DEPARTMENT OF MINES AND ENERGY
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NATIVE LAND RIGHTS IN NORTH AMERICA (Report of a study tour, 1980)

GEOLOGICAL SURVEY

By

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D.M.E. No. 240/79

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SUMMARY

The practical problems being faced in North America with regard to Indian and Inuit land rights are in most ways similar to those in Australia, despite a much longer history and a generally different legislative basis for negotiations. One fundamental legislative difference must be recognised: whereas in South Australia minerals belong to the Crown, in North America it is common that both the surface and the sub-surface entitlements are held by the land holder, especially on Indian reserves under treaty in the U.S.A. Hence in these circumstances it is quite correct in North America for land rights negotiations to involve the value of minerals in the ground: on the other hand, in South Australia royalty is paid to the Crown and it is incorrect for overriding royalty (or probably non-participatory equity rights) to be involved in the settlement of any land claims.

This aside, the following points from North America are worthy of note.

1. Generally land claims are considered only from status natives who are defined as:
   - those with greater than one quarter native blood;
   - are living on or near tribal lands as of a set date;
   - and are descendants on the male side only. (Those natives who lose status such as full-blood women who marry Caucasians are called non-status natives; and the offspring are part-caste Indians, called Metis.).

2. In many areas, land entitlements of a set number of acres per status native family are being entered into with a figure of about 160 or so acres being the average.
3. Land grant title generally confers fee simple title over small family areas, with consideration given to aboriginal rights over larger areas, including the right of access to totemic sites within and outside these lands.
4. A problem yet to be faced in North America relates to land grants if third party interests are involved. So far, settled land claims have occurred only where unallotted 'Crown' land has been available, and where this land has not been subject to mineral development tenments. Problems such as how to calculate land value for exchange or compensation are common, and unsolved. When settlements are reached in relation to land claims it is deemed that all future claims are extinguished.
5. Unless agreed to in settlements, access to areas around the land grant area is unrestricted for all purposes.
6. The types of claims being made by native groups have evolved from direct monetary compensation, to land rights, and now emphasis is being placed on gaining political rights.
7. It is common that the terms of a settlement are not unanimously accepted by a tribal group because conflict exists between the asperations of those with traditional attitudes and those who wish to promote development.
8. Experience in Alaska has indicated that governments should play a minority role on native boards of management during the first three to five years after their formation.

9. Considerable interst is being shown by native groups in the progress achieved by two moderately recent initiatives:

(a) the formation of the Council of Energy Resources Tribes (CERT) (Ref. 14); and

(b) extensive land and political claims being negotiated in the Canadian Territories (Appendix): the eventual outcome of each of these initiatives will influence land rights issues around the world.

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INTRODUCTION

The subject of Aboriginal land rights has been of considerable interest in South Australia for several years, especially in relation to the exploration and development of energy and mineral resources.

In order to gauge the progress and status of negotiations between the South Australian Government and Aboriginal groups, I visited North America from 22nd July to 16th August, 1980, to discuss these issues and related matters with officers in government departments of native affairs, native management corporations, and advisory legal offices.

This report outlines the information gained during the study tour. Overall, it is apparent that although South Australia has only been involved with land rights negotiations for a short time compared with North America, the recent Pitjantjatjara Land Rights Bill, 1980, is a well conceived, innovative, and highly relevant piece of legislation which will be studied with considerable interest within Australia and overseas.

UNITED STATES OF AMERICA: the 48 States

U.S. DEPARTMENT OF THE INTERIOR, Bureau of Indian Affairs (Washington, D.C.)

Meeting with Mr. Thomas Oxendine, Public Information Officer (23/24 July 1980)

Mr. Oxendine was the first full-blood Indian (he is a member of the Lumbee tribe) to be inducted into the United States services, in 1942.

Indians were indigenous to North America at the time of the first European settlement on the eastern seaboard and initially Indians welcomed and helped the settlers. Settlers in general believed in converting the Indians to European ways and the Bureau of Indian Affairs was established in 1824 to facilitate this move. As government contacted Indians, treaties were entered into whereby Indians gave up ancestoral rights to large land areas and agreed to live on smaller areas. In 1871 Congress passed a law saying that no future treaties would be entered into: this is still on the statute books and in all practical circumstances will not be overthrown by Congress in the future because very few votes really go with the Indian cause.

Initially, Indians were considered to be wards of the government and generally were excluded from laws designed for the white people; the blacks were always excluded.

The absence of Indian reservations in the eastern USA arises because Federal lands are rare to absent in this area as a consequence of the early colonization history whereby States were established at an early stage. There are some State-run reservations however in these areas. Federal trust

reservation controlled through the Bureau of Indian Affairs can only exist on Federal lands because treaties are entered into with the Federal Government. Because most Federal lands are in the centre and west of the USA, this is where the prominent reserves are found.

In 1980 there are 278 tribal agreements entered into with 662,000 Indians, and these agreements relate to reserves with a total area of 53 million acres held in trust. Indians in this context are defined as members enrolled in a tribal group living on or near a reservation, generally with more than one-quarter Indian blood. Excluded from this category are Indians living on State reservations and Indians living in urban areas.

The tribal groups theoretically are similar, but in practice differ widely. Points in common are:

. the groups have elected tribal governing bodies
. they have tribal constitutions for self government approved by the Secretary of State
. tribes must comply with Federal law
. members of tribes must be enrolled.

However differences show in the eligibility criteria for tribal membership, which is determined by the tribe, not the Federal government: some tribes are most restrictive in their definition of whom may belong, others are lenient. Definitions run from full-bloods born on reservations being the only members for tribal enrolment, through to one instance in 1962 when people with only 1/32nd of Cherokee blood were allowed to be tribal members. In other instances, a base was established in 1906 and only descendants of members of that base roll may be considered as tribal members.

Meeting with Mr. Dean Suagee, Environmental Services (24 July, 1980)

In addition to reinforcing many of the points made earlier, Mr. Suagee as an Indian himself, feels that traditional Indians will no longer exist in one or two generations but that tribal beliefs and ties to the land will still be strong.

Telephone conversation with Mr. Dick Wilson (25 July, 1980)

Federal Acts in the 1930's did not anticipate the problems of the long lead time for developing large low grade mineral deposits. The philosophies of the late 1800's of coersive assimilation, with the aim to produce Indian urban farmers owning land in fee simple, did not eventuate and generally Indian lands are still held in trust by the Federal government. Never-the-less, within some reserve areas, land was sold to Indians and others with or without mineral rights. In these circumstances, if an Indian purchasing or owning land died without a will, his beneficiaries (upwards of 100 in some cases) have to consent to the method of dividing the benefit. As a consequence, a chequer board of land tenure has developed in some Indian reserves and this has led to immense difficulty in aggregating land title for mining lease areas. In addition, the 1969 National Environmental Act and subsequent legislation considerably affects the speed at which negotiations can occur. Finally, the internal Indian problem of the traditionalist versus the developer who sees the need to provide an economic base for Indian development creates further time delays in negotiations.

On the other hand, although the initial negotiations between Indians and companies are open-ended, once tenure has been granted to a company they must submit mine plans for approval

and a time constraint of 60 days has now been placed on the Indians for objections to mine plan proposals.

FRIED, FRANK, HARRIS, SCHRIVER & KAPELMAN (Washington, D.C.)

Meeting with Mr. W. Richard West (24 July, 1980)

Mr. West is a member of the Cheyenne tribe of Oklahoma and is one of many Indians who are now attorneys with either private legal firms advising Indian groups or else working within the Government Department of Indian Affairs.

Within the USA two land categories are relevant in relation to Indian lands. First, Indian reserves have sovereign status because they are the subject of treaty agreements and are held in trust by the Federal Government: because of the sovereign status, tribal law runs on reservations but, because Indian laws are considered to be lenient it has been ruled that Federal and State laws also have force. However, the sovereign status does not extend to Indians having the right to treat independently of the US government with other nations.

Second, aboriginal lands are not under treaty but are acknowledged as large areas originally held by Indians. It is in this context that the American Indian Religious Freedom Act (Ref. 21) was passed in 1978 to allow for the recognition, protection, and right of access for Indians to sacred sites within aboriginal lands. It is evident that Indians have a relationship to the land similar to that of the Australian Aborigine and that sacred, mythological or totemic sites may be identified in a similar way in both cultures and have similar significance, but in the case of the Indians generally the sites are not secret. The first instance in which the Religious Freedom Act has been used relates to the Hopi Indians where

sites identified by them on aboriginal lands in the San Fransisco Peaks area are to be protected from development of a nearby ski resort.

With regard to Indian lands and mining, the Indians as sovereign owners have a right of veto over mining on Indian reserve lands. The procedure is that an applicant for mining on Indian lands approaches the Federal Government as trustee and requests approval to approach the Indians to commence negotiations. If the Federal Government gives approval, negotiations commence between the Indians and the applicant: when agreement is ultimately reached the applicant returns to the Federal Government for the granting of his lease. The Federal Government as trustee has the right to refuse the application even if agreement has been reached with the Indians (although this is extremely rare, if it has ever happened). The Indians as sovereign owners of the minerals and the mineral rights within their lands are allowed to negotiate with companies on all aspects related to cultural matters, environmental matters, and financial matters to the degree that the market will bear.

However, it must be remembered that in many tribal groups there is still internal conflict as to whether any mining should be allowed to go ahead. This is true even of the 25 tribes amalgamated in the Council of Energy Resources Tribes (CERT) (Ref. 14) where the initiators amongst the Navajo Indians recognised that financial returns from the development of energy resources on Indian land were required in order to progress their nation as they saw necessary; but even in this instance the tribe is not unanimous that mineral development is the way to proceed. Hence it is mainly the younger non-traditional Indians, and sometimes those believing in the principle of assimilation

with Europeans, who are involved in this enterprise. As well as members within tribes of the CERT group who do not believe in the aims of CERT, there are also about 400 tribes as yet not associated with CERT.

Never-the-less, CERT developed because of a feeling of a lack of Federal assistance in geological mapping and resource estimation in Indian reserves. The CERT group now has its own staff of geologists, geophysicists and engineers who are competent to negotiate with applicant companies wishing to explore and develop mineral and energy resources on Indian reserves. It was originally held that CERT may be compared with the OPEC group of nations but this is not appropriate because Indian lands do not hold an overwhelming proportion of minerals or energy resources, although the amounts controlled are significant. CERT does ensure that Indians control the way in which developments occur and also the way in which payments are made to Indians. However, as mentioned earlier, the Council still finds itself in conflict with those traditional Indian members who hold that mining desecrates the sacredness of the land.

A CERT meeting in Pheonix in December 1979, produced a checklist of terms and conditions for Indian resource agreements. Because of its interest to the mining industry, it is repeated here in full (Ref. 14).

1) Limited time period: An agreement should be for a fixed time period, preferably 20-25 years, not for "so long as minerals can be profitably produced".
2) Exploration work programe: A work program should be agreed, detailing what is to be done and when, including drilling, and requiring the expenditure of a specified minimum amount.

3) Delivery of all data: A tribe should obtain all information resulting from exploration, including interpretation. A tribe should have the property rights to that information, subject to confidentiality - for a limited period - and subject to the operator's right to use the information for purposes of carrying out the Agreement.

4) Prospect size and relinquishment provisions: Current federal leases limit the size of one prospect area to 2,560 acres; upon justification, larger areas could be considered. If a comparatively large area is to be subject to the agreement, a relinquishment provision should be included requiring the operator to give up percentages of the exploration area over a period of time. This should not preclude dividing the area into a number of blocks and reserving certain blocks (traditionally in a checkerboard pattern) for future development.

5) Sharing of real profits: The fiscal regime should be based on a tribe's sharing in the true profits, including tax credits and allowances and other direct or indirect subsidies, preferably on a sliding scale increasing progressively with revenues or profitability, or after the operator has recovered its original costs. A tribe should be assured that an operator will not over-price or under-price affiliated company transactions so as to siphon off profits.

6) Limitation of recovery rates: Where a tribe shares in profits, the operator's recovery of its original costs in computing profits could be spread out over a specified period of years, or limited each year by a specified percentage of the value of production.

7) Royalty: A tribe should be assured of a royalty equal to a percentage of the fair-market value of production each year, regardless of profitability, preferably on a sliding scale increasing progressively with price or revenue.

8) Minimum cash payment: A tribe should also be assured of a minimum annual revenue, as a rental or royalty.

9) Payments for surface and water rights: Fair market charges should be made for water and for the use of surface rights. Where a fixed annual charge is agreed, provision should be made for automatic adjustments by a price index for changes in the cost of living.

10) Bonuses: Cash bonuses should be considered on signature, on discovery, and perhaps at different production levels, keyed to the value rather than the quantity or production. A tribe should not, however, trade off a share of the profits or a higher royalty for immediate cash payments ("front end" money) if this is not to its long-term economic advantage.

11) Employment preferences: Tribal members should be assured of genuine employment and promotion preferences in all employment categories (including supervisory, administrative, technical and managerial), coupled with commitments to provide educational opportunities and on-the-job training for tribal members to qualify for employment and promotion.

12) Preference for tribal enterprise: Enterprises owned by a tribe and tribal members should obtain preferences in providing goods and services through prequalification, advance notice, and an edge of 15% in competitive bidding.

13) Tribal concurrence in basic decisions affecting the reservation and its resources: A tribe should be assured that it will take part in the basic decisions that determine how the

land will be used and the value of its resources realized. These should include concurrence in decisions on:

a) the location of drill holes or wells, plant, equipment, infrastructure, and access routes;

b) the size, method, and rate of operations;

c) the impact of operations on air, surface, and sub-surface water, and on community facilities;

d) conservation, reclamation, and restoration programs;

e) marketing arrangements; and

f) annual operating budgets, where the tribe shares profits.

14) Indemnification: A tribe, its members, officers, employees and agents, should be fully indemnified against all liabilities arising out of operations.

15) Effective record keeping and reporting: All pertinent information should be recorded on a regular basis, with financial information recorded in accordance with agreed-upon accounting principles (not just those "generally accepted"), and reports rendered at least quarterly.

16) Inspection and monitoring procedures: Tribal officials and their advisers should be assured the right to inspect all operations and books and records at all times.

17) Assignment: Tribal consent should be necessary for any assignment of any interest in the agreement.

18) Insurance, guarantees, and performance bonds: Operators should be required to carry appropriate insurance in adequate amounts for all operations. Performance bonds should also be required unless the operator's performance is guaranteed by parent corporations with adequate assets, including cash reserves.

In respect to the rights of the Federal government in overriding or expediting negotiations between companies and Indians, it is held that Congress would have the right to intervene in a national interest on reservations. This has not been attempted, and in the typical American fashion would almost certainly be a subject of a major court appeal. Recently, some companies have attempted to have the Federal government hurry up negotiations. This is especially the case where areas of chequerboard land ownership carried over from the "assimilation" days occur within Indian reserves, and the situation arises where the majority of landowners have agreed for development to occur but a few are standing out. In this instance the Federal government has not been prepared to intervene.

U.S. DEPARTMENT OF JUSTICE, Land & Resources Division, Washington, D.C.

Meeting with Mr. Sanford Sagalkin, Deputy Assistant Attorney-General (23 July, 1980)

From the point of view of Indian administration within the United States of America, Indians in the 48 States maintain a formal tribal structure, compared with Alaska where legislation related to Indians enacted in 1971 established a corporate structure. Decision making for the Government is easier with a corporate structure, but in both tribal and corporate groupings a problem continues to exist in projecting the view points of the traditional or generally elder Indians.

Within the area of the 48 States Indian reserves are held in trust by the US Government and in most instances the lands include the mineral, water, and timber rights. The reserves are the outcome of treaties entered into by the US Federal Government with Indian tribal groups and the Indians maintain a sovereign

control over their lands. For this reason tribal laws do run within the reserves but legal precedent now limits those laws to minor disputes meaning those involving less than $500, and excludes criminal offences.

An act of Congress in 1871 extinguished all future land claims by Indian groups if a treaty had not been entered into by then. However, it is maintained that even if extinguished, claims can be made by tribal groups to obtain adequate compensation where it is considered this had not been achieved in past agreements. Nominally only one claim is allowed but in practice if the Indians feel insufficient compensation has been paid, then they reapply.

A case in point is the recent Black Hills compensation decisions involving the Sioux Indians where claims have been maintained for many tens of years but in truth the claims have been made by younger, more aggressive, tribal members while the older traditional members have taken no part. As a consequence, now that the government has agreed that adequate compensation must be paid for fishing, hunting and timber rights over 405,000 acres in the Black Hills it is known that the traditional members of the Sioux Indian tribe are not prepared to accept any financial compensation; they wish to retain the land although it is outside an existing Indian reserve. It is expected that the US Government will not pay any compensation to the Sioux until they have resolved their tribal differences and it is thought that this will be achieved by tribal negotiation: the solution most likely to be agreed to will involve buying the land on the open market using the money paid for compensation. This will retain Indian ownership of the land, but legal advice has not yet decided whether the lands so purchased will be treated in the same manner as

reserve lands which are exempt from State and Federal taxes, amongst other concessions.

Treaty lands established in the late 1890's have subsequently been subject to the whims of political change. In the early 1900's it was decided that assimilation of Indians into the European community would be advantageous. A move was made to break up reserves into 120 acre blocks and to grant these either to Indians or allow them to be purchased by Europeans or allow Indians to sell them to Europeans. However, in this last case, the proviso was made that if the block was owned by a full-blood Indian it could not be sold for 25 years, whereas a block allocated to a part-caste Indian may be sold at any time. In addition, mineral rights under the land may or may not be sold at any point of the transactions.

In 1934 it was decided that the policy of assimilation was a disaster and that Indian reserves would be maintained intact and in trust to the Federal Government. In practice this has meant that generally what the Indians have wanted to do has been agreed to by the Federal Government as trustee, and in the majority of cases there was no conflict: in relation to monies or royalties paid consequent upon the extraction of minerals from Indian lands, the monies are paid to the Government and into a trust fund for the Indians and subsequently returned to the Indians.

With respect to minerals, the Indians are at present allowed to negotiate financially what the market will bear and this is best exemplified by the development of the Council of Energy Resources Tribes (CERT). However, the Federal Government does maintain a watchdog role of the use of the funds paid to Indians and accounts are audited annually by the Federal Government.

It is considered that the general population of the USA are not against the Indians retaining reserve lands and having control over them, plus the mineral rights, because of the abject failure of the pre-1930 efforts for integration; and because lands granted for reserves were originally considered to be wasteland and the present mineral resources, although large, do not represent controlling proportions of the USA resources. It is certainly the attitude of the Indians that they wish to retain their lands. It is also apparent that concepts of apartheid are not generally brought up in this context. However it is possible that the white Caucasian population during the past five years has commenced to feel that the Indians may be receiving too much special attention and financial gain.

AMERICAN INDIAN LAWYER TRAINING SCHEME (Washington, D.C.)

Meeting with Mr. Alan Parker, President of the Association of Indian Attorneys, and Mr. Gil Hall. Mr. Parker will transfer to the U.S. Department of Energy late in 1980.

With regard to the religious freedom for American Indians, legislation enacted in 1978 (Ref. 21) only recommends procedures for Federal bodies to minimise the impact of Federal developments, in much the same way as the Australian Heritage Act has effect upon other Federal bodies. A subsequent report on the legislation (Ref. 21) recommends further legislation but this has yet to be devised. Considerable interest was expressed in the South Australian Aboriginal Heritage Act 1979 which provides legislation along the lines desired in the USA, although it does not concern itself with the question of access for traditional owners to sites.

A current sacred site problem in the USA relates to the geothermal power installation at Los Alamos in New Mexico. Here about 50 million dollars have been expended so far, and agreement

has been reached between government and industry to develop a model geothermal power project on the site. Only recently it has been recognised by local Pueblo Indians who have reservations north and south of the area that a sacred site will be interfered with by the development. They are now protesting that development should not proceed. Appeals are being made to the court, and concurrently the Indians are trying to get the environmentalists to support their opposition, although the completed EIS for the project has been accepted (the argument proposed is that the geothermal power development may affect the water table which may have an effect upon the river which flows between the two Indian reserves).

On the matter concerning the future retention of tribal beliefs within an increasingly sophisticated population, a meeting of Indian lawyers was held in June 1980 to discuss this issue in relation to modern pressures of education, communication and transport. It was agreed that Indian cultural relations are changing but should be preserved. However, how this may be achieved is uncertain and is only just being considered. It is expected that the tensions between "traditionalist" and "developer" Indians will have to be resolved by the integration of the aspirations of the traditionalists into the understanding of all tribal members. It probably will be practical for Indians within the USA to retain their cultural integrity because a large number of Indian people have professional training. An impression is gained that the majority of lawyers in the Bureau of Indian Affairs are Indians and there are many within private legal firms as well. There are abundant Indian teachers, and an increasing number of medical personnel so that as an ethnic group, they are approaching self-sufficiency. This is

in marked contrast to the Canadian, Alaskan and Australian situations where native groups are only beginning to move in this direction, and hence still have a large dependance on white Caucasian advisers.

UNITED STATES OF AMERICA: Alaska

U.S. DEPARTMENT OF THE INTERIOR, Bureau of Indian Affairs (Washington, D.C.)

Meeting with Mrs. Esther Kaloa, Special Assistant for Alaska to the Assistant Secretary for Indian Affairs (24 July, 1980)

Alaska was purchased by the USA from Russia in 1863. Oil was discovered there in economic quantities in 1976. Natives within Alaska comprise both Indians, and Eskimos generally known as Inuit. On the whole, the Indians and Inuit combine in land right negotiations and are treated similarly by the Federal government. However, in addition the Inuit from Alaska have combined with related groups in Canada and Greenland and northern Europe in a recent meeting of the Circumpolar Inuit Conference to discuss and combine against the international rulings on the hunting of whales for non-commerical use. In this instance whales have a religious significance for the Inuit who believe that a whale killed purely for the food needs of an Inuit group dies willingly for this purpose.

In Alaska a most complicated system has evolved for native land tenure. In practical terms, moves for land rights were initiated by Athabascan Indians near Anchorage when areas nearby were about to be granted in the early 1960's for petroleum exploration. A rapidly co-ordinated court appeal resulted in a ruling that the auction monies for the petroleum leases should go to the Indians. These funds allowed attorneys to be hired to initiate land claims for about 80,000 Indians and Inuit in

Alaska. In part, because the attorneys were not well versed in existing USA Indian legislation, the system agreed to in 1971 between Federal and State authorities (Ref. 19) is most complicated and has cost many millions of dollars in legal fees. One expensive complication occurs because land title is not formally granted until land surveys have been completed and this is still underway ten years after the enabling legislation was passed.

The Alaskan concept is that as regional corporation, municipal, village and finally individual areas are surveyed surface rights will vest in that level of control although subsurface rights remain with the regional corporation.

All tribal groups have been incorporated as profit making corporations and all profits must be paid into funds for distribution to all natives as stockholders, but as yet most monies earned or gained have been spent in legal fees and salaries for 15 imported major administrators. In addition, profits cannot be used for welfare because of the profit making corporation structure.

The definition of an Indian or Inuit in Alaska nominally folllows the USA (considered generally to mean more than one-quarter of native blood) but in Alaska because of the complications caused by a considerable amount of intermarrying with Russians and between Inuit and Indians, the register of status natives nominally to be compiled by 1972 has not yet been completed. However it would appear as though religious beliefs are not involved at all in the definition of who is a native.

In Alaska, as elsewhere, educational problems have led to the alienation of the children from their homes by having to attend schools hundreds or thousands of kilometres away

from their tribal villages. When children return from school they are unable to maintain the traditional ways of existence and are ostracized by their families.

Additional land problems in Alaska relate to land being set aside by environmentalists for parks and national monuments and about 100 million acres have been set aside so far. A complaint by the natives in Alaska is that parks often form transporation barriers between native land areas.

COOK INLET REGION INCORPORATED (Anchorage, Alaska)

Meeting with Mr. Roy M. Huhndorf, President (14 August, 1980)

The fundamental basis for land claims in Alaska comes from the Tlingit-Haida case which had its beginnings in 1929 with settlement in 1959. The court concluded that the Indian bands were using and occupying their land according to their native manner of use and occupancy in 1867 when the United States acquired Alaska from Russia; that such use and occupancy was not interfered with by the United States or its citizens until 1884; that beginning in 1884 and continuing thereafter those Indians lost most of their land through the Government's failure to protect the rights of such Indians through the administration of its laws and the provisions of the law themselves; and that a large area was taken without compensation and without the consent of the Indians. In deciding in favour of the Indians the court said they were entitled to compensation for all useable and accessible land which they used and occupied. It was to be another nine years before the court placed a value upon the 16 million acres taken by the government in this way.

Following this case which legitimised the land rights of the Alaskan natives but related only to compensation, moves were made for actual land claims. The history of subsequent developments is outlined in the book edited by Arnold (Ref. 1).

The ultimate settlement in 1971 is embodied within the Alaska Native Claims Settlement Act, with minor amendments in 1976 and 1977 (Ref. 19), which provides for the settlement of certain land claims for Alaska natives and for other purposes. In essence the 80,000 or so tribal members, defined as those Alaskan natives with one-quarter native blood or more, and either living on their tribal lands or living in towns or overseas, but born before the date of passage of the 1971 Act, are designated to comprise 12 regional groups within Alaska and a thirteenth group to represent those natives living outside Alaska but with legal entitlement under the Act.

The Cook Inlet Region Incorporated, known by the acronym Ciri, is one of the most developed of the regional organisations. The regional population has been incorporated and comprises just over 6,000 stockholders associated within six village corporations. After 10 years of experience it has been shown that the corporate structure is the best for this type of situation because in essence economic assets are involved at all stages, even with subsistence. The 1971 legislation provides for a prohibition on the sale of stock by stockholder for 20 years, a moratorium on land tax for 20 years, but stipulates that the 48% USA profit tax is applicable on all dividends paid by the corporation.

Roy Huhndorf as President of Ciri is a full-blood member of the region and a stockholder. He considers that the concepts proposed in the initial legislation have been most successful both for the natives and the government. The only change he

would recommend should this experiment be used elsewhere, is that the government play a phase-out role on boards of directors rather than giving full corporate control to tribal groups from the beginning as was the case in Alaska. He feels that the presence of government members as a minority proportion of board directors for the first 3-5 years would preclude waste from the outset, and also remove any risk of failure with its consequent undermining of self-esteem within the native group should this occur.

Land is granted to regional groups in fee simple title and includes the subsurface and mineral rights. The central corporation may lease the use of land to both tribal members and outsiders. Essentially management is a matter of trading economic objectives against social objectives with the knowledge that income earnt offsets government welfare payments. Leasing land for cattle raising for instance is considered to have a redeeming social value if the cattle so raised are used for the feeding of shareholders. In lease agreements for mineral and energy development, both corporate strategy and the needs of stockholders have to be considered. Agreement structures generally have early cash bonuses and rental payments especially at the exploration stage; while in the medium and longer terms allowance is made for royalties and working or equity interest, with the balance between royalty and equity depending upon the profitability in the long term of the project. In addition, allowance is always made for the utilisation of tribal sources, both products of their industries, and employment.

However despite the fee simple land grants, moves are still underway to have aboriginal rights extended to larger areas around those held in fee simple, in order to allow for a higher

level of hunting, fishing and trapping than is permitted by the areas contained in the present land grants. This and other matters are covered by a current Bill being discussed before the Senate of the United States in August 1980 (Ref. 20). This Bill arises out of Section 17(d)2 of the Alaskan Native Claim Settlement Act, 1971 (Ref. 19) and provides for the designation and conservation of certain public lands in the state of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, National Wilderness Preservation System, and for other purposes. It is considered that when this Bill is enacted aboriginal claims to land in Alaska shall be deemed to be settled apart from future technical amendments.

Although the Alaskan native voting population represents only 15% of the total electorate their political power is great because of their economic wealth. With oil now flowing from the North Slope oilfields to market, the 2% share of mineral revenues to be granted and shared by the Alaskan natives under the 1971 Settlement Act will soon be greater than the current 30 million dollar annual appropriation paid to them from Congress. However, as stated in the interview with Mrs. Kaloa in Washington it is debatable as to how much of these monies is reaching the stockholders and how much so far is being used in payment of fees for legal and financial advisers.

Practical problems in relation to land settlements have also delayed considerably the actual legal acquirement of land title, and land conveyancing is expected to continue for quite some time into the future although moves are being made for it to be finalised within five years. As part of this process

it is interesting to note that the surface estate of lands selected by village corporations go to village corporations, whereas the subsurface estate of village corporation lands go to the regional corporations within which they are located.

A particular land problem in the Cook Inlet area revolves around the proviso in the 1971 Act that Federal, State and privately held land cannot be included within the land calimed by a native group. Because of this, most of the remaining land in Alaska is held under native land claims. However, insufficient land was available in the Ciri traditional area to satisfy their legitimate land claim. As a consequence Ciri is being allowed to select non-contiguous land (generally held by the State) outside their traditional area, in order to aggregate a total area sufficient to meet their land claim. Legal challenges to this land trade finally ended in 1977 when the U.S. Supreme Court upheld the legality of the exchange.

A practical outcome of this situation was disclosed in subsequent discussions with Mr. Ilmars (Bill) Gemuts, Exploration Manager, Alaska, for Anaconda Copper Company. He stated that Anaconda is paying Ciri $750,000 per year for the right to manage geological exploration to evaluate those areas which may be incorporated in the Ciri land claim, in order to decide which areas have the greatest mineral potential. Anaconda has a three-year contract with Ciri for this exploration and Ciri assists Anaconda in negotiations with the other regions for access, together with supplying all previous exploration details from other companies. The expectation for Anaconda is that should the venture be successful, Anaconda will have the front running in future development programmes with Ciri and with other regional groups.

CANADA: the Territories

DEPARTMENT OF ENERGY, MINES & RESOURCES (Ottawa, Ont.)

Meeting with Dr. W.(Bill)G. Geffery, Assistant Deputy Minister, Mineral Policy; Dr. R.(Bob)D. Hutchinson, Senior Advisor, Minerals, Mineral Policy; Mr. R.(Bob)J. Schank, Director, Resources & Development Division, Mineral Policy, and two of his staff, Mr. Jack E. Reeves, and Mr. R.(Bob)G. Telewiak; and Dr. R.(Bob)G. Skinner, Head, Office of Environmental Affairs, Science and Technology sector: together with Mr. Richard J. Bush (Councillor-Resources), Australian High Commission (28 July, 1980).

The Canadian Federal Government has sole responsibility for all areas north of latitude 60^{o} comprising the Yukon Territory and the Northwest Territories (Ref. 4). The native peoples in these territories comprise the Indians, the Metis (meaning half breed Indian), and the Inuit. The total population within the territories is about 65,000 people and they constitute .28% of the total Canadian population. In contrast, the area north of 60^{o} covers almost 4 million square kilometres or 40% of the Canadian area. In the Northwest Territories native people form the majority of the population and of a total of 42,609 people, there are about 8,450 Indians, 3,500 Metis, and 13,000 Inuit; while the Yukon population of 21,836 breaks down to 3,240 Indians, and 1,200 Metis, the remainder being non-natives.

Anthropologists say that natives have lived in the north American Arctic for 5,000 years or more: at present the nomadic life has generally been abandoned and the natives are settled within about 75 communities dotted across the country. The natives carry out hunting, fishing and trapping, both for their own subsistence, and for earning income. However, with populations now centred on communities, the opportunities for living off the land have diminished, and fewer continue to live exclusively in a traditional manner. Never-the-less, there is a

strong attachment of the natives for the land and this is evidenced by several major land claims in progress at the present time.

In relation to the maintenance of native laws, it generally has been the principle of both the Royal Canadian Mounted Police and, more recently, the judges attached to the area, that they uphold laws moulded in southern legislatures and courts but that these laws must be bent to fit the local circumstances.

South of 60^{o} in the provinces Indians have been generally subject to treaty agreements similar to those in the USA, and live predominantly on reserves. Generally minerals are held to belong the Crown in both the provinces and the territories, but within the provinces royalties earned on Indian reserves are returned to the Indians. This has led to the growth of some very rich Indian groups, but because there is no sharing mechanism between tribal groups, others are extraordinarily poor. Most Indian reserves within the provinces are small, and some reserves are related to the identification and protection of sacred sites.

As a general proposal within the territories, it is held that land may be granted to natives in fee simple in those areas where they are living, but that these areas are to be kept small and nominally with minimal mineral potential as evaluated by the Geological Survey of Canada. In addition, it is generally maintained that no mineral rights will go with the land and that corridors will be maintained for access for mineral investigation and development. The Inuit maintain that they are not anti-development but they wish to have a say in development. Consequently, at present they are in conflict with the government over areas the subject of land claim where the govern-

ment maintains that, accepting the Inuit philosophy, they will continue with current developments while the land claims are being negotiated, but without prejudice to the ultimate outcome of the claim; whereas the Inuit maintain that a veto should be placed on all development until the claim is decided. It must also be remembered that the Inuit and the Indians receive welfare payments to maintain their living standards so the necessity to claim extensive land for subsistence purposes is reduced.

In the early 1970's it was recognised by the Canadian government that natives had legitimate rights to lay claim to land, but a Supreme Court decision in 1973 concluded on a technicality that the Nishga tribe in British Columbia did not have an aboriginal claim (Appendix K). Subsequently, the Federal Government has provided money to native groups for studies of their present and past land use and occupancies in order to validate their claims. Doubt has been expressed as to the worthwhile nature of the Federal Government financing these investigations by self-interested groups. It was described by one officer as a case of self-flagillation related to the concept that the Candian treatment of natives, especially in the north, has resulted in a "shadow on the Crown" and that there is a need for the government to lift this shadow.

The general aim of the government is to negotiate claims in order to extinguish any subsequent claims. Hence they are prepared to be generous in recognising legitimate claims. In practice a group requesting to make a claim receives Federal funding generally for one or two years while the evidence for the claim is compiled. During this time the government continues to try to grant alienations (such as mining tenements) without

prejudice to the settlement of the claim but this is objected to by the natives.

The government encourages the Indians to participate in development, and this is described in more detail later. But because minerals belong to the crown, over-riding royalties are not allowed; on the other hand, revenue sharing of royalties paid to the Crown is considered.

The precedent-setting nature of the outcome of a land claim has now been recognised so that the agreements of one claim become the minimum objectives of the next. Never-the-less, an impression is gained that outcomes achieved within the territories are not at this stage thought by the Federal authorities to be able to be translated to the provinces. Part of the basis for some settlements will require the recovery by the Federal authorities of expenditures already made on natives.

On the practical level, parties from the Geological Survey of Canada requesting to enter some land claim areas to assess the mineral potential have had their access refused. In these circumstances they have found that satisfaction is achieved in most cases when they negotiate access directly with the natives and not through the Department of Indian Affairs and Northern Development.

In the territories, environmental matters and native matters are closely linked and a popular slogan is "the land is ours, the land is us."

DEPARTMENT OF INDIAN AFFAIRS & NORTHERN DEVELOPMENT (Ottawa, Ont.)

Meetings with Ms. Cathy Sullivan, Executive Assistant to the Assistant Deputy Minister, Northern Affairs Program; Mr. Dan G. McKinnon, Director-General, Northern Resources and Economic Planning; Mr. Frank Fingland, Acting Director-General, Northern Policy and Programming; Mr. W.(Bill)D. Mills, Acting Director-General, Northern Pipelines Branch; Mr. Jim Barrett, Land Manager, Oil & Gas Rights Section, Northern Non-Renewable Resources Branch; Mr. Olav H. Loken, Director, Renewable Resources Branch; Mr. Brian Bennison, Officer within the Northern Pipelines Branch; Mr. Don Passett, Hydrocarbon Transport Review; Mr. Paul Gorlick, Social Cultural Development; Ms. Sandra Smart, Government Administrative Services; Mr. J.R.(Bob) Goudie, Acting Executive Director, Office of Native Claims (Appendix A), and his assistant, Mr. Jack Dowline (29th July, 1980).

Applications for mineral claims within the territories are submitted not to the Department of Energy, Mines and Resources, but to the Department of Indian Affairs and Northern Development. Much of the area of the territories is covered by mineral or petroleum claims onshore and offshore and at present about 20,000 mining claims exist in the Northwest Territories, and 12,000 in the Yukon. Petroleum exploration and development is predominantly coastal or offshore in the MacKenzie Delta region of the Beaufort Sea and at the eastern end of the Parry channel. Negotiations are also proceeding for the construction of the Alaskan Highway Gas Pipeline (Ref. 16).

Although it is the prerogative of the Department to grant claims, as a general principle, applications for land use permits north of 60^{o} are submitted to communities who may have an interest in the land. However, it was stated that at present feedback is disappointing and this practice may lapse.

Currently, the policy in relation to native claims may be described as a buy-off policy whereby compensation is paid for the Indians to forego their land rights. On the other hand, participatory agreements, especially regarding equity particip-

ation, are encourage but as yet have not been concluded, and it is undecided as to who would pay for the initial equity purchase.

It is felt that the North American Indian and Inuit understand the advice they receive adequately for them to competently judge proposed agreements, including the situation where equity participation may be offset against the ultimate financial settlement, at which time the initial equity outlay would be recouped by the government. Never-the-less, as in the USA, there is not an unanimous attitude to development within the native groups and generally it is considered that youth, education, and idealism range against traditional values.

Sacred sites are recognised as a natural part of Indian and Inuit traditions and are taken into account in planning developments such as pipelines. Sites are not secret and hence before development proceeds, an inventory of sites is prepared to ensure minimum disruption.

Within the territories a group placing a land claim must prove traditional use and occupation of the area as regards hunting, fishing and trapping, and meet the basic premise that the group is currently earning a living from the land (Ref. 17). In general, claims involve several forms of settlement. First, fee simple surface rights around villages. Second, hunting, fishing and trapping rights (aboriginal rights) over larger areas. Third, subsurface rights in those cases where the productivity value of two different areas are to be equated in a trade-off situation; hence in some cases the subsurface value of minerals is taken into account in a settlement. Fourth, the cash equivalent for direct financial compensation.

The Federal government has recognised that should land claims be granted in areas where mineral claims are already held and where monies have been expended, then compensation payments may have to be made, but in practice this has not yet been faced. The government is adamant that land claim settlements must not cut off access for communication, harbours, pipelines and other such matters; and overall that settlements must advance the natives, with emphasis placed in land grants on hunting, fishing, and trapping facilities. Aboriginal rights will generally be allowed within national parks. On the other hand, where fee simple land grants are made to native groups they have a complete right of veto in those lands on access for government officers.

In all cases native claims are considered to represent an alienation of the public domain. This means that the natives in this context are considered as part of the private sector.

A developing difficulty in land claims is that recently a written language has been developed for many of the Indian and Inuit groups and they are maintaining that communications and documentation should occur in their own language.

A report on constitutional change in the territories conducted by former Liberal Cabinet Minister Mr. D.M. Drury, has been ignored so far by the Inuit, but the report recommends that the people within the north should be allowed to determine what type of constitutional government they require. On the whole the non-native people wish to proceed to province status, whereas the native attitude is that they want more rights than this would allow. An article from The Globe and Mail, Toronto, Canada, 30th July 1980, states that the eastern Arctic Inuit claim that the Northern Affairs Minister has stalled land claim

negotiations for more than two years because he is dragging his feet in nominating a negotiator or a mediator who may report directly to the minister and who would have a mandate to discuss political change, along with land and money issues: whereas Federal negotiators say that they have no mandate in a land claim claim situation to discuss political change. The Drury report recommends the devolution of Federal powers to first, the territory governments, then to the communities on matters related to health, education and welfare. On the issue of the subdivision of the territory it is recommended that this be left to a local referendum. Finally, it is recommended that subsurface resource responsibility should be removed from the Department of Indian Affairs and Northern Development and returned to the Geological Survey of Canada and the Department of Environment. (The current duplication between Northern Development and the Geological Survey of Canada arises because of the recognition by the Federal Government of the territory as equivalent to a province, controlled through Northern Development, in which facilities for the investigation of mineral and hydrocarbon resources and their development, and the building of pipelines and ancillary facilities, are retained.)

The only agreement with natives signed by the Canadian Federal Government so far is the James Bay and Northern Quebec Agreement which was proclaimed and became final on October 31st 1977 (Appendix H, and Ref. 10). It gave 6,500 Cree and 4,200 Inuit, 225 million Canadian dollars over 20 years, ownership of community land, and exclusive hunting and trapping rights over large areas. It allowed the creation of a new system of local government to be controlled by the natives:

in return the Indians and Inuit surrendered aboriginal claims to roughly one million square kilometres. However, although the James Bay settlement nominally is finalised three of the claimant native bands have not accepted the settlement. In this settlement mineral rights have been retained to the Crown, but three separate committees representing the Government, the Indians, and the Inuit have each to give approval for mineral exploration to take place.

Other land claims in progress are (see Appendix):

1. the Inuit have claimed most of the Northwest Territories beyond the treeline and they have asked that this land become a new territory with its own government to control its affairs. It would remain within the Confederation, however, they say;
2. the Indian Brotherhood of the Northwest Territories have claimed the MacKenzie River Valley and they have suggested that three territories be created: one for the Inuit above the treeline, one for the Bene Indians which would cover much of the valley, and one urban territory centred upon Yellowknife. In conflict with this, Prime Minister Trudeau has said that Canada cannot allow the creation of ethnically based jurisdictions; while on the other hand, the natives say that they are simply seeking self determination and control over their land and resources. The MacKenzie River claim is complicated by a divergence of opinion between the Indians, and the Metis who wish to evolve a different legislative system involving a native senate with veto power over any rules and regulations that adversely affected aboriginal land;

3. another claim under consideration was presented by the Committee for Original Peoples' Entitlement (COPE) representing the Inuit living in the MacKenzie Delta Western Arctic Region. The COPE claim proposes a regional municipal government for the western Arctic, a public land management agency, exclusive ownership of some lands, and royalties from oil and natural gas development. The COPE Agreement is now considered by the Federal Government and COPE to be an agreement in principle (Ref. 8), having progressed to the point where it is essentially understood that about 50,000 square kilometres will be granted to the natives with both surface and subsurface rights and about 32,000 square kilometres will be granted with only aboriginal rights. On the other hand, a newspaper article of Tuesday 29th July 1980 in The Gazette, Montreal, stated that the Yukon government bitterly objects because it was not consulted about the terms of the COPE Agreement and which, it says, cuts the territory off from its only coastline and the possibility of developing a major port to serve Beaufort Sea oil and gas developments. For this reason the Yukon Government is threatening to take the Federal Government to court if certain clauses are not changed;

4. in the Yukon, status Indians, non-status Indians, and Metis together formed the Council for Yukon Indians (CYI) and their claim covers most of the Yukon and asks for outright ownership of lands for native communities; exclusive hunting, fishing and trapping rights over other lands; compensation for past use of Indian land; plus a share in resource development. It also seeks ways of making the native people more self determining.

CANADA: the Provinces

SASKATCHEWAN MINING DEVELOPMENT CORPORATION (Saskatoon, Sask.); & SASKATCHEWAN PROVINCIAL GOVERNMENT, Indian Policy Office

Meeting with representatives of the Saskatchewan Mining Development Corporation, Mr. Roy E. Lloyd, President; Mr. Gerry Pollock, Director, Joint Ventures; Mr. Mike Williams, Senior Geologist, Joint Ventures; Mr. Rob Marshall, Superviser, Joint Ventures; Ms. Marty Murray, Assistant to the President; Mr. Lloyd Clark, Manager, Exploration. Also present Ms. Merran Twigg, Director of Indian Policy, Saskatchewan Provincial Government (31st July, 1980).

Of the 400,000 status Indians in Canada, about 45,000 live in Saskatchewan and comprise 68 bands, or tribal groups (Ref. 11, 12, 18). Of the status Indians, 30,000 live on 138 reserves with a total area of 1.12 million acres. Status Indians are those defined as Indian by the Federal Indian Act initiated in the late 1800's with amendments up to the mid 1950's. The Indian Act maintains that status is passed through the male Indian side only, and that status Indians are registered and are a Federal responsibility. All other Indians, including the Metis (part-caste Indians) are classified as non-status Indians or natives. It is uncertain how many non-status Indians live in Saskatchewan.

Status Indians form those bands with which treaties were established with the Federal Government before the province of Saskatchewn was created in 1905. Status Indians may opt to become delisted which means they are no longer a Federal responsibility, and this is encouraged by the Federal Government as part of its general policy of assimilation. Within Saskatchewan, land claims are only recognised from status Indians.

The attitude within Saskatchewan to Indian land claims is considered to be the most advanced of the majority of Canadian provinces, in fact, so far advanced that Alberta to

the west in particular is strongly opposed to the precedents established within Saskatchewan.

Small Indian reservations have been established for some time within Saskatchewan, generally measuring only some tens or at the most a few hundred square kilometres, scattered through central and northern Saskatchewan. Never-the-less, the Government in 1976 agreed that each status Indian was eligible for a land allotment of 128 acres, and the location for the land was to be chosen by the Indians. Generally, by 1980 most eligible Indians had indicated the lands that they desired, but where that land is under licence for mineral exploration, little will be done to transfer the lands to the Indians until exploration is completed.

The general claim process involves an Indian band being made aware by the Government of any outstanding entitlement, after which the band reaches a corporate decision on what land it wishes to acquire. The land claimed does not need to have any traditional significance. If a third party is involved, i.e. the land is not unallotted Crown land with mineral rights belonging to the Crown, but is either under mineral title (Ref. 2, 15) or is under freehold title to a third party (in which case the mineral rights belong to the freehold titleholder), a mutual agreement package has to be negotiated. It is agreed by the government in principle that compensation payments my need to be paid where the third party's interests will be alienated by a land claim but this problem has not yet been faced.

When the parcel of lands to be allocated to the band, and the terms of that allocation, are agreed, the lands are passed to the Federal Government who has the responsibility to pass the lands to the Indians, so that the lands have the status of a

normal Indian reserve: in these instances the mineral rights are subsequently held by the Indians and financial arrangements have to be entered into by a company to obtain the right to the minerals (this is the most obvious difference to the situation in South Australia where lands transferred to the aboriginal groups in fee simple do not include the mineral rights which are retained by the Crown).

If income is earned from their reserve lands by an Indian band, the income so gained is offset against welfare payments. Income is also free from taxation.

A recent example in northern Saskatchewan of negotations which take place involved the wish by the Saskatchewan Mining Development Corporation to explore for minerals within an existing Indian reserve. The Indians were not opposed to this but said that to gain those rights they wished to have an adjacent area added to the lands they controlled. The adjacent land was unallotted crown land without third party involvement and ultimately the various levels of agreement were achieved and the land was transferred to the Federal Government and to the Indians. Subsequently, the Saskatchewan Mining Development Corporation obtained the right to explore for minerals over the total parcel of land on the understanding that they will enter into an equity sharing arrangement with the Indians in the event that their exploration discovers an economic orebody.

With regard to national parks in Saskatchewan, Indians have not been allowed aboriginal access to these parks because the parks are classified as occupied crown land, whereas aboriginal rights apply only to unoccupied crown land. Mineral exploration is also excluded from all national parks.

With regard to a broader issue affecting the total population, the socialist provincial government in Saskatchewan established a Heritage Fund (Ref. 13) on April 1st 1978, to ensure that a share of the benefits from the development of the province's non-renewable resources would be preserved for future generations. The fund has three main purposes: to invest in assets that will provide the base for future economic vitality; to finance capital projects which will contribute to the long term economic and social development of the province; and to stabilise yearly fluctuations in the resource revenues used to finance general government programming. All non-renewable resource revenues are deposited in the Saskatchewan Heritage Fund and in 1981 the total revenues are estimated to be 645.5 million Canadian dollars. The controlling act permits up to 80% of the Fund's revenues to be transferred annually to consolidated revenue but in practice a much lower percentage is generally transferred. The balance of the resource revenues are allocated to three divisions of the Heritage Fund.

1. The Resources Division which finances the general activity of the Fund, as well as those activities related to non-energy mineral development, including loans for investments in Crown corporations such as the Saskatchewan Mining Development Corporation.
2. The Energy Security Division which finances the Fund's efforts to develop the province's energy resources and encourage energy conservation.
3. The Environmental Protection Division which acts as a contingency fund against unforeseen environmental problems which may arise after a uranium mine has ended production and site reclamation has been completed.

ALBERTA PROVINCIAL GOVERNMENT, Attorney-General's Department, and Native Secretariat; & ENERGY RESOURCES CONSERVATION BOARD (Calgary, Alberta)

Meeting organised by Mr. George A. Warn, Technical Assistant to the Chairman, Energy Resources Conservation Board, with Ms. Susan G. Cartier, barrister and solicitor, Civil Law Section, Attorney-General's Department, Edmonton; and Mr. Rick Mace and Ms. Ann Dunn, Native Secretariat, Alberta Provincial Government, Edmonton (5th August, 1980).

A British Royal proclamation issued in 1763 provides the basis for the current treatment of natives in the USA and Canada. However, whereas in the USA native Indians were granted a sovereign relationship from the start (i.e., a third nation status, under which it is quite correct that minerals belong to the Indians), Canada provides no sovereign entity and hence a more diffuse relationship exists in relation to Indian status. Moreover, status passes only on the male side, so that a full-blood Indian woman who marries a white man is no longer classed as a status Indian but becomes a non-status Indian; whereas a white wife of a full-blood Indian becomes classified as a status Indian when accepted into the tribe.

In 1930 it was agreed between the Canadian Federal Government and the Alberta Provincial Government in a transfer agreement, that any land claims required to fulfil Indian treaty obligations would first be a claim against the Federal Government, so that Alberta only has the role to provide the lands decreed to be due to the Indians. Essentially all Alberta is covered by treaties made in the late 1800's and hence there are few if any aboriginal land claims to be made in relation to status Indians.

Present land claims related to defining Indian land within the treaty areas, based upon a formula of 120 to 160 acres per

family of five status Indians, are currently being resolved. The population figures used for these land claims are those census figures valid at the time treaties were signed with the Federal Government, meaning that they date back at least a 100 years or so. Most Indian bands are making land claims on this formula within their original treaty areas, but a problem yet to be resolved relates to those areas where little unoccupied Crown land remains to be granted, in which case compensation payments will need to be arranged with a third party. Some treaty Indians are also claiming treaty and aboriginal land rights, and this has yet to be challenged in law. Other questions to be resolved relate to the integrity of the lands claimed by a band; whether these must comprise one contiguous area or whether they may be broken into several separate areas.

Historically, mineral rights go with reserve or treaty land status, but the present Alberta policy is that mineral rights do not go with reserve status. Questions of compensation for the loss of mineral rights and other matters will have to be resolved generally by litigation rather than by negotiation, because it is claimed that negotiations finished when the treaties were established in the past. In a recent settlement involving the Trans-Canada Highway Gas Pipeline a formula has been arranged whereby 44 acres are granted to Indians for each acre of Indian land resumed, but with no mineral rights going with the acres so granted.

With regard to the non-status Indians and particularly the Metis, the Dominion Lands Act requires the issue of land script for 160 acres of land to Metis families to extinguish or to settle their land claims. Current problems with this issue

being faced in Alberta relate, first, to treaty Indians who claim that their treaties have priority and as yet have not been fulfilled and, second, to the Metis who claim they have not received their land script: in both cases the question as to whom owns the mineral rights has also to be resolved.

Problems about access across and onto Indian reservations revolve around Section 88 of the Indian Lands Act which states that provincial acts in relation to land cannot apply on Federal Reserve Lands. Hence no utility rights of way may be obtained across reserves, and of the few rights-of-way negotiated in the past, several are now being challenged. This Section also provides the right of veto for access of all people onto Indian reserves, including government officials.

Sacred sites on reservations provide no problems but in some instances Indian burial grounds outside reservations have inadvertently been disturbed and this has caused an outcry within the Indian community.

Alberta Indians are becoming increasingly interested in the CERT concept being evolved within the USA, and their awareness of the importance of energy resources is shown by a land claim in mid-1980 to tar sand areas within Alberta. Their claim is based on the argument that early treaty agreements did not extinguish their rights. They are claiming compensation for minerals already removed from the tar sands, and land and mineral rights over the remaining resource. It is expected that compensation claims will run into billions of dollars, and it is debatable whether this matter comes within the jurisdiction of the Federal or Provincial Governments.

CANADIAN INSTITUTE OF RESOURCES LAW (Calgary, Alberta)

Meeting with Dr. Roland J. Harrison, Executive Director of the Institute based within the Faculty of Law, University of Calgary (5th August, 1980).

Resources law institutes exist in Canada, USA and Scotland. An institute is soon to be formed in Australia and will be an independent body generally associated with universities which is prepared to undertake contract research into aspects of law related to renewable and non-renewable resource development.

DOME PETROLEUM LIMITED (Calgary, Alberta)

Meeting with Mr. Harry E. Palmer, Director, Environmental Affairs (5th August, 1980).

The problems for Dome Petroleum, who are exploring for offshore hydrocarbons in the MacKenzie Delta area, relate to onshore Indian band claims summarized in the COPE Agreement in principle which will restrict their ability to construct onshore supply and refinery facilities, and pipelines (Ref. 8).

NORTHERN PIPELINE AGENCY (Calgary, Alberta)

Meeting with Mr. A. Barry Yates, Director, and Mrs. Carol Kennedy, Legal Advisor (5th August, 1980).

The Northern Pipeline Agency is the Federal Government authority overseeing the construction by a private company of the Alaskan Highway Gas Pipeline. Through the Act (Ref. 9) under which they have authority, the contractor involved in the pipeline construction may negotiate land claim settlements in relation to the pipeline, but these are not considered to be binding upon ultimate land claim negotiations related to broader matters (Ref. 6, 7, 16).

WESTWATER RESEARCH CENTRE (Vancouver, B.C.)

Meeting with Dr. Andrew Thompson, Director of the Centre (which is located in the University of British Columbia), and Mr. Nigel Bankes, Doctoral student (11th August, 1980).

In contrast to northern Canada where regional agreements are being negotiated between the Federal Government and either Indian or Inuit groups, within British Columbia the initially richer Indian culture has led to political infighting between Indian leaders. A decision by the Federal Government to provide funds to the Union of British Columbia Indian Chiefs makes this the recognised group for Indian negotiations. However, this group does not include all status Indians, and excludes non-status Indians and Metis; hence the Indians within British Columbia do not speak with one voice in regard to land rights.

The pioneering land claim case in British Columbia occurred in 1973 when the Nishga Indians claimed aboriginal rights over a large area in north-central northwestern British Columbia. This case was heard in the Supreme Court and the ultimate decision was split evenly: three judges in favour, three judges against. The Chief Justice threw out the case on a technicality. Nearly all the judges agreed on the principle of aboriginal rights, but some questioned whether the rights had been extinguished or not. This matter has not been pursued further in the courts and hence legal uncertainty still exists regarding Indian aboriginal rights in British Columbia.

What has occurred as a consequence is that land settlements, either made or under negotiation elsewhere in Canada, provide a minimum basis for further land claims. Most recently in British Columbia, the Union of British Columbia Indian Chiefs

is following the principle of picking up all existing individual grievances and hardship under current legislation rather than undertaking large scale new land claims. Hence small but significant matters such as inadequate compensation for land obtained from Indians to establish a golf course near the University of British Columbia in Vancouver has led to a court case with a settlement running into several millions of dollars in favour of the Indians.

Another current case involves land at Fort Nelson where Crown land originally owned by the province was surrendered to the Federal Government for transfer to Indians, but the mineral rights were retained to the province. It was subsequently found that the Indian reserve is the site of a major gas field and the Indians claimed compensation for the non-transfer of the mineral rights.

In May, 1980, Bill 22 titled: Fort Nelson Indian Reserve Minerals Review Sharing Act (Ref. 5), was introduced to the Legislative Assembly of British Columbia. This Act confirmed an agreement made with the Federal Government and ratified by the members of the Fort Nelson Indian Band for the ownership, administration and control by the province of the coal, oil and gas underlying the Fort Nelson Indian Reserve, and provides for sharing with the band the revenues from the production of natural gas. The Bill was passed in July, 1980 and initial payments to Indians in the Fort Nelson Band were made on 8th August, 1980.

The legislation authorises the sharing of profits earned from wells drilled on the reserve held by the Fort Nelson Band of Slave Indians by Pacific Petroleum, now part of Petro-Canada and Quintana Exploration Limited, beginning 30 years ago. For the initial payment cheques for $20,000 each and totalling

$3,486,000 were handed out to 166 adult members of the band; another $2.5 million has been put in trust for children of the band until they come of age. Another $9 million has yet to come in retroactive royalties and the band will reap some $600,000 a month in continued revenues from this deal which gives it 50% of provincial profits on gas development on the reserve. Ultimate payments are expected to be in the order of $100 million. It is also stated that the lawyer handling the case for the Indians is on a 5% contingency fee and stands to do very well out of this settlement.

Away from Indian reserves aboriginal rights are generally accepted in Canada but it is still uncertain as to how they are to be established. Hence an evolution is seen in the types of claims being made by Indian groups, from monetary compensation, to land rights, and now emphasis is being placed by Indian groups on gaining political rights.

The COPE agreement in principle involves all three types (Ref. 8). An independent consultant was employed to "value" the minerals in the ground within the area of the land claim, and this value was used to negotiate trade-offs for both monetary compensation for land to be excluded from the claim, and to equate land granted with or without subsurface rights. Within all community areas the land grant is in fee simple and subsurface rights are included on the principle that if one is giving surface rights including a right of veto on access then the mineral rights may as well be included. However, under these circumstances the precedent has been established on existing Indian reserves, that where Indians have already approved alienation of the subsurface rights by giving agreement to mineral development taking place on a reserve, any subsequent

disputes that may arise will be taken to arbitration rather than reapplying the power of veto.

In Alberta conflict arises not only with Indian groups, but with farmers opposing the nominal right of oil companies holding tenements to drill wherever they wish. The Alberta Surface Rights Office has been established by the provincial government, and the professional staff carry out an ombudsman role to arbitrate between farmers and oil companies: the Office also has the power to allow compensation to oil companies if the right to drill has to be refused.

Another Indian issue expressed in the newspapers of the province, on Monday 11th August 1980, involved the Nishga Indians acting essentially as a citizen environmental group opposing methods proposed for tailings discharge from two mines: the Grand Duck Copper Mine being reopened by Canada Wide Mines Ltd., a subsidiary of Esso Resources Canada Ltd.; and a proposed mine to be operated by Amax of Canada Ltd. at the Alice Arm molybdenum deposit. In each case it is proposed to release tailings directly into glacial rivers for ultimate deposition downstream, in the case of the Grand Duck Copper Mine in lakes, and in the case of the Alice Arm Mine in a nominally stagnant basin within a deep fiord. In both cases it is maintained that containment of the tailings will not be good and that heavy metal pollution in particular will escape into the waters and have a marked effect upon the salmon industry.

On a quite separate matter, a popular move in Canada, especially with provincial governments, is to "privatise" natural resource development. In this way the Canadian citizens are encouraged to take up share equity in a government-based company and the money so raised is used to purchase interests

within those Canadian companies involved with natural resource development. In a recent British Columbia issue, five free shares and one share at $6 was allocated to every citizen of the province with an option for each person and coporations to take up additional shares to a limit ensuring that no personal corporation may gain a controlling interest. In this way, $500 million of public capital were raised and this money is being used to purchase interests in timber, fishing and mineral development industries. Moreoever, the companies so established to control the funds are proving to be of interest to multi-national companies required by Federal rules to hold a high proportion of Canadian equity in developments within Canada.

UNION OF BRITISH COLUMBIA INDIAN CHIEFS (Vancouver, B.C.)

Meeting with Mr. Steve Basil, Head of Fisheries Portfolio and Acting Head, Minerals and Energy Portfolio (held by Ms. Lillian Basil) (12th August, 1980).

The Union of B.C. Indian Chiefs was formed in 1969 to provide corporate Indian strength to oppose a White Paper policy introduced in 1965 to pursue the assimilation of Indians into the white Canadian community. The majority of the 52,000 status Indians in British Columbia who are aggregated into 192 bands, belong to the union but a few, such as the Nishga band, remain outside. The reserves held by these Indians range in size from a maximum of 7,000 acres down to areas as small as one acre. So far, little or no compensation has been paid to Indians for lands lost through European development although the recently decided Fort Nelson case indicates a precedent for the future (Ref. 5).

The role of the Portfolio Heads within the Union office is to provide overviews of government regulations in order to

assist Indian bands to use government rules to their advantage. In addition, they have the responsibility for highlighting those areas within existing law which are in conflict with the aims of the Indian bands and to take these matters to court for resolution. A current issue relates to the construction of the Alaska Highway Gas Pipeline (Ref. 16) where it has been recognised that social problems will be created when work camps are located close to Indian villages. This issue of social disruption was not considered by those planning the pipeline and the Indians are now proposing that they should have the legal right of redress for offenders who violate their social rules within their reserves. It is considered that the band members and the Chief-in-Council should have the right to decide on penalties for offenders if the government does not provide adequate safeguards.

In general, when problems are recognised affecting Indian bands the Union of B.C. Indian Chiefs approaches the provincial government with a working proposal, including costing, for the research necessary to review the situation. The government generally has accepted these proposals and provided the funds for the research to be carried out. In this regard the Union is the only Indian group recognised by the Government for funding: bands outside the Union have to provide their own funds for similar projects. Subsequently the report goes to the government for consideration, and generally ends in the courts where legal decisions are resolved.

Currently a large proportion of status Indians still live in a traditional way on their reserves and depend heavily upon hunting and trapping for their livelihood, especially to supplement the diet which may be purchased with the small

amount of welfare provided by the Federal Government. Hence it is seen to be necessary to claim for aboriginal rights to large areas of land around the small reserves upon which villages are situated in order to provide adequately for their livelihood. In this context, the only compensation which has been calculated for social dislocation relates to this necessity to maintain a subsistence lifestyle. For the traditional animals hunted a calculation can be made of the equivalent cost per pound per year per person on a replacement basis for an alternative food, both in the past, present and future, and a dollar value put on this calculation. Apart from this no attempt has been made to value social dislocation.

With regard to sacred sites in relation to developments such as the gas pipeline it has been found that the elders have not always revealed the location of all sites, in particular burial grounds, at the initial stages of planning. Hence occasional conflict has arisen after construction has commenced when sacred sites either have been potentially violated or in fact have been disrupted.

CDB:ZV

C.D. BRANCH

REFERENCES

1. ARNOLD, R.D. (Editor), 1978. Alaska Native Land Claims. The Alaska Native Foundation, Alaska, Anchorage, Second Edition.

2. BAYDA, Justice E.D. (Chairman), 1978. The Cluff Lake Board of Inquiry: final report. Canada, Saskatchewan Department of the Environment.

3. CANADA. FEDERAL COURT, 1979. The Hamlet of Baker Lake, et alia, v. The Minister of Indian Affairs and Northern Development, et alia. Judgement T-1628-78.

4. CANADA. INDIAN AND NORTHERN AFFAIRS, 1978. Canada's North Today. Supply and Services, Canada, Ottawa.

5. CANADA. LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA, 1980. Fort Nelson Indian Reserve Minerals Revenue Sharing Act. Bill 22.

6. CANADA. NORTHERN PIPELINE AGENCY, 1980. Northern pipeline socio-economic and environmental terms and conditions for southern British Columbia, including environmental guidelines. The Northern Pipeline Agency, Ottawa, Ontario.

7. _____, 1980. Northern pipeline socio-economic and environmental terms and conditions for the province of Alberta. The Northern Pipeline Agency, Ottawa, Ontario.

8. CANADA. GOVERNMENT OF CANADA, 1978. Inuvialuit Land Rights settlement agreement in principle (the COPE agreement).

9. _____, 1978. The Northern Pipeline Act. Canada Gazette Part III vol. 3(4).

10. CANADA. GOVERNMENT OF QUEBEC, 1976. The James Bay and Northern Quebec Agreement. Editeur officiel du Quebec.

11. CANADA. PROVINCE OF SASKATCHEWAN, 1979. Indian lands and Canada's responsibility - the Saskatchewan position. Indian Lands Entitlement Office.

12. CANADA. PROVINCE OF SASKATCHEWAN, 1979. Indian land entitlements: Questions and answers. Indian Land Entitlements Office.

13. _____, 1980. Saskatchewan into the eighties. Gov. of Saskatchewan.

14. JACKSON, D. and McGRADY, C. (Compilers), 1980. Mine development on US Indian lands. Eng. Mining J., January, pp. 66-72.

15. KEY LAKE MINING CORPORATION, 1979. The Key Lake Prospect - summary of a proposal to develop a Saskatchewan Resource. Canada, Saskatchewan Department of the Environment.

16. MAIR, W.W., 1980. Forgotten Land, Forgotten People (A report on the Alaska Highway Gas Pipeline hearing in British Columbia). The Northern Pipeline Authority, Ontario, Ottawa.

17. MILTON FREEMAN RESEARCH LTD., 1976. Unuit land use and occupancy project: a report prepared by Milton Freeman Research Ltd. under contract with the Department of Indian and Northern Affairs. Supply and Services Canada, Ottawa. 3 vols.

18. SASKATCHEWAN INDIAN CULTURAL COLLEGE, 1975. Socio-economic profile of Saskatchewan Indians and Indian Reserves. Federation of Saskatchewan Indians Annual Conference.

19. UNITED STATES CONGRESS, 1971. Alaska Native Claims Settlement Act, P.L. 92-203; and amendments P.L. 94-204 (1976), P.L. 94-456 (1976), P.L. 95-178 (1977).

20. _____, 1980. Alaska National Interest Lands Conservation Act. H.R. 39.

21. UNITED STATES. DEPARTMENT OF THE INTERIOR FEDERAL AGENCIES TASK FORCE, 1979. American Indian Religious Freedom Act report. P.L. 95-341.

APPENDIX: STATUS OF MAJOR CANADIAN NATIVE CLAIMS

A. CANADIAN OFFICE OF NATIVE CLAIMS: ROLE & RESPONSIBILITIES
B. THE CLAIMS PROCESS: HOW CLAIMS ARE CURRENTLY DEALT WITH
C. HISTORY OF MECHANISMS FOR DEALING WITH NATIVE CLAIMS
D. THE YUKON CLAIM (COMPREHENSIVE)
E. INUIT TAPIRISAT OF CANADA (I.T.C.) (COMPREHENSIVE)
F. THE MACKENZIE VALLEY CLAIMS (COMPREHENSIVE)
G. COMMITTEE FOR ORIGINAL PEOPLES' ENTITLEMENT (COPE) (COMPREHENSIVE)
H. CLAIMS IN QUEBEC (COMPREHENSIVE)
I. TREATY LAND ENTITLEMENTS, PRARIE PROVINCES (SPECIFIC)
J. BRITISH COLUMBIA "CUT-OFF" LANDS
K. CLAIMS IN BRITISH COLUMBIA (COMPREHENSIVE)

OFFICE OF NATIVE CLAIMS: ROLE & RESPONSIBILITIES

A

- TO RECEIVE COMPREHENSIVE & SPECIFIC CLAIMS FROM NATIVE GROUPS & ASSOCIATIONS WHICH ARE REFERRED TO OFFICE BY MINISTER OF INDIAN & NORTHERN AFFAIRS. "COMPREHENSIVE CLAIMS" ARE BASED ON LOSS OF "NATIVE INTEREST" IN AREAS OF CANADA WHERE IT HAS NOT BEEN EXTINGUISHED BY TREATY OR SUPERSEDED BY LAW; "SPECIFIC CLAIMS" ARE BASED ON GOVERNMENT'S ALLEGED MALADMINISTRATION OF INDIAN ASSETS UNDER TREATIES OR INDIAN ACT, OR FAILURE TO FULFILL PROVISIONS OF TREATIES & INDIAN ACT RELATING TO SPECIFIC BANDS

- TO REPRESENT MINISTER OF DEPARTMENT OF INDIAN & NORTHERN AFFAIRS (DINA) IN DISCUSSIONS WITH NATIVE GROUPS & ASSOCIATIONS CONCERNING VALIDITY OF THEIR CLAIMS; TO ACT AS REPRESENTATIVE OF MINISTER & FEDERAL GOVERNMENT IN NEGOTIATION OF CLAIMS WHICH ARE ACCEPTED, & TO DEVELOP ADVICE CONCERNING THEIR RESOLUTION OR OTHER DISPOSITIONS

- TO IDENTIFY POTENTIAL POLICY ISSUES & TO ADVISE OF FURTHER DEVELOPMENT OF POLICY RELATING TO BOTH COMPREHENSIVE & SPECIFIC CLAIMS, INCLUDING POLICY ON FUNDING OF CLAIMS RESEARCH, DEVELOPMENT & NEGOTIATIONS & OTHER RELATED ACTIVITIES

- TO ADVISE ON OVERALL STRATEGY FOR DEALING WITH COMPREHENSIVE & SPECIFIC CLAIMS, WHETHER THROUGH NEGOTIATIONS OR OTHER MEANS THAT MAY EVOLVE, WITH VIEW TO ENSURING COORDINATION & CONSISTENCY IN GOVERNMENT'S TOTAL APPROACH TO CLAIMS SETTLEMENT

- TO BE RESPONSIBLE FOR CARRYING OUT ANALYSIS & SUCH FURTHER SUPPLEMENTARY RESEARCH AS MAY BE NECESSARY FOR DISCHARGE OF FOREGOING RESPONSIBILITIES & TO MAINTAIN LIAISON WITH NATIVE GROUPS & ASSOCIATIONS, FEDERAL DEPARTMENT, PROVINCIAL & TERRITORIAL GOVERNMENTS & ANY SPECIAL AGENCY, COMMISSION OR BODY THAT MAY BE ESTABLISHED FROM TIME TO TIME & WHICH MAY HAVE AN INTEREST IN NATIVE CLAIMS

- TO MAINTAIN CLOSE LIAISON WITH OTHER SECTIONS OF DINA CONCERNING CLAIMS PROCESSES, REVISION OF INDIAN ACT, & OTHER POLICY DEVELOPMENTS RELATING TO CLAIMS

- TO INITIATE, ASSIST WITH & MONITOR AS REQUIRED THE IMPLEMENTATION OF CLAIMS SETTLEMENTS BY PROGRAMS IN DINA & OTHER DEPARTMENTS, GOVERNMENTS & AGENCIES, WITHIN THEIR RESPECTIVE AREAS OF COMPETENCE

- TO PROVIDE PUBLIC INFORMATION CONCERNING NATIVE CLAIMS, INCLUDING ALL MATERIAL ON NATIVE CLAIMS FOR PUBLIC STATEMENTS BY MINISTER & GOVERNMENT

Indian and Northern Affairs Canada | Affaires indiennes et du Nord Canada
Office of Native Claims | Bureau des revendications des autochtones
June, 1980

THE CLAIMS PROCESS: HOW CLAIMS ARE CURRENTLY DEALT WITH

B

A. SPECIFIC CLAIMS

- CLAIM IS SUBMITTED TO DEPARTMENT OF INDIAN & NORTHERN AFFAIRS (DINA)
- OFFICE OF NATIVE CLAIMS (ONC) CONDUCTS ANALYSIS. THIS INCLUDES EXAMINATION OF SUPPORTING DOCUMENTATION & EVIDENCE SUBMITTED BY CLAIMANT, AS WELL AS MATERIAL OBTAINED BY ONC THROUGH ITS OWN RESEARCH. ONC MAY ALSO SEEK CLARIFICATION MEETINGS WITH CLAIMANT IF NECESSARY
- ONC REFERS CLAIM TO MINISTER OF JUSTICE FOR LEGAL REVIEW TO DETERMINE WHETHER, IN LAW, FEDERAL GOVERNMENT HAS OR HAS NOT LIVED UP TO ITS OBLIGATIONS UNDER VARIOUS INDIAN ACTS OR TREATIES. FURTHER CLARIFICATION & DISCUSSION WITH CLAIMANTS MAY BE NECESSARY
- FORMULATION OF GOVERNMENT'S RESPONSE & FORMAL RESPONSE BY MINISTER OF DINA:
  - WHERE CLAIM IS FELT TO BE SUBSTANTIATED, ONC IS AUTHORIZED TO NEGOTIATE SETTLEMENT WITH CLAIMANT
  - WHERE FINDINGS OF FACT DO NOT SUBSTANTIATE CLAIM, CLAIMANT IS SO ADVISED & PROVIDED WITH COPIES OF KEY DOCUMENTS USED BY GOVERNMENT IN RENDERING ITS OPINION ON MERITS OF CLAIM
  - WHERE FINDINGS REVEAL INSUFFICIENT GROUNDS FOR NEGOTIATION BUT INDICATE THAT CLAIM MAY BE CAPABLE OF REDRESS THROUGH EXISTING DEPARTMENTAL OR GOVERNMENTAL PROGRAMS, CLAIMANT IS ADVISED THAT DEPARTMENTAL REPRESENTATIVES ARE WILLING TO DISCUSS FURTHER TO FACILITATE THIS
  - IN ANY CASE WHERE FINDINGS DO NOT SUBSTANTIATE THE CLAIM, CLAIMANT IS ADVISED OF GOVERNMENT'S WILLINGNESS TO REVIEW CLAIM AT LATER DATE ON BASIS OF NEW EVIDENCE

B. COMPREHENSIVE CLAIMS

- CLAIM IS SUBMITTED TO DEPARTMENT OF INDIAN & NORTHERN AFFAIRS (DINA)
- OFFICE OF NATIVE CLAIMS (ONC) CONDUCTS ANALYSIS. THIS INCLUDES EXAMINATION OF SUPPORTING DOCUMENTATION & EVIDENCE SUBMITTED BY CLAIMANT AS WELL AS MATERIAL OBTAINED BY ONC THROUGH ITS OWN RESEARCH. ONC MAY ALSO SEEK CLARIFICATION MEETINGS WITH CLAIMANT IF NECESSARY
- ONC REFERS CLAIM TO MINISTER OF JUSTICE FOR LEGAL REVIEW & ANALYSIS IN ORDER TO DETERMINE LEGAL MERITS OF CLAIM
- FORMULATION OF GOVERNMENT'S RESPONSE & FORMAL RESPONSE BY MINISTER OF DINA: WHERE FINDINGS INDICATE POSSIBLE EXISTENCE OF UNEXTINGUISHED NATIVE INTEREST, ONC IS AUTHORIZED TO PROCEED WITH NEGOTIATING SETTLEMENT WITH CLAIMANT

HISTORY OF MECHANISMS FOR DEALING WITH NATIVE CLAIMS

C

- 1969 FEDERAL REVIEW OF RESPONSIBILITIES FOR INDIAN MATTERS PROPOSES NEW DIRECTION FOR INDIAN POLICY. THIS LEADS TO REVIEW BY INDIAN PEOPLE OF GOVERNMENT POLICY & ADMINISTRATION OF INDIAN AFFAIRS. AS RESULT OF REVIEW, INDIAN RIGHTS & GRIEVANCES EMERGES AS A CENTRAL ISSUE OF CONCERN TO INDIAN PEOPLE

- IN DECEMBER 1969 DR. LLOYD BARBER APPOINTED INDIAN CLAIMS COMMISSIONER TO RECEIVE & STUDY INDIAN GRIEVANCES & CLAIMS & TO RECOMMEND MEASURES TO BE TAKEN BY GOVERNMENT TO RESOLVE THEM (POSITION TERMINATED IN 1977)

- IN 1970 GOVERNMENT BEGINS FUNDING NATIVE GROUPS & ASSOCIATIONS TO ENABLE THEM TO CONDUCT RESEARCH INTO INDIAN TREATIES & RIGHTS

- IN FEBRUARY 1973 DEPARTMENT OF INDIAN & NORTHERN AFFAIRS (DINA) GIVEN RESPONSIBILITY FOR FUNDING INDIAN RESEARCH INTO RIGHTS & TREATIES & NEGOTIATING SETTLEMENTS OF CLAIMS

- ON AUGUST 8, 1973 MINISTER OF DINA ANNOUNCES GOVERNMENT'S POLICY ON CLAIMS OF INDIAN & INUIT PEOPLE

- IN JULY 1974 OFFICE OF NATIVE CLAIMS NEGOTIATION (NOW OFFICE OF NATIVE CLAIMS:ONC) ESTABLISHED IN DINA. ON BEHALF OF MINISTER & FEDERAL GOVERNMENT, ONC RECEIVES CLAIMS FROM NATIVE GROUPS & ENTERS INTO DISCUSSIONS & NEGOTIATIONS WITH THEM CONCERNING THEIR CLAIMS

- IN 1975 JOINT NATIONAL INDIAN BROTHERHOOD (NIB)/CABINET COMMITTEE ESTABLISHED TO PROVIDE BASIS FOR CONTINUING CONSULTATION BETWEEN CABINET MINISTERS & NIB ON MAJOR INDIAN POLICY ISSUES & PROBLEMS. SUBSEQUENTLY, JOINT SUB-COMMITTEE ON INDIAN RIGHTS & CLAIMS ESTABLISHED, AND CANADIAN INDIAN RIGHTS COMMISSION ESTABLISHED UNDER SUB-COMMITTEE, TO EXAMINE RIGHTS & CLAIMS & TO RECOMMEND PROCESSES FOR DEALING WITH THEM. THIS STRUCTURE SUBSEQUENTLY TERMINATED WITH WIDHDRAWAL OF NIB FROM JOINT COMMITTEE IN APRIL 1978

- IN 1977 SERIES OF SENIOR CLAIMS NEGOTIATORS APPOINTED IN OFFICE OF NATIVE CLAIMS TO DEAL WITH COMPREHENSIVE CLAIMS IN N.W.T. & LABRADOR, MACKENZIE DELTA, YUKON, B.C., & WITH SPECIFIC CLAIMS ACROSS CANADA

- IN APRIL 1978 ONTARIO TRIPARTITE COMMISSION ESTABLISHED TO EXAMINE MATTERS OF CONCERN (INCLUDING CLAIMS) TO INDIAN PEOPLE & ONTARIO & FEDERAL GOVERNMENTS. AT SAME TIME, MR. JUSTICE PATRICK HARTT APPOINTED CHIEF EXECUTIVE OFFICER FOR NEWLY ESTABLISHED ONTARIO INDIAN CLAIMS COMMISSION, TO ACT AS CHIEF MEDIATOR TO HELP RESOLVE CLAIMS ISSUES IN THAT PROVINCE

THE YUKON CLAIM
(COMPREHENSIVE)

D

- FEBRUARY 1973 - YUKON NATIVE PEOPLE PRESENT CLAIM PROPOSAL, "TOGETHER TODAY FOR OUR CHILDREN TOMORROW", TO FEDERAL GOVERNMENT

- 1973 -75 - SERIES OF MEETINGS BETWEEN YUKON NATIVE PEOPLE & FEDERAL & TERRITORIAL REPRESENTATIVES

- JULY 1975 - FULL-TIME FEDERAL NEGOTIATOR APPOINTED. SUCCEEDED IN OCTOBER 1976 BY SENIOR CLAIMS NEGOTIATOR J.K. NAYSMITH. DR. NAYSMITH'S MANDATE TO CONDUCT INFORMAL DISCUSSION LEADING TO SUBSTANTIVE NEGOTIATIONS ON YUKON CLAIM & TO NEGOTIATE CLAIM ITSELF

- JANUARY 1977 - "CO-OPERATIVE PLANNING APPROACH" FORMALLY AGREED TO BY COUNCIL FOR YUKON INDIANS (C.Y.I.), FEDERAL & TERRITORIAL GOVERNMENTS. TRIPARTITE PLANNING COUNCIL ESTABLISHED CONSISTING OF C.Y.I. PRESIDENT DANIEL JOHNSON, COMMISSIONER OF THE YUKON ARTHUR PEARSON, & FEDERAL NEGOTIATOR DR. NAYSMITH. THIS BODY RESPONSIBLE FOR CONDUCT OF NEGOTIATIONS

- IN 1977 - PLANNING COUNCIL PRODUCES, RECEIVES EXECUTIVE APPROVAL FOR & MAKES PUBLIC FOUR DOCUMENTS:

  "CO-OPERATIVE PLANNING TOWARD A SETTLEMENT OF THE YUKON LAND CLAIM" (DESCRIPTION OF PLANNING COUNCIL'S MANDATE)
  "A STATEMENT OF GOALS RESPECTING THE YUKON INDIAN CLAIM"
  "ELIGIBILITY"
  "SETTLEMENT MODEL"

- "SETTLEMENT MODEL", RELEASED JULY 15, 1977, ILLUSTRATES SHAPE OF POSSIBLE AGREEMENT-IN-PRINCIPLE & OUTLINES ELEMENTS THAT COULD BE CONTAINED IN IT

- DECEMBER 1977 - FEDERAL GOVERNMENT PRESENTS SETTLEMENT PROPOSAL TO C.Y.I. BASED ON PLANNING COUNCIL DISCUSSIONS

- JANUARY 1978 - C.Y.I. REQUESTS ADDITIONAL TIME TO REVIEW ITS POSITION ON CLAIM & TO FURTHER CONSULT WITH COMMUNITIES IN THIS REGARD

- MARCH 1978 - C.Y.I. APPEARS BEFORE SPECIAL COMMITTEE ON NORTHERN PIPELINE TO EXPRESS CONCERN THAT PIPELINE SHOULD NOT BE CONSTRUCTED UNTIL LAND CLAIM IS SETTLED

- JANUARY 20, 1979 - C.Y.I. PRESENTS REVISED CLAIM PROPOSAL TO FEDERAL GOVERNMENT. BOTH PARTIES ANNOUNCE THEIR COMMITMENT TO INTENSIVE NEGOTIATIONS. THESE BEGIN APRIL 1979

- SUMMER 1979 - NEGOTIATIONS INTERRUPTED PENDING FEDERAL CLAIMS POLICY REVIEW

- OCTOBER 1979 - DR. HOLMES APPOINTED AS YUKON CLAIMS NEGOTIATOR. NEGOTIATIONS RESUME NOVEMBER 16, 1979

- FEBRUARY 1980 - NEGOTIATIONS AGAIN INTERRUPTED DUE TO FEDERAL ELECTION CALL

- MARCH 1980 - FEDERAL GOVERNMENT CONFIRMS COMMITMENT TO RESUME NEGOTIATIONS

- MAY 23, 1980 - DENNIS O'CONNOR NAMED CHIEF FEDERAL NEGOTIATOR FOR YUKON CLAIM

- JUNE 1980 - NEGOTIATIONS BEGIN IN VANCOUVER

INUIT TAPIRISAT OF CANADA (I.T.C.)
(COMPREHENSIVE)

E

- 1972 - I.T.C. ANNUAL CONFERENCE SETS LAND CLAIMS RESEARCH AS TOP PRIORITY

- 1973 - FOLLOWING AUGUST FEDERAL CLAIMS POLICY STATEMENT, FEDERAL GOVERNMENT BEGINS FUNDING I.T.C. TO RESEARCH LAND CLAIMS & LAND USE & OCCUPANCY, & TO ESTIMATE ECONOMIC VALUE OF RESOURCES OF LANDS

- FEBRUARY 27, 1976 - I.T.C. PRESENTS CLAIM PROPOSAL TO FEDERAL GOVERNMENT ON BEHALF OF ALL INUIT IN N.W.T. ENTITLED "NUNAVUT", IT SEEKS SURFACE TITLE TO AT LEAST 250,000 SQUARE MILES IN N.W.T.; CREATION OF INUIT GOVERNMENT ("NUNAVUT TERRITORY") IN NORTHEASTERN PART OF N.W.T.; STRONG CONTROL OVER HUNTING, FISHING & TRAPPING; ROYALTIES FROM RESOURCE DEVELOPMENT; SPECIAL SOCIAL & ECONOMIC PROGRAMS, & ESTABLISHMENT OF LAND USE & PLANNING COMMISSION

- SEPTEMBER 1976 - PROPOSAL WITHDRAWN TO ALLOW SUBSTANTIAL CHANGES TO BE MADE

- JULY 6, 1977 - I.T.C. MAKES PUBLIC NEW CLAIM PROPOSAL IN FORM OF "PROPOSED AGREEMENT-IN-PRINCIPLE FOR THE ESTABLISHMENT OF INUIT RIGHTS BETWEEN THE INUIT OF NUNAVUT & THE GOVERNMENT OF CANADA", IN ORDER TO SEEK PUBLIC REACTION BEFORE MAKING FORMAL PRESENTATION TO FEDERAL GOVERNMENT IN FALL

- DECEMBER 14, 1977 - THIS PROPOSAL PRESENTED TO FEDERAL GOVERNMENT ON BEHALF OF INUIT OF CENTRAL & EASTERN ARCTIC IN FORM OF "AGREEMENT-IN-PRINCIPLE". CALLS FOR INUIT POLITICAL SELF-DETERMINATION; FORMATION OF NUNAVUT GOVERNMENT (WITHIN CONFEDERATION) BASED ON INUIT POLITICAL INSTITUTIONS; INUIT OWNERSHIP OF TRADITIONAL INUIT LANDS & WATERS, INCLUDING SUB-SURFACE; PRESERVATION OF TRADITIONAL INUIT HUNTING, FISHING & TRAPPING RIGHTS; RIGHT TO DETERMINE ELIGIBILITY IN A SETTLEMENT; PRESERVATION OF INUIT LANGUAGE & CULTURE; COMPENSATION BY FEDERAL GOVERNMENT OF THIRD-PARTY INTERESTS ADVERSELY AFFECTED BY A SETTLEMENT, & AMENDMENT OF BNA ACT TO "PROVIDE FOR THE CONSTITUTIONAL RECOGNITION & CONTINUED ASSURANCE OF THE RIGHT OF THE INUIT TO EXIST AS AN INDEPENDENT CULTURE WITHIN CANADA"

- MAY 18, 1978 - FORMAL NEGOTIATIONS BEGIN WITH FEDERAL GOVERNMENT. DISCUSSIONS CONTINUE WITH VIEW TO REACHING AGREEMENT-IN-PRINCIPLE BY END OF 1979

- MAY 1978 - FEBRUARY 1979 - FIVE NEGOTIATING MEETINGS HELD WITH I.T.C. LAND CLAIMS COMMISSION

- FEBRUARY 1979 - I.T.C. BOARD OF DIRECTORS ABOLISHES LAND CLAIMS COMMISSION AND APPOINTS NEW NEGOTIATORS

- MAY 1979 - REGIONAL NEGOTIATING MEETINGS BEGIN

- SEPTEMBER 1979 - I.T.C. PRESENTS POSITION PAPER, "POLITICAL DEVELOPMENT IN NUNAVUT", TO FEDERAL GOVERNMENT. NEW I.T.C. EXECUTIVE APPOINTED & REVIEW UNDERTAKEN BY I.T.C. ON ITS POSITION AND NEGOTIATING STRUCTURES

DECEMBER 20, 1979 - I.T.C. ANNOUNCES NEW NEGOTIATING STRUCTURES AND APPROACHES AS PART OF REVIEW OF ITS POSITION ON CLAIM. NEGOTIATION OF LAND COMPONENT UNDER DIRECTION OF KEITH CROWE, O.N.C.

THE MACKENZIE VALLEY CLAIMS (COMPREHENSIVE)

F

DENE; METIS ASSOCIATION OF THE N.W.T.

1899 - INDIANS LIVING IN SOUTHERN PORTION OF MACKENZIE VALLEY SIGN TREATY 8
1921 - INDIANS LIVING IN NORTHERN PORTION SIGN TREATY 11
1970 - INDIAN BROTHERHOOD OF THE N.W.T. (I.B.N.W.T.) ESTABLISHED (NOW KNOWN AS "DENE")

I.B.N.W.T. CLAIMS THAT NOT ONLY HAS FEDERAL GOVERNMENT NOT FULFILLED TREATY OBLIGATIONS, BUT THAT TREATIES ARE MERELY "PEACE TREATIES" & DO NOT REPRESENT SURRENDER OF INDIAN INTEREST IN LAND. GOVERNMENT DOES NOT ACCEPT THIS VIEW

1973 - I.B.N.W.T. APPLIES FOR CAVEAT ALLEGING INTEREST IN LAND. N.W.T. SUPREME COURT UPHOLDS RIGHT TO FILE CAVEAT, BUT FEDERAL GOVERNMENT APPEALS DECISION & N.W.T. APPEAL COURT UPHOLDS APPEAL, STATING THAT CAVEATS CANNOT BE FILED AGAINST UNPATENTED CROWN LANDS. DECISION CONFIRMED BY SUPREME COURT OF CANADA DECEMBER 1976

IN MEANTIME, FEDERAL GOVERNMENT AGREES TO NEGOTIATE WITH I.B.N.W.T. ON GROUNDS THAT INDIAN PEOPLE NEVER RECEIVED COMPENSATION SET OUT IN TREATIES. FEDERAL FUNDS PROVIDED TO ENABLE I.B.N.W.T. TO RESEARCH CLAIM & MAKE PRESENTATIONS TO BERGER INQUIRY

JULY 1974 - I.B.N.W.T. & METIS ASSOCIATION OF N.W.T. (INCORPORATED IN 1972) ANNOUNCE THEY WILL SEEK SINGLE LAND SETTLEMENT ON BEHALF OF ALL NATIVE PEOPLE ("DENE") IN MACKENZIE VALLEY REGION, & DEMAND THAT FEDERAL GOVERNMENT FORMALLY RECOGNIZE THEIR ABORIGINAL TITLE TO THE 450,000 SQUARE MILES OF THE VALLEY

JULY 1975 - JOINT GENERAL ASSEMBLY OF TWO ASSOCIATIONS MAKES PUBLIC "DENE DECLARATION" AND "DENE MANIFESTO", REASSERTING THEIR INTEREST IN THE LAND & ASKING FOR RECOGNITION BY CANADA & WORLD OF "DENE NATION". THIS CONCEPT REJECTED BY MINISTER OF INDIAN AFFAIRS IN PUBLIC STATEMENT SEPTEMBER 10, 1975

FEBRUARY 1976 - AT FEDERAL URGING IN FACE OF LACK OF SUBSTANTIAL PROGRESS ON FORMAL CLAIM, DENE LAND CLAIMS NEGOTIATING COMMITTEE AGREES TO SUBMIT CONCRETE CLAIM PROPOSAL TO FEDERAL GOVERNMENT BY NOVEMBER 1976

SEPTEMBER - OCTOBER 1976 - METIS ASSOCIATION FORMALLY WITHDRAWS FROM DEVELOPMENT OF JOINT INDIAN-METIS CLAIM PROPOSAL, STATING "WE CANNOT ABIDE THE CONCEPT OF A NATION WITHIN A NATION". ASSOCIATION DECIDES TO DEVELOP OWN CLAIM & RECEIVES INTERIM LOAN FROM FEDERAL GOVERNMENT TO DO SO ON UNDERSTANDING THAT THERE CAN BE ONLY ONE FINAL SETTLEMENT FOR BOTH CLAIMS IN THE VALLEY

OCTOBER 25, 1976 - I.B.N.W.T. SUBMITS CLAIM PROPOSAL TO FEDERAL GOVERNMENT IN FORM OF "STATEMENT OF RIGHTS" & "AGREEMENT-IN-PRINCIPLE". PROPOSED AGREEMENT SEEKS ESTABLISHMENT (WITHIN CONFEDERATION) OF "DENE GOVERNMENT WITH JURISDICTION OVER A GEOGRAPHICAL AREA & OVER SUBJECT MATTERS NOW WITHIN THE JURISDICTION OF EITHER THE GOVERNMENT OF CANADA OR THE GOVERNMENT OF THE N.W.T.", & INCLUDING SUCH MATTERS AS LAND OWNERSHIP; CONTROL OVER NON-

RENEWABLE RESOURCE DEVELOPMENT; PROTECTION OF HUNTING, FISHING & TRAPPING RIGHTS; PRESERVATION OF DENE LANGUAGE & CULTURE, & COMPENSATION FOR "PAST USE OF DENE LAND BY NON-DENE"

APRIL 4, 1977 - METIS ASSOCIATION PRESENTS OWN CLAIM PROPOSAL, IN FORM OF DISCUSSION PAPER, TO FEDERAL GOVERNMENT

AUGUST 3, 1977 - PRIME MINISTER REJECTS CONCEPT OF SEPARATE "DENE NATION" IN ANNOUNCING APPOINTMENT OF HON. C.M. DRURY AS GOVERNMENT'S SPECIAL REPRESENTATIVE FOR CONSTITUTIONAL DEVELOPMENT IN THE N.W.T. MR. DRURY'S MANDATE TO CONSULT WITH LEADERS OF N.W.T. GOVERNMENT, NORTHERN COMMUNITIES & NORTHERN NATIVE GROUPS & RECOMMEND MEASURES TO EXTEND & IMPROVE REPRESENTATIVE GOVERNMENT RESPONSIVE TO NEEDS OF ALL N.W.T. RESIDENTS

SEPTEMBER 28, 1977 - METIS ASSOCIATION SUBMITS FORMAL CLAIM TO FEDERAL GOVERNMENT. NEGOTIATIONS ON BOTH CLAIMS AT STANDSTILL BECAUSE OF INABILITY OF DENE & METIS TO AGREE ON JOINT NEGOTIATION PROCESS

JANUARY 24, 1978 - FEDERAL GOVERNMENT PRESENTS PROPOSALS ENTITLED "DENE AND METIS CLAIMS IN MACKENZIE VALLEY: PROPOSALS FOR DISCUSSION" TO HELP INITIATE JOINT DISCUSSIONS ON CLAIMS

SEPTEMBER 27, 1978 - BECAUSE OF CONTINUED INABILITY OF DENE & METIS TO AGREE ON MECHANISM FOR CONDUCTING JOINT NEGOTIATIONS ON THEIR OVERLAPPING CLAIMS, DESPITE GOVERNMENT URGING TO DO SO, MINISTER OF INDIAN & NORTHERN AFFAIRS SUSPENDS FUNDING FOR CLAIMS DEVELOPMENT & NEGOTIATION. BOTH ASSOCIATIONS CONTINUE TO WORK ON WAYS TO INITIATE JOINT NEGOTIATIONS

NOVEMBER 1979 - METIS ASSOCIATION PROPOSES THAT DENE BE RESPONSIBLE FOR NEGOTIATING & CONCLUDING CLAIM SETTLEMENT WITHIN 12 MONTHS ON BEHALF OF BOTH DENE & METIS (50% OF SETTLEMENT BENEFITS TO GO TO METIS ASSOCIATION); AS PART OF PROPOSAL MAKE OFFER TO PURCHASE FEDERAL GOVERNMENT'S INTEREST IN NORMAN WELLS OILFIELD, PURCHASE PRICE TO BE DEDUCTED FROM FUTURE CLAIM SETTLEMENT COMPENSATION

DECEMBER 20, 1979 - MINISTER OF DINA STATES PRINCIPLE OF NORTHERN NATIVES HAVING EQUITY SHARE IN NORTHERN DEVELOPMENT PROJECTS ACCEPTABLE, BUT THAT PROPOSAL TO PURCHASE SHOULD BE NEGOTIATED AS PART OF CLAIM SETTLEMENT AS A WHOLE

APRIL 1980 - MINISTER OF DINA MEETS WITH DENE NATION EXECUTIVE & AGREES TO REINSTATE FUNDING FOR FURTHER DEVELOPMENT OF THEIR CLAIM PROPOSAL. ALSO AGREES TO PROVIDE FUNDING TO METIS TO ENABLE THEM TO WORK OUT THEIR ROLE ON DENE NEGOTIATING TEAM. NEGOTIATIONS EXPECTED TO BEGIN LATER IN YEAR

COMMITTEE FOR ORIGINAL PEOPLES' ENTITLEMENT (COPE) (COMPREHENSIVE)

G

- COPE ORIGINALLY WORKS WITH INUIT TAPIRISAT OF CANADA (I.T.C.) TO DEVELOP JOINT CLAIM ("NUNAVUT"), WHICH IS PRESENTED TO FEDERAL GOVERNMENT FEBRUARY 27, 1976 & SUBSEQUENTLY WITHDRAWN SEPTEMBER 1976

- DECEMBER 14, 1976 - COPE ANNOUNCES IT WILL PROCEED WITH DEVELOPMENT OF OWN CLAIM (SEPARATE FROM REVISED I.T.C. PROPOSAL) BECAUSE OF MORE IMMEDIATE PRESSURE OF RESOURCE DEVELOPMENT IN WESTERN ARCTIC. I.T.C. AND FEDERAL GOVERNMENT AGREE TO THIS; FEDERAL FUNDING PROVIDED IN FORM OF ACCOUNTABLE CONTRIBUTION

- MAY 13, 1977 - COPE SUBMITS CLAIM PROPOSAL TO FEDERAL GOVERNMENT ENTITLED "INUVIALUIT NUNANGAT" ("LAND OF THE INUIT OF THE WESTERN ARCTIC"). CLAIM IS BASED ON SAME PRINCIPLES AS "NUNAVUT" PROPOSAL: OWNERSHIP IN FEE SIMPLE OF APPROXIMATELY 70,000 SQUARE MILES OF LAND & 44,000 SQUARE MILES OF WATER IN N.W.T. WESTERN ARCTIC REGION; REGIONAL MUNICIPAL GOVERNMENT; ESTABLISHMENT OF PUBLIC LAND MANAGEMENT AGENCY; ROYALTIES FROM OIL & GAS DEVELOPMENT; PROTECTION & STRENGTHENING OF INUIT CULTURAL IDENTITY & PROTECTION OF ARCTIC WILDLIFE & ENVIRONMENT

- DECEMBER 7, 1977 - JOINT POSITION PAPER ON WILDLIFE COMPONENT OF CLAIM MADE PUBLIC

- JULY 14, 1978 - JOINT POSITION PAPER ON ALL FACETS OF CLAIM MADE PUBLIC

- OCTOBER 31, 1978 - AGREEMENT-IN-PRINCIPLE SIGNED PROVIDING FRAMEWORK FOR FINAL AGREEMENT. INCLUDES SUCH ITEMS AS LAND; HUNTING, FISHING & TRAPPING RIGHTS; $45 MILLION (PRESENT VALUE), & SOCIAL & CULTURAL SECURITY. FINAL AGREEMENT ANTICIPATED IN YEAR'S TIME

- MAY 18, 1979- AGREEMENT REACHED ON SELECTION OF MOST OF LAND OVER WHICH INUVIALUIT WOULD HAVE SURFACE RIGHTS

- SUMMER & WINTER 1979-80 - NEGOTIATIONS INTERRUPTED DURING GOVERNMENT'S REVIEW OF CLAIMS POLICY & FEDERAL ELECTION CALL

- APRIL 1980 - COPE & FEDERAL GOVERNMENT AGREE TO EARLY RESUMPTION OF NEGOTIATIONS TO ACHIEVE FINAL AGREEMENT

- JUNE 6, 1980 - SENATOR DAVID STEUART NAMED CHIEF FEDERAL NEGOTIATOR FOR COPE CLAIM

CLAIMS IN QUEBEC
(COMPREHENSIVE)

H

JAMES BAY & NORTHERN QUEBEC AGREEMENT

- JULY 1971 - JAMES BAY DEVELOPMENT CORPORATION ESTABLISHED TO DEVELOP HYDRO-ELECTRIC POWER RESOURCES OF NORTHERN QUEBEC. CREES IN AREA EXPRESS CONCERNS ABOUT THEIR RIGHTS OF USAGE & OCCUPANCY THERE WHICH HAD NEVER BEEN DEALT WITH AS PROVIDED FOR IN 1912 QUEBEC BOUNDARIES EXTENSION ACT

- DECEMBER 1972 - FACED WITH FAILURE OF INFORMAL DISCUSSIONS WITH QUEBEC ON ISSUE, INDIANS & INUIT SEEK INTERLOCUTORY INJUNCTION TO HALT JAMES BAY PROJECT, WITH FEDERAL FUNDING ASSISTANCE

- NOVEMBER 1973 - QUEBEC SUPERIOR COURT RULES IN FAVOUR OF NATIVE PEOPLE, BUT QUEBEC COURT OF APPEAL LATER REVERSES DECISION. NEGOTIATIONS BETWEEN NATIVE PEOPLE & FEDERAL & PROVINCIAL GOVERNMENTS BEGIN SOON AFTERWARDS

- NOVEMBER 15, 1974 - AGREEMENT-IN-PRINCIPLE SIGNED BETWEEN GRAND COUNCIL OF CREES (OF QUEBEC), NORTHERN QUEBEC INUIT ASSOCIATION & FEDERAL & PROVINCIAL GOVERNMENTS

- NOVEMBER 11, 1975 - FINAL AGREEMENT SIGNED. AGREEMENT PROVIDES $225 MILLION PAYABLE OVER 10 YEARS BEGINNING MARCH 31, 1976, TO BE ADMINISTERED BY NATIVE CORPORATIONS; LANDS FOR EXCLUSIVE NATIVE USE & OCCUPANCY; HUNTING, FISHING & TRAPPING RIGHTS; SUBSTANTIAL PARTICIPATION IN LOCAL & REGIONAL GOVERNMENT; ENVIRONMENTAL PROTECTION; SPECIAL ECONOMIC & SOCIAL DEVELOPMENT MEASURES, & NATIVE CONTROL OVER EDUCATION

- FEDERAL ENABLING LEGISLATION (BILL C-9) RECEIVES THIRD READING IN SENATE JULY 6, 1977. PROVINCIAL LEGISLATION PASSED JUNE 30, 1976. PROCLAMATION OF FEDERAL & PROVINCIAL LEGISLATION APPROVING & GIVING EFFECT TO AGREEMENT OCTOBER 31, 1977

NORTHEASTERN QUEBEC AGREEMENT

- JANUARY 1975 - NASKAPIS OF SCHEFFERVILLE, BAND OF 400 INDIANS LIVING IN JAMES BAY AGREEMENT "TERRITORY", DECIDE TO JOIN IN AGREEMENT NEGOTIATIONS, WITH JAMES BAY CREES & INUIT

- FALL 1975 - NASKAPIS DECIDE TO NEGOTIATE THEIR CLAIM TO "THE TERRITORY ON THEIR OWN

- JANUARY 31, 1978 - NORTHEASTERN QUEBEC AGREEMENT SIGNED BY NASKAPIS OF SCHEFFERVILLE & ALL SIGNATORIES TO JAMES BAY & NORTHERN QUEBEC AGREEMENT

APRIL 14, 1978 - FEDERAL ORDER-IN-COUNCIL APPROVING AGREEMENT BROUGHT INTO EFFECT

CONSEIL ATTIKAMEK-MONTAGNAIS DU QUEBEC (C.A.M.)

- APRIL 1979 - C.A.M. PRESENTS CLAIM TO MINISTER
- OCTOBER 1979 - MINISTER ACCEPTS CLAIM FOR NEGOTIATION
- APRIL 1980 - FEDERAL GOVERNMENT PROVIDES LOAN FUNDING TO C.A.M. TO ENABLE IT TO DEVELOP ITS CLAIM NEGOTIATING POSITION

TREATY LAND ENTITLEMENTS, PRAIRIE PROVINCES (SPECIFIC)

1

- QUESTION OF OUTSTANDING TREATY LAND ENTITLEMENTS IS OLD ONE IN PRAIRIE PROVINCES. UNDER PROVISIONS OF TREATIES SIGNED IN MANITOBA, SASKATCHEWAN & ALBERTA BETWEEN 1871 - 1906, RESERVE LANDS WERE TO BE SET ASIDE FOR INDIAN BANDS WHO SIGNED. HOWEVER, SOME BANDS DID NOT RECEIVE THEIR FULL LAND ENTITLEMENT UNDER TREATY

- SITUATION IS RECOGNIZED IN TERMS OF NATURAL RESOURCES TRANSFER AGREEMENTS OF 1930 BETWEEN CANADA & PRAIRIE PROVINCES. UNDER AGREEMENTS, PROVINCES ASSUME OBLIGATION TO SET ASIDE SUCH LANDS AS WOULD ENABLE FEDERAL GOVERNMENT TO FULFILL TREATY LAND OBLIGATIONS. PROCESS, HOWEVER, NEVER COMPLETED

- IN 1975 MINISTER OF INDIAN AND NORTHERN AFFAIRS REQUESTS CO-OPERATION OF THREE PROVINCES IN RESOLVING MATTER

- IN AUGUST 1976 SASKATCHEWAN RESPONDS TO REQUEST WITH SETTLEMENT PROPOSAL

- IN APRIL 1977 FEDERAL GOVERNMENT INFORMS SASKATCHEWAN OF ITS GENERAL AGREEMENT WITH PROVINCIAL PROPOSAL

- AUGUST 24, 1977 - AS RESULT OF CLOSE COLLABORATION BETWEEN FEDERATION OF SASKATCHEWAN INDIANS (F.S.I.), SASKATCHEWAN & FEDERAL GOVERNMENT, TRIPARTITE AGREEMENT REACHED ON PROCESS FOR RESOLVING ISSUE OF FULFILLING OUTSTANDING TREATY LAND ENTITLEMENTS. AGREEMENT STIPULATED THAT FORMULA FOR SETTLEMENT WOULD USE BAND POPULATION FIGURES AS OF DECEMBER 1976 FOR BANDS WITH OUTSTANDING TREATY ENTITLEMENTS, MULTIPLIED BY PER CAPITA ACREAGE AS SET OUT IN APPLICABLE TREATY; THAT PROVINCE WOULD MAKE AVAILABLE PROVINCIAL CROWN LANDS FOR THIS PURPOSE OR, INSTEAD OF LANDS, WOULD PROVIDE OPPORTUNITIES TO BANDS FOR REVENUE SHARING IN RESOURCE DEVELOPMENT OR PARTICIPATION IN JOINT VENTURES, & THAT F.S.I. & DEPARTMENT OF INDIAN & NORTHERN AFFAIRS WOULD ASSIST BANDS TO SELECT LANDS. WAS HOPED THAT PRINCIPLES EMBODIED IN AGREEMENT WOULD PROVE TO BE USEFUL IN FUTURE DISCUSSIONS WITH MANITOBA & ALBERTA CONCERNING OUTSTANDING TREATY LAND ENTITLEMENTS IN THOSE PROVINCES

- IN 1977 LAND SELECTION PROCESS BEGINS FOR THE 15 SASKATCHEWAN BANDS WITH ENTITLEMENT; EFFORTS TO REACH AGREEMENT ON THIS MATTER WITH MANITOBA & ALBERTA CONTINUE

- DECEMBER 1978 - SASKATCHEWAN UNWILLING TO AGREE TO COST-SHARING PART OF FORMULA

- FEBRUARY 1979 - NEW APPROACH AGREED UPON BY BOTH GOVERNMENTS TO DEAL WITH TREATY LAND ENTITLEMENTS IN SASKATCHEWAN ON AD HOC BASIS

BRITISH COLUMBIA "CUT-OFF" LANDS

J

- 1912 - MCKENNA-MCBRIDE AGREEMENT SIGNED ESTABLISHING ROYAL COMMISSION ON INDIAN AFFAIRS TO INVESTIGATE SIZE & LOCATION OF RESERVES IN BRITISH COLUMBIA WHICH HAD BEEN IN DISPUTE BETWEEN FEDERAL GOVERNMENT & PROVINCE FOR MANY YEARS. RECOMMENDATIONS INCLUDE REDUCING OR "CUTTING OFF" ACREAGE OF RESERVES WITH PROCEEDS TO BE DIVIDED BETWEEN PROVINCE & CANADA, CANADA'S SHARE TO BE USED FOR BENEFIT OF INDIANS AND INDIANS' CONSENT TO BE OBTAINED; ADDING LANDS TO EXISTING RESERVES, & CREATING NEW RESERVES

- 1916 - COMMISSION'S FINAL REPORT SUBMITTED. AFTER SOME MODIFICATION, THIS REPORT GIVEN EFFECT WITH B.C.'S ENACTMENT OF INDIAN AFFAIRS SETTLEMENT ACT OF 1919

- IN 1920 CANADA PASSES BRITISH COLUMBIA INDIAN LAND SETTLEMENT ACT AUTHORIZING RESERVE LAND REDUCTIONS WITHOUT INDIAN CONSENT. IN THE END, REDUCTIONS AFFECT 34 RESERVES BELONGING TO 22 BANDS. AFFECTED BANDS NEVER ACCEPT REDUCTIONS BECAUSE INDIAN CONSENT NOT OBTAINED

- NOVEMBER 1974 - CUT-OFF BANDS OF B.C. COMMITTEE ESTABLISHED, CONSISTING OF 22 BANDS AFFECTED, TO NEGOTIATE SETTLEMENT OF ISSUE

- DURING 1975-76, NUMEROUS MEETINGS HELD BETWEEN TWO LEVELS OF GOVERNMENT TO TRY TO RESOLVE MATTER.

- MARCH 1977 - TRIPARTITE COORDINATING COMMITTEE ESTABLISHED (BOTH GOVERNMENTS & CUT-OFF BANDS COMMITTEE) TO REACH AGREEMENT ON PRINCIPLES OF SETTLEMENT

- JANUARY 19, 1978 - JOINT OFFER OF SETTLEMENT BY BOTH GOVERNMENTS PRESENTED TO COMMITTEE. COMMITTEE OBJECTS TO CERTAIN ELEMENTS, SPECIFICALLY THOSE DEALING WITH COMPENSATION FOR ALIENATED CUT-OFF LANDS

- DECEMBER 1978 - NEW FEDERAL OFFER PRESENTED WITH INCREASED FEDERAL COMPENSATION

- MARCH 1979 - NEW JOINT GOVERNMENT OFFER PRESENTED TO COMMITTEE AND REFERRED TO BANDS INVOLVED

- JULY 1979 - COMMITTEE PRESENTS ITS POSITION TO MINISTER OF INDIAN & NORTHERN AFFAIRS FOR FEDERAL REVIEW

- DECEMBER 1979 - EIGHT CUT-OFF BANDS (SQUAMISH, ALEXANDRIA, OHIAT, OKANAGAN, METLAKATLA, PORT SIMPSON, WESTBANK & CHEMAINUS) FILE SUIT IN FEDERAL COURT REGARDING THEIR CLAIM. THREE OTHER BANDS SUBSEQUENTLY JOIN ACTION

- FEDERAL AND PROVINCIAL GOVERNMENTS AND CUT-OFFS COMMITTEE CONTINUE TO EXPLORE WAYS TO RESUME NEGOTIATIONS ON THIS ISSUE DESPITE COURT ACTION

CLAIMS IN BRITISH COLUMBIA
(COMPREHENSIVE)

K

NISHGA TRIBAL COUNCIL

- FEBRUARY 1973 - SUPREME COURT OF CANADA SPLITS 3-3 ON VALIDITY OF NISHGA CLAIM THAT ABORIGINAL TITLE HAS NEVER BEEN EXTINGUISHED IN NASS RIVER VALLEY. SEVENTH JUDGE RULES AGAINST CLAIM ON BASIS OF TECHNICALITY

- 1974 - FEDERAL GOVERNMENT BEGINS DISCUSSIONS WITH NISHGAS CONCERNING THEIR ABORIGINAL RIGHTS ("COMPREHENSIVE" CLAIM), BUT PROVINCIAL PARTICIPATION, NEEDED BECAUSE PROVINCIAL LANDS & RESOURCES WOULD BE INVOLVED IN FINAL SETTLEMENT, NOT FORTHCOMING

- JANUARY 1976 - FEDERAL & PROVINCIAL OFFICIALS MEET WITH NISGHAS TO INITIATE TRIPARTITE NEGOTIATIONS

- APRIL 27, 1976 - NISHGAS PRESENT INITIAL STATEMENT OF CLAIM TO FEDERAL & PROVINCIAL GOVERNMENTS. STATEMENT SEEKS CONFIRMATION OF NISHGA TITLE TO LAND, AIR, SURFACE & SUBSURFACE RESOURCES OF NASS RIVER VALLEY; LAND & RESOURCE DEVELOPMENT FREEZE UNTIL SETTLEMENT REACHED; HUNTING, FISHING & TRAPPING RIGHTS; CERTAIN FORMS OF TAX EXEMPTION; CASH, & LOCAL & REGIONAL NISHGA GOVERNMENT STRUCTURES

- OCTOBER 1976 - FEDERAL AND PROVINCIAL GOVERNMENTS AGREE TO DEVELOP JOINT RESPONSE TO NISHGA CLAIM

- FEBRUARY 1977 - FEDERAL DRAFT PROPOSAL SENT TO PROVINCE FOR COMMENT IN ORDER THAT JOINT RESPONSE CAN BE FINALIZED. PROVINCE DECIDES TO PROCEED WITH SEPARATE RESPONSE

- JANUARY 1978 - FEDERAL & PROVINCIAL RESPONSES TO CLAIM PRESENTED TO NISHGAS. DISCUSSIONS CONTINUING

- OCTOBER 27, 1978 - NISHGAS PRESENT POSITION PAPER ON FORESTRY

- AUGUST 1979 - B.C. GOVERNMENT REJECTS FORESTRY PAPER

- MARCH 8, 1980 - NISHGAS PRESENT THEIR FISHERIES PROPOSAL. URGE BOTH PROVINCIAL & FEDERAL GOVERNMENTS TO PRESENT COUNTER-PROPOSALS ON FORESTRY & FISHERIES ISSUES

GITKSAN-CARRIER BAND

- DECEMBER 13, 1977 - CLAIM ACCEPTED FOR NEGOTIATION BY FEDERAL GOVERNMENT SUBJECT TO PARTICIPATION IN CLAIM NEGOTIATIONS BY PROVINCE BECAUSE OF PROVINCIAL JURISDICTION OVER LANDS & RESOURCES IN PROVINCE. PROVINCE NOT YET INDICATED WILLINGNESS TO DO SO