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NEW RIGHTS OR NO RIGHTS?

COPE AND THE FEDERAL GOVERNMENT OF CANADA

BY

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled "NEW RIGHTS OR NO RIGHTS? COPE AND THE FEDERAL GOVERNMENT OF CANADA", submitted by Barry A. Hochstein in partial fulfillment of the requirements for the degree of Master of Arts in Political Science.

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ABSTRACT

In 1984 the Committee for Original Peoples' Entitlement (COPE) reached an agreement with the federal government of Canada regarding a land claim. The Western Arctic Land Claim: Inuvialuit Final Agreement provided land, mineral rights, cash and interest-free loans to the Inuvialuit (Inuit of the Western Arctic). Additional provisions, similiar in wording and intent to the signed "numbered" treaties in Canada, extinguished the aboriginal rights of the Inuvialuit. These provisions appear to be in direct opposition to the 1982 Canadian Constitution which entrenches aboriginal rights in Sections 25 and 35. This dilemma reflects the continuing ambiguity in Canadian politics and the judicial system of what actually constitutes "aboriginal rights".

Research conducted within the Inuvialuit Settlement Region indicates that the Inuvialuit do not feel any aboriginal rights have been extinguished. Rather, all the claims of land, self-government and cultural continuity are felt by COPE to be included in the Western Arctic Claim. Extinguishment, to COPE, means there will be no further land claims by the Inuvialuit. It extinguishes no other rights.

Canada has continued a policy of recognition of aboriginal rights to extinguish such rights for development, such as occurred on the prairies. This policy does not appear to have changed, particularly in view of hydrocarbon development in the Canadian Beaufort Sea.

The reconciliation of these two seemingly opposite stances makes it extremely likely there will be political negotiations as guaranteed in the first amendment to the Constitution Act of 1982, or even litigation, occurring as a result of the ambiguity of the term "aboriginal rights". Land "rights", or claims, no longer appear to form the entire context of "aboriginal rights".

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CONTENTS

INTRODUCTION

In 1984 the Committee for Original Peoples' Entitlement (COPE) reached an agreement with the federal government of Canada regarding a land claim settlement in the Mackenzie Valley-Beaufort Sea region. This was the third major agreement between native peoples and the Canadian government since the federal government announced its willingness to negotiate comprehensive land claims following the 1973 Calder case. This particular situation was unique for several reasons.

The first unique characteristic of what is known as "The Western Arctic Claim: The Inuvialuit Final Agreement" is that it is a settlement between the Inuit of the western Arctic (or Inuvialuit) and the government of Canada. Prior claims have almost exclusively involved Indians and only in limited cases such as the James Bay Agreement, some local Inuit. The only recorded Inuit agreement was between the Inuit of northern Labrador and Moravian missionaries. Diamond Jenness, the noted scholar of the Arctic, records that the Moravian missionaries,

> knowing that their charter from the British government carried no meaning whatever to uncivilized natives who could neither speak nor read a word of English, ... negotiated a separate agreement with the local Eskimos, paying to each family fishing tackle,

> tools, and other goods in return for the 100,000 acres over which Britain had promised their society exclusive ownership.(1)

A second unique feature of the Western Arctic Claim is that it occurred in the Northwest Territories, a region still under quasi-colonial rule by the federal government of Canada. Since Confederation and the federal-provincial division of powers, the territories of Canada have remained under federal control. The current Northwest Territories are the remnants of the land not wanted by the provinces as they were created. The formation of a territorial responsible government with full elected representatives was not achieved until the late 1970s. The powers of the Commissioner of the N.W.T. are now being relegated in practice to the government leader, although in form the government is still limited by the constitutional-legal control of the Commissioner, just as the earlier vestiges of colonial rule are manifest in the Lieutenant-Governors' role in the provinces.

A third and important constitutional-legal development is that the Western Arctic Claim is the first comprehensive land claim to be settled after the patriation of the constitution and the enactment of the Canadian Charter of

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(1) Diamond Jenness, Eskimo Administration: III. Labrador, Arctic Institute of North America Technical Paper No.16, Montreal: AINA, May, 1965, pp.8-9.

Rights and Freedoms. For the first time in Canadian constitutional history, and thus in native Canadian history, aboriginal rights have been entrenched in the constitution. This represents a significant departure from historical government dealings with aboriginal peoples in Canada. Traditionally the government of Canada dealt with native concerns through the process of legislation, but now its ability to legislate in this field is constrained by the constitution.

The entrenchment of aboriginal rights in the Canadian constitution raises a considerable number of questions about what exactly aboriginal rights were and are. Currently, this recognition of rights is restricted by the ambiguous clause "existing aboriginal and treaty rights" in Section 35 of the Constitution Act, 1982. The term "existing" was added during negotiations with the provincial premiers, some of whom saw possible problems in the unrestricted recognition of aboriginal rights, which could subsequently be construed as ongoing and cumulative.(2)

The last and most important feature of the Western Arctic Claim is the allowance made by the Inuvialuit for the extinguishment of aboriginal rights.

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(2) Interview with former Alberta Premier Peter Lougheed, November 27, 1986, Calgary, Alberta.

> The Settlement Legislation approving, giving effect to and declaring valid this agreement shall extinguish all aboriginal claims, rights, title and interests whatever they may be of all Inuvialuit in and to the Northwest Territories and Yukon Territory and adjacent offshore areas, not forming part of the Northwest Territories or Yukon Territory, within the sovereignty or jurisdiction of Canada.(3)

The allowance of the extinguishment clause is particularly surprising given the enunciation and entrenchment of aboriginal rights in the Constitution and the direction aboriginal rights have been moving in recent years.

As the first land claim settlement since the the Charter was added to the Canadian constitution, the Western Arctic Claim sets a precedent for aboriginal land claims in the North, and indeed in all of Canada. Given the rhetoric of aboriginal rights after the announcement of the 1969 White Paper on Indian Policy, the inclusion of the extinguishment clause in the Western Arctic Claim is unexpected and surprising. This thesis will examine the concept of native rights in Canada from the announcement of the 1969 White Paper to the agreement of the Western Arctic Claim and analyze the reasons underlying the inclusion of this extremely controversial clause.

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(3) DINA, The Western Arctic Claim: The Inuvialuit Final Agreement, Ottawa: DIAND, 1985, Section 3(5), p.3.

One possible reason for accepting extinguishment could be the offer of a substantial monetary settlement. I would define substantial monetary settlement as cash, interest-free loans and additional revenue (present and future) from the development of natural resources on native-owned lands. All of these are included in the Western Arctic Claim.

Native peoples include cultural survival as part of their claimed aboriginal rights. Because their culture is so closely linked to the land, the initial aboriginal rights claim is seen as the land itself. This approach to aboriginal rights has the longest history in Canada, arising well before Confederation, and in a sense even before settled occupation of America by Europeans.

The introduction of money into the negotiations between the native peoples and the Canadian federal government complicates the issue of cultural survival and the link to the land. Money may of necessity become a primary target of native people, and they may see it as a <u>means</u> to cultural survival. For the federal government, money is the bargaining tool which permits the desired goal of extinguishment of aboriginal rights.

The issue of the money transfer to COPE and the Inuvialuit prompted some northern and southern native groups to charge that COPE "sold out" to the federal

government, extinguishing their aboriginal rights for money (and other similar compensation).

While following the central theme of extinguishment, this thesis will examine the forementioned issue and the complete context of the series of events surrounding the development and subsequent final signing of the Western Arctic Claim, which led to the extinguishment of the aboriginal rights of the Inuvialuit.

Outside variables will be considered in their effect on the signing of the Inuvialuit Final Agreement, as well as investigating the role COPE played as representative to the Inuvialuit.

However, to simply state that extinguishment of aboriginal rights occurred is misleading. This thesis will attempt to clarify what aboriginal rights may be, and if they can be clearly identified, what rights are extinguished, if any, and what rights may not be extinguished.

At this point it is not clear whether the COPE model will be accepted by other native peoples now pursuing comprehensive claims. Certainly it has been subjected to vociferous criticism. However, it deserves careful study both in its own right and as a possible model for subsequent agreements.

CHAPTER ONE

CANADIAN ABORIGINAL RIGHTS HISTORY

Aboriginal rights in Canada have had a complex history, documented by both government and private authors.(4) The recent development of aboriginal rights was furthered by the Government of Canada's proposal of the 1969 White Paper which advocated total enfranchisement of native people in Canada and the elimination of all special native rights and special treatment.(5) This assimilationist proposal was almost unanimously rejected by Canadian native people because they saw it as a policy of cultural termination.

While protecting individual freedoms and ameliorating the social conditions of aboriginal peoples, the White

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(4) See Peter A. Cumming, Canada: Native Land Rights and Northern Development, Copenhagen: International Work Group for Indigenous Affairs, 1977, pp.24-27; Government of Canada, Department of Indian and Northern Affairs, The Historical Development of the Indian Act, Ottawa: DIAND, 2nd Edition, 1978, and Handbook of Case Law on the Indian Act, Ottawa: DIAND, March 1984; and Peter A. Cumming and Neil H. Mickenberg, Native Rights in Canada, Toronto: The Indian-Eskimo Association of Canada in association with General Publishing Co. Ltd., 2nd Edition, 1972.

(5) See Government of Canada, DIAND, Statement of the Government of Canada on Indian Policy, Ottawa: DINA, 1969.

Paper denied the guarantees earlier expressed by the Crown towards continued "Citizen Plus" status. Native people feel they have all the inherent rights of individuals, native or non-native alike, but also have a special relationship with the Crown due to their prior occupation of the land from time immemorial. This special relationship was formally recognized by Britain as early as 1763.(6)

In addition to the policy direction of the 1969 White Paper, there was the problem of a lack of communication between the government and the native peoples. Of particular note were the "consultations" between the native people of Canada and the federal government just prior to the proposed White Paper. Sally Weaver notes that the native people felt completely ignored after serious discussions with the government, and the subsequent native proposal had little effect on the contents of the White Paper.(7)

Native people lost any faith they might have had in the government up to this time. Their concerns over special aboriginal rights and historical claims in land and treaties were not, in the native viewpoint, apparently a

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(6) Cumming and Mickenberg, Native Rights In Canada, op.cit., see Chapter Two, especially pp.24-34.

(7) Sally Weaver, Making Canadian Indian Policy: The Hidden Agenda 1968-1970, Toronto: University of Toronto Press, 1981, pp.3-11.

concern of the government. Weaver also points out that nativism followed, the process of cultural affirmation which often arises when cultural systems are severely threatened.(8) With the formal withdrawal of the 1969 White Paper, the federal government of Canada assisted native peoples in forming lobby groups, or native interest groups, which could clearly voice their concerns.

There was a concern by some groups that receiving funds from the federal government could restrict their actions. Some native groups were organized initially by volunteer efforts, and were funded by obtaining resources from private supporting institutions, such as the Canadian Donner Foundation. COPE was one such group. With organization came clearer indications of the concerns of northern natives. There were certain similarities with the Indian concerns of southern Canada, particularly with respect to the land and traditional native pursuits such as hunting, fishing and trapping. There were also the cultural, social, religious and political attachments to the land experienced in a similiar form to the Indian peoples of southern Canada. There were, however, several significant differences from the southern situation.

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(8) Sally Weaver, ibid, p.6.

The first difference in northern native groups was the impetus to form. Indian groups across Canada rallied together in various "brotherhoods", including the northern Dene, in direct response to the 1969 White Paper which was principally directed at "status Indians". The Inuit, or Canadian Eskimos, as they were referred to in earlier years, formed alliances over concerns of encroaching oil and gas developments in the north. The concepts of "the land" and native Inuit rights to the land were held in common, but the original cause of the Inuit groups forming was not the instigation of the 1969 White Paper, but these concerns over oil and gas development.(9)

A related difference is the additional concern of the Inuit over offshore areas, both during the open-water fishing and whaling season, and during the winter for hunting on the sea-ice. This is tied to Canadian claims over sovereignty in the Arctic and has international repercussions.

Following the passage of the S.S. Manhattan through the Northwest Passage in 1969, Canada passed the Arctic Waters Pollution Prevention Act in 1970. Trevor Lloyd notes that, in international terms, the legislation to

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(9) Interview with Agnes Semmler, Deputy Commissioner of the NWT, first President of COPE (1970-1973), June 10, 1986, and Sam Raddi, second President of COPE (1973-1977/78), June 13, 1986, Inuvik, NWT.

guard against pollution of the Arctic seas may have pioneered new concepts which, if accepted by Canada's Arctic neighbors, could initiate an international regime in the far north.(10) Included in this Act was the implicit recognition of the problems pollution in the Arctic could pose for the northern populations which still draw a high degree of subsistence from their traditional hunting, fishing, trapping and whaling. The Arctic Waters Pollution Prevention Act, 1970 served the dual purpose of stating Canada's jurisdiction over its Arctic waters as well as recognizing Inuit concerns over pollution in the North.

Another concern of Canada has been the claim of sovereignty over the Arctic Islands. While there are no serious claims against the territorial Arctic Islands in northern Canada, Canada must maintain its claim over the northern territories or risk losing them. The key point relating to the Inuit is the principle of effective occupation, whereby a nation maintains its claim through using and occupying the claimed lands and adjacent seas.(11) This principle has been actively implemented

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(10) Trevor Lloyd, "Some International Aspects of Arctic Canada" in The International Journal, Vol.XXV:4 (Aug. 1970), p.723.

(11) J.L. Brierly, The Law of Nations, Sixth Edition, Edited by Sir Humphrey Waldock, Oxford: Clarendon Press, 1978, pp.162-173.

through such means as Canadian military sovereignty flights, the presence of the R.C.M.P., Government of Canada Nursing Stations in the Territories, leasing of Canada Lands for resource development, and even the re-location in some instances of Inuit settlements to far northern areas. One example of the latter is the settlement of Grise Fiord, Northwest Territories.

> In an effort to alleviate poor economic conditions among the Inuit and to assist in establishing Canadian sovereignty over the Arctic Islands, the Federal Government moved families from Port Harrison, Quebec and Pond Inlet to Grise Fiord around 1953.(12)

The Inuit relationship with offshore areas also appears to be well-founded in the general theory of aboriginal rights. Marc Denhez suggests that the expression

> 'aboriginal rights'...refers...to that body of rights which were vested in peoples (prior to the European arrival) under their own legal systems, which were not interrupted by any statute subsequent to the European arrival and hence which continue to be enforceable under the recognized principles of continuity of law.(13)

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(12) Outcrop, NWT Data Book 84/85, Yellowknife: Outcrop, 1984, p.158.

(13) Marc Denhez, Counsel for the Inuit Tapirisat of Canada, "Impact of Inuit Rights on Arctic Waters", in the Sikumuit Workshop, McGill University, April 15, 1982, p.14.

Regarding the Inuit offshore, Denhez concludes

> there is therefore no overwhelming legal impediment of Inuit rights in sea-ice, which would be analogous to Inuit rights on land.(14)

The claim of the Inuit to the offshore for traditional native pursuits has a long history. Alan Cooke relates the extensive history of Inuit usage and their claim of aboriginal rights offshore, and concludes that

> persons unfriendly to Inuit claims to traditional use of land-fast sea ice should remember that historical evidence from the written record, especially the narratives of exploration, the Arctic Blue Books, and the anthropological literature, will confirm these claims in all essential respects.(15)

A third difference between Inuit and Indian claims is the general homogeneity of the Inuit in language, culture, family ties and religion. Whereas each Indian band may have unique characteristics in each of the above sociological traits, the Inuit have a closer relationship to each other, even across the vast distances of the Arctic. Graburn and Strong emphasize these anthropological and sociological factors:

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(14) Marc Denhez, ibid, p.16.

(15) Alan Cooke, "Historical Evidence for Inuit Use of the Sea Ice", Centre for Northern Studies and Research, McGill University, c.1981-82, p.7.

> We wish to stress the cultural homogenety of so far-flung a group of peoples and the great variety of adaptations to local circumstances that often go unrealized in the lay mind.
>
> Eskimos[']... traditional lands extend over five thousand miles across the circumpolar region, embracing political domains of four nations - U.S.S.R., Alaska (U.S.A.), Canada, and Greenland (Denmark). Basically the Eskimos have the same kind of culture and react in the same kind of ways to social and technical pressures from Siberia in the west to Ammassalik in the east.
>
> The differentiation of Eskimo cultures has involved technological and demographic adaptation to vastly differing ecological niches within the Arctic area, and these have led to superficially different social and physical structures. In Barth's terms, we may say that the same basic cultural patterns and economic strategies have generated different social forms under different pressures and circumstances.
>
> The two factors that distinguish the environment of the Eskimos and hence their lifeway from that of all other native peoples of North America are residence in the Arctic and dependence on the sea. Their whole life rests on a land-sea dichotomy.(16)

A fourth difference is that the Inuit have historically had few dealings with the federal government. One reason for this has been the geographical location of the Inuit, far from encroaching southern populations. The

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(16) Graburn, Nelson H.H., and Strong, B. Stephen, Circumpolar Peoples: An Anthropological Perspective, Pacific Palisades, California: Goodyear Publishing, 1973, pp.137-139.

Inuit had little to offer in terms of land suitable for settlement. For this reason, the north was largely left alone while southern Canada was settled from the Maritimes to Vancouver Island, reducing the indigenous Indian population to a small minority. The lack of a similiar migration north has left northern natives a majority in their own lands.

The north was, however, plagued by a series of "boom and bust" cycles in the economy, reflecting the tenuous nature of the northern economy even to the present day. The early whalers and fur traders brought sporadic influxes of wealth and work for the Inuit. With the passing of the whalers, the gold and silver rushes in the north repeated the "boom and bust" cycle. Thereafter, mining and hydrocarbon exploration began, but there have been fluctuations in world markets and prices for northern minerals (first developed in the late 19th century) and hydrocarbons (discovered in 1920). Contemporary (c.1987) "mega-projects" in the Beaufort Sea and Arctic Islands seem speculative, given the substantial drop in world oil prices far below the threshhold production price for far northern developments. Four major actors in the north, Dome, Gulf, Esso and Panarctic, have all either substantially reduced or shut down oil and gas exploration pending a more favourable economic climate in Canada. The result has been

another "bust" in the "boom and bust" economic cycle of the north.

While the Inuit claims may appear different from the those of southern native peoples, the principles underlying the claims are identical. Cumming and Mickenberg point out that "by virtue of section 91(24) of the British North America Act, the Federal Government is given legislative jurisdiction over 'Indians and Lands reserved for Indians'. In Re Eskimos, the Supreme Court of Canada held that Inuit were 'Indians' within the meaning of section 91(24)".(17) With the inclusion of the Inuit as a recognized aboriginal people in the Canadian constitution, along with the Indians and Metis, it appears that similar principles will be applied in the determination of aboriginal rights. The differences between land claim settlements will be dependent on the individual circumstances and historical events leading to a settlement. The obtaining of political rights, if such may be acquired and/or recognized, will reflect the regional differences of native peoples. These differences will be most evident in differences between southern native peoples and northern natives, because the Inuit, Dene and Metis together hold a voting majority in the Northwest Territories.

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(17) Cumming and Mickenberg, op. cit., p.7; See also Re Eskimos, (1939) S.C.R. 104.

Native peoples, Canadian governments and scholars have discussed the issue of what exactly native rights are and may be. Native people have an idea of what their rights are and should be. The problem has occurred in translating these cultural, religious, social, economic and political feelings into a terminology understood by those who represent the rest of Canadian society, particularly the political decision-makers. The ambiguity of a definitive recognition of aboriginal rights has perpetuated problems between native peoples and the federal and provincial governments. Put simply, the government has not clearly understood the concerns of native peoples. Complicating this problem in communication has been the stereotype of native peoples as a cohesive group across Canada.

There has been a tendency to refer to the indigenous population as a single group - "native peoples". Canada, however, does not deal with only one native people, as may be found in New Zealand, Greenland, or Norway. Canada has also not taken a universal approach, as has the United States of America, for dealing with native issues. Rather, Canada has identified at least three major groups of native peoples and entrenched their as yet undefined rights in the constitution. The Canadian Constitution states that "In

this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Metis peoples of Canada".(18)

The stereotype of a single, homogeneous native classification could not be further from reality. While Indian bands may be of similiar linguistic and cultural backgrounds and be from the same Indian nation, they may have quite distinct political views and land claim concerns. In 1981, the census figures show 491,460 native people who declared themselves as such. Of these, 25,290 declared themselves as Inuit, 292,700 as Indian, 75,110 as non-status Indian, and 98,260 as Metis.(19) For one group, registered or status Indians, the band is the basic social and political group. The significant fact is that in Canada there are 581 of these different bands.(20)

These 581 bands represent only a portion of the Indian people in Canada. These bands are what the federal government classifies as status Indians, i.e. those Indians having status under the Indian Act. A large number exist in society, having left reserves, being enfranchised

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(18) Hogg, Peter W., Canada Act Annotated, Toronto: Carwells, 1982, p.81, Sec.35(2).

(19) First Ministers Conference, "Canada's Aboriginal Peoples", Ottawa, February 1983, p.7, from 1981 Census of Population.

(20) Government of Canada, DINA, Registered Indian Population by Sex and Residence, Ottawa, DIAND, December 31, 1984, p.xv.

or disqualified themselves through some portion of the Indian Act, such as Indian women marrying non-Indians.(21) The actual number of non-status Indians may not be as clear as indicated in census figures. Some enfranchised Indians may have stopped identifying themselves as "Indians", and have chosen another ethnic ancestry, particularly in mixed-blood relationships. The definition of ethnic origin is a subjective categorization, with the possibility of error an inherent probability. The Canadian constitution does not indicate whether these non-status Indians have the same rights entrenched as status Indians, and cases will likely be presented for opposing sides on this issue.

Another group mentioned in the Canadian Constitution is the Metis. There are different classifications of Metis in Canada, based on different criteria. Traditionally, a Metis has been a person born of white and Indian parents. Problems can arise in this classification as Metis may marry whites, Indians, other Metis or people from other racial groups that have immigrated to Canada.

Such a classification based on racial considerations is inherently full of problems in delineating who is Metis and who is not. Added to this racial problem is the

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(21) The concerns of Indian women losing their "status" through various forms of enfranchisement, mostly marrying outside of the "status" community, are currently being reversed by ameliorative legislation.

history of the Metis in Canada. The history of the Metis in the Red River Valley is quite different from the Metis north of the 60th parallel. Some Metis are under provincial jurisdiction, as in Manitoba, while others under federal jurisdiction, as in the Northwest Territories. As well, the Metis have not been governed by the same set of rules and legislation as have Indian peoples. One argument has been presented suggesting that the Metis have no aboriginal rights, and the clause, "existing aboriginal rights", in the Canadian constitution, should effectively exclude the Metis people from aboriginal claims.(22)

The Inuit of northern Canada represent a group with which the government of Canada has not had such historical and controversial relations. They were, in fact, the traditional enemies of northern Indian tribes and bands. Little is mentioned of this tradition today, but political action may bring out these historical tensions. Graburn notes the extent to which the Indians and Inuit held hostilities towards each other:

> The Indians and Eskimos thought of each other in the most hostile and derogatory manner. The Indians referred to the Eskimos as "aijistimau" (aijatsimijuu, iicimau), which means "eaters of raw meat", that is, animal-like, anathema to the Indi-

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(22) Thomas Flanagan, "The Case Against Metis Aboriginal Rights" in Canadian Public Policy, IX:3:314-325, 1983, pp.314,324.

> ans. The Eskimos referred to the Indians as "adlet" ("Indians, hostile strangers") or "irqidlit" which means those with "irqit" (louse eggs) showing in their hair!
>
> The interethnic behaviour is described differently from the two sides (as one would expect), but both agree that when they met they fought and killed each other. The Eskimos were always afraid of the Indians, although the Indians have stated that the former often attacked first. Both agree that the Eskimos lost the skirmishes and usually fled if they saw the Indians or came across their camp.
>
> After the traders established themselves in the northern area in the 19th century, they curbed active warfare as they did not want to see their trappers using their time and supplies to shoot each other. The Indians probably had access to guns first, which made them even more feared by the Eskimos.(23)

With such a diversity of native peoples in Canada it is not surprising that native people feel they are not understood by the federal government of Canada. To be equally responsive to each band of Indians, each non-status group of Indians, each regional Metis group and likewise to the Inuit would require a small army of government employees. Added to this demographic diversity is the ambiguous character of native rights.

Michael Asch suggests that, in principle, there are many kinds of rights possible, but in Canada, there appear

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(23) Graburn and Strong, Circumpolar Peoples: An Anthropological Perspective, op.cit., pp.119-120.

to be primarily two rights: first, rights to self-government and self-determination, which he refers to as "constitutional" rights (henceforth referred to as political rights); and second, a property right in land and/or a right to hunt, fish and trap (hereafter referred to as land rights).(24) He quotes Cumming and Mickenberg regarding the latter rights: "Aboriginal rights are those property rights which inure to Native peoples by virtue of their occupation of certain lands from time immemorial".(25)

Separating these aboriginal rights into political and land rights makes understanding both native concerns and government goals much easier. The goal of the government of Canada has been the settlement of land claims to facilitate economic development in Canada. This policy was obvious in the treaty process carried out in the numbered treaties in Western Canada. It also appears to be the policy now being formulated for northern native land settlements. What the federal government of Canada has attempted in the past has been the extinguishment of both political and land rights through treaties and land claim settlements.

D.J. Gamble has pointed out that

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(24) Michael Asch, Home and Native Land, Toronto: Methuen, 1984, p.6.

(25) Michael Asch, ibid, p.6.

> it was the view of even the earliest, outnumbered settlers that encroachment on Indian lands was justified by the inherently superior nature of European culture of its values, technology and religion. As each area became coveted for development purposes - for agriculture, for railways, for pipelines and hydro-electric schemes - the Crown would formally acknowledge aboriginal title to the lands required for development and proceed to negotiate a treaty which would award certain financial and other benefits in exchange for a relinquishing of all native claims to aboriginal title. By acknowledging title in order to extinguish it, such development could proceed legitimately.(26)

Even more specifically, the treaties, up to and including the Western Arctic Claim, included wording along these lines:

> ...the Indians inhabiting the district hereinafter described and defined, do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for Her Majesty the Queen and Her Successors forever, all their rights, titles and privileges whatsoever, [emphasis mine] ...(27)

The current trend for policy-makers appears to be the splitting of the two rights, political and land, so that the extinguishment of rights may now refer only to those land rights which have been settled through a completed

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(26) D.J. Gamble, "Engineering Ethics and Northern Development" in Engineering Journal, November, 1982, p.6.

(27) Treaty No.3, cited in Cumming and Mickenberg, op.cit., p.314.

treaty, land claim settlement or stated policy of a government. The latter right was clarified in the Calder case.

> A series of proclamations by Governor Douglas between 1858 and 1863, followed by four ordinances enacted between 1865 and 1870, revealed a unity of intention to exercise, and the legislative exercising, of absolute sovereignty inconsistent with any conflicting interest, including one as to "aboriginal title".(28)

It would also appear that the negotiations in the First Ministers' Conferences on Aboriginal Affairs, as guaranteed in the first Constitutional amendment, affect the political rights of native peoples in Canada, include land rights and may attempt to delineate geographical boundaries of native governments. The direction self-government for aboriginal peoples might take appears less clear than land claim settlements, as the former must take into account the diversity of numbers and types of native peoples, whereas the latter poses more or less the same issue in all circumstances.

Land claims are being resolved in a "once and for all time" fashion, involving complete extinguishment of such further claims from the same group of native peoples. Political rights appear to be involved in a much lengthier

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(28) Calder et al v. Attorney-General of B.C., (1973) SCR 313, p.314.

and complicated process of constitutional development which could provide entrenched guarantees.

Regarding land claims, the goal of native peoples appears to be the maintenance of traditional economies, society and religious values, all of which focus on the relationship between the land and native peoples. Native peoples see political rights as connected with their society, religion and economy, but such rights are more easily separated in discussions with government policy-makers.

The key questions revolve around the administration of native self-government and the relations such governments would have with the various governments of Canada, whether municipal, territorial, provincial or federal. One of the problems associated with the administration of such a governmental system is how many governments would be created. Would there be one for each Indian band, all 581? The answers to such questions involve further research and are an ongoing concern of the First Ministers Conferences on Aboriginal Affairs.

The federal government has continued a pattern of extinguishment of aboriginal rights in aboriginal agreements and final settlements.. It is one purpose of this thesis to identify this direction through the clarification

of what the term "aboriginal rights" entails, based on the COPE settlement.

History of Aboriginal Rights

Aboriginal rights have been a recurring source of concern to Canadian courts, provinces and federal government. This concern originates from the uncertain definition of what exactly aboriginal rights are, and what they have been in the past. Cumming and Mickenberg suggest that:

> Almost all the inherent "native rights" which Canadian Indians and Inuit retain today are derived from their original possession of the North American continent. It is this historical fact and the due recognition which Canadian and English law and policy have given to the principle that native people have a right to retain possession of or be compensated for the loss of their aboriginally-held land that underlies and explains the complex legal theory of aboriginal rights, the emergence of most of the Indian treaties, and the continuing and justified demands of native peoples for satisfaction of outstanding claims.(29)

Native people refer to their occupation of the land as extending to "time immemorial", which goes far beyond their recorded history. Cumming and Mickenberg point out that the origins of the theory of aboriginal rights are generally traced to the Spanish theologian, Francisco de Vitoria

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(29) Peter A. Cumming and Neil H. Mickenberg, op.cit., p.3.

and his lectures, "De Indis" and "De Jure Belli"(30) in 1532.(31) They then trace the development from Pope Paul III to the Spanish Law of the Indies which provided for the protection of Indian lands, which, they suggest, had a substantial impact on the early development of the theory of aboriginal rights.(32)

Cumming and Mickenberg recognize that the development of aboriginal rights in Canada did not occur independent of other variables outside Canadian territory:

> Because of the close relationship between what is now Canada and the United States during the formative period of the theory of aboriginal rights, and because of the very full development of the doctrine in American law, frequent reference will be made to the American jurisprudence in this area, particularly in the earlier stages of our analysis. For presumably the same reasons, Canadian courts have often relied upon American case law when dealing with this intricate subject.(33)

Thus, it would be useful to separate the two historical developments of aboriginal rights at this point; first, the governmental statutes and enactments reflecting desired

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(30) Classics of International Law, De Indis et De Jure Belli Relectiones, E. Nys ed., New York: Oceana Publications, 1964, cited in Cumming and Mickenberg, op.cit., p.14.

(31) Cumming and Mickenberg, op.cit., p.14.

(32) Cumming and Mickenberg, op.cit., p.15.

(33) Cumming and Mickenberg, op.cit., p.14.

policies; second, the development of judicial interpretation of the meaning of aboriginal rights, including both Canadian and American case law, and international law where applicable.

Policy Statements and Statutes

As early as 1633, a statute of the colony of Massachusetts provided that "what lands any of the Indians in this jurisdiction have possessed and improved, by subduing the same they have a just right unto".(34) Cumming and Mickenberg also point out that the colonies established by the Dutch and Swedes (c.1629) were all founded on lands which were purchased from the Indians.(35) In 1670 the British Parliament passed legislation which placed the conduct of Indian relations in the hands of the various colonial rulers and identified the main elements of future British Indian policy: a) protection of Indian people from unscrupulous settlers and traders, b) introduction of Christianity, later becoming the movement to "civilize" Indian people, and c) an active role for the

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(34) A. Young, Ed., Chronicles of the First Planters of the Colony of Massachusetts Bay, 1623-1639, Boston: Charles C. Little and James Brown, 1846, p.159, cited in Cumming and Mickenberg, op.cit., p.15.

(35) Cumming and Mickenberg, op.cit., p.16.

Crown as a protector of "Indians".(36) The next major policy statement was to prove instrumental in future aboriginal rights' negotiations and definitions - the Royal Proclamation of 1763. Interpretations vary as to the geographical extent of the Proclamation; in any case it stated that land belonging to

> ...the several Nations or Tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them as their Hunting Grounds.(37)

This followed the earlier pattern of British policy of claiming land as a conquering nation, but respecting that the land was occupied and used by the indigenous population. Settlement occurred in the context of purchase of the land from the native peoples.

In 1775, instructions to Governor Carleton of the British Canadian colonies outlined an administrative structure and elaborated on the principal policies, establishing a hierarchy of Indian Superintendents, Commissaries, Interpreters and Missionaries with a clear set of duties and

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(36) Department of Indian and Northern Affairs Canada, The Historical Development of the Indian Act, Ottawa: DIAND, 1984, p.2.

(37) Royal Proclamation of 1763, cited in Cumming and Mickenberg, op.cit., Appendix II, p.291.

powers.(38) By 1798 five land surrenders had been made to the Crown, following the pattern set in the 1784 Mississauga surrender of the Grand River tract in southern Ontario; all rights and privileges in the land were surrendered in favour of the Crown for a specified amount of consideration to be given either in cash, or, as was more common, in goods.(39)

Following the end of the Indian wars, the early nineteenth century saw "humanitarian" efforts by the British to "civilize" the Indian population. These efforts were largely seen as hopeless and viewed as a complete failure as early as 1836.(40) When the Bagot Commission suggested changes concerning Departmental administration in 1847, the Commissioners conceded that the Crown had allowed Indians the rights of occupancy and compensation for surrender or purchase of their lands.(41) Two acts were passed in 1850 which further elaborated the government's policy on Indian lands, as well as a clause in the Crown

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(38) DINA, The Historical Development of the Indian Act, op.cit., p.6.

(39) Cumming and Mickenberg, op.cit., p.112.

(40) DINA, op.cit., p.15.

(41) DINA, op.cit., p.17.

Lands Protection Act in 1839, all of which considered the recommendations of the earlier Bagot Commission.(42)

Further enactments by the British Government dealt with Indian Lands, Indian status, and grew to be involved with all aspects of native life. The important point to note is that throughout all the historical dealings with the Indians, the land was the centre of negotiations and native-governmental relations.

In 1867, jurisdiction was transferred to the newly created Canadian government which controlled "Indians and Lands Reserved for Indians" by virtue of Section 91(24) of the British North America Act. When the Indian Act was passed in 1876, it had three principal areas of concern: lands, membership and local government.(43) This was a noteworthy action by the federal government, recognizing indigenous peoples' local political activity. Former relationships hinged on treaty alliances in times of war with France. As the provinces of Upper and Lower Canada grew, so did the relations, on a more domestic and less militaristic basis, of the government of Canada and the native peoples. With this simple recognition of local Indian governments came little else in terms of political develop-

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(42) DINA, op.cit., pp.23-24.

(43) DINA, op.cit., p.51.

ment for native peoples in Canada until the 1960s. Concern about the relationship of native peoples and their claimed lands overshadowed such developments.

This gap in Indian political development continued until the late 1960s when the 1969 White Paper rallied native peoples together to force the issue of political and cultural survival. The relationship between the government of Canada and Indian people had centred on the Treaties earlier agreed upon, as well as the subsequent numbered Treaties from 1871 to 1923. The Indian Act served as the administrative tool of the federal government to satisfy the terms of the Treaties and handle Indian affairs.

The federal government of Canada has continued a policy carried over from the preceding British government since the recent European discovery of the Americas. This policy was a recognition of aboriginal rights vested in the land, which the British saw as an impediment to colonial development. Aboriginal rights were affirmed in British law and tradition, and thus existed as a "given" principle when British/North American Indian relations began.

The European nations also saw themselves as conquering sovereigns, who included the native peoples of the Americas under their divinely appointed monarchies and extended them their "protection". While the treatment of Canadian native

peoples has not been recorded as the ideal, the principle of the recognition of aboriginal rights was maintained.

The other policy the British Empire continued was the antithesis of the former policy, from a practical standpoint. This policy was the recognition of aboriginal rights, which was then negotiated for the ultimate extinguishment of those rights. From the extinguishment of aboriginal rights over the land could proceed colonial development. Extinguishment could be seen in two applications, neither of which has ever been seen to be desired by the native people of Canada. The most severe was extinguishment of aboriginal rights by attrition of aboriginal peoples. This "final solution" was observed in the Maritimes, where some bands of native people became extinct, thus obliterating any associated aboriginal rights. Such as policy a native "extinguishment" could not be formally associated with a "governmental" policy per se, but the practical application in the new colonies was evident. Howley documents the tragedy of the Beothuk Indians.

> Extract from Harrisse
> On October 10th, 1610 - The Procureur of St Malo made complaint that in the preceding year many masters and sailors of vessels fishing in Newfoundland, had been killed by savages, and presented a request to Court that the inhabitants of St Malo be allowed to arm two vessels to make war upon the savages, so that they might be able to fish in safety. Permission was obtained, and St

> Malo fishermen fitted out each year, one or more vessels for this purpose. These vessels were stationed at the Northern Peninsula, or Petit Nord, which the St Malo fishermen frequented. The custom was continued at least until 1635.(44)

It was not until 1769 that the atrocities against the Beothuk, or Red Indians, were formally recognized. The earlier policy of outfitting for war had the incidental effect of creating a permanent "hunting licence" against the Beothuk, who at times past had co-existed with the Labrador Inuit. The Beothuk were exterminated by over-zealous "Indian-hunters", the last known survivor dying June 8, 1829.

The second, and more amenable option was negotiation, which concluded in the many known and written treaties in Canada. The Indian treaties achieved essentially the same results as the first method, but at a greater financial and administrative cost to the government. The former method carried little expense, but a substantial moral problem, for the native people had been declared "people" by the Pope, not merely savages.

The treaties in Canada followed similiar patterns from the first to the most recent. Aboriginal rights to the land were extinguished in exchange for a small grant of

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(44) Howley, James P., The Beothuks or Red Indians, Toronto: Coles, 1974 (facsimilie), originally published in 1915, p.22.

land by the government and "gifts", which were designed to civilize Indians and convert them both to an agragrian economy and Christianity. These gifts included cash bonuses, or compensation, farm implements, modern medical services (circa the 1800's) and other items intended to pacify natives into agreement.

Whether morally "fair" or not, the treaties had the effect in law, where they were carried out legitimately, of effectively extinguishing aboriginal rights. Modern policies have not differed greatly. The 1969 White Paper proposed total extinguishment for all native peoples, giving them the same status as equal Canadian citizens, and allowing them the cultural permanence as experienced by Ukranians, Italians, Chinese and other ethnic groups. This proposal grew out of the notions of greater individual freedoms and the concerns over the disparate conditions of Canadian native people. These conditions were deplorable: poverty, unemployment, health problems, housing conditions, suicides, alcoholism and drug abuse were and in some cases, still are statistically worse for Canadian natives than for the general population. These concerns of the federal government coincided with an ameliorative move in the U.S. toward correcting past injustices to its Negro population.

The United States was in the process of enforcing a reversal of the 1896 Plessy v. Ferguson(45) "separate but equal" doctrine. In 1954 the American Supreme Court reversed the doctrine in Brown v. Board of Education of Topeka.(46) The "separate but equal" doctrine had led to separate, but unequal, societal conditions for American resident Negros. Canada had the advantage of watching these problems develop and applying the solutions to Canadian native peoples.

The White Paper was a natural ameliorative move to correct these societal injustices perpetuated among indigenous native Canadians, following the American example; just as Confederation in 1867 had followed the American Civil War and considered regional problems facing a federal state in that historical period, so to did the 1969 White Paper have similiar tones of equality following the American example of riots, Martin Luther King Jr. and other racial events. When conflicts arose over Indian lands and Indian rights, generally defined in respect to the Indian relationship to the land, the matters were referred to the Canadian courts for settlement. These judicial interpretations have their own history, discussed below.

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(45) Plessy v. Ferguson, 163 U.S. 537 (1896).

(46) Brown v. Board of Education of Topeka, (No.I) 347 U.S. 483 (1954).

Legal Decisions Affecting Native Rights

Significant cases in Canada did not arise until the late nineteenth century. Cases in the United States arose earlier, particularly the famous case of Johnson v. McIntosh(47) in 1823. These cases revolved around one central theme - the land rights of Indians and the various legal, political and constitutional concerns of both the governments and native peoples which stemmed from this theme. The decisions elaborated the argument that the discovering European nations, with an economic agricultural base, gained full sovereignty upon discovery and occupation of the Americas. This theory of discovery was clearly stated in Johnson and Graham's Lessee v. McIntosh:

> The exclusion of all other Europeans, necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no European could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.
>
> Those relations which were to exist between the discoverer and the natives, were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.
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> ...the rights of the original inhabitants...to dispose of the soil at their own free will...was denied by the original fundamental principle, that dis-

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(47) See Johnson and Graham's Lessee v. McIntosh, (1823), 8 Wheaton 543.

> covery gave exclusive title to those who made it.(48)

The context for North American natives was further outlined in the same case:

> In Virginia, therefore, as well as elsewhere in the British Dominion, the complete title of the crown to vacant lands was acknowledged. So far as respected the authority of the crown, no distinction was taken between vacant lands and lands occupied by the Indians. The title, subject only to the right of occupancy by the Indians, was admitted to be in the king, as was his right to grant that title. The lands, then, to which this proclamation referred, were lands which the king had a right to grant, or to reserve for the Indians.(49)

The same concept held for over a century and a half, and was re-affirmed in 1955 in Tee-Hit-Ton Indians v. United States:

> This position of the Indian has long been rationalized by the legal theory that discovery and conquest gave the conquerors sovereignty over and ownership of the lands thus obtained.(50)

Canadian courts followed an almost identical pattern, reaffirming the Crown's sovereignty. In 1888 the courts decided that: "...the tenure of the Indians was a personal

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(48) Ibid, p.572.

(49) Ibid, p.596.

(50) Tee-Hit-Ton Indians v. United States, (1955), 348 U.S. 272, p.279.

and usufructuary right, dependent upon the good will of the Sovereign...The Crown has all along had a present proprietary estate in the land, upon which the Indian Title was a mere burden".(51) Cumming and Mickenberg point out that the

> two great limitations which the St.'Catherine's case stated that the law placed upon aboriginal title were:
>
> a) the inability to alienate aboriginal lands except to the Crown;
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> b) the vulnerability of the lands to extinguishment by the Crown.(52)

A gap appears in Canadian case law regarding the extinguishment of aboriginal rights. Cumming and Mickenberg also note that

> both the Royal Proclamation of 1763 and St.'Catherine's Milling make clear the uninhibited and exclusive right of the sovereign to extinguish aboriginal title. Until the 1970 decision in Calder v. Attorney-General however, no Canadian case had attempted to explain how such an extinguishment could be executed.(53)

Little has changed over the past century with regard to extinguishment of aboriginal rights and the ultimate

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(51) St. Catherine's Milling and Lumber Co. v. The Queen, (1888), 14 App. Cas.46, p.54.

(52) Cumming and Mickenberg, op.cit., p.40.

(53) Cumming and Mickenberg, op.cit., p.40.

settlement of negotiations between native people and the federal government.

> It is...obvious that the Government of Canada has already extinguished, and indeed, is continuing to extinguish the aboriginal rights of native peoples. The clearest example of extinguishment is the land cession treaties in which Indians ceded huge tracts of their aboriginal lands in return for a reserve and other benefits.(54)

Without any solid case law on extinguishment, and the lack of continuing land claims being negotiated by the federal government, little was completed in terms of land claims for approximately fifty years. The turning point for both case law and governmental policy was the Calder case. In this demarcation point for native rights, the court split their decision on the issue of native rights, with the tie-breaking vote against the Nishga Indians, but on a technical consideration, not on the issue of native rights. With such a close decision on whether Indians did in fact have "aboriginal rights", Ottawa proceeded to move in a positive direction, for the benefit of the Canadian native people, and instituted the 1973 policy on native claims.(55) This policy, which arose directly as a result

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(54) Cumming and Mickenberg, op.cit., pp.43-44.

(55) See DINA, "Statement Made by the Honourable Jean Chretien Minister of Indian Affairs and Northern Development On Claims of Indian and Inuit People",

of the Calder case, was the first to accept the notion of entertaining new land claims from Canadian aboriginal people.

Native Rights In Canada

The history of native rights in Canada has largely been a history of native land rights and the government's response to these claims. Political development, although recognized as early as 1874 in the Indian Act, was nearly non-existent for a century. This has been reflected in concerns over the treaties and Indian case law over the last century. The problems associated with aboriginal rights reflect this split between political development (or the lack thereof) and the concerns over land settlements.

Native people regard their political rights as the right to self-determination through self-government. Thomas Flanagan discusses the concept of aboriginal rights and includes the concerns of political rights in the three models he utilizes.(56) His 'Model I' most clearly states the native view of themselves as separate and sovereign "nations":

> 1. Indian peoples are "nations" in the cultural sense of having a self-sufficient and

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Ottawa: DIAND Communique, Aug.8, 1973.

(56) Thomas Flanagan, "From Indian Title to Aboriginal Rights", in the Western Canadian Legal History Conference, April 25-27, 1984.

unique identity as well as in the political sense of having a desire for collective existence.

2. These nations possess "sovereignty", the power to govern themselves as distinct communities.

3. Their intercourse with other sovereign nations is to be regulated by the law of nations.

4. Whether they are Christian or pagan, civilized or savage, is immaterial to their standing among the family of nations.

5. As nations, they have full and absolute ownership of the land on which they dwell. That their ownership is in common rather than in severalty does not remove its absolute character.(57)

Flanagan concludes that the native people have attempted a revival of this model, based on the law of nations, but face the opposition outlined in his other two models. Models II and III represent, respectively, the government's views that primitive populations are not sovereign nations, and the more conciliatory idea that while Indians are not separate sovereign nations they do have certain attributes of sovereignty respecting their independent position.(58) While the native peoples have had an extensive history of aboriginal rights based on land claims and the assertion of native identity connected to the land, the more recent

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(57) Thomas Flanagan, ibid, pp.9-10.

(58) Thomas Flanagan, ibid, pp.38,19,25.

developments include this essential notion, but add the important aspect of political development.

This additional factor in aboriginal rights can be seen in the historical development of northern politics. Native participation in the government of the NWT has been relatively recent, and has a comparatively short track record. As with southern natives, concern over aboriginal rights grew from the "nativism" that followed the 1969 White Paper. In addition, people in the north were pressured by oil and gas development. This was evident in areas traditionally occupied by the Dene and Inuit as their hunting regions. This combined impetus for northern natives led to strong assertions of northern native "rights".

When the Berger Commission concluded that the Mackenzie Valley Natural Gas Pipeline should not proceed until land claims and the environment were better understood, the federal government put a moratorium on the mega-project. Esso Resources Canada, however, recently (1985) completed a Mackenzie Valley oil pipeline as far north as Norman Wells and put its oil discoveries on stream into the main grid system to southern Canada. This was done with less public dissent and vocal opposition, in contrast to the events of the previous decade.

It is interesting that the current non-renewable natural resource development (the Norman Wells portion of the oil pipeline) has occurred within the confines of the geographical region claimed by the strongest proponents of Flanagan's Model I, the Dene of the Northwest Territories. The Dene's attitudes, until very recently, were to have nothing to do with the territorial government, not recognizing it as having any authority over the Dene "nation". After realizing they could not make changes outside the context of federal-territorial negotiations, the Dene included themselves in territorial politics and quickly assumed a leading position with a Dene, Richard Nerysoo, as Government Leader of the Northwest Territories.

The Dene were obviously under pressure by Esso Resources Canada, who hold the largest interest in the Norman Wells oil fields, and who fully intended from the outset of northern drilling to bring the discoveries to market. The Dene, with the support of Esso Resources and the Department of Indian and Northern Affairs, formed the Dene Development Corporation (DDC), modelled on the Corporations formed after the Alaska Land Claim Settlements, and purchased a land drilling rig for their new company, Dehcho Drilling Limited. This new company contracted with Esso to drill oil wells, some on artificial islands in the Mackenzie River, some on the mainland. As well, natives

were given a high preference for hire on the pipeline project itself. The Native Employment Training Study (NETS) will soon release its findings, including Norman Wells as one of its case studies. The role of northern employment in the Norman Wells region will be of particular interest in other native regions where development is considered.

One question which arises is why development could proceed, relatively uninhibited, in 1985, when it was a near impossibility in 1975. For the Dene there has been no clearly agreed upon treaty, no land claim settlement and no clear delineation of native political rights. Rene Fumoleau documents this situation, which the federal government had attempted to remedy by the signing of Treaty Number Eleven.

> Most official documents indicate that Treaty 11 was a cession of land. The Indians of the Mackenzie District contest this interpretation. They do not believe that their fathers ever intended to surrender the land to the government. They have never understood that Indian title to the land was extinguished by Treaty 11.

> If Conroy [the treaty 'negotiator'] asked the Indians to surrender their rights to the land, it is possible and probable that they did not understand him. Historians and anthropologists agree that the European concept of 'land ownership' was unknown to the Indians of the Mackenzie District in 1921.(59)

The political rights are the most elusive, given the ambiguity of the constitutional guarantees, the place the Dene may have in the Canadian and territorial context, and considering the possibility of division in the Northwest Territories. The questions are more complex than they were in 1975, where the constitutional guarantees, political integration and likelihood of division were non-existent. Why then, did resource development proceed on the claimed land of Denendeh, the prospective political region of the Dene?

The road to self-determination and self-government is paved with capital resources. With money comes power. With no money to carry out the desires of a self-determining, self-governing people, all the "rights" in the world will not effect any change in current conditions.

Without the capital resources to carry out native policies and programs to maintain their cultural, religious, political and social uniqueness, the ideas will

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(59) Rene Fumoleau, As Long As This Land Shall Last, Toronto: McClelland and Stewart, n.d.(c.1973.), p.212.

remain on paper, in the minds of the well-wishers, and be left to academics to ponder for the future. With this becoming clearer in the minds of native peoples, the once primary goal of the land and the cultural survival relating to the land becomes a secondary goal for a period of time. The new primary goal becomes the acquisition of capital resources with which native people have the power to literally "create" or "re-create" their culture. With the desire of the native people to achieve this, and the funding provided in a settlement, the "rights" of natives can be maintained in perpetuity.

It should be noted that this hypothesis is not unique to the Canadian northern situation. Greenland, consistent in the past with its vociferous condemnation of Canadian oil and gas activities between its shores and the Canadian Arctic Islands, recently allowed offshore drilling off its eastern shores, an area renowned for its abundance of sea life. The opportunity to obtain substantial funds from oil and gas royalties appears to override concern over the environment. When the financial gains do not benefit the indigenous population, however, the environment can be used as a tool of leverage to maintain the status quo.

Unless aboriginal rights are clearly defined, this leverage is based only on speculation, and the legal means to maintain aboriginal rights are reduced (to such methods

as placing caveats on land pending land claim settlements). For the federal government, native rights must be extinguished as an inducement for industrial development. The creation of a more favourable operating environment is particularly essential in northern areas, where logistics and extreme low temperatures add to development costs. This "better" environment is created by extinguishing aboriginal rights in the area.

CHAPTER TWO

A HISTORY OF COPE

The Historical Context for Political Action

On January 28, 1970, a small group of northern natives in the Western Arctic met formally to discuss mutual concerns of "native rights".(60) The impetus for this ground-breaking meeting was the activities of oil and gas corporations in the Mackenzie Delta-Beaufort Sea region. A southern newspaper reported this new "native-rights group", largely because the president and driving force was a native woman.

> The fireball behind the burgeoning North-west Territories Native Rights Movement is a plump middle-aged Indian woman who plots assaults on federal policies from the incongruous confines of a government-operated handicrafts shop.
>
> The fact that Mrs. Semmler is methodically biting the hand that feeds her might be considered a little strange. But north of the [Arctic] circle, everything is just a little odd by southern standards.(61)

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(60) Committee for Original Peoples Entitlement (COPE), "Minutes", Meeting held at Craft Shop, Inuvik, NWT, January 28, 1970, at 7:30 p.m.

(61) Toronto Daily Star, "Indian woman works for rights of Eskimos in the N.W.T.", Women's Section, Friday, Sept.11, 1970.

A long series of events preceded this first meeting which led to the incorporation of a northern native peoples' society - The Committee for Original Peoples' Entitlement (COPE).(62) The events which transpired prior to this first COPE meeting centred largely around oil and gas development in the north.

There has been a comparatively long history of oil and gas exploration in the north. Oil has been known to exist in in-situ bitumen deposits along the Mackenzie River, and was used by native peoples long ago as a sealant for their canoes. Early Arctic explorers, such as Alexander Mackenzie, noted the oil as early as 1789, and geological surveys established the existence of an immense oil field within the Mackenzie Basin by the late 1880's.(63) The first successful oilwells were drilled in the current location of Norman Wells, N.W.T., in 1918-1919. These first wells brought in proven commercial quantities of oil in 1920. Exploration and development continued in Norman Wells, but the cost of shipping the oil overland from the

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(62) Note: The punctuation of People[s'] appears to have changed several times throughout the life of COPE. I have recorded the name as it was used at the time. The variations reflect differences in culture, use and possibly, meaning. The most correct form used appears to be the one just cited (Peoples').

(63) Rene Fumoleau, As Long As This Land Shall Last, Toronto: McClelland and Stewart, n.d. (c.1973), p.152.

north proved to be prohibitively expensive, from the viewpoint of southern markets.

The oil discovery in Fort Norman (Norman Wells) by Esso precipitated an "oil rush" similiar to the earlier "gold rushes" experienced in the north. Prospectors and speculators considered every means possible to reach Norman Wells, including airplane, "Fast Dirigible Service to Oil Fields of the North", foot travel, dog team from Ft. McMurray and later, when winter was over, river boat.(64) Another "boom and bust" cycle in the north was commencing. As had been the concerns over the similiar rush west into the prairies and the interaction with the Indian peoples, so were the concerns of Ottawa about development in the north and the Eskimo people.

The discovery of oil was deemed an event of national significance, but the "Indian" rights to lands lying north of the Great Slave Lake had not been extinguished.(65) The resultant action was to send a treaty-making team to the north to extinguish native rights, clearing the path for northern development. This was to be achieved by negotia-

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(64) Rene Fumoleau, As Long As This Land Shall Last, Toronto: McClelland and Stewart, n.d. (c.1973), p.153-154.

(65) PAC, RG10, BS, file 336,887, McLean to HBC Commission, 7 Feb. 1920, quoted in Rene Fumoleau, As Long As This Land Shall Last, Toronto: McClelland and Stewart, n.d., p.158.

tions in the continuing series of treaty-making; this would be Treaty Number 11, in the numbered treaties.

Treaty 11 was not a negotiation; the treaty "negotiator", H.A. Conroy, had his hands tied by Ottawa. He was only to reach a settlement on pre-determined terms from the capital.(66) Once Ottawa had decreed the time, terms and conditions of Treaty 11, only one thing remained for Conroy to do: obtain the consent and signatures of the Indian people of the Mackenzie District.(67)

The goal of Treaty 11 is obvious. It was intended to free the land in the surrounding area of the north for resource development, unhindered by complications arising from undefined aboriginal rights. Treaty 11 states its intentions in similiar wording as other treaties: "...the said Indians do hereby cede, release, surrender and yield up to the Government of Canada, for His Majesty the King and His Successors forever, all their rights, titles, and privileges whatsoever, to the lands included within the following limits...".(68)

What appears as an anomaly is that traditionally used lands of the Eskimo people were included in the

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(66) Rene Fumoleau, ibid, p.163.

(67) Rene Fumoleau, ibid, p.164.

(68) Cited in Rene Fumoleau, ibid, pp.165-168.

geographical delineation of Treaty 11. Fumoleau cites the reasons for this:

> When Kitto made his tour in 1920, he rejected the validity of any land claims by the Eskimos. No treaty has been made with these [Eskimo] people, but as they are a purely non-resident people, they are not in the same position as the non-treaty Indian.(69)

The Eskimos were not asked to sign Treaty 11 in 1921; however, when they were invited in 1929, they refused.(70)

Prior to 1923, the Eskimo people were not under the supervision of any government department. By an amendment to the Indian Act, the Parliament of 1923 brought 6,538 Eskimos under the charge of the Superintendent General of Indian Affairs.(71) In 1927, responsibility for Eskimo affairs was transferred to the Commissioner of the North-west Territories.(72) Rene Fumoleau indicates that it was discovery and development which prompted the Government to make Treaty. The Government was prompted to recognize the original inhabitants of the land by entering into agree-ments with them, to ensure that they would not impede

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(69) From F.H. Kitto, 1920 report, Section XXI, cited in Rene Fumoleau, ibid, p.206.

(70) Rene Fumoleau, ibid, p.206-207.

(71) Rene Fumoleau, ibid, p.274.

(72) Canada, Privy Council, OC No.709, 31 Aug.1927, cited in Rene Fumoleau, ibid, p.274.

progress, and to compensate them for their inconvenience. However, the extinguishment of title or aboriginal rights was not explained to the chiefs who signed the Treaty. The Indians accepted the Treaty without understanding all of its terms and implications.(73) The Eskimo, or more specifically, the Inuvialuit people, were not considered in the same classification as the Indian people.(74) At the 12th Session of the Northwest Territories Council, December 11, 1929, the Commissioner stated that "Eskimos should not be classed with Indians, who are wards of the nation, and...[the Eskimos] really had the status of white men resident in the Northwest Territories".(75)

The exclusion of the Eskimo people from the treaty process has been seen as one of the most fortunate encounters they had (or more accurately in this case, did not have) with the white man and his government.

> Few white trappers reached the Arctic Coast and the Mackenzie Delta before the Thirties. The creation of the Arctic Pre-

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(73) Rene Fumoleau, ibid, p.306.

(74) Note: While it may appear to be redundant to technically refer to the Inuit or Inuvialuit as people (the Inuit terms denote "the people" and "the real people", respectively), thus calling them the "people people", the terms have also come to differentiate the Inuit and Inuvialuit as ethnic groups relative to each other and outside groups. For example, the Inuit of Alaska are still referred to as Eskimos.

(75) Rene Fumoleau, ibid, p.275.

> serves permitted the Eskimo people to maintain their economic independence and to continue their traditional way of life. The total exclusion of white trappers from the Arctic Islands proved to be more benefit to the Eskimo people than any treaty could have been.(76)

The Eskimo or Inuit were generally excluded from government relations, except as being under the jurisdiction of the Commissioner of the N.W.T., and continued to exist in their traditional ways of life; but even the "old ways" were being forcibly changed by another aspect of government "good intent".

To ameliorate the extremely poor health conditions of northern natives, the government in Ottawa pursued a later policy of encouraging northern natives to move into settlements where health care, education and easier R.C.M.P. supervision would be available.

> Government policy was, mainly, to encourage people to move into town. The government would not provide health and educational facilities in the smaller settlements and camps. The children were increasingly made to go to the large hostel schools. People began to feel that even if they themselves wanted to stay on the land, the only way they could do right by their children was to move into town.

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(76) Rene Fumoleau, ibid, p.275.

> So they began to move into places like Aklavik and Tuktoyaktuk (and later, Inuvik), not always because they wanted to, but because they had to.(77)

An earlier "policy" of not supplying general free health care in the north had disastrous results in the form of "white man's diseases", which decimated the northern populations, wiping out complete bands in some circumstances, with the same end result of the Beothuk Indians in Newfoundland - extinguishment of rights through extinction of people. With subsequent publicity and public outcry over such health concerns, particularly when some Inuit with tubercluosis were brought to Edmonton in the 1950's for treatment,(78) the government proceeded to act, and established towns such as Inuvik.

This new style of community was based on southern standards, brought north. Generally, however, the newcomers to the north were the ones taking advantage of the new housing with running water, central heating and sewage facilities. The natives could not afford such services for many years, opting for cheaper "honey bucket" service and

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(77) Peter J. Usher, "History of COPE", Ottawa: COPE, 25 Apr.1973, p.3.

(78) Globe and Mail, "TB threat in North left wandering Inuit tracking their roots", September 17, 1986, p.A1-A2.

using wood-burning stoves as opposed to costly oil furnaces.

The practical reasons for not adopting utility services (electricity, water, heating, etc.) are the same today as they were when first offered. Many natives tried such services, left for the bush, or to go out on the tundra for a few months, only to return to unpaid monthly bills for services they did not feel they used, disconnected services (more bills) and broken or frozen water pipes. A transient style of life was not immediately compatible with a southern notion of utility-based homes.

The government also began to enforce the attendance of children at public schools. Children were brought to hostel school communities like Inuvik, where they were placed under the care of either Catholic or Protestant keepers. The result was a cultural alienation of the children from their parents for most of the year, except for the major holidays and the two summer months. Having only the two months of summer to spend with their families deprived the children of the opportunity to take part in the traditional trapping in the spring, particularly the months from March to June.

Before condemning the federal government, it must be remembered that the policies undertaken were to ameliorate the ravages of both disease and famine, often widespread

among the Inuit well into the twentieth century. It cannot be denied that there was a substantive change in the Inuit culture as the people were encouraged to move into settlements, but there are the positive aspects of modern health care and guaranteed minimum living standards which should be considered against any negative points.

Prior to these governmental policies and actions in the 1950's, oil from the Norman Wells refineries was produced for a very short time during World War II when a perceived Japanese threat to North America led to the construction of the Canol Pipelines from Norman Wells to Skagway, Alaska. Woodman clarifies this aspect of World War II:

> Norman Wells was a straw in the whirlwind of war...and our militarists grasped at it early in 1942 when Alaska looked like the weakest portion of North America. By then Japan had knocked out the U.S. Pacific Fleet at Pearl Harbor and had occupied islands far out on the Aleutian chain. Enemy subs seen off the United States west coast threatened shipping in the Gulf of Alaska.(79)

When the threat proved to be non-existent, the pipeline, although actually used for a brief period, was quickly

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(79) Woodman, Lyman L., "CANOL: Pipeline of Brief Glory", in The Northern Engineer, Vol.9, No.2, 1978, p.15.

dismantled and various portions of the operation sold to a number of entities.(80)

Oil exploration came to the forefront of northern attention when Diefenbaker announced his "Northern Vision", and Canada Lands were opened up for oil and gas exploration in 1960. While drilling in the north was quite minimal at first, the number of wells drilled increased rapidly until the 1968 oil discovery in Prudhoe Bay, Alaska, created a rush north of oil companies and oilwell drilling contractors. The 1970s saw a flurry of oilwell drilling in the northern United States and Canada. This activity was fueled by the 1973 OPEC oil crisis when fuel self-sufficiency became national concerns world-wide. The promise of oil in the north led to unprecedented activity on both the Arctic Islands and offshore in the Arctic Ocean. At the same time, drilling continued around the Norman Wells region, expanding and delineating the known fields, as well as throughout the Mackenzie Delta-Beaufort Sea region.

When oil was discovered in 1970 at Atkinson Point near Tuktoyaktuk, N.W.T., the natives in the Mackenzie

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(80) For more detailed information on this point see: Canada, Treaty Series, PETROLEUM CANOL Project, Exchange of Notes between Canada and the United States of America, Washington, March 31, 1960, In force March 31, 1960, Ottawa: Queen's Printer, 1961, pp.2,4,6.

Valley/Beaufort Sea region expressed concern over the activities of seismic and exploration companies moving across the land interrupting their hunting, fishing and trapping economy.

> With oil exploration, something new has happened. The outside world needs the North, or at least its oil and gas resources, but it doesn't need native people at all. Outsiders know exactly what they want, and exactly how to get it, and they need absolutely no local help. Now they can travel to any place with tractors, trucks, airplanes and helicopters. They can keep themselves warm, sheltered, clothed and fed by bringing everything with them from outside. They have all the skills and knowledge to explore for oil, produce it, and take it out of the country. They can bring all the labour they need form outside. If there were no native people in the North, they could still do all this, maybe even with less trouble because they wouldn't have to worry about giving native people jobs or royalties or land rights. If native people have nothing to offer the oil companies, how can we bargain with them?(81)

A small number of people, representing Metis, Dene Indian and Eskimo, met to voice their concerns and set up some form of unity through which they could challenge the oil companies and federal government.

One other factor assisted in the creation of the Committee for Original Peoples' Entitlement, and this also came from the south. In Edmonton, Alberta, during the

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(81) Peter Usher, op.cit., p.20.

October 1969 Tundra Conference, the Tundra Conference planners asked the Indian-Eskimo Association office to assist in obtaining Eskimo delegates to attend.

> As a result Eskimo leaders from the Western Arctic were present representing Inuvik, Sachs Harbour, Tuktoyaktuk, Coppermine and Cambridge Bay. This group was unanimous in declaring the need for a conference of Arctic native people to discuss mutual concerns, particularly the question of aboriginal rights to the land.(82)

From December, 1969, to the Conference the next summer, COPE was organized. COPE had asked the Indian-Eskimo Association to assist them in organizing.(83)

The History of COPE

The stated objective of COPE from its first meeting was to provide "a united voice for all the original people of the whole of the N.W.T.", while the second aim "should be to work for the establishment of our rights...."(84) By original peoples, the founding members of COPE intended to include all the people of the north who were original inhabitants prior to the coming of the Europeans and other

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(82) Coppermine Conference of Arctic Native People, July 14-18, 1970, Proceedings, Coppermine, NWT, Introduction.

(83) Ibid, Introduction.

(84) COPE Meeting, "Minutes", January 28, 1970, op.cit, p.2.

immigrants. The organization of COPE was to be "working for the equality of all rights of all native peoples in the N.W.T. that claim aboriginal rights and also ...[to]... get a certain percentage of the revenue of all mineral and oil finds derived from the N.W.T....".(85)

It is noteworthy that even in this first meeting of COPE, non-native/external factors played a part in the direction the group would take. Their lawyer, Brian Purdy, who had earlier represented Joseph Drybones of Yellowknife, was hired by the small volunteer group, which had little or no funding. Purdy had gained national attention when he represented Drybones in The Queen v. Drybones in 1970.(86) The case dealt with

> the compatibility of provisions in the Indian Act restricting the drinking rights of Indians with the egalitarian provisions of the [Canadian] Bill of Rights [1960].
>
> ...it was an activist majority willing to use the Bill of Rights to invalidate a long established piece of legislation.
>
> The six judge majority (and the three dissenters did not dissent on this point)...held that equality before the law meant at least that the criminal law should not treat one racial group more harshly than other Canadians.(87)

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(85) Ibid, p.2.

(86) See The Queen v. Drybones, (1970), S.C.R. 282.

(87) Peter H. Russell, Leading Constitutional Decisions, Ottawa: Carleton Press, 1982, p.407.

The central issue recorded in the first meeting was to win "oil rights", which were very contentious among the native people of the area.

> He suggested that our first project should be that we work for the oil rights.(88)

> Brian quoted a price of $_____ to $_____ and if he wins the court [sic] we can pay them from the revenue of the mineral and oil rights taken from the N.W.T. or on contingent basis if he doesn't win the case.(89)

This concern was manifested in the statements over changes in the land by oil companies, and the feeling of native people regarding their "fair share" of the resources extracted from "their land". It was the anticipation of this early COPE group that they could win a court case regarding "oil" and "land" rights, from which they could pay their lawyer.

At the second formal COPE meeting

> Mrs. Semmler explained the reason that an Executive was formed at a special meeting was that this organization COPE could be formed which would include Metis, Eskimo, treaty Indians and non-treaty Indians.

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(88) COPE Meeting, "Minutes", January 28, 1970, op.cit., p.1.

(89) Ibid, p.2.

> We realized at the time that an election of this type should take place at a public meeting, so the people present were asked if a proper election was preferred.(90)

The three factors this statement clarifies are first, that COPE was initially a group that intended to represent all northern native peoples; second, that they were in the process of mixing traditional consensus politics with a "southern" (election) form of agreement; and third, that the idea of a native rights organization was a novelty in the north.

> The idea of a native rights organization, run by and for native people themselves, was new in the north. There were Indian Brotherhoods down south, in the provinces. The N.W.T. Indian Brotherhood had been formed shortly before, but in early 1970, it was only active around Yellowknife and Rae, and depended on Alberta Indians a lot for help. There were no Eskimo organizations at all. So at that time, there had really been no such thing as an entirely local group in the North getting together to form their own organization with no outside help.(91)

At the same meeting, a noteworthy motion was raised which shows a special attachment of the northern people to their elders.

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(90) COPE Meeting, "Minutes", Public Meeting Held at the Research Lab [Inuvik, N.W.T.], February 11, 1970 - 7:30 p.m., p.1.

(91) Peter Usher, op.cit., p.21.

> Victor Allen made a motion that the whole old age pensioners be given free membership as they will be our real Original voice and often we'd turn to them for advice.(92)

This motion assumed that the older native people were on government-supplied pensions (a result of the encouragement of the federal government to move the Inuit into settlements) and that they had something of worth to contribute to the political concerns of their children and their children's children.

In the north, there have also been the historic influences of the various religious denominations. The Anglican and Roman Catholic churches supported native education, as necessary to the solid conversion of the "pagans" to "Christianity". Priests and ministers were often involved in political development in the settlements, usually supporting a direction which would aid that particular settlement's conversion process. It is not surprising that the Roman Catholic church became involved, however slightly, in the support of the Committee for Original Peoples' Entitlement.

> Mrs. Semmler informed us that Father Adam is willing to lend us the hall free for bingos [for fund raising].(93)

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(92) Ibid, p.1.

(93) Ibid, p.2.

In the summer of 1970 COPE became quite active and rallied to the support of the Inuvialuit at Sachs Harbour, which was the target of seismic work, leading to oil and gas exploration on the Arctic Islands and offshore in the Canadian Beaufort Sea.

> It was decided...to ask...whether or not an injunction could be obtained on the basis of the facts which were outlined to the meeting namely that the oil companies who have leases from the Federal Government intend to undertake exploration work involving detination of dynamite for seismic operations and to use equipment which will go across the entire island either on the ground or in the air being the intention of oil companies to establish three airstrips as well as a major base. It is clear that the operations of the oil companies would have a virtually permanent, damaging effect on the lands and upon the hunting grounds of the people of Sachs Harbour and the people of Banks Island.(94)

The concerns of native rights to this point continually centred on the aspects of "oil and gas" rights, or what may be more abstractly called the "extraction of native resources from traditionally-occupied native lands".

This concern over native rights also included support for southern Indians.

> Through a telephone conversation with Brian Purdy relating to the case being brought up in the Supreme Court by the Nishga tribe it was decided at this meeting that Mr. Purdy

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(94) COPE Meeting, "Minutes", July 5, 1970, at the residence of Wally Firth, 9:00 p.m., Inuvik, N.W.T., p.1.

> take the action necessary to take part in this court action [i.e.Calder et al v. Attorney-Gen. of B.C.].(95)

One of the continuing concerns of COPE in its initial formation was the issue of funding. Contrary to the notion expressed in the Toronto Daily Star,(96) COPE did not "bite the hand that fed it", but consciously avoided federal funding to avoid a conflict of interests. The Inuit also kept an international focus, as has been evident over the 1970s and 1980s in media coverage. In subsequent meetings both local and international funding was considered and sought. As early as October 6, 1970, COPE considered funding from both the Canadian Donner Foundation and the World Relief Fund.(97)

The emphasis on original peoples' rights never excluded consideration of day-to-day concerns. Trappers in Arctic Red River region indicated that pollution from the oil companies was responsible for dead moose and beaver, as well as having company service road construction cut off fresh water supplies.(98) The concern with rights was even more evident at the following meeting where Peter Usher (a

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(95) Ibid, p.2.

(96) Toronto Daily Star, op.cit.

(97) COPE Meeting, "Minutes", October 6, 1970, p.1.

(98) Ibid, p.1.

northern consultant) explained the purposes and need for a land use occupancy study to substantiate the COPE claim within the larger native concerns of the North. Some of the issues of this study were: (1) who was entitled to a land claim settlement - Indian, Eskimo and Metis; to what generation would the claim extend; (2) method, or procedure for settlement; a comparative study considered with reference to the then ongoing Alaska Native Claims Commission;(3) concerns over game laws and game management; and (4) a major concern that the cash settlement would not preclude a more stable and controlled settlement. "The land settlement is more important than the cash settlement."(99)

This last statement underlines a basic notion of this thesis - that there had to be a balance struck between the concerns of land reparation and cash compensation. In the development of COPE and its desire to affirm its concept of the rights of original northern peoples, there had to be a conscious decision about this balance. This balance was faced from the outset and was a necessary factor to consider in the settlement itself, fourteen years later. Agnes Semmler stated the direction COPE would pursue, and

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(99) COPE Meeting, "Minutes", Held November 20th (Monday), 1970, at Nellie Cournoyea's House [Inuvik, N.W.T.], p.1.

with the advantage of hindsight, saw achieved in her lifetime:

> Healthy development of human resources is the prime concern, along with preservation of land and wildlife, to the people of the North. They have learned through the communication of radio and television that the problems of pollution are a major concern in the South. Because of the lack of planning and co-ordination the people of the North have little confidence in what is being done. Everyday we hear about pollution, high birth rates and ecology damage in the South. This plus the criminal scene is a frightening thing for the people of the North. It is because of this that the 70's should hold a type of planning that will be an improvement, at least, over the problems that are already existing in the South.
>
> Northerners are asking for planned development in the 70's, taking into account the past experiences of the developers that are planning the future of the Arctic, to ensure that there will be a good alternative if there should prove to be no oil worth exploiting as a profit-making venture. We must live here, but the developers move on if the profits are not there.
>
> The first priority is the development of the land in such a manner that there will be something left behind when the exploration is over.(100)

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(100) Mrs. Agnes Semmler, President, Committee on Original People's Entitlement, "Resolution of COPE", in Conference For Arctic Planning, sponsored by The Admiral R.E. Byrd Polar Center, Arctic Institute of North America and The New England Aquarium, at a presentation at the Harvard Faculty Club, Cambridge, Massachusetts, October 15-16, 1970, p.33.

The Inuvialuit were more explicit in their definition of their attachment to the land in the Western Arctic when assisting Usher in his role as consultant to COPE.

> To native people, the land is more than just a source of food or cash. It is the basis of what they are as people. The land, and the birds, fish and animals it supports, has sustained them and their ancestors since time immemorial. Properly cared for, it can always do so. Native people know how to take care of the land, and they know why that must be done.
>
> The land is one of the things that makes the North a good place to live. Even if you have a job, it's nice to go out hunting and fishing. People like to camp in the bush or on the tundra. They like to watch the weather and the water, to see the first signs of break up, the first geese arriving, or the first snowfall. To many people, these are the real pleasures of life.(101)

Just prior to Mrs. Semmler's presentation at Harvard University, COPE was formally incorporated on September 25, 1970.(102) This marked a turning point for northern natives, in giving them a recognized voice from which to express their concerns over aboriginal rights.

The next series of meetings recorded were from a travelling delegation to various settlements along the

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(101) Peter Usher, op.cit., pp.13-14.

(102) Documents of Incorporation, Committee for Original Peoples' Entitlement, September 25, 1970, Inuvik, Northwest Territories, p.7.

Mackenzie River. It is important to recognize that each settlement did not have the same concerns. As the ethnic composition changed, so too did the concerns over rights and the focus on these rights. For example, in Arctic Red River, the concerns expressed to COPE were oil exploration activities and the environment, pre-fab houses, pensions, logging operations, trapping, and the interest in newly-created organizations such as the Indian-Eskimo Association, Indian Brotherhood and COPE.(103)

In Fort McPherson the issues were substantially different. The major concerns was over the unratified Treaties 8 and 11. The Dene Indian people of this area felt that their rights were not clearly defined and questioned the very validity of the treaties. Chief John Charlie explained

> The treaties were signed by men who did not get all the information they needed--the translations were not good. The full explanation was not given to the people--most of the people thought they were more or less signing a peace treaty not giving their land entitlement away. It looks at though we will have to live with it.(104)

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(103) COPE Meeting, "Minutes", Meeting Held In Arctic Red River, N.W.T., April 9, 1971,.1-2.

(104) COPE Meeting, "Minutes", Meeting Held In Fort McPherson, April 10th and 11th, 1971, p.1.

Chief Johnny Kaye reiterated the same statement and added that

> Now that those with an education can better understand, they can talk for themselves, there will be no excuse for making a mistake again. People must make sure of what they are doing in regards to the future. The pipeline is coming through, by rights, a share of this oil or gas must go to the people. By making a settlement, this is the only way we can go ahead today. Everyone should get behind their leaders so that this matter could be settled. The Indian Brotherhood and COPE should get together.(105)

With this recognition of the varied concerns in western Arctic areas of development, Nellie Cournoyea travelled to Montreal and expressed the summation of these early meetings to the Council for Foundations Incorporated.

> This rapid development began to leave the people behind - the first crews were not influenced by any rules or regulations were allowed to carry out their operations, leaving damage to the environment. The cause of this rapid development was not because oil was needed in Canada but because it was needed by the American states. We are told we have very little choice in what goes on, other that to take advantage of the casual job opportunities and get into business, bear in mind, education had been in the North provided by the missionaries for about 20 years, on a very minimum scale. Those who benefited were small in number and went to, perhaps, the third or fifth grade. In 1950, the government knocked on our door to let us know, they had the answer to all our problems.

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(105) Ibid, p.1.

> So the teaching began with no planning, no thought of adapting education to the needs of the people and the land and very little thought and time in selecting the right kind of teachers. After all, who wanted to come to the barren waste land of the Arctic - 1950.
>
> 1970/71, now it is the place to go - Tredeau [sic] wants to see hippies build a city in the north, Frontiers are broken - properity [sic] buyers in the earths and seas of the Arctic - development or exploitation - to us explanation - to a greater majestic need, development. Again no planning - no thought of the people development.(106)

There were further meetings throughout the summer of 1971, with a long series of meetings in August. Agnes Semmler was re-elected President of COPE for a second term(107) and continued in contact with the Nishga Indians' case. In the first of the August meetings it was decided to take advantage of the offer by Father Adams of the Catholic Church in Inuvik and use bingo for fund raising.(108) A second move made by COPE was to begin negotiations to include the Trappers Association as members

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(106) Nellie Cournoyea, Speech given at Council for Foundations, Inc., April 18-21, 1971, in Montreal, pp.1-2.

(107) COPE Meeting, "Minutes", Executive Meeting - Radio Station CHAK, July 16, 1971, Inuvik, NWT, p.1.

(108) COPE Meeting, "Minutes for COPE Meeting, held August 2nd at 2 o'clock, at the residence of Wally Firth", 1971, Inuvik, NWT, p.1.

of COPE.(109) At a meeting later that same month, COPE became embroiled in the Sachs Harbour dispute, earlier raised as a concern in 1970. The political actions of COPE were becoming delineated as the functions it was attempting to fulfill were realized. The extent to which COPE was to act, however, necessarily was kept within certain bounds.

> Mr. Purdy said that Cope [sic] should always be careful not to do more than their proper function. He does not think it is possible to tell them (Sachs) what to do.
>
> Mr. Purdy suggested that experts be asked to make up lectures about the land, etc. Mr. Purdy reported that the people at Sachs do not seem to realize the importance of repeating their stands. Nellie Cournoyea stated that people get fed up. We are saying things now that we started saying 10 years ago. Mr. Purdy stated that the Gov't is infinitely patient and will listen to you a thousand times. The only thing they really understand is power.(110)

Peter Usher offers a description of the power perceived by the northern native people.

> The government really offers native people only token power. It gets people to serve on one committee after another, and flies them around to meetings here and there. At first people think they are getting a chance to have some real input and do something worthwhile, but then they find out that very little comes of it afterall.

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(109) Ibid, p.1.

(110) COPE, "Meeting held at Nellie Cournoyea's home on August 16, 1971", Inuvik, NWT, p.1.

> When they see their time and energy and hard work seems to go for nothing, people begin to feel they are just being used. When people are given responsibility and they find out they can't do anything with it, they get frustrated. But people are learning the difference between token power, which is just a diversion, and real power. Real power is economic power, and that is based on ownership and control of land and resources.(111)

In September of 1970 COPE shifted its attention to the continuing Calder case in British Columbia. One key concern was the issue of aboriginal rights for all native people. In the context of discussing the Calder case, the following ensued:

> N. Cournoyea: Why didn't the Yukon intervene?
>
> Purdy: Afraid to rock the boat by making a sweeping case for all aboriginal rights. They haven't said there is no aboriginal title. There should be judicial determination that there is no aboriginal titles. If the courts do have the right to determine and decide against, we could [go?] to the public and have parliament pass laws.

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(111) Peter Usher, op.cit., p.9.

> Special position of the N.W.T. raise matter [sic] of Eskimos alert them that there is other people to be affected. If Burger [sic] does not win this case no one else will.(112)

It is important to note at this point the perceived power this small group of northern natives felt. It is also interesting the perceived control that could be lost by accepting federal funding.

> It was unanimous that we must not take any funds that would make COPE lost [sic] it[s] credibility with the people. We had survived with good support[;] we must not allow ourselves to be bought. If there were strings attached we must refuse to take any funds. It was agreed that the work load was becoming very heavy but belief in Native control was the desire of the people.(113)

COPE remained active and vocal to the general public as well as to its constituent members. It issued press releases concerned with aboriginal rights, particularly where there were direct confrontations with the oil industry's exploration activities.(114)

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(112) COPE Meeting, Minutes, Meeting held at Nellie Cournoyea's home on August 16, 1971, Inuvik, N.W.T., pp.3-4.

(113) COPE Meeting, Minutes, Meeting held at Nellie Cournoyea's home on September 6, 1971, p.1.

(114) COPE Press Release, September 9, 1971, issued by Nellie Cournoyea, Public Relations Officer, Inuvik, NWT.

The ethnic composition of COPE was challenged by the Secretary of State for creating a conflict of interest between the newly created Inuit Tapirisat of Canada and COPE, as both claimed to represent Eskimos.(115) While neither COPE nor the ITC felt there was any problem in conflicts of interest, the seeds were being sown for a future structural change in COPE.

On November 1, 1971, COPE formally withdrew from its part in the Nishga Indian case. There had been pressures in the past not to remain directly tied to the case, in the possibility of losing the case and establishing some pattern of overall definition of aboriginal rights that could be construed to apply to all native Canadian peoples, and not just the Nishga Indians. COPE's formally stated reason for withdrawing as an active participant was shortage of funds.

While the funding issue may have been valid, the pressure not to be associated too closely with the Nishga Indians should not be discounted. This point can be seen in the converse of the public statement by COPE.

> COPE president, Agnes Semmler, said that while her organization was not going to have its lawyer present at the hearing,

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(115) COPE Meeting, Minutes, Meeting held at the Radio Station on Friday, September 10, 1971, Inuvik, NWT, p.1.

> "COPE is not withdrawing its support of the Nishga tribe..."
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> "A victory for the Nishgas will be a victory for all the native people of Canada," said Mrs. Semmler.(116)

The implication, is of course, that a loss for the Nishgas would be a loss for all the native people of Canada. The removal of the COPE lawyer put a little protective space between the Inuvialuit and the southern Indians, a space which could be construed as formally withdrawing its legal support of the Nishga case, while maintaining political support for the cause.

This same concern was felt by the Inuit Tapirisat of Canada, as viewed by COPE committee members.

> Inuit Tapirisat did not back the Nishga case in B.C. because there were afraid the ruling would apply to all native people in Canada and not only the Nishga Indians.(117)

Following this action taken by COPE, there was pressure against COPE from the competing northern organizations, the ITC and Indian Brotherhood of the NWT. COPE took this opportunity to additionally define itself and

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(116) COPE Press Release, November 1, 1971, Inuvik, NWT, p.1.

(117) COPE Meeting, Minutes, Special Meeting, Elijah Menarik, Inuit Tapirisat (Eskimo Brotherhood), March 8, 1972, p.1.

make the public aware of this stand. It was decided that COPE would continue to represent all native peoples in the Mackenzie Delta.(118)

As COPE grew in scope and influence throughout the Mackenzie Delta region, it encountered a new problem - the lack of funding to carry out its plans.

> Nellie Cournoyea...told the members that the organization has a good idea of what the people want done but that at the moment plans are being hampered by a lack of funds. Also that people are now working for C.O.P.E. on a volunteer basis and now they have come to a standstill. They can go no further as the plans now mapped out must have funds and the people themselves contacted and all this requires funding. The money support can be realized with the support from the national native organizations.(119)

This marked the beginning of the transition of COPE from a volunteer-run organization to one funded with federal funds, but at an "arms-length", through the national native organizations which were set up to administer the funds.

Even in 1972, COPE recognized the challenge of its claim to the land for original northern peoples.

> At the moment people have no rights for the land. Over the next year ITC will draw together facts etc. into a proposal to the Government and Canadian Public. ITC did

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(118) COPE Newsletter, "THIS IS OUR LAND! NUNAGA!", March 22, 1972, Inuvik, NWT, p.1.

(119) Ibid, p.1.

> this because at the moment Government stand is Inuit don't have any rights to the land.
>
> People don't agree with this position due to aboriginal claim. Problem is Government doesn't recognize that use of land and no legal right to prevent others using and coming in using the land. Have to convince Government and public that it is a wrong position. Inuit have rights to[o].(120)

Without any recognition by the federal government of the original peoples' claim to the northern lands, COPE recognized that it must necessarily convince the public and the government of plight of northern natives. With the end of 1972, COPE saw that its primary focus was to protect the rights of the native people and their land.(121)

The year 1973 saw changes for COPE. Agnes Semmler stepped down from the Board of Directors.(122) The issue of ethnic membership in COPE re-arose when the federal government told COPE it would only fund them if it was an Eskimo organization.(123) The policy of the federal government at this point was to fund native groups which were clearly defined and represented a single group capable of

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(120) COPE Meeting, Minutes, Meeting held in Tuktoyaktuk, NWT, July 21, 1972, p.1.

(121) COPE Meeting, Minutes, Meeting held at the Aklavik Theatre, Aklavik, NWT, December 27, 1972.

(122) COPE Annual Meeting, Ingamo Hall, Inuvik, NWT, April 25, 1973, p.3.

(123) COPE Informal Meeting, Minutes, no location given, April 27, 1973, p.1.

settling specific claims. With an seemingly identical group formed in the Eastern Arctic (the ITC), the government was concerned over a duplicity of groups attempting to achieve a single goal. The new president, Sam Raddi, issued a statement on N.W.T. Native Rights which recognized the work done by COPE in the past and showed his future intentions of continuing along the same lines as established by his predecessor, Agnes Semmler. "COPE feels that the priority must be to get the land issue settled."(124)

In 1973 the native ethnic composition of COPE was altered to reflect the demographic reality of the Northwest Territories. To the south the Dene had formed the Indian Brotherhood of the N.W.T. while in the north-east Arctic the Inuit formed their locally based organization - the Inuit Tapirisat of Canada (ITC). The Metis in COPE joined the newly formed NWT Metis Association. COPE adapted to the political changes by restating its goals in terms of the Inuvialuit, no longer considering itself a unified voice for all original northern people. The decision to proceed unilaterally has had ramifications which continue to affect issues such as: (1) division of the N.W.T. into

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(124) Statement by Sam Raddi, President of COPE, to the Federation of Natives North of 60, Whitehorse, Yukon, May 30 - June 1, 1973, p.2.

two territories, Denendeh and Nunavut; (2) resource development and revenue-sharing possibilities (as in Canadian Beaufort Sea future oil and gas production); (3) Arctic Regional Municipalities (such as suggested in the W.A.R.M. proposals) and; (4) federal/territorial relations regarding the fore-mentioned developments, among others.

Another important event that occurred in 1973 was the completion of the Nishga Indian case in British Columbia. Following the dismissal of the Nishga claim and the new policy statement of the Minister of Indian Affairs, Jean Chretien,(125) COPE began preparing a land claim to be presented to the federal government. In 1973 COPE responded to a supposedly secret Cabinet document(126) which approved in principle oil and gas exploration in the Canadian Beaufort Sea, considered by the Inuvialuit an essential part of their subsistence whaling, sealing and fishing economy. COPE issued a request for a moratorium on offshore drilling for a minimum of three years. With the assistance of the Canadian Arctic Resources Committee (CARC) in Ottawa, COPE received international attention.

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(125) DINA, "Statement Made By The Honourable Jean Chretien Minister Of Indian Affairs And Northern Development On Claims Of Indian and Inuit People", Ottawa: DIAND Communique, August 8, 1973.

(126) Pimlott et al, Oil Under The Ice, Ottawa: CARC, 1976, pp.135-141.

What the northern people, and those who purported to help them, failed to realize is what underlies the workings of Parliament. Underlying all other motives and intentions is the single goal of the maintenance of power - being re-elected. Richard Fenno notes this peculiar interest of politicians:

> When we speak of constituency careers, we speak primarily of the pursuit of the goal of re-election. So long as they are in the expansionist stage of their constituency careers, House members will be especially attentive to their home base. They will pursue the goal of re-election with single-minded intensity and will allocate their resources disproportionately to that end.(127)

The president of Dome Petroleum in the 1970s, Jack Gallagher, had already persuaded federal politicians that offshore development of oil in the Beaufort Sea was a sound venture. Dome Petroleum would later enter into the most complex ties and negotiations with the federal government, affecting future legislation and the underpinnings of the Canadian economy, the banks of Canada which had also supported this new northern venture.

Even as COPE was drafting and submitting their request for a moratorium on offshore drilling, the Canadian Marine Drilling fleet was in preparation in drydock in southern

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(127) Richard F. Fenno, Jr., Home Style, Toronto: Little, Brown and Company, 1978, p.215.

Canada. Two drillships were purchased and refitted for northern ice conditions, and a third drillship built in Norway, as a Class 1A1 Ice Drilling Vessel, was also being added to the new fleet.

In January of 1974, Douglas Pimlott delivered a report to COPE on Offshore Drilling in the Beaufort Sea.(128) Pimlott expressed his concern over the lack of data available to COPE.

> This report was written because no information on offshore drilling has been given to the Inuit by the Department of Indian and Northern Affairs, the Department of Environment or by the Government of the Territories.(129)

In the report Pimlott expressed his concerns over the differences in drilling offshore in other parts of the world and drilling in the Canadian Beaufort Sea. The obvious difference is the ice and cold temperatures experienced in the Arctic. The main problem with drilling in the this portion of the traditional lands of the Inuvialuit is the possibility of an oil blowout/spill.

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(128) Douglas H. Pimlott, A Summary Report On Offshore Drilling In The Beaufort Sea, A Report to the Committee for Original Peoples Entitlement (COPE), Canadian Arctic Resources Committee, Ottawa, January, 1974.

(129) Ibid, p.1.

If an an oilwell got out of control and was permitted to empty oil into the Beaufort Sea during ice-covered conditions, the technology did not exist in 1973 to drill a relief well and control the blowout in moving, ice-covered conditions. The result could be an underwater blowout which would spill oil under the ice all winter until ice conditions allowed the commencement of drilling.

When the Inuvialuit received this news they were obviously worried and expressed their fears in a press release.

> COPE's Board of Directors has requested the Federal Government to begin immediate consultation with COPE and Inuit Tapirisat of Canada on the whole matter of offshore drilling in Arctic waters. The object should be to develop an agreement which will include adequate safeguards for the interests of native people and their environment.(130)

The Inuvialuit did not mention, or were not possibly aware that offshore drilling had already commenced on man-made islands in the Beaufort Sea, and on reinforced ice platforms offshore in the high Arctic. The first Canadian Arctic offshore well was drilled in the Beaufort Sea by Esso Resources Canada at Immerk B-48. The spud date (date drilling commenced) was September 17, 1973. On March 19,

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(130) COPE Press Release, Drilling For Oil and Gas In The Beaufort Sea, Friday, February 8, 1974, Inuvik, NWT, p.4.

1974, Panarctic Oils drilled the first offshore well from an ice platform in the high Arctic. The next logical progression, from the oil companies' point of view, was to bring in drilling vessels capable of drilling further offshore and which had the capability of withstanding, or at least yielding to the movements of the Beaufort Sea ice gyre.(131) The main difference between the two formats of drilling was the change in the availability of drilling relief wells in the event of a blowout. Panarctic had already had two spectacular natural gas blowouts on the Arctic islands, both of which did not create an environmental hazard because the gas was flared at the well. Damage was done, however, in the minds of the Inuit who saw these blowouts as a substantially more likely possibility than the statistics quoted them by the oil companies.(132)

An interesting result was the negotiation, as asked for, with the oil companies and the various levels of

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(131) The difference between drilling offshore in the high Arctic and the Beaufort Sea is the movement of the sea ice. In the Beaufort Sea the ice is constantly moving, even throughout the long winter months. It rotates within the Beaufort Sea while the ice between the islands of the Canadian Arctic Archipelago remains fairly static between freeze-up in the fall and break-up in June.

(132) Douglas Pimlott, op.cit., p.3.

government, but it was not with COPE, but with the Settlement Council in Sachs Harbour, NWT.(133)

> On March 5, 1974, the Sachs Harbour Settlement Council and the Sachs Harbour Trappers Association met with people from Panarctic Oils, the Department of Indian and Northern Affairs, the Department of the Environment and the Game Department of the Government of the Northwest Territories. The meeting was the fourth one held with Panarctic to consider its request to schedule oil exploration activities on Banks Island on a year-round basis.(134)

The repercussions of this action were to make it harder for COPE to be viewed as the legitimate political authority speaking on behalf of the Inuvialuit. While the pressures increased on COPE from a political point of view, additional pressures were being generated by southern pipeline corporations intent on being first to bring a pipeline up the Mackenzie Valley to the Beaufort Sea to bring the newly discovered oil to southern markets. It was seen as expedient by both governments and oil companies to ensure national self-sufficiency in the aftermath of the OPEC crisis of 1973. Pipeline hearings were almost over by the time COPE was able to organize itself and represent the

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(133) Settlement Council, Sachs Harbour, NWT,,"Exploration for Oil and Gas in the Summer On Banks Island", Press Release, March 11, 1974.

(134) Ibid, p.1.

Inuvialuit. Justice Berger's hearings on the Mackenzie Valley pipeline were nearing completion.

> COPE represented the native people of the Mackenzie Delta and Beaufort Sea at the preliminary hearings on the pipeline last week at Yellowknife and Inuvik. Next Monday and Tuesday the final preliminary hearings will be held in Ottawa. Shortly after that hearing Justice Berger will probably announce when the main pipeline right-of-way hearings will be held.
>
> At this moment COPE knows how a lemming must feel when it looks out of its hole and sees an oil company's D-9 bulldozer bearing down on it as it lumbers across the Delta cutting a seismic line.(135)

The conclusion of 1974 saw COPE battling on two fronts: first, to be recognized as the authoritative voice of the Inuvialuit; and second, to resist oil development pressures from both the exploration and production facets of industry, expressed as offshore drilling in the Beaufort Sea and a pipeline down the Mackenzie Valley, respectively.

Early in 1975 COPE responded to further progress towards what then seemed like an inevitable pipeline.

> We do not agree with Mr. Buchanan that the assessment proposal be referred to the Berger inquiry for information purposes only. We strongly recommend that Berger's ruling be respected by DIAND [to have a social, environmental and economic impact evaluation done]. We believe that only if the concept of oil and gas development is

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(135) COPE Press Release, Pipeline Hearings and the Mackenzie Delta, May 3, 1974, Inuvik, NWT, p.1.

> discussed as an integral plan can sensible recommendations be made.
>
> COPE and ITC strongly recommends that the Territorial and Federal government not be asked to conduct community evaluation and assessment of a gas gathering and processing system for the following reasons:
>
> 1. The work will duplicate work already being done by COPE and the Indian Brotherhood of the NWT and other groups and will therefore waste money.
>
> 2. This addition as assessment will make the task of the native organizations more difficult and may jeopardize our community work project. It will use resource people in competition to the native organizations. It may alienate people who have been studied and overstudied.
>
> Because of the Minister's statement, we re-affirm our stand that no pipeline be built prior to the settlement of Inuit Land Claims.(136)

In 1975 the first small Class 1 icebreakers of the Dome/Canmar fleet anchored in Tuktoyaktuk, and supplies were shipped north for stockpiling. Serious offshore drilling operations had begun. For the Inuvialuit, though, the threat had not yet arrived. There were no offshore drilling vessels in the north in 1975. The main concern of the proposed offshore project focussed for a time on the

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(136) COPE Press Release, "In Response to the Minister of Indian Affairs and Northern Development's Release of January 10, 1975, Yellowknife Regarding Construction of 5 Clusters of Gas Wells and 2 Processing Plants", January 11, 1975, Inuvik, NWT, p.1.

effects of a possible oil spill in the Beaufort. COPE was accepted as a legitimate negotiating partner when the Environmental Protection Service (EPS) met with the communities of Aklavik, Inuvik, Tuktoyaktuk, North Star Harbour, Paulatuk, Sachs Harbour and Holman Island.(137)

At this time COPE made an interesting move. As noted above, another settlement was brought into negotiations - North Star Harbour. This settlement was created in 1975 as a new "town" for hunters and trappers. Administratively, it seemed like a possible way of expanding hunting and trapping areas where there were too many trappers in the already existing settlements. The unstated possibilities were manyfold.

The knowledge of land occupancy studies could have influenced COPE leaders to consider expanding their land base for the sake of occupancy studies not then fully completed. It would add a certain amount of legitimacy to claims of hunting and trapping, even if the Inuvialuit had been there for many years, to have a reasonably permanent settlement in that area. If funding were to be given based on the number on settlements, an additional settlement could substantially help a six-settlement organization. There are many possible reasons for adding a seventh

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(137) COPE/EPS News Release, Nov.24, 1975, Inuvik, NWT, p.1.

settlement in the region, all of which ended up as irrelevant, as the North Star Harbour settlement fell apart when it was discovered there was not enough trapping and hunting to support the new settlement's families. It was later disbanded and left as only a depot drop and convenient stop for trapping in the area.

Another development that should be noted at this time (between 1975 and 1976) was the appearance of the terms "Inuit" and "Inuvialuit" in common usage. Prior to this time, all Inuit and Inuvialuit were referred to by the Indian name, Eskimos, a derogatory name given to them by their enemies. Although the Alaska native people have retained the term Eskimos, northern Canadian peoples adopted their own linguistic terminology, and are even changing the names of their settlements to traditional Inuit names, forsaking the first European names given by British and other explorers.(138)

The concerns manifested in the Berger Pipeline Inquiry gave the impetus for COPE to proceed with a formalized land claim. The necessary background information was felt to be reasonably sufficient, and COPE was becoming accepted as a political negotiator on behalf of the Inuvialuit. It was no coincidence on the part of COPE that their attention was

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(138) For example, as of January 1, 1987, Frobisher Bay, NWT became known as Iqaluit, NWT.

turned towards a land claim. Their concerns about both exploration and production industries initiated their active political concerns about land rights. The beginning of offshore drilling in the Beaufort Sea in 1976 put COPE at the same negotiating level as the oil companies, settlements and Trappers Associations. The Berger Inquiry in a sense "forced" COPE to delineate its claim in the Mackenzie Delta-Beaufort Sea region, which was appropriate for their continuing action towards an ultimate end of a land claim settlement.

One precedent had been set in 1975 with the signing of an agreement between the Government of Quebec, the Societe D'Energie De La Baie James, the Societe De Developpement De La Baie James, the Commission Hydroelectrique De Quebec (Hydro-Quebec), the Grand Council of the Crees (of Quebec) and the James Bay Crees, the Northern Quebec Inuit Association, the Inuit of Quebec and the Inuit of Port Burwell, and the Government of Canada. On November 5, 1975, the above listed parties began the formal process of signing the agreement and culminated the first modern comprehensive land claims agreement in Canada.(139)

The Inuit were quick to respond to the James Bay settlement.

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(139) Editeur officiel du Quebec, The James Bay Agreement, 1975.

> There seems to be little doubt after the signing of the James Bay Agreement that Federal and Provincial authorities are committed to the same policy in relation to the native people of Canada that has failed for over 100 years already.(140)
>
> On the whole the James Bay Agreement is often vague. It is apparent that both the federal and provincial governments do not appreciate the needs of the native people in Quebec, nor do they seem to care to understand.
>
> There is every possibility that this settlement will lead us down the same road to poverty, bitterness and frustration that now faces many Indian bands in Southern Canada. There is no need to force our native people into a welfare economy.
>
> An even more incredible fact is that the Federal Minister of Indian Affairs perceives the James Bay Agreement as some sort of model for future land claims. If this is his version of salvation for the native people of Quebec then, God help those people. (as well as the salvationists) [addendum by unknown author](141)

It is obvious that the Inuit were not impressed with the final version of the James Bay Agreement.

On February 27, 1976, the Inuit Tapirisat of Canada presented to the Prime Minister of Canada Nunavut A Proposal for the Settlement of Inuit Land in the Northwest

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(140) ITC (?), "The James Bay Agreement - What It Means To All Inuit - ", n.d., found in COPE's 1976 files, printed in both English and Inuktituk, p.1.

(141) Ibid, p.11.

Territories.(142) Nellie Cournoyea noted the reaction to the Nunavut proposal.

> Beginning in September 1976 gloomy apprehensions prevailed over the progress of the NWT Inuit Land Claims negotiations. The lack of clear direction and indecision within ITC land claims, concerning the Nunavut proposal, was picked up by the press, federal and territorial government. This resulted in an increasing series of attempts by the press to discredit the land claims and leadership. Although the document "nunavut" was heavily promoted in the south and apparently to a lesser degree in the north, it was becoming clear, especially in the western arctic, that there was some serious problems in trying to reach any decisions that would begin to reach the objective of settlement for the Inuit.(143)

Sam Raddi, then president of COPE, attended the negotiations with the ITC and the federal government of Canada and brought back the news that the Inuit could not agree on a claim and that there were differing views from different regions of the Arctic.(144)

It should be noted briefly that another factor was influencing the northern native rights movements. The Government of the Northwest Territories was under pressure

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(142) Northwest Territories Chamber of Mines, Press Release, "Re: Nunavut", Yellowknife, NWT, August 16, 1976.

(143) Nellie Cournoyea, "Overview of Land Claims", n.d. (c.December, 1976), Inuvik, NWT, p.1.

(144) Ibid, p.2.

from within and from the federal government to decentralize itself. The ITC made a proposal at one meeting to withdraw the Nunavut proposal and this caused a substantial stir.

> The reaction of some territorial councillors was happiness. This would give them lots of time so they could shove their idea of decentralization down the throats of the people. This was the territorial government's answer to land claims.(145)

Sam Raddi took the question of Inuit land claims to every settlement that COPE represented. In each community they attempted to reach each household and talk about (1) the withdrawal of the Nunavut proposal; (2) what direction should land claims take; (3) how best to approach the question of land claims; and (4) how much time do people want to take to have land claims settled.(146) This notion of reaching every household was consistent with the Inuit or northern political approach of consensus politics, as opposed to the adversarial form of party politics found in southern Canada.

Sam Raddi continued to voice the Inuvialuit concerns through the ITC apparatus, but Nellie Cournoyea notes that

> After Sam Raddi attended the November ITC Board Meeting in Ottawa, he returned home to report that he had tried to get the Western Arctic concerns across to the ITC

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(145) Ibid, p.3.

(146) Ibid, p.6.

> Board, but he felt that there was not much interest or support for the Western Arctic problems. His speech to the ITC Board was not included in the minutes. In Sam's speech to the ITC Board he informed them what approach he was going to take in getting a vote from the Western Arctic.(147)

The decision was made to go to every household and take a vote on the future of the Western Arctic land claims issue. The voting was kept simple; two questions were asked: (1) Do you support Western Arctic Land Claims?; and (2) Do you want COPE to do the job for you? The results of the voting were affirmative for COPE to continue to do the job, and not have the ITC represent the Western Arctic (631 yes/9 no), and affirmative support for the Western Arctic Land Claim itself (628 yes/12 no).(148) To be properly qualified, it should be noted that Holman was not included, and the remaining inhabitants of North Star Harbour were included (19 people).

> After the interview and votes were done the COPE Board and ITC Board were informed of the results. Sam Raddi would now go to Ottawa to make the necessary arrangements with ITC and the government to go ahead with the Western Arctic Regional Land Claims.(149)

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(147) Ibid, p.8.

(148) Ibid, Appendix, no title.

(149) Ibid, p.11.

> Sam Raddi, Nellie Cournoyea went to Ottawa to meet with Indian Affairs Minister Allmand, along with James Arvalak, Peter Cumming and Bob Delury. The meeting with the minister was to reach a financial understanding and political acknowledgement for the Western Arctic land claims.(150)

In the spring of 1976, Cabinet gave a whirlwind approval for the commencement of drilling, even though the environmental studies had barely begun. As activity in the Beaufort escalated, COPE began preparations in earnest to settle a land claim, including the ocean and sea-ice within the Canadian Beaufort Sea.(151) COPE also claims a triangular wedge of the Beaufort Sea which is in dispute between offshore Alaska and offshore Yukon Territory.(152)

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(150) Ibid, p.8.

(151) It is useful to distinguish between portions of the Beaufort Sea in the Arctic Ocean. To date, most references are to the "Beaufort Sea", or "eastern" or "western" Beaufort Sea. I would propose that there should be a more precise definition which would delineate the political portions of the Beaufort Sea. I suggest that the division become known as the Canadian and American Beaufort Sea. As the names of places in the Beaufort Sea become more well-known, the political distinctions will add to the clarification of where work, whether industrial or scientific, is occurring. It will also become more useful regarding international strategic issues in the circumpolar north, given the issues of right of transit through the NW Passage and submarine traffic throughout the Arctic Ocean.

(152) The United States and Canada have not yet ratified the offshore boundary between these two regions. The U.S. maintains, albeit rather quietly, that the equidistant method of determining offshore boundaries, as used in the Law of the Sea (which

In 1976, the issue of extinguishment of rights was still foremost in the minds of the policy-makers in Ottawa, and COPE was not immune from their influence. In an early draft of COPE's position regarding the Nunavut proposal, it was stated that

> The Government of Canada and COPE hereby agree that for the lands indicated...as priority areas...each community corporation will decide in respect to any blocks of lands owned by it with regard to any existing oil and gas, coal or mineral rights or land use permits whether: (a) these rights are to be extinguished, or
>
> (b) these rights may only be continued on the basis of additional conditions as set forth by the community corporation.(153)

These oil and gas rights are ambiguous in nature as to exact ownership, but the intention appears to be the maintenance of certain aboriginal rights vis-a-vis the oil companies and the federal government. The very issue of rights raises the question of permanence. The legal terminology which reflects this question is: (1) constitutionally entrenched rights (which have the sense of

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ironically they are not signatory to) should determine the border. Canada has, almost equally quietly, maintained the 141st meridian (longitude) as the Canadian border offshore between Alaska and the Yukon Territory, from the sea line to the North Pole.

(153) COPE Negotiating Document, Authors Unknown, n.d. (c.1976), Part Seven, Existing Alienations and Oil and Gas Operations, pp.46-47.

permanency above the laws of the land); and (2) extinguished rights, being those rights which may have existed, but were removed, or extinguished through some legal process.

In the end, the Nunavut proposals by COPE went unheeded as COPE made the decision to proceed unilaterally, without the ITC, Indian Brotherhood of the NWT, or the Metis Association of the NWT.(154) The Indian Brotherhood of the NWT also proceeded unilaterally to present a document for a signing of an agreement in principle. There were, however, some unclear aspects to both Treaties 8 and 11. More specifically, the ambiguity of the northern Treaty 11 was recognized by both Dene and Inuvialuit alike. Treaty 11 included land up to the Beaufort Sea as being "ceded", but the Mackenzie Valley-Beaufort Sea region was not part of the traditionally occupied lands of the Dene who were under pressure from the federal government. The land was traditionally occupied by the Inuvialuit and Inuit.

The question of how long the Inuvialuit have occupied the Mackenzie Delta-Beaufort Sea region has been raised after signing of the Inuvialuit Final Agreement. Various

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(154) For a brief time COPE was included in the Nunavut proposal representing the Inuit of the western Arctic. They later dropped out of the ITC regarding the pursuit of land claims.

theories of traditional occupation range from 3,000 years ago to as recent as the early 1900's. Ancestors of the modern-day Inuit are recognized by archaeologists as arriving in Canada's north approximately between 900-1000 A.D.

The occupying Inuit in the Mackenzie Valley region are referred in the literature as Mackenzie Eskimos.(155) McGhee describes the first meeting between the Mackenzie Eskimos and Europeans as occurring near the present settlement of Arctic Red River in the summer of 1799.(156) This race of Eskimo was plagued by disease over the latter half of the 19th century. The two major bands, the Kittegaryumiut and the Kupugmiut were subjected to devastating epidemics from 1900 to 1910, which left fewer than 150 survivors from an estimated 2500 Mackenzie Eskimos.(157) McGhee notes the change which occurred to the population of the region at this time:

> At the same time as Eskimos were being decimated by disease, local aboriginal cul-

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(155) Robert McGhee, Beluga Hunters, An archaeological reconstruction of the history and culture of the Mackenzie Delta Kittegaryumiut, Newfoundland Social and Economic Studies No.13, Institute of Social and Economic Research, Memorial University of Newfoundland, Toronto: University of Toronto Press, 1974, p.1.

(156) Ibid, p.1.

(157) Ibid, p.5.

> ture was being submerged beneath a wave of American and Alaskan Eskimo introductions. Shocked by the materially rewarding involvement with the American whaling ships, Mackenzie Eskimo culture was susceptible to wholesale adoption of the cultural traits of American-oriented Alaskan Eskimos. The latter were either brought to the area as caribou hunters by the whaling ships, or had moved in on their own in search of new hunting and trapping grounds after the North Alaskan caribou herds had been killed off to supply the excess demands of the whaling fleet.

The arctic explorer Stefansson recorded that

> the net result is that the Mackenzie population is becoming mixed in blood, is already deeply influenced in its culture, and has taken up many strange words into the spoken language.(158)

Unfortunately for claims of the modern-day Inuvialuit, McGhee states that the "aboriginal Mackenzie Eskimo culture could probably be considered to have become extinct between 1900 and 1910...".(159) Ancestral ties to the Alaskan and Soviet Inuit are relatively close and support the theory of recent crossward northern migrations. The issue is a moot point as the agreement has already been completed and passed as legislation by the Parliament of Canada. Howev-

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(158) V. Stefansson, The Stefansson-Anderson Arctic Expedition: Preliminary Ethnological Report, Anthropological Papers of the American Museum of Natural History, Vol.14, part 1. New York. Cited in Robert McGhee, op.cit.,p.5.

(159) McGhee, ibid, p.5.

er, the issue of longevity could possibly be raised in court if there was a group that stood to gain by having the agreement legislation challenged.

The decision to proceed as a regional organization may have been influenced by meetings with COPE and the Minister of Indian and Northern Affairs. The direct meetings with the Minister, without the "go-betweens" of the ITC, may have contributed to the feeling of responsiveness and power of COPE in dealing directly with the federal government. It should be remembered that when northern people travel south to Ottawa, a meeting of the respective heads of the related political organizations will be perceived by both as a direct negotiation and consultation. When the Board of COPE met with the Minster of DINA, perceptions and expectations ran high.

On July 13th, 1976 COPE met with the DIAND Minister Warren Allmand.

> The meeting started at 9:30 a.m. It became obvious right at the start that the ONC [Office of Native Claims] had not done their work. They had not reached any level of understanding and agreement. It was a frustrating meeting with the ONC staff so we asked them to leave and the Minister agree to meet with only the Inuvialuit.
>
> We discussed with Minister Allmand the difficulties we were having with ONC and how they were unable to do the necessary work. We told the Minister that we still

> want an Agreement-in-Principle before the pipeline decision is made.(160)

Relations between COPE and the government were strained shortly afterwards when Canadian Marine Drilling (Canmar)/Dome Petroleum Limited received federal authority to drill offshore in the Canadian Beaufort Sea to total depth (i.e. in what were anticipated oil and gas zones).

> COPE views the outrageous decision today by the Cabinet Committee and the Minister of the Department of Indian Affairs (DIAND) with sadness and regret. How can the Inuit of the Western Arctic or any Canadian not feel skepticism and mistrust for a minister and a government that neither honours its agreements nor recognizes its own principles and procedures?
>
> The Cabinet did not consult with the Inuit or its own review body, the Arctic Waters Oil and Gas Advisory Committee, which normally handles the offshore drilling application, before taking its quick decision.
>
> Actions like this one by Cabinet make it hard for the Government to maintain the credibility of its claim that it is looking after the interests of the Inuit. COPE feels that only through a land claims settlement will the interests of Inuit and the interests of all Canadians in the Arctic be justly served.
>
> We hope that Canada does not abandon forever its concept of a just society, even though it appears to be forgotten at times such as these.(161)

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(160) COPE Document, Knute Hansen, author, report of July 4-20, 1976 of COPE officials in Ottawa.

(161) COPE Press Release, September 9, 1976, Inuvik, NWT.

In 1977 COPE pursued an interesting angle of development. Although past land claims were based on traditional occupation and use in the NWT, COPE felt that Inuvialuit traditional use and occupancy also included the North Slope of the Yukon.

> Since the Inuvialuit have an exclusive aboriginal property right documented in the North Slope of the Yukon, the Inuvialuit will retain through their Land Rights Settlement the largest amount possible of their traditional lands in that area as private Inuvialuit lands.
>
> ...the Old Crow people have no aboriginal property rights and therefore no land claim, in the North Slope of the Yukon...
>
> To protect the Porcupine Caribou herd for the Inuvialuit, the Old Crow and other native peoples, all the native people will work out an International Co-operative Management Treaty for that herd.(162)

Following this declaration, which proceeded apparently unchallenged, COPE obtained support from the Alaska Native Regional Corporation.(163)

COPE still had to face pressures from the oil and gas development industry. One company, Gulf Oil, discussed the proposed seismic work (which precedes actual oil and gas

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(162) COPE Document, Inuvialuit Declaration of Position in regard to The North Slope of the Yukon, January 13, 1977, Inuvik, NWT, pp.1-2.

(163) COPE Press Release, COPE Secures International Support for Western Arctic Land Claims, January 14, 1977, Inuvik, NWT., 2 pp.

exploration) with COPE and the federal government. COPE wrote to the President of Gulf Oil and requested protection of the area for the wildlife.(164) Gulf gave a typical oil industry response.

> Your assumption that Husky Lakes "....is a lower potential area" for oil and gas may not be correct. Actually we consider it to be of relatively high potential, and the seismic program proposed for this season will help to confirm or negate that preliminary assessment.
>
> In keeping with our operating record to date in the Arctic, our operations will be conducted so as to minimize possible effects on the ecology and the lifestyles of northern residents.(165)

The federal government intervened and put a six-month freeze on activities on the lands COPE was concerned with. COPE supported this move, although it did not agree with the underlying principles that forced the freeze.(166) In March, 1977, COPE reached an agreement-in-principle with the government of the Yukon Territory and Yukon natives for the boundary between the lands surrounding Old Crow, Yukon,

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(164) Sam Raddi, President of COPE, Letter to John Stoik, President of Gulf Oil, January 5, 1977.

(165) John Stoik, President, Gulf Oil, Letter to Sam Raddi, President, COPE, January 14, 1977.

(166) Sam Raddi, President, COPE and COPE Board of Directors, Letter to Warren Allmand, Minister of DIAND, February 14, 1977.

and the Inuvialuit lands (of traditional occupation).(167) Following this agreement, COPE sought ITC support for the progress of a land claims settlement. COPE hoped the ITC would continue to pursue the Nunavut proposal in the possibility that both the COPE and ITC claims could be settled at the same time, thus including all the Inuit of Canada in one settlement.(168)

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(167) COPE Document, "Agreement in Principle for the Boundary Between Old Crow Lands and Inuvialuit Lands", March 9, 1977, Inuvik, NWT.

(168) Sam Raddi, President, COPE, Letter to Michael Amarook, President, ITC, March 18, 1977.

CHAPTER THREE

THE WESTERN ARCTIC CLAIM

The first semblance of a positive move towards a land claim settlement came on May 13, 1977, when COPE presented a proposal for an agreement-in-principle.(169) One interesting aspect of the proposal was that COPE perceived the settlement to be final.

> As part of the deal made between the government and the Inuvialuit, we agree; (a) there will not be another land claims [sic] by Inuvialuit.(170)

This was the Inuvialuit point of view. In the actual written agreement, as printed by the federal government negotiators, the wording is somewhat different.

> In consideration of the rights and benefits set forth in the Final Agreement, the

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(169) COPE, "Inuvialuit Nunangat", The Proposal for an AGREEMENT-IN-PRINCIPLE to achieve the SETTLEMENT OF INUVIALUIT LAND RIGHTS in the WESTERN ARCTIC REGION OF THE NORTHWEST AND YUKON TERRITORIES, between THE GOVERNMENT OF CANADA and THE COMMITTEE FOR ORIGINAL PEOPLES' ENTITLEMENT, Inuvik, NWT, May 13, 1977.

(170) COPE, "A Summary of the Details Contained In Inuvialuit Nunangat The Proposal for an Agreement-In-Principle to achieve Settlement of Inuvialuit Land Rights in the Western Arctic Region of the Northwest and Yukon Territories Between: The Government of Canada and: The Committee for Original People's Entitlement", Given to the government on May 13, 1977, p.3.

> Inuvialuit of the Northwest Territories undertake to cede and surrender all their claims, rights, titles and interests on and to land in the Northwest Territories, the Yukon Territory and adjacent offshore seabed and subsoil in Canada, by virtue of the said Final Agreement, and upon the signing of the Final Agreement all such claims, rights, titles and interests of the Inuvialuit shall be extinguished, subject to the provisions of such Final Agreement.(171)

The COPE working documents differed on the issue of extinguishment, delineating the issue of "the land" from other unknown or unexpressed aboriginal rights. In the draft of the first proposal, COPE listed one of the four goals it wanted to achieve from the Settlement:

> Achieve fair compensation or benefits to the Inuvialuit in exchange for the extinguishment of Inuvialuit land [emphasis mine] rights.(172)

In comments by the Land Claims Commission, the federal view concentrated on the extinguishment issue.

> C.O.P.E. is agreeing to extinguish the aboriginal rights of the Inuit of the Western Arctic in exchange for some land and other financial compensation.

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(171) COPE and the Federal Government of Canada, "Inuvialuit Nunangat", May 13, 1977, Section 205, p.10.

(172) COPE, Draft, Summary of Inuvialuit Land Rights Settlement Proposal, Inuvik, NWT, p.3, n.d. (c.1976).

> For C.O.P.E., their settlement is a legal and economic one - the Inuit extinguish their legal aboriginal rights in exchange for material and economic advantage.(173)

In the north, politics is many-faceted. With all the pressures already being exerted on COPE from oil and gas development and the pursuance of a land claim, another factor intervened. Charles M. Drury was appointed as Special Representative for Constitutional Development in the Northwest Territories. One of the interesting differences between Justice Berger and Mr. Drury was that Drury was to report directly to the Prime Minister (Pierre Trudeau), not to the Minister of DIAND, Warren Allmand. Drury's functions were to

> report on wide-ranging consultations to be carried out with leaders of the Territorial Government, northern communities and native groups on measures to extend and improve representative and responsive government in the Territories.(174)

One northerner, Don MacNeill, brought the southern response to this appointment to COPE's attention (as viewed by John Gray in Ottawa):

> That such an appointment was made last week suggests that Prime Minister Trudeau and

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(173) Comments prepared by L.C.C. and sent to DIAND; received by COPE from DIAND, n.d. (c.1976 summer), p.2.

(174) Office of the Prime Minister, Press Release, August 3, 1977, Ottawa, p.1.

> those around him are eager to keep a firm lid on the increasingly volatile North.
>
> The goverment, it is now clear, wants no more of that excessive sympathy of the kind shown by Justice Thomas Berger in his report on the impact of a Northern Pipeline.(175)

Raddi, as president of COPE, responded quickly to the Minister of DIAND, regarding the Drury appointment.

> Given our extensive negotiations with you on our land rights proposal, I am writing directly to you, rather that to the Prime Minister.
>
> I find it very disappointing that no reference at all, let alone any favourable reference, was made to Inuvialuit Nunangat.(176)

On the issue of aboriginal rights, COPE recognized at least half-way through its existence that there were many aboriginal rights, not just the land rights recognized by the federal government and legal system. At the COPE Annual Meeting at Holman Island in 1977, the Inuvialuit notions of aboriginal rights were brought up in the context of preparing to attend the Inuit Circumpolar Conference at Barrow, Alaska.

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(175) John Gray, "Northern Crackdown, Drury appointment promises rough ride for natives", in The Citizen, Ottawa, p.5, August 13, 1977.

(176) Sam Raddi, President, COPE, Letter to Warren Allmand, Minister of DIAND, August 23, 1977, pp.1-2.

> There are many rights recognized in different jurisdictions for original people besides those concerning hunting and land. Rights such as marriage, adoption and self determination in areas of health, education, justice and government. There are many rights which may be defined in the future for original people.
>
> The Inuvialuit have proposed a land rights agreement with the government to establish and entrench Inuvialuit rights to the land, to the resources and their rights in respect to hunting, trapping and fishing.(177)

COPE's brief to the Inuit Circumpolar Conference (ICC) further outlined its position regarding aboriginal rights.

> Although "Inuvialuit Nunangat" deals specifically with Land Rights, it does not give up any other rights [emphasis mine], nor does it define them more explicitly.(178)

There was a realization by COPE of the real intentions of the federal government regarding the total extinguishment of Inuvialuit aboriginal rights:

> It should be noted that some members of the C.O.P.E. have hinted that all the proposal will do is to extinguish the aboriginal 'property' rights of the Inuit of the Western Arctic, and that other aboriginal rights will remain untouched. This is not so.
>
> The concept of aboriginal rights has never been considered, either by the courts or by

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(177) COPE, Annual Meeting, August 15-18, 1977, Holman Island, NWT, "Inuit Circumpolar Conference", p.2.

(178) Ibid, COPE Brief to ICC, p.9.

> the government of Canada, as including anything other than property rights. By agreeing to extinguish the aboriginal 'property' rights of the Inuit of the Western Arctic, the C.O.P.E. proposal is in fact agreeing to extinguish all aboriginal rights.
>
> If it were true that some aboriginal rights were to remain untouched, then surely those rights would be important enough to be specified and set aside as not to be extinguished, but there is no such reference anywhere in the proposal.(179)
>
> The apparent purpose of the C.O.P.E. proposal is to provide some material advantage to the Inuit of the Western Arctic in exchange for terminating their aboriginal rights...
>
> They are, in reality, to become wealthier second-class citizens on their own land.(180)

Outside opinions recognized the situation COPE found itself in.

> This proposal will please the government and the oil companies because it gives them everything they could want. It gives the Inuit of the Western Arctic less than they have now.
>
> The highlights of the proposal are: (1) It guarantees Kabloona ["white man"] control of Inuit organizations by setting up complicated corporations that can only be understood and managed by people with university degrees or law; (2) It extinguishes

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(179) COPE List of Meetings with government about Inuvialuit Nunangat, "COPE Draft Principles", p.3, "Comment To The COPE Proposal", prepared by LCC, received by COPE from DIAND. n.d. (c. summer 1976).

(180) Ibid, "Wealthier Second-Class Citizens", p.4.

> all aboriginal rights; (3) It gives away much of the land now owned by Inuit; and (4) In return for giving away their land and their rights, the Inuit will get no money unless a pipeline is built through the Western Arctic, or some other means is found for moving oil or gas from the Western Arctic to the south.(181)

This also was a foreshadowing of events to occur far into the future, events which would inevitably return to haunt COPE in legal and constitutional worries for some time yet to come. Yabsley concluded succinctly: "It is the legal language that counts-- not the nice comments and explanations."(182)

COPE also found new challenges arising in the negotiating process as the government changed the Minister of DIAND from Warren Allmand to J. Hugh Faulkner. All the trust and relationship built with the former Minister, including the formal, yet personal meetings, had to be re-instituted with a new Minister. The frustration of the situation can be seen in COPE's opening comments to the new Minister, explaining, all over again, what COPE was and intended to do. "COPE began in 1970 with membership of Indian, Eskimo and Metis..."(183)

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(181) Ibid, G. Yabsley, Opinion prepared for ITC, "COPE's Land Claims Proposal", p.1.

(182) Ibid, p.4.

(183) Brief by COPE to Minister of Indian and Northern Affairs, J. Hugh Faulkner, October 25th, 1977,

COPE met with the new Minister and DIAND officials in Ottawa in November of 1977. The negotiations did not go well.

> The government offered very small amounts of land and royalties and their offer was considered unacceptable by the COPE negotiators as a fair settlement of Inuvialuit land rights. The COPE negotiators felt that the government didn't want to give anymore because they want our settlement to be similiar to James Bay and the government does not believe the Inuvialuit, or any other native people have any legal rights to their land.(184)

Of note was the ommission of any mention of problems associated with the extinguishment of aboriginal rights from a report entitled "The Parts of the Government Answer That We Heard That Were Unacceptable Included:".(185) From the meetings and reports from this time period, it appears that concerns over royalties and game management overshadowed the more ethereal concerns of "rights". The game and the environment have been, and will continue to be of primary importance to the Inuvialuit. COPE was also involved in several other issues relating to traditional

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"Introduction to the Inuvialuit Land Rights Proposal and History of COPE", p.1.

(184) COPE, "Report on Negotiations With Government On Western Arctic Inuvialuit Nunangat", November 29, 1977, p.1.

(185) Ibid, p.1.

game management, including travelling to Toyko for discussions on international whaling, discussions with the Government of the NWT on game management, and similiar meetings in Ottawa with federal officials from Parks Canada and the Department of the Environment.

COPE had become involved in community affairs within the Inuvialuit region, addressing such problems as venereal disease, housing, wage employment unions, development corporations and native employment training programs. COPE was also instrumental in the NWT Summer Games, a collection of traditional Inuit games held each year, a sort of northern "Olympics".

It seems apparent that although COPE was aware of extinguishment, other priorities had to be addressed, as designated by the Inuvialuit - generally their protection of whaling, sealing, hunting and trapping regions from encroaching oil and gas exploration.

As well, COPE was caught up in the negotiations over royalties and compensation. Private consultants were hired to assist them in the calculation of the optimum cash and land compensation that would be negotiated in the land claim settlement. This ended the year 1977 for COPE. Negotiations were tentatively re-starting with a new minister, but the relationship was strained.

Faulkner started the new year 1978 with a token expression of goodwill towards the Inuvialuit. The North Slope of the Yukon was pulled out of public lands and categorized as National Park lands, for preservation's sake. Although the Inuvialuit expressed their disappointment that there was not enough action by the minister, it was generally perceived as a positive move by northerners.

In April of 1978, both the government of Canada working group and COPE agreed on three important elements of the Inuvialuit claim - lands, financial compensation and related rights.(186) This first confidential discussion paper stated that one of the four basic goals of the Inuvialuit land rights settlement was to achieve fair compensation or benefits to the Inuvialuit in exchange for the extinguishment of Inuvialuit land rights.(187) What remained for the Inuvialuit was to protect their perceived rights as best as possible within the context of the land claim settlement.

The Inuvialuit attempted to achieve this result by creating sub-categories of each of their perceived rights. The topics included such items as Game Management, Wildlife

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(186) Working Group On Inuvialuit Claim, Joint Position Paper On Lands, Financial Compensation and Related Rights, April 25, 1978, p.1.

(187) Ibid, p.2

Boundaries, Development Corporations, Investment Corporations, and self-determination through control over enough resource development to ensure Inuvialuit cultural maintenance.

On April 1, 1978, the joint working group reached an agreement on lands, financial compensation and related rights.(188) Negotiations then broke off over a dispute on some additional changes. COPE saw its point of view as different from the government's:

> COPE Position: All of the proposals by COPE were designed to protect the future generations against regional poverty after the oil and gas development is finished. The Inuvialuit did not want to depend on welfare or Government programs to protect future generations but the Inuvialuit wanted to be self reliant and independent economically which meant the Inuvialuit wanted to participate in development, not take handouts.
>
> The Government, on the other hand, rejected the COPE objective that the Land Rights Settlement should provide the opportunity to Inuvialuit to be economically self reliant. The Government sees the money...as being a handout that has no purpose except to settle land rights.(189)

On May 29, 1978, the COPE/Government Working Group created a joint position paper for submission to Cabinet.

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(188) COPE, Outline of Field Work, n.d. (c. April 1978), p.2.

(189) Ibid, p.5.

There were notable differences from the preceding paper, which provides some evidence of the input from the Inuvialuit regarding their perception of aboriginal "rights".

> It is agreed that [one of] the four basic goals of the Inuvialuit land rights settlement [is to] provide specific rights, benefits, and compensation to the Inuvialuit in exchange for any Inuvialuit land rights that now exist.(190)

Notes to the Position Paper indicate that the Inuvialuit considered specific rights alien to the government's conception of a land claim. They included "(1) hunting, fishing, trapping (2) property (3) economic (4) participation and (5) rights to protect our rights".(191)

There was also a feeling by COPE that their decision with the working group should override subsequent legislation.

Knute Hansen: If any problems come up after the Final Agreement be in Federal, Territorial, our agreement super-

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(190) COPE/Government Working Group Joint Position Paper On The Inuvialuit Land Rights Claim, May 29, 1978, "Principles", p.1.

(191) Caroline Kikoak, Executive Secretary to COPE President, Notes on COPE/Government Position Paper, May, 29, 1978.

cedes any such changes.(192)

The issue of aboriginal rights was raised at the 1978 COPE General Assembly. The following conversation shows the result.

Winnie Carpenter:	If we release, surrender our rights, does it mean hunting rights, land rights?
Knute Hansen:	(discussion) - Rights given up refer to land only. (translated by Rosie Albert)
Agnes Semmler:	Does this [COPE/ Government Joint Position Paper] not say that hunting, trapping rights are in the whole area, even on lands given up? (translated by Rosie Albert)
Bob Delury:	In law whether it is a right or a title or a claim, you do not give up any other rights (constitutional or political).(193)

At this meeting COPE, for confidential reasons, decided to withdraw from the ITC as a regional member.(194)

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(192) COPE Annual General Assembly, Sachs Harbour, NWT, October 29-31, 1978, p.4.

(193) Ibid, p.5.

(194) Ibid, "Motions and Resolutions", p.2.

COPE signed the "Inuvialuit Land Rights Settlement Agreement in Principle" on October 31, 1978. The clause regarding the extinguishment of aboriginal rights read the same as the Joint Position paper had outlined, exchanging only land rights.

Throughout the winter of 1978-79, the Inuvialuit spent a great deal of time and energy on the development of the various corporations that would administer their respective portions of the Final Agreement, which seemed imminent. They included the Inuvialuit Land Corporation (ILC), Inuvialuit Development Corporation (IDC), Inuvialuit Investment Corporation (IIC) and the Inuvialuit Community Corporation (ICC).(195)

Hopes were high that the Agreement-in Principle would be quickly ratified and a Final Agreement reached, signed and passed as legislation. The federal negotiator, Dr. John Naysmith, had set a positive tone for the completed signing between COPE President Sam Raddi and DIAND Minister Hugh Faulkner. Faulkner had indicated the same tone regarding aboriginal rights as the Inuvialuit had envisioned, which essentially was the view of his predecessor, Allmand:

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(195) Inuvialuit Development Corporation Shareholders Meeting, Inuvik, NWT, December 9-13, 1978, p.8.

> to achieve fair compensation for the Inuvialuit in exchange for the extinguishment of Inuvialuit land rights.(196)

The positive attitude presented by both COPE and the federal government was not unanimously accepted by other native groups in Canada and in the north. "The settlement was immediately denounced as a sellout by other native organizations in the North."(197)

From the records of COPE activities, COPE worked extremely hard throughout 1979 on settling the finer points of land rights, development corporations and issues of land use with the Yukon Indians. Problems arose when the Liberal government called an election in May, 1979. The Conservative Party won the election and formed a minority government. COPE found itself in an undesirable position.

> One year after emerging as a tiny spark in the darkness surrounding native claims to northern lands, federal negotiations with the 2,500 Inuit of the western Arctic have blinked off.
>
> Federal negotiators and representatives of the Committee for Original People's Entitlement (COPE) have not met since May

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(196) DINA, Communique, "Speech Notes for the Honourable Warren Allmand, Minister of Indian and Northern Affairs on the Occasion of the Presentation to the Government of Canada by the Committee for 'Original Peoples' Entitlement of Their Land Claim Proposal", Ottawa: DIAND, May 13, 1977, p.2.

(197) Jeffrey Simpson, Toronto Globe and Mail, July 15, 1978.

> 18, four days before the federal election that produced a new government in Ottawa. To that point, the negotiators had been trying to fill in the blanks of an agreement-in-principle signed last October.
>
> At the moment, all claims issues, including the COPE settlement, are officially "under review", according to spokesmen for Jake Epp, the new minister of Indian & Northern Affairs.(198)

COPE's response was, as would be expected in the situation, not one of extreme pleasure.

> THEREFORE, BE IT RESOLVED that the General Assembly considers that the bad faith demonstrated by the Department of Indian Affairs, the Minister of Indian Affairs, Honourable Jake Epp, the Government of Canada is deceitful and disgraceful.(199)

The motion of southern politics had interfered with northern concerns. The Conservative government, under Prime Minister Joe Clark, immediately shelved the COPE agreement-in-principle to be looked at after a reasonable period of adjustment between the two parties' differences in policies, if any could be ascertained.

As is evident from history, the new government never had the chance and was replaced six months later by a strong Liberal government, again headed by Pierre Trudeau. Trudeau immediately initiated government action towards

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(198) Fred Harrison, Financial Post, October 6, 1979, p.9.

(199) COPE Annual General Assembly, Holman Island, NWT, January 18-21, 1980, p.11.

constitutional change and began the successful movement towards patriation of the Canadian Constitution.

The energies COPE had put into a land settlement were now being threatened with constitutional change, and this new development forced COPE to delay the claim. The new focus was the first unilateral voice of the native people since the native response to the 1969 White paper. Native people across Canada felt a need to have their "aboriginal rights" affirmed in the new Constitution and Charter of Rights. The new Liberal government appointed John Munro as Minister of DIAND and Senator Davie Steuart as federal negotiator. By September of 1980, discussions resumed on the Agreement-in-Principle. By the end of the year, however, the negotiations were not going well.

> We have been having difficulties with the Federal Government since the signing of the Agreement-in-Principle. It has been 2 1/2 years now, with little progress and it seems as if we are at a point where no progress is possible.
>
> I met with Minister Munro on 2nd February [1981] after I was given a copy of a letter, which he had sent to his Chief Negotiator Davie Steuart, dated December 1980.
>
> It was a hard meeting because in the letter, the Minister directed Davie Steuart to break the Agreement-in-Principle.(200)

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(200) Sam Raddi, "President's Report", in Joint Board/Negotiators Meeting to Consider Land Rights situation, Tuktoyaktuk, NWT, February, 1981, p.2-2.

Talks broke off with Ottawa when leaked government documents, which were obtained by COPE, revealed intended changes to the Agreement-in-Principle. Native leaders, even outside of COPE, commented critically:

> For you to alter Canada's agreement with COPE without their consent... calls into question the credibility of the federal government to honor its committments.(201)

COPE's efforts were again turned to constitutional entrenchment of aboriginal rights, and little is recorded of COPE's move to settle the Agreement-in-Principle. In 1982, after the inclusion of a clause affirming "existing aboriginal rights" in the Canadian Constitution, a new negotiator was assigned to the COPE claim for the federal government - Simon Reismann. From early spring in 1982 to 1983, there were no formal negotiations toward a Final Agreement.(202) This situation changed with the new negotiator, and COPE made it clearly known that they wanted to complete its claim in all due haste.

> Therefore be it resolved that the Inuvialuit unequivocably support the Agreement, Land Rights negotiators and the position of the negotiators with the govern-

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(201) James Wah-Shee, Aboriginal Rights Minister, GNWT, quoted in the Calgary Herald, February 17, 1981, "Inuit accuse Grits of bad faith in Arctic land claim dealings".

(202) COPE Annual Meeting, Holman Island, NWT, March 30-31, 1983, p.8.

> ment. The negotiators are to continue to work diligently on behalf of the Inuvialuit to achieve the Final Agreement. The negotiators are to receive the complete support of the officers, the Board and the employees to achieve that end.(203)

COPE worked simultaneously on constitutional affairs, with the pending Constitutional Conference of First Ministers on the Rights of Aboriginal Peoples, and on the Western Arctic Claim. DIAND Minister John Munro apparently worked with his staff just as diligently, and they were nearing completion on the Inuvialuit Final Agreement in January of 1984.(204)

Opposition from other native groups and businessmen in the Yukon and the NWT to the Western Arctic Claim gained attention in southern Canada. The "reverse discrimination" aspects of the proposed settlement were perceived by some northern groups as detrimental to their own people.

> What it boils down to is smart negotiating by COPE, and an inability of the "mea culpa" contingent to see that this agreement is an invitation to under-the-table business practices and ultimately, the complete breakdown of native land claims negotiations.
>
> The COPE agreement, which should go to cabinet within a week, is in direct contradiction of the federal government's own

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(203) Ibid, p.9.

(204) Robert Sheppard, "Munro hopes land claims pact ready for Cabinet in 2 weeks", in Globe and Mail, Toronto, January 26, 1984.

> policy on Canadian native claims. "When working to protect native interests, respect for the rights of other Canadians must be maintained...It serves no just purpose if the terms of settlement ignore or arbitrarily infringe upon the rights of other citizens..."(205)

COPE reached an agreement with the federal government on March 27, 1984,(206) and legislation was subsequently passed in Parliament.(207) COPE had the first land claim settlement after the new Constitution was passed and accepted by Canada. The agreement did, however, have its costs. One upsetting circumstance was the method of paying compensation (cash received) to the Inuvialuit people. The idea of development corporations, lawyers and consultants gobbling up the money, properly viewed by Inuvialuit, was anathema to some residents. In the period between Cabinet's acceptance of the Western Arctic Claim and the signing in June, a new group formed asking people in the six communities to reject the land-claims package negotiated by COPE. The Inuvialuit Action Group, formed in Inuvik, Tuktoyaktuk and Aklavik, wanted to see at least

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(205) Catherine Ford, "Land claims plan invites corruption", in Calgary Herald, February 2, 1984.

(206) COPE Annual Meeting, Tuktoykatuk, NWT, March 28-29, 1984, "President's Report", p.1.

(207) See Western Arctic (Inuvialuit) Claims Settlement Act, S.C. 1984, c.24, proclaimed in force by S.I./84-115, effective July 25, 1984, Government of Canada.

half of the monies received go directly back to the Inuvialuit, and half go into a permanent trust fund.

COPE's President, Peter Green, responded by saying that COPE had negotiated an agreement that the people wanted.(208) COPE did not have to pursue this action group's claim, as the majority of Inuvialuit had already given their acceptance to the signing of the Final Agreement in March of 1983.(209) The focus of the claim had not changed in the year preceding the signing of the claim, particularly regarding the use of the compensation provided.

The political ramifications of the constitutional rights preserving "existing aboriginal rights" was evident in the governmental announcement that

> The Final Agreement will not prejudice the rights of the Inuvialuit as Canadian citizens nor as aboriginal people within the Constitution, and they shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples including Federal and Territorial programs), and those deriving from the Constitution applicable to native citizens.(210)

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(208) Globe and Mail, "Native group seeks rewritten land pact", Toronto, May 1, 1984.

(209) COPE General Annual Meeting, Minutes, March 30-31, 1983, Motion No.21, p.8.

(210) DIAND, Backgrounder, March 28, 1984, p.1.

The Western Arctic Claim: Inuvialuit Final Agreement was signed June 5, 1984 by the President of COPE, Peter Green, and DIAND Minister John Munro in Tuktoykatuk, NWT.(211)

Some changes regarding the extinguishment of aboriginal rights did occur, even if the questions of the use of compensation did not succeed in altering the settlement. Very subtly, the four basic goals expressed by the Inuvialuit and recognized by Canada in the Final Agreement became three goals. Notably, the goal missing was the reference to the exchange of rights, or the extinguishment of rights clause.(212)

The former clause exchanging land rights was substantially altered to read as most land claim settlements, or treaties, had read in the past.

> Subject to the Settlement Legislation coming into force, and in consideration of the rights and benefits in favor of the Inuvialuit herein set forth, the Inuvialuit will cede, release, surrender and convey all their aboriginal claims, rights, titles and interests whatever they may be in and to the Northwest Territories and Yukon Territory.

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(211) DIAND, "Inuvialuit Final Agreement Signed", in Communique, June 5, 1984, p.1.

(212) COPE/Government of Canada, Inuvialuit Settlement Agreement, March 27, 1984, "Confidential" Working Agreement, p.3.

> The Settlement Legislation approving, giving effect to and declaring valid this Agreement shall extinguish all aboriginal claims, rights, title and interests whatever they may be of all Inuvialuit in and to the Northwest Territories and Yukon Territory.(213)

The quoted working paper also provided a "watered-down" version of the exchange of rights.

> The Settlement Legislation shall provide that Canada recognizes and gives, grants, and provides to the Inuvialuit the rights, privileges and benefits specified in this Agreement and as set forth herein, in consideration of the said cession, release, surrender and conveyance referred to in subsection 3(2).(214)

The issue of rights never appears to have been raised after the initial approval of the Inuvialuit in 1983, when they read through the agreement, page by page, discussing each line and thought expressed. There were no apparent considerations after the signing, as evidenced from the annual meeting of COPE in 1985.(215) The issue of rights seemed to have been over with the signing of the agreement in June, 1984. There were possible reasons for this change, and some very probable theories for the changes

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(213) Ibid, "Final Agreement and Legislative Approval", S.3(2), S.3(2)(a), pp.13-14.

(214) Ibid, S.3(3), p.16.

(215) COPE Annual General Meeting, Sachs Harbour, NWT, February, 15-16, 1985.

either going unnoticed or remaining unchanged, if they were noticed.

CHAPTER FOUR

AN ANALYSIS OF THE COPE AGREEMENT

A reading of the Western Arctic Claim: Inuvialuit Final Agreement shows that

> the Inuvialuit cede, release, surrender and convey all their aboriginal claims, rights, title and interests, whatever they may be...(216)

With this surrender, the subsequent Settlement Legislation extinguished

> all aboriginal claims, rights, title and interests, whatever they may be of all Inuvialuit...(217)

This, however, was tempered by the inclusion of a clause suggesting that there still remained some constitutional validity to the "existing aboriginal rights":

> Nothing in this Agreement or in the Settlement Legislation shall remove from the Inuvialuit their identity as an aboriginal people of Canada nor prejudice their ability to participate in or benefit from any future constitutional rights for aboriginal people that may be applicable to them.(218)

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(216) DINA, The Western Arctic Claim: The Inuvialuit Final Agreement, Ottawa: DIAND, 1984, p.3, Sec.3(4).

(217) Ibid, S.3(5).

(218) Ibid, p.3, Sec.3(6).

These rights have not been defined by any other terminology than rights stemming from the land(219) - usufructuary rights.(220)

The Inuvialuit Context

Nellie Cournoyea flatly stated that "the only things that were extinguished were those things that we didn't have".(221) The explanation of this statement was that the Western Arctic Claim included, in COPE's view, all the guarantees of land rights, political rights leading to self-government, language rights and all the rights which will provide a sense of cultural continuity and permanence. Interviews with past presidents of COPE revealed surprise that the clause extinguishing aboriginal rights was actually in the claim. The thinking of COPE leaders interviewed about extinguishment of rights in the agreement seemed to reflect the earlier provisions

> that [one] of the four basic goals of the Inuvialuit land rights settlement [is] to:...1(3) Provide specific rights, benefits and compensation to the Inuvialuit in

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(219) Ibid, p.3, Sec.3(7).

(220) See Chapter 1, p.34.

(221) Interview with Nellie Cournoyea, IDC, Inuvik, June 10, 1986.

> exchange for any Inuvialuit land rights that now exist.(222)

Chapter Three presented a startling change in both viewpoints and terminologies of COPE and the federal government of Canada. The federal government maintained, as much as possible, the attitude that a land settlement would be a "once and for all time" agreement. There had to be a sense of finality, according to the legal opinion of the federal government. This finality was to protect the federal government from future claims and prevent the native people from becoming dependent on handouts associated with treaty-making. One example of this is the continuing debate on the issue of health care and the clauses in the numbered treaties which provided "medicine chests" to Indian agents for medical services.

COPE, on the other hand, continually pursued the notion that the settlement would be an exchange of land rights for specific rights delineated in the agreement. It is important to recognize that this was the final definition of exchange of aboriginal rights that the Inuvialuit accepted. This is where at least one problem can be identified. This problem is the difference between the entire body of Inuvialuit and those elected and appointed

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(222) COPE/Government Working Group, Joint Position Paper on the Inuvialuit Land and Rights Claim, "Principles", July 14, 1978, p.3.

to represent them. COPE accepted, on behalf of the Inuvialuit, a lesser, and certainly different document, than the one agreed upon at the 1978 Inuvialuit/COPE Annual General Meeting, specifically regarding the extinguishment of aboriginal rights.

This change in the final agreed-upon document to the signed document is worthy of close attention. The Inuvialuit never intended to extinguish their rights. This is evident both from interviews of the Inuvialuit and from following the continuing texts of the working documents.

The intention of the federal government appears never to have changed over the longer period of time of the negotiations. The initial intention of extinguishing aboriginal rights and the final result are identical. The allowance of lesser definitions during the working and negotiating period may have been just that - negotiating. The buzz-words were "give and take". Each party was expected to give up something in return for receiving something.

COPE expected to give up the Inuvialuit claim to lands in the north for receiving specifically listed benefits, specific lands, and some compensation for prior use and possible future use of Inuvialuit lands by non-Inuvialuit developers. The federal government expected the Inuvialuit to extinguish all further claims against them in return for

receiving the benefits detailed in the Western Arctic Claim, of which a large portion was a cash outlay. The final agreement reflects more of what the federal government wanted than what the Inuvialuit aimed at.

Why this occurred is readily apparent in the time factor surrounding the negotiations. COPE was under a considerable amount of pressure from many directions, as noted in Chapter Two. When the negotiations were at their peak with the new negotiator, Simon Reismann, Pierre Trudeau announced his resignation. The following day, March 1, 1984 was likely a day of consternation for the COPE negotiating team. They remembered all too well what had happened after the last federal election with the change of political parties. They also remembered the problems caused by dealing with new federal Ministers of DIAND. The immediate perception by the public, and certainly by COPE, was that the Conservatives had their greatest chance to be elected in two decades. Without the leadership afforded to the Liberal party by Pierre Trudeau, the Conservatives were perceived as being "next". Later in 1984, Brian Mulroney did lead the Conservative party to a strong majority government.

Before this happened COPE wanted to settle the Western Arctic Claim; and within four weeks of Trudeau's announce-

ment of his resignation, COPE and DIAND announced that the settlement was agreed upon and completed for signing.

This pressure to complete the Western Arctic Claim in such short time led to the extinguishment clause being accepted, or at least, not noticed. No one is willing to stand forward and accept responsibility for the inclusion of this controversial clause; yet it appeared, almost magically, in the last document signed, after a period of being re-defined in terms amenable to the Inuvialuit.

Inuvialuit spokesmen feel they have not lost any rights, but rather, have had their status as original peoples, with their accompanying rights, affirmed by the government of Canada. This is possibly a reflection of the 1981 federal policy on native claims which attempted to define the settlement of a land claim as trading undefined aboriginal rights for a set of clearly defined and legally binding aboriginal rights.(223) These "new" rights would have to be constitutionally valid, and from the native viewpoint, would not really be "new", but an affirmation of rights traditionally held from time immemorial. Proceeding on the basis that COPE "only extinguished what they didn't have",(224) it becomes necessary to look in detail at what

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(223) DINA, In All Fairness, A Native Claims Policy, Ottawa: DIAND, 1981, p.19.

(224) Interview with Nellie Cournoyea, op.cit.

the Inuvialuit actually received in the Final Agreement, and what they did not receive.

The Inuvialuit Final Agreement is the result of several working groups' efforts to consolidate each concern of the Inuvialuit into legal prose reflecting the native ideal. The Final Agreement is divided into several sections, each dealing specifically with one concept.

The opening statement of the agreement shows what COPE and Canada expected:

> AND WHEREAS COPE and Canada have entered into negotiations directed towards a Final Agreement to provide rights, benefits and compensation in exchange for the interest of the Inuvialuit in the Northwest Territories and Yukon Territory, as contemplated by the Federal Government policy statement of August 8, 1973 ...(225)

This statement reveals several aspects of the underlying process which culminated in the signed agreement. The first is that these were negotiations. Earlier treaties were in fact standard documents, pre-fabricated in Ottawa, to be signed by the respective Indian chiefs, as outlined in Chapter Two. The Inuvialuit Final Agreement was, in contrast, one of ongoing negotiations. The claim began informally in 1970 with the inception of COPE, and became formalized in 1977 with the agreement by the federal

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(225) DINA, The Western Arctic Claim: Inuvialuit Final Agreement, op.cit., p.1.

government to entertain a claim by COPE, followed in 1978 by the ratification of an agreement-in-principle between COPE and the federal government. Concluding in 1984, COPE had fourteen years to negotiate, deal with and influence the government of Canada.

The second point is that the Final Agreement was to provide rights, benefits and compensation in exchange for the Inuvialuit interest in Canada's north. This is the key to COPE's claim of having the rights affirmed in the agreement. Apparently, whatever rights the Inuvialuit may have had are delineated in the Final Agreement. This gives further cause to provide a closer look at the agreement itself.

According to the exchange principle the Inuvialuit and the federal government each gave something for something else in return. The Inuvialuit were to have their rights delineated, their benefits laid out and compensation provided for use of traditional lands by non-Inuvialuit.

The federal government, in return for this package, would receive clear title to the land in the Western Arctic region. This would assist in the development of natural resources in the oil-rich Beaufort Sea and oil and gas fields in the Mackenzie Delta, where theshhold finds of

each hydrocarbon now exist.(226) It would also allow the government of Canada a free hand, barring any restrictive clauses in the Western Arctic Claim, to do what it wants with that portion of Canada, in matters such as military buildup, sovereignty, resource development, political development or devolution, native self-government and environmental programs, among others.

The issue of clear title arose from the Berger Inquiry period, when caveats were placed on land in the Mackenzie Valley, for lands claimed by the native people in the absence of a clear treaty or land claim settlement. This issue held up development, which was in the end fortunate for the consortiums involved, but was recognized as one problem which could re-surface in the future. One primary goal of the federal government was to provide the industries involved in resource development with the incentive to proceed with northern development. The federal government, of course, has a vested interest in northern development, both in royalties derived from hydrocarbon

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(226) The term threshhold refers to the cost of exploration, production and transportation of oil and/or gas, versus the world market price for these commodities. If the world price is $19.00/bbl U.S., and the cost of getting the oil is $25.00/bbl U.S., the theshhold price is whatever profit margin is chosen over the breakeven point. The oil and gas also has to exist in quantities sufficient to justify a production phase.

production and from revenues directly received from crown corporations, such as Petro-Canada.

The last point of the opening clause is the fact that the agreement stems from the 1973 policy statement by the federal government.(227) Since there was another policy made in 1981 on comprehensive land claims, it is interesting to note that the 1984 Western Arctic Claim refers to the 1973 policy. The likely reason for this is that the agreement-in-principle was signed in 1978, three years ahead of the later policy.

The wording of the principles of the agreement shows the goals of the Inuvialuit and the government's response to these goals:

> The basic goals expressed by the Inuvialuit and recognized by Canada in concluding this Agreement are:
>
> (a) to preserve Inuvialuit cultural identity and values within a changing northern society;
>
> (b) to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and
>
> (c) to protect and preserve the Arctic wildlife, environment and biological productivity.(228)

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(227) DINA, "Statement Made By The Honourable Jean Chretien...", op.cit.

(228) DINA, Western Arctic Claim: Inuvialuit Final Agreement, op.cit., p.1.

The recognition of Inuvialuit rights is later set out in the agreement:

> ...Canada recognizes and gives, grants and provides to the Inuvialuit the rights, privileges and benefits specified in this Agreement in consideration of the cession, release, surrender and conveyance referred to in subsection (4).(229)

The exact rights recognized, given, granted and provided to the Inuvialuit must therefore be gleaned from the Western Arctic Claim.

The first recognition or right is the deletion of COPE as the political body and the recognition of a new entity to represent the Inuvialuit.

> The provisions of this Agreement may be amended with the consent of Canada and the Inuvialuit, as represented by the Inuvialuit Regional Corporation.(230)

The Inuvialuit Regional Corporation (IRC) is a body created by the local village/community corporations, which are elected by the people in the six settlements. The IRC provides electoral accountability and responsibility, and provides the basis for local self-government. In fact, the underlying formation of local self-government came with the institution of COPE and its later annual general meetings,

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(229) DINA, ibid, S.3(11), p.3.

(230) DINA, ibid, S.3(13), p.3.

where COPE officers were nominated and acclaimed by consensus.

Les Carpenter, President of the IRC, reported that COPE would be phased out and replaced by the IRC within about two years, or by mid-1988. The structure of the IRC permitted the continued responsibility to the Inuvialuit that was desired and earlier achieved by COPE.(231)

The next portion of rights is presented under the heading "CITIZEN'S RIGHTS AND PROGRAMS".

> Nothing contained in this Agreement prejudices the rights of the Inuvialuit as Canadian citizens, and they shall continue to be entitled to all of the rights and benefits of other citizens under any legislation applicable to them from time to time.(232)

This represents the general rights the Inuvialuit have as ordinary Canadian citizens. There are two factors which should be considered here. First, the Inuvialuit receive all the rights and freedoms of other Canadians. This provides the southern, liberal, egalitarian form of rights enunciated in the Canadian Charter of Rights and Freedoms. Whether these rights are found to be desirable by the

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(231) Interview with Les Carpenter, President, IRC, June 12, 1986; this "phasing out" of COPE was reiterated by COPE's Assistant to the President, Shirley Kisoun, in an interview the same day, in Inuvik, NWT.

(232) DINA, ibid, S.4(1), p.3.

Inuvialuit, who have a different emphasis on native collective rights, is yet to be determined.

Second, this clause sets the stage for "Citizens Plus". Not only do the Inuvialuit have all the rights and freedoms of Canadian citizens, they also have other rights, which places them in a different category than the "average" Canadian". It is this category which has received the most media attention, both at home and abroad. Giving native people different rights than other citizens is the basis for apartheid in South Africa. The racist system of government stemming from this difference in the political system has been the root of serious problems in South Africa, continuing at the time of writing.

The Prime Minister of Canada has attempted to draw a clear line of the differences between the Canadian situation and the one in South Africa:

> Brian Mulroney, en route Monday to Africa where he will campaign against apartheid, angrily rejected comparisons between the situation facing native Canadian Indians and South African blacks.
>
> Glenn Babb, South Africa's outgoing ambassador in Ottawa, recently blasted Canada for criticizing South African apartheid while failing to improve social conditions for its own native Indians.
>
> Mulroney...replied..."There is no comparison at all between the difficulties of our

> aboriginal peoples and the system of evil that exists in South Africa".(233)

One major difference between the two countries is that the native people in Canada want the distinctions made. These have been emphasized twice; first when the 1969 White Paper was announced, and second, when the Canadian Constitution was being patriated and the Charter of Rights and Freedoms drafted. In both cases native people in Canada jointly agreed that they wanted their rights affirmed and retained as special aboriginal peoples.

The next right designated in the Western Arctic Claim is the maintenance of existing and new programs that apply to the Inuit of Canada.(234) This clause in the agreement allows the Inuvialuit to remain in the same status as Inuit generally in Canada, and affords them the continuing opportunity to take advantage of federal and territorial programs without prejudice to the fact that they have settled a land claim.

The last of the citizen's rights in the agreement is one highly regarded by the Inuvialuit:

> Canada agrees that where restructuring of the public institutions of government is considered for the Western Arctic Region,

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(233) Calgary Herald, "Mulroney gets angry; defends Indian policy", January 27, 1987, p.A1.

(234) DINA, ibid, S.4(2), pp.3-4.

> the Inuvialuit shall not be treated less favourably than any other native groups or native people with respect to the governmental powers and authority conferred on them.(235)

This clause is the sole protection for native self-government in the Western Arctic Claim. It should, therefore, bear close scrutiny. The opening of this clause in fact provides a disclaimer against possible native self-government. Canada has not agreed to consider restructuring public institutions in the Western Arctic, as some might read from this clause. It, in fact, suggests that <u>if</u> such changes are contemplated, the Inuvialuit will receive fair treatment. There is no clause guaranteeing future self-government in the Western Arctic Region by the Inuvialuit. The Inuvialuit, however, are proceeding on the assumption that there will be native self-government, and that they will receive identical treatment to other native people.

The entire question of native self-government is a very open issue. Recent deliberations are ambiguous and uncertain.

> The issues are so complex even Justice Department lawyers admit they're scratching their heads.
>
> The questions, on which all sides agree there's no legal consensus, come down to

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(235) Ibid, s.4(3), p.4.

> two main points: provincial fears that Ottawa is trying to change the formula to amend the Constitution; and disagreements between federal lawyers and those representing natives on what aboriginal self-government means.
>
> Brad Morse said: "If you want a new amending formula, you need unaminous consent by all 10 provinces and the government of Canada.
>
> Aboriginal groups are saying that negotiating self-government agreements is just a continuation of the treaty-making process that has existed in Canada for 260 years."
>
> But federal officials don't agree. Their position, Morse said, is "that this (self-government) is a whole new ball game...a new creature."(236)

There are no guarantees for self-government for native peoples in Canada. There is a policy movement towards such a goal, but this is yet to be realized. One of two major factors is the cost of creating a new government level in Canada, let alone the political ramifications of such a move. The second factor is that Quebec has yet to sign the patriated Constitution. To change the amending formula the consent of all 10 provinces is needed. Quebec does not currently seem any closer to signing the constitution than it was in 1982. Without Quebec's signature, it is unlikely that native self-government could be approved.

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(236) Calgary Herald, "Legal tangle threatens native rights conference", January 20, 1987, p.F6.

The second part of the "new public institutions" clause states that the Inuvialuit shall not be treated less favourably than other native groups or native people. If other native people in the north make no gains in native self-government from restructuring political institutions, then the Inuvialuit will make no gains.

This is a very ambiguous clause for several reasons. The first is that it makes a necessary assumption that there may be changes in public institutions. If there were changes in the public institutions in the Western Arctic Region, they would have to be within the current realm of federal/territorial politics, unless there was a move towards provincehood. In either case, the changes would likely parallel institutions in the south - not be a new creation.

The second reason is that the Inuvialuit may not like the changes that could be effected. With continued development in the Mackenzie Valley- Beaufort Sea region, there could be, as there has been in past years, a northward migration of non-Inuvialuit peoples. An influx of longer-term northern residents could upset the current native majority in the Western Arctic region, a worry of the Inuvialuit for years. Repeated proposals to establish longer terms of residence for voting have attempted to address this concern. However, the new Charter of Rights

and Freedoms is also intended to protect the voting rights of all Canadians, whether they live in the north or the south. The very Constitution which proclaims to entrench existing aboriginal rights also works against some ameliorative solutions.

Another problem with this last clause is that it pays homage to the governmental powers and authority conferred on the Inuvialuit. The key words here are "conferred on them". Similiar to other native people in Canada, the Inuvialuit believe their political rights stem from time immemorial. They do not believe that the federal government of Canada, or any other government for that matter, can confer, or give them any political rights; such rights can only be recognized and affirmed. The wording of this clause goes against the general native view and displays more the character of the federal government than of the Inuvialuit.

Sections 5 and 6 of the Western Arctic Claim set out eligibility, enrollment and a system of corporate structures for the Inuvialuit. In Section 7 the Inuvialuit are granted title to various portions of land and resources on and below the land. The listed lands are extremely important to the Inuvialuit, as they provide the basis for cultural permanence, as well as possible income derived

from resource development. In fact, drilling for oil and gas has already commenced on Inuvialuit lands.

> The Inuvialuit Land Administration Commission approved Esso's application for an oil and gas concession on Tuk 7(1)(a) lands March 14 [1986].
>
> Esso has agreed to pay the Inuvialuit $1 million upon signing the agreement. Depending on several factors there could be a payout of $257 million over the 30 year life of the agreement.(237)

The lands are generally referred to as 7(1)(a) lands and 7(1)b lands. The claim agreement clarifies the differences between these lands:

> 7(1) The Inuvialuit shall...be granted title to:
>
> (a)(i) 4,200 square miles of lands, more or less, in fee simple absolute (which for greater certainty includes all minerals whether solid, liquid or gaseous and all granular materials) selected in the Western Arctic Region in blocks of 700 square miles more or less near each of the six communities...
>
> (a)(ii) A single block of 800 square miles, more or less, of land in fee simple absolute...in Cape Bathurst...and the present moratorium on exploration and development shall continue until the time of conveyance; and
>
> (b) 30,000 square miles, more or less, of lands in fee simple absolute, (less oil, gas, related hydrocarbons, coal native sul-

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(237) David McNeil, "ILAC approves Esso concession", in Tusaayaksat, Inuvik, NWT, April 1, 1986, p.8.

> phur and minerals defined in Annex M)...(238)

As well, the Inuvialuit gained title in fee simple absolute to the beds of all lakes, rivers, and other water bodies found in Inuvialuit lands, while the Crown retained ownership of all the waters in the Inuvialuit Settlement Region.(239) The Inuvialuit thus received a total of 35,000 square miles of land.(240)

Staying with traditional policy toward Canadian native peoples, the government placed a restriction upon conveyances of land by the Inuvialuit.

> The Inuvialuit Land Corporation and other corporations controlled by the Inuvialuit may, from time to time, exchange lands with Canada.
>
> Subject to any agreements that the Inuvialuit have entered into or may enter into with other native groups in adjoining land claims areas respecting the acquisition or disposition of their respective interests in land, title to Inuvialuit lands may not be conveyed except to Inuvialuit individuals or corporations controlled by the Inuvialuit or Her Majesty in right of Canada.(241)

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(238) DINA, Western Arctic Claim, op.cit., S.7, p.5.

(239) Ibid, s.7(2-3), p.6.

(240) For a delineation of this area, see DINA, ibid, Annex A, p.38.

(241) Ibid, s.7(43-44), p.9.

The Inuvialuit are protected, as are the Indians of southern Canada, from land transfers of the nature that have arisen in Alaska, threatening the cultural permanence of the Alaskan Eskimos. Inuvialuit lands may only be transferred to the Crown, not to private individuals. This provides a degree of protection for the Inuvialuit, a cultural guarantee; the trade-off was the availability of the Inuvialuit lands to be used as collateral for business ventures. Considering the priorities continually emphasized in connection with the land, the protective clause appears to have been the wiser choice. The Alaskan Eskimos are experiencing severe difficulties, bankruptcies and other problems with their development corporations, which tied the land to investments as collateral, and now face the unwanted eventuality of losing their native lands.(242)

The Inuvialuit gained more than just land; they also received a capital transfer payment of $45 million (payable in 1977 dollars). The agreement also called for loans to be made available, up to $30 million per year, not greater than $87 million aggregate in the best year in the

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(242) For a more thorough detailing of this matter, see Thomas Berger, Village Journey, The Report of the Alaskan Native Review Commission, New York: Hill and Wang, 1985.

future.(243) There was also the recognition that Canada had extended interest-free loans in the amount of $9,675,000.(244) The issues of land and game management, economic measures, social development programs, environmental impact screening and review processes are also dealt with at length in the Western Arctic Claim. The claim also included an economic enhancement fund of $10 million and a Social Development Fund of $7.5 million, to assist in problems of social transition.(245) In each of these issues, the Western Arctic Claim provides the guarantees the Inuvialuit desired and agreed to.

This discussion reveals the rights of the Inuvialuit. When examined closely, the Western Arctic Claim does give substantial power to the Inuvialuit in their own lands, as well as cash, loans and opportunities for involvement in future socio-economic advances in the NWT. Also, when closely examined, the rights of the Inuvialuit seem a little hazy, clouded, and unsure. The political rights clauses in particular do not give the Inuvialuit anything except unclarified future possibilities.

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(243) See "Financial Compensation", DINA, ibid, p.31 and Annex O.

(244) Ibid, s.15(9), p.31.

(245) DINA, "Inuvialuit Settlement Agreement", in Communique, Ottawa: DIAND, March 27, 1984, pp.6-7.

The Inuvialuit signed the agreement in 1984, fully aware of its legal entanglements. It was not a larcenous or dubious maneuvre by the federal government negotiators. They extinguished all their aboriginal rights, whatever they might be.

The Federal Context

For the federal government of Canada, the settlement of the Western Arctic Claim was a simple land claim by the Inuvialuit, which could be settled with the degree of finality desired. The important point to remember is that the federal government never had to negotiate a land claim. They could have chosen to legislate aboriginal title out of existence, as was done in effect by the province of British Columbia in Calder et al, but instead chose to negotiate with the Inuvialuit. One American case suggests that there was no legal committment on behalf of the government to give the Inuvialuit all they asked for:

> No case in this court has ever held that taking of Indian title or use by Congress required compensation.(246)

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(246) Tee-Hit-Ton Indians v. United States, (1955), 348 U.S. 272, p.282.

The tempering decision in Canadian courts came recently in 1980, when the Justice Mahoney held that:

> even though the Royal Proclamation did not apply to the Arctic barrens, the Inuit had a common law aboriginal title in Canadian courts.(247)

Flanagan notes the difference between the American view of compensation and one Canadian position.

> The restrictive view is that Indian occupancy or usufruct is not a property right at all...the sovereign may do whatever he wishes with lands traditionally inhabited by Indians - grant them to others, or issue licences to explore for minerals, cut timber, build pipelines and so forth - as long as Indians are compensated for losses.(248)

Moving from the judicial arena to the political, the federal government stated its first policy regarding comprehensive land claims.

> Since 1973, the federal government has operated under a policy that acknowledges Native interests in certain land areas claimed and that allows for the negotiation of settlements for claims where these interests can be shown not to have been previously resolved.(249)

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(247) Baker Lake v. Minister of Indian Affairs and Northern Development, 1 F.C. 518, 1980, 5 W.W.R. 193, 107 D.L.R. (3d) 513, note 47, p.556.

(248) Thomas Flanagan, "From Indian Title to Aboriginal Rights", op.cit., pp.96-97.

(249) DINA, In All Fairness, op.cit., p.8.

The "finality" clause in this policy laid out in clear terms what the federal government expected as a result of such negotiations for a land claim settlement.

> When a land claim is settled for negotiation, the government requires that the negotiation process and settlement formula be thorough so that the claim cannot arise again in the future. In other words, any land claims settlement will be final. The negotiations are designed to deal with non-political matters arising from the notion of aboriginal land rights such as lands, cash compensation, wildlife rights, and may include] self-government on a local basis.
>
> The thrust of this policy is to exchange undefined aboriginal land rights for concrete rights and benefits.(250)

This policy was issued in 1981. Some of the terminology can be seen in COPE's statements about the goal of the Western Arctic Claim, as recorded in Chapter Three, regarding the initial four goals of the settlement.

Peter Ittinuar states the Inuit position towards land claims in the Arctic.

> The Inuit have developed a policy position on land claims which I think can be described as moderate. We do not take the position that we own everything in the North. Rather, we accept the fact that we are a part of Canada, and that we can make a contribution to the country as a whole by sharing the wealth that can be drawn from our lands. Such sharing is consistent with our traditional philosophy of life. But at

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(250) Ibid, p.19.

> the same time we insist that the sharing arrangement must protect and guarantee our cultural integrity, which is dependent upon our continuing links to the land.
>
> ...we are prepared to recognize the legitimate needs of the country as a whole if it in turn is prepared to recognize our legitimate needs as a distinct northern people.(251)

The issue of cultural continuity is manifest in Ittinuar's statement. It is also clarified by Dacks.

> ...the claims represent a one-time opportunity for native people to obtain the capital they need to secure their traditional life-styles and to finance their entry into the modern economy.(252)

Peter Cumming, in a recent article also notes that:

> northern land claims settlements offer the opportunity of a significant mechanism whereby native cultural identity can be retained, so far as is realistically possible in present-day society...(253)

COPE negotiated a claim with the federal government with a full knowledge of the 1981 policy regarding land claims.

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(251) Peter Ittinuar, "The Inuit Perspective on Aboriginal Rights", in Menno Boldt and J. Anthony Long, (Eds.), The Quest for Justice: Aboriginal Peoples and Aboriginal Rights, Toronto: University of Toronto Press, 1985, pp.50-51.

(252) Gurston Dacks, "The Politics of Native Claims in Northern Canada", in Boldt and Long, Ibid, p.253.

(253) Peter Cumming, "Canada's North and Native Rights", in Bradford W. Morse (Ed.), Aboriginal Peoples and the Law, Ottawa: Carleton University Press, 1985, p.706.

It also had a full and comprehensive knowledge of all the issues revolving around the claim itself. The final question this thesis must address is "have all Inuvialuit aboriginal rights been extinguished as a consequence of Sections 3(3-4) in the Western Arctic Claim?".(254) According to the evidence reviewed it is apparent that the federal government does have the capability of extinguishing aboriginal rights, with or without compensation. The classic example remains Calder et al. Keeping suggests that

> it is in law, possible that the combined effect of s.3(4) of the Final Agreement and s.3(3) of the settlement legislation is the extinguishment of all aboriginal claims the Inuvialuit may have had. The wording of the extinguishment clauses is broad enough to achieve that result.(255)

Keeping then notes that

> if there remains a basis in law for the Inuvialuit to make aboriginal claims, the basis of those claims may be their identity as an aboriginal people not their traditional use and occupancy of any particular lands.(256)

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(254) Janet Keeping, "COPE", Draft, Canadian Institute of Resources Law, University of Calgary, Calgary, Alberta, October 17, 1986, p.76.

(255) Janet Keeping, ibid, p.77.

(256) Janet Keeping, ibid, p.77.

The settlement legislation has effectively extinguished any further claim that the Inuvialuit could have regarding land rights. This did not seem a concern to COPE at the time of signing.

> COPE was a little pressured into settling the claim, due to the timing factor (Pierre Trudeau and possible change of government), but nothing was ever felt to be lost by doing so. Everything wanted in the claim was included in it.
>
> Aboriginal rights is really not even an issue. All the rights are in the settlement. The Inuvialuit got what they wanted - what other native groups felt or said was not of any major concern to the Inuvialuit.(257)

One of the key negotiators felt similiarly.

> COPE never extinguished any rights. That's a misconception. All the rights are in the Claim - political, culture, police, education, etc. If you read the Claim, everything, all the rights of the Inuvialuit, are included in the claim. It is not really even an issue. People take one small portion and blow it out of proportion - twist it.(258)

COPE members held the same notion.

> All the rights in the Settlement are the rights the Inuvialuit wanted. We didn't extinguish anything. Aboriginal rights weren't that much talked about. We knew

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(257) Interview with Les Carpenter, President of Inuvialuit Regional Corporation, Inuvik, NWT, June 10, 1986.

(258) Interview with Nellie Cournoyea, IRC, founding member of COPE, in Inuvik, NWT, June 10, 1977.

> what we wanted - it's all in the Settlement.(259)

The issue of extinguishment appears to be a dead issue for the Inuvialuit. It also appears to be the same for the federal government. Why is it then raised? The Canada Act entrenches existing aboriginal rights in sections 25 and 35. Although these rights are yet to be defined, it appears the Inuvialuit have extinguished all their rights, whatever they may be, in the settlement legislation.

New Rights or No Rights?

One area of development of aboriginal rights that has received attention, but yet to be resolved is the issue of native self-government. Janet Keeping notes that

> the Inuvialuit had experienced professional negotiators advancing their position and the individual Inuvialuit involved in the negotiations were far from illiterate (for example, Nellie Cournoyea was the Tuktoyaktuk negotiator for the Committee for Original Peoples' Entitlement - COPE). While the bargaining positions of the two parties were probably not equal, they were certainly not as egregiously unequal as was the case when the Indian treaties were concluded in the 18th and 19th centuries. Further, it is not at all clear that the bargain struck was from the Inuvialuit

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(259) Interview with Shirley Kisoun, Assistant to the President of COPE, Inuvik, NWT, June 12, 1986.

> point of view a bad one, and it certainly cannot be said to be "larcenous".(260)

It has been shown that the federal government's view was, and is, that aboriginal rights equal land rights. An argument can be put forward that since this is the case, whatever rights the Inuvialuit had at the time of signing are now extinguished, except for what is in the agreement. The wording of the Western Arctic Claim seems to make this clear.(261)

If this is accepted, then the logical conclusion is that the existing aboriginal rights spoken of in the constitution are only land rights, nothing more. The term "existing" is sufficient to limit the rights of the Inuvialuit to that point in time that they signed the agreement - 1984. Any future rights available may then become inapplicable to the Inuvialuit; just as the Nishga Indians had their aboriginal rights extinguished by legislation, so too are the rights of the Inuvialuit gone. The constitutional guarantees in the Western Arctic Claim will give the Inuvialuit only as much as other native people who have had their aboriginal rights extinguished - no more, no less.

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(260) Janet Keeping, op.cit., p.73.

(261) Janet Keeping, op.cit., p.77.

The issue of aboriginal rights for the Inuvialuit could be re-opened if the Inuvialuit question the difference between what COPE signed on their behalf and what was approved in their Annual General Meeting in 1978, as far as the issue of exchange of rights is concerned. It has been shown that what the Inuvialuit agreed to in 1978 and what was ultimately signed by COPE in 1984 are not the same documents.

Representatives of COPE have attempted to justify this action by stating that the rights the Inuvialuit wanted affirmed are declared in the Western Arctic Claim. It has also been shown that these rights are not entirely defined, as the issue of aboriginal rights in Canada is ongoing and has yet to be settled.

Unless there are radical changes to the public institutions of government in the north, the Inuvialuit will be kept in the same public representation-by-population form of government as the rest of Canada. Unless native people achieve the desired goal of self-government, currently an unlikely proposition given both the costs to Canada and the Quebec issue, the Inuvialuit will remain politically static.

The issue of extinguishment is certainly ongoing in the department of Indian Affairs and Northern Development.

A Task Force reviewing comprehensive claims policy raises the complex issues of aboriginal rights and extinguishment.

> History has shown that agreements with aboriginal groups in North America are final only when they work satisfactorily.
>
> An apparent objective of post-Confederation treaties and modern claims agreements has been the final settlement of all aboriginal claims...In practice finality has never been achieved.(262)

This task force points out the development of the extinguishment clause(263) and especially notes that "the language of extinguishment also is found in the Alaska Native Claims Settlement Act, which cleared aboriginal title through a process that was not strictly consensual".(264) The task force suggests that

> there is a serious question as to whether a sweeping clause on extinguishment is necessary to clear the title in circumstances where a voluntary surrender of rights has been procured from the aboriginal people.

As suggested earlier in this thesis

> to many aboriginals, aboriginal rights are intimately tied to culture and lifestyle and are integral to their self-identity.

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(262) Task Force to Review Comprehensive Claims Policy 1985, Living Treaties: Lasting Agreements Report of the Task Force to Review Comprehensive Claims Policy, Ottawa: DIAND, 1986, p.35.

(263) Ibid, pp.37-40.

(264) Ibid, p.38.

> The blanket surrender and extinguishment of these rights suggests assimilation and cultural destruction. It is partly for these reasons that aboriginal groups fought so vigorously for the entrenchment of their rights in the Canadian Constitution.(265)

The assimilation and cultural destruction so feared appear now to be protected by the Canadian Constitution which entrenches "existing aboriginal rights". The task force notes the change that the Constitution has had on the issue of extinguishment.

> The enactment of section 35 of the Constitution Act cast new light upon the issue of extinguishment. Under the pre-1982 law, the Crown could extinguish aboriginal rights legislatively without the consent of the aboriginal peoples. The elevation of aboriginal rights to a constitutional level has precluded such an approach in the future. It now appears that these rights may be altered in only one of two ways.
>
> First, rights still can be altered with the consent of the aboriginal peoples.
>
> Second, rights can be altered by constitutional amendment.(266)

The task force suggests at least three alternatives to extinguishment(267) which could lead to a change in federal policy on extinguishment. Changes could be effected for

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(265) Ibid, p.40.

(266) Ibid, pp.40-41.

(267) Ibid, p.41.

future land claim settlements. For the Inuvialuit, however, the deed is done. The final agreement has been signed and executed by legislation. Whether future policy-makers will allow past treaties and land claim settlements to be re-opened pending a definitive description of "existing aboriginal rights" is unknown. COPE sits in a grey zone, constitutionally, between extinguishment and entrenched rights, although it appears that for both COPE and the federal government, the issue is closed.

It appears that the Inuvialuit received the agreement they desired, but at a cost they attempted to avoid - the extinguishment of their aboriginal rights. The rights contained in the Western Arctic Claim could conceivably give the Inuvialuit the future they wish, but it can also be the final agreement which binds them to a new form of treaty reservation, albeit one of their own creation.

To The Future

With this conclusion comes an uncertainty for the future of aboriginal rights in Canada. The last in the series of First Ministers' Constitutional Conferences on Aboriginal Affairs ended with no progress achieved (March 1987). The direction of policy development in Canada for native peoples appears unclear. From this thesis there are some suggestions for future native groups to consider.

First, there is the continuing notion of extinguishment of aboriginal rights. Future native groups considering a comprehensive land claim should carefully consider their options regarding extinguishment. Specifically, the wording of any agreement should include, as best as is humanly possible, all the native rights that should be affirmed; such rights would include cultural continuity, religious rights, political rights for self-determination through self-government, language rights, land rights, traditional subsistence (i.e. hunting, trapping, fishing, etc.) rights and any variation and combination of these and others as they can be defined.

There may be a need to re-open land claims and treaties already concluded, regarding the extinguishment clause and the balance of rights ultimately to be defined in the constitutional entrenchment of "existing aboriginal rights". If the federal government decides that extinguishment has not been a blanket extinguishment on all aboriginal rights, as the wording in the treaties and land claims suggests, then each treaty and land claim will necessarily have to be altered.

Secondly, native groups must be conscious of their relatively minor place as interest groups in the federal system. Federal responsiveness must necessarily address Canada in total. The electorate keeps governments in

power, and governments can never afford to lose sight of that fact. Natives represent a very small, disjointed and scattered portion of the electorate. Their influence on Parliament has already outweighed the proportionate weight normally carried in representation by population.

The essence of future politics for native peoples is that they must consider their goals within the current context of federalism. They must also consider the fact that Quebec has not yet signed, and has no clear intention of signing the Canadian Constitution. Without the consent of Quebec on this larger issue, native affairs must necessarily take a back seat, at least as far as entrenching political rights beside the two great divisions of power already in the Constitution.

As native groups receive funding and settlements from the federal government, it is essential that they consider the long-term effects of such remuneration and carefully observe those settlements already completed. There is no perfect model yet to slot any particular group into for the "ideal" settlement.

While on monetary issues, it would be worth mentioning the ideal scenario for native groups to consider in settling a comprehensive land claim. In the past, native groups have had to hire expensive consultants, lawyers and accountants to set up corporations, draw up legal contracts

(for the actual settlement) and to conduct negotiations. Two problems exist with this. First, all are usually very expensive, running sometimes over $100,000 per year per consultant. Second, there is inherently a problem of cultural communication when an non-native intermediary is injected between the federal government and the native groups.

It would be far better for the native people concerned to consider training their own people in all the above occupations and settling later, rather than settling sooner for a short-term monetary gain. COPE went through both an intellectual and corporate building experience, along with the acculturation of the Inuvialuit to southern business standards.

There are many problems yet to be resolved in the Western Arctic Claim. One problem is the staffing all the various corporations and boards involved. The small numbers of Inuvialuit create a shortage of trained and available manpower. The lack of the qualified Inuvialuit is not a unique situation in the Beaufort Sea region, but rather one that exists in the greater part of the Northwest Territories. While the NWT is a vast area, representing approximately one-third the area of Canada, its population is extremely small.

To fill every position desired with competent, highly qualified northern natives is not a realistic possibility. The reality is that there are only so many native northerners in the north. Many wear several "hats", both politically and in business. Sometimes these "hats" are contradictory to one another, but this does not seem to have slowed the processes in northern politics - only confused southerners.

As northerners become educated in the ways of the south, there can be opportunities for them to understand how southern standards have become imposed upon them, sociologically, psychologically, culturally, politically and industrially. It will be only by recognition of these factors that have played such a great influence on the north that the perceived and desired changes can be accomplished. The key to such change is the recognition that all change must occur in the mix of society that has resulted.

The Inuvialuit cannot remove outside forces acting upon them. Society will continue to develop regardless which path the Inuvialuit choose to follow. With this continuation of development, the native people of the north must consciously choose how to integrate, whether to integrate and to what extent they become involved in the

rest of Canadian society, both economically and politically.

Each native group in Canada must now consider these questions. To adopt the "white man's" methods of business may be advantageous to some; it may be a detriment to others; it could even mean cultural destruction to some. When considering settlement and affirmation of rights with the federal government of Canada, native groups must take the time to carefully consider what their values and priorities are, and attempt to obtain these desired goals without the political rhetoric of aimless affirmation of rights; rather, set specific goals from the bottom of the hierarchical structures, and agree within each subset of the entrenched "existing aboriginal rights" what these rights are in fact.

This may mean there are different rights for each of the Indian, Inuit and Metis of Canada. Certainly they each have a different history, both culturally and in terms of dealing with the new sovereign government. A comprehensive set of "rights" for all three may not be the answer, but rather the problem to the current dilemma facing native groups in Canada.

For the Inuit of the Northwest Territories there is an opportunity for the creation of public government forums that can be accommodated by Canadian federalism and yet

give the native people the self-determination by self-government they desire. The Nunavut proposals run closest to the ideal in this regard. For the Dene in the NWT and the Yukon Indians, the dilemma reflects the southern situation, where native people are a minority in their own land. These solutions are more complex, but if approached with direction and accommodation, certainly not unattainable.

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