson's Bay Company. This was the case with the treaty considered in Regina v. White and Bob 50 D.L.R. (2d) 613; affirmed on appeal 52 D.L.R. (2d) 481.


34) The 1868 Hudson's Bay Company Deed of Surrender reads, in part: "And claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government, and the Company shall be relieved of all responsibility in respect to them".

The Canadian Speech from the Throne in 1870 stated, in part: "And furthermore, that upon the transference of the territory in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigine." The Imperial Order in Council admitting Rupert's Land and the North-Western Territory into the Union in 1870 reads, in part: "Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be
relieved of all responsibility in respect of them."

35) S.C. 1912, Chapter 45, section 2.

36) Three reserves have been established under the Quebec Lands and Forests Act. Only one is in an area affected by the present James Bay project.

37) A study done for the Department of the Environment in 1971 and unofficially released early in 1973 deals with the constitutional issues involved: Michael Bird, An Analysis of Federal Interests Affected by the Proposed James Bay Hydro Development, May 1972, Environment Canada. A cabinet document, unofficially released in January 1973 describes the federal position as one of "alert neutrality" and, on the question of constitutional responsibility, says: "Although the Federal Government does not have a broad responsibility for environment questions affecting only the province, the Federal Government can call, if necessary, on the Navigable Waters Protection Act, the Fisheries Act, the Indian Act and possibly the Migratory Birds Convention Act and the Canada Water Act to alter the rate and scale of development proposed by the James Bay Development Corporation in a unilateral manner."

38) Brief presented to the Public Hearing on South Indian Lake, January 27, 1969, by G.W. Malsher. Malsher was Director of the Manitoba Wildlife Department until 1967.

39) These quotations are taken from two articles: "Manitoba's No. 1 controversy: hydro or "humanity first", and "Life in the Trapline cabins: no one needs welfare", Globe and Mail, August 13, 1969, p. 23.

40) Presentation on behalf of the Manitoba Indian Brotherhood, undated (1969?).

41) Presentation on Flooding at South Indian Lake to the Public Utilities and Natural Resources Committee of the Manitoba Legislative Assembly by the Manitoba Indian Brotherhood, May 1969, p. 6.


44) Platiel, Eskimos want oil hunt halted; accept inevitability:
Information on the Cape Bathurst Peninsula dispute has been taken from an information package dated October 10, 1972 prepared by the Committee for Original Peoples Entitlement (C.O.P.E.) a native organization based in Equisvik. The package includes minutes of meetings of the Tuktoyaktuk Hamlet Council. The following items from the Globe and Mail continue the story to the time of the one year ban: Ban oil search on hunting grounds, residents of Tuktoyaktuk urge Trudeau, October 24, 1972, p. 8. Tuktoyaktuk residents are firm in demanding ban on oil search, October 26, 1972, p. 8. Oil probe blocked on arctic peninsula after native protest, November 18, 1972, p.1.

There was a treaty between a Moravian mission and Eskimos in Labrador: Cumming, opus cit. p. 93.


Chrétien says Pipeline from Arctic Inevitable, Toronto Star, March 13, 1972.


Treaty No. 11, (booklet) Queen's Printer, reprinted 1967, p. 3.

Report of the Commission appointed to investigate the unfulfilled provisions of Treaties 8 and 11 as they apply to the Indians of the Mackenzie District, 1959, pp. 3 and 4.

Treaty No. 11 (booklet) Queen's Printer (reprinted 1967) p. 3. Supra, footnote 51, p. 3.

Richardson, "Did Ottawa scalp N.W.T. Indians in 1921," Montreal Star, June 14, 1968. I have examined the transcripts of statements which appear to be the sources relied on in this article.


Morris, The Treaties of Canada with the Indians of Manitoba.
and the North-West Territories, Toronto, 1880, p. 16.

59) Public Archives of Canada, R.G. 10, (Black) 75 236-1.

60) Mr. Duncan Scott, Deputy Superintendent General of Indian Affairs in a memorandum to the Honourable James Lougheed, dated November 23rd, 1920, states: "...the question (of taking a ceasure of the Indian title to lands in the Mackenzie District) has become a very urgent one, owing to the rapid and unexpected exploitation of the country, the establishment of oil industries and the increasing immigration of prospectors, trappers and white settlers." Scott then adds "The Indians themselves are very anxious to be taken into treaty, as they are desirous that reserves should be set aside for them as soon as possible." This last statement is in direct conflict with the 1921 report of the Commissioner who negotiated Treaty 11.

61) Letter of June 18, 1898, from the Honourable Clifford Sifton, Superintendent General of Indian Affairs to the Governor General in Council, Public Archives of Canada, R.G.10 (Black) 75 236-1.

62) Kainai News, Cardston, Alberta, August 1, 1972, p. 5. The cartoon would be based on a statement made in July in the Northwest Territories. That statement and the reply of the Minister of Energy, Mines and Resources, Donald Macdonald are recounted in Wills, Ottawa's vision of northern development could be shattered by aboriginal land claims, Globe and Mail, July 26, 1972:

"At that point, Rev. Joseph Adam interjected that the natives will blow up the pipeline unless they get their share from gas production. A few days later in Yellowknife at another dinner, Mr. Macdonald said he thought the Oblate priest's views on the risk of violence were exaggerated, but he added: 'I think, however, that his view did reflect a sincere concern that if the aspirations of Northerners are frustrated in putting into effect a pipeline system, then there will be certainly this exasperation, this frustration which could find an outlet that will be violent and, therefore, it is incumbent on all of us, in both the Government and the country and particularly in the companies involved, to make certain these expectations to the best possible degree are realized so that this kind of risk will not exist.'"


65) Usher, opus cit, p. 46. COPE is a native organization based in the Mackenzie delta.

66) Morris, opus cit, p. 83.


68) Quebec Boundaries Extension Act, 1912 S.C. c. 45, s 2 (e).


71) See Papers Connected with the Indian Land Question, 1850 - 1875 Victoria, 1875.

72) Hansard, January 10, 1973, p. 139.

73) Memorandum to Cabinet, James Bay Project, undated (Spring, 1972?).

74) I am grateful to Dr. Stuart Raby for the analysis in this paragraph.

75) Fort George in James Bay, Fort Chipewyan in the Peace-Athabaska Delta, Tuktoyaktuk in the Northwest Territories all are urban centers for native populations in their areas. Groups which used to live inland have settled in Fort George and only go inland to hunt.


78) See Lysyk, *Approaches to Settlement of Aboriginal Title Claims in Alaska*, September 3, 1971, printed in *Claim Based on Native Title Union of British Columbia Indian Chiefs*, December 1971, Appendix C.
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