The Crown, Territorial Jurisdiction, and Aboriginal Title: Issues Surrounding the Management of Oil and Gas Lands in the Northwest Territories

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The majority of the land in the Northwest Territories (NWT) is Crown land and, as such, is subject to federal regulations. The regulatory regime which applies to the exploitation of the oil and gas potential of these lands has evolved from an ad hoc system of ordinances, to an elaborate system of incentives and restrictions in the 1980s, to a much less restrictive and industry friendly regime at present. Forces of change acting to affect this federally dominated regime include ongoing Constitutional development of the NWT, the settlement of Native land claims and the implementation of the inherent right to self-government. This paper explores oil and gas activities in the NWT, paying particular attention to the regulatory regime and how forces of change stand to alter the jurisdiction of federal, territorial and Native governments in the NWT.

La plus grande partie des terres constituant les Territoires du Nord-Ouest appartiennent à la couronne et en conséquence sous soumises au régime fédéral. Le cadre légal qui s'applique à l'exploitation des gisements de pétrole et de gaz situés sur ces terres a évolué. D'un système ad hoc d'arrêtés il est passé à un système élaboré à base d'encouragements et de restrictions dans les années 1980 pour devenir maintenant un régime beaucoup moins restrictif et favorable au secteur industriel. Les forces du changement qui agissent pour affecter ce régime dominé par le gouvernement fédéral incluent le développement d'une constitution pour les Territoires du Nord Ouest, le réglement des revendications territoriales des autochtones et l'application des droits inhérents à une administration indépendante. Cette étude explore les activités liées au prétrole et au gaz dans les T.N.O. en portant une attention spéciale au cadre légal et à la manière dont les forces du changement vont altérer les rapports juridiques entre les gouvernements fédéral, territorialet autochtone dans les TNO.

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1. Introduction

The Canadian Federation can be broken down into two broad classes of territory: that portion which lies within the jurisdiction of the provinces as spelled out in the British North America Act and, more recently, in the Constitution Act of 1982; and that portion which does not. Those lands that do not lie within the jurisdiction of the provinces are referred to in various ordinances, acts and regulations in respect of oil and gas or mining activities as the *Canada Lands* or the *Frontier*. The Canada Lands consist of the bulk of the Yukon and Northwest Territories (NWT) in addition to all land offshore within Canadian jurisdiction (i.e., the east, west and north coast offshore areas, the offshore areas surrounding the high Arctic Islands, and the offshore areas within Hudson Bay). Indeed, several reports have been written for the federal government of Canada with respect to the development potential of the Frontier (e.g., see Croasdale and McDougall, 1992; Natural Resources Canada, 1993). The Canada Lands, i.e., those for which political accords with the provinces/territories have not been signed, are the domain of the federal government. As such, federal acts and regulations dictate how resource activities, especially oil and gas activities, are to be carried out, and how the economic benefits of such

activities are to be shared between the developer(s) and the federal Crown.

Prior to the mid-1980s, the timing, scale, pace, and administration of all resource activities on the Canada Lands was controlled exclusively by the federal government of Canada. All royalties and the majority of the tax revenues flowing from these developments, be they in the North or in offshore areas adjacent to a province, flowed to the federal Crown. Resource exploitation on Canada Lands benefited host or adjacent regions minimally, and indeed, in the case of the North, they often left the region in poorer condition (Abele, 1987; Bone et al., 1992; Bone, 1992). On February 11, 1985 the Government of Canada signed the *Canada-Newfoundland Atlantic Accord* with the Government of Newfoundland, and on August 26, 1986 the *Canada-Nova Scotia Accord* was signed. Each of these accords establishes joint federal-provincial petroleum management boards for the respective provincial offshore areas (Department of Energy, Mines and Resources, 1987). These accords also spell out terms for revenue sharing between the provincial and federal governments. In 1993 the *Canada-Yukon Oil and Gas Accord* was signed, essentially establishing joint management of the oil and gas operations in this portion of the Frontier and detailing revenue sharing between the Government of Canada and the Yukon Territorial Government (YTG). An Agreement-in-Principle (AIP) on a similar accord between the Government of Canada and the Government of the NWT (GNWT) was signed in 1988, but the Native dominated Legislative Assembly of the NWT refused to ratify it.[1] As a result, oil and gas operations in the NWT are still subject to federal regulation, and the royalties and tax revenue flowing from oil and gas operations in the NWT accrue solely to the federal Crown.[2] Negotiations respecting a revised accord between the federal government and the GNWT have come to a halt. Insiders expect that a revised Northern Accord will not be negotiated until land ownership issues in the NWT are clarified through the settlement of Native Land Claims, and through the implementation of Native self-government.

The purpose of this paper is to present the nature of the oil and gas play in the NWT, to discuss the regulatory environment which surrounds this activity, and to discuss certain forces of change which impinge on this environment. In so doing, it will become clear that present and future forms of this regulatory regime are intimately intertwined with the broader economic, social, political and constitutional dimensions of the NWT. To this end, section two presents a brief chronology of oil and gas development in the NWT, and section three discusses the evolution of the regulatory regime. Section four offers a discussion of some of the broader forces of change that are acting to transform this regime specifically, and the nature of the federal-territorial relationship more generally, including constitutional development, the settlement of Native Land Claims, and the implementation of Native Self-Government. Section five concludes the paper with a discussion of major themes, and of possible futures with respect to the ownership of and responsibility for the oil and gas resources of the NWT.

2. A Brief History of Oil and Gas Activity in the NWT

The existence of oil and gas North of 60 has been known since 1789 when Alexander Mackenzie recorded the presence of oil seeps along the banks of the Mackenzie River near the present day location of Norman Wells in the NWT. It was not until 1911 that explorers became aware of these oil seeps, and in 1919 a subsidiary of Imperial Oil Ltd., the Northwest Company Ltd., conducted extensive studies of the area. Encouraged by the results of their tests, the Northwest Co. began drilling and discovered what is now referred to as

1/ Ownership of land in the NWT is hotly contested by Aboriginal groups. Indeed, much of the NWT has been claimed by Natives, and only four Comprehensive Land Claim Agreements have been signed to date. Native people in the NWT generally resisted the notion of the territorial government being given power over resources since these groups are in the process of negotiating claims to these lands and resources with the federal government. The fact that the NWT is composed largely of Native people and the Yukon is largely non-Native speaks to why the accord was signed in the Yukon and not in the NWT.

2/ At this juncture it is important to note that the Canada-Yukon Accord and the AIP on a Canada-NWT Accord only deal with the management and sharing of revenue from oil and gas resources. Control over mineral resources, and the royalties therefrom, lie solely within the domain of the federal government.

the Norman Wells field in 1919. Development drilling commenced in 1920. (Department of Indian Affairs and Northern Development, 1966; 1983; Maxwell, 1973; Bone, 1992).

Early production from the Norman Wells field was approximately 600 barrels per day (bpd), and all of the oil produced from the field was used for local consumption. The period from 1920 to the beginning of the Second World War saw activity at Norman Wells remain unchanged. During the war, the inland oilfield at Norman Wells was expanded, and a pipeline was built from the production site to a newly built refinery at Whitehorse in the Yukon Territory. This *megaproject*, referred to as the CANOL Pipeline project (CANOL being an acronym for Canadian oil), was financed by the US Army in response to a perceived threat of a Japanese attack on Alaska. The CANOL system would be impervious to enemy submarine or aircraft attacks and would provide a secure source of oil for the American war effort in the Pacific Northwest/ Arctic theatre of war. Work began on the CANOL project in 1942 and was completed in 1944 by which time the threat of an attack on Alaska had all but disappeared. Without the military demand, CANOL oil could not compete with the cheaper sources of supply and the Whitehorse refinery was closed, the new wells at Norman Wells were capped, and the pipeline was abandoned. In 1947, the CANOL pipeline, the related pumping equipment, and all support vehicles were sold as surplus war assets (Bone, 1992). Production at Norman Wells rose from 267,000 barrels per year in 1943 to 1,220,000 barrels in 1944. The period from 1945 to 1970 saw oil production at Norman Wells remain at approximately 600,000 barrels per year.

In late 1967 Imperial Oil Ltd. estimated that the demand for its oil would increase, and that the output of the Norman Wells field would begin to decline in the near future. In response, Imperial implemented a secondary recovery scheme in 1968. Imperial also drilled two additional producing wells in an attempt to maintain capacity and to prepare for anticipated additional demand. As of 1970, the Norman Wells refinery was active in manufacture of petroleum products for local consumption.

In 1968, Atlantic Richfield Co. Ltd. discovered a massive oil field at Prudhoe Bay on Alaska's North Slope, just a few hundred miles west of the Canadian exploration teams. This discovery triggered an exploration boom both on the northern mainland of the NWT near Richards Island at the mouth of the Mackenzie River, and in the high Arctic Islands. By 1969, the amount of land in the NWT that was under permit nearly doubled (Department of Indian Affairs and Northern Development, 1970). The Prudhoe Bay discovery represents a major *pivot point* in the history of oil and gas exploration in the Canadian North generally, and in the NWT specifically. The enormity of this Alaskan field reminded explorers that even with the astronomical costs of exploration in the North, large profits could be realized if a sufficiently large reservoir (i.e., an elephant field) were to be discovered (Maxwell, 1973).[3]

Over the period from 1965-1969, optimism regarding the profitability of reserves in the Canadian Arctic, especially the sedimentary basins underlying the Arctic Islands, was on the increase due primarily to the discovery of the Prudhoe Bay oil and gas field and the discovery by Panarctic Oil's Ltd. of significant gas fields in the Arctic Islands. This period saw exploratory drilling and leased acreage increase steadily (Department of Indian Affairs and Northern Development, 1966, 1967, 1968, 1969 and 1970). By the early 1970s, the Arctic Islands were being referred to as the "glamour boom" of the decade. The expectation was that these reserves, in combination with the Prudhoe Bay reserves, could be economically delivered to southern markets via large diameter oil and gas pipelines running from Alaska's North Slope, down the Mackenzie Valley and on to southern Alberta. A group of four exploration companies and two pipeline companies formed a consortium in 1969 to investigate such a scheme (i.e., Canadian Arctic Gas Pipeline Ltd.).

The early 1970s saw a gradual lessening of the rush for acreage in the Arctic Islands and in the Mackenzie Delta region although industry and

3/ Maxwell (1973) shows that a 1.8 trillion ft3 gas field, which would requite $400M to develop, would translate into a unit cost of 2.2¢/Mcf (Mcf=1000 ft3) (in 1970, the wellhead price of natural gas was 32¢/Mcf). Maxwell (1973) also shows that the exploration and development costs, plus the cost of a 48" pipeline to US markets, would raise this unit cost to 8 to 12¢/Mcf, and that at the time of writing–1973–companies could earn a discounted cash flow rate of return of 20% if the wellhead price of gas was between 30 and 36¢/Mcf.

government reports of the time were still overwhelmingly optimistic with regard to the potential of these regions to yield a field comparable in size to the Prudhoe Bay field. The reports were also optimistic regarding the approval and construction of the requisite pipeline system. Dacks (1981) notes that the situation in the early 1970s had become one of trying to find oil to justify such a pipeline system. The fact that the Arctic Islands were still held in high regard in early 1970s as a potential oil producing region was evidenced by Ottawa's overt willingness to provide additional cash to finance Panarctic's exploration program (maintaining its 45% share in the consortium). Concurrent activities in the southern NWT (i.e., in the Pointed Mountain region) were yielding significant natural gas finds, and efforts were being mobilized in the early 1970s to design a pipeline which would tie these gas fields into existing gas lines in the Yukon Territory, Northern British Columbia and Alberta. In 1971, both Panarctic Oils Ltd. and Imperial Oil Ltd. reached agreements with large U.S. utility companies for guaranteed access to their oil and gas in return for significant cash for resource development.

In 1972, Imperial Oil Ltd. received approval to begin dredging sediment from the bottom of the Beaufort Sea to build artificial islands to be used in the construction of drilling platforms. The first artificial island was completed in 1972 at a total cost of $3M. Dome Petroleum began exploring the Arctic Islands in 1972 with $30M in backing provided by three American companies. In 1972 four companies including TransCanada Pipelines Ltd., Panarctic Oils Ltd., Canadian Pacific Investments Ltd., and Tenneco Oils and Minerals Ltd., formed a consortium to conduct research and planning for the building of a gas pipeline from the Arctic Islands to southern pipelines. The project was called the "Polar Gas Project" (PGP). Two routes were considered: one passing to the west of Hudson Bay; and the other to the east. Late in 1971, Panarctic Oils Ltd. announced that it had acquired nearly one third of the reserve base required to make the PGP economic.

In 1974 a submission was received by the Federal Government for approval to develop the gas reserves of the Mackenzie Delta region (i.e., the Mackenzie Valley Gas Pipeline Project). The proposal included plans for five clusters of wells, 18 miles of gathering lines, and two gas processing plants. This project represented, to that time, the most costly construction project ever planned by private industry in Canada. In 1973, Panarctic Oils Ltd. unveiled a proposal to use floating ice islands in a high Arctic drilling campaign, and in 1974 a previously discovered gas field (Hecla) was successfully tested from such a platform. In 1975 Panarctic expanded its ice platform based drilling activities and continued to prove the effectiveness of the scheme. Imperial Oil Ltd. continued building artificial islands in 1974 and 1975 and reported significant oil and gas discoveries in the Delta. Over the same period of time, Dome Petroleum was seeking approval for the use of floating drill ships for a drilling program in the Beaufort Sea.

In 1975, Foothills Pipelines Ltd. proposed to build the "Maple Leaf Mackenzie Gas Pipeline" which would consist of a 42 inch wholly Canadian owned and operated gas transmission line. The Maple Leaf line would run from the Mackenzie Delta–Beaufort Sea region to Fort Simpson, NWT where it would be connected to an existing pipeline system. Applications were filed with the Department of Indian Affairs and Northern Development (DIAND) and the Department of Energy, Mines and Resources (EMR) in early 1975. The PGP also received assured funding from the Ontario Energy Corporation and PetroCanada in 1975.

By 1978 DIAND's *Oil and Gas Activities* reports were beginning to acknowledge that the international climate with respect to oil and gas was changing. In a 1992 report to the Federal Panel on Energy Research and Development (PERD), Croasdale and McDougall note that the international price of crude oil was beginning to "skyrocket" and that this prompted the re-evaluation of many previously ignored discoveries in the Arctic, and elsewhere. Indeed Croasdale and McDougall (1992) note that in the late 1970s, the Alberta tar sands were beginning to look like a possibility.

On December 21, 1977, the PGP group filed an application with the National Energy Board and DIAND for approval to construct the 3765 km (2349 mi.) pipeline including 89 miles of marine crossings, at an estimated cost of $6.9B (1976 dollars). In addition, the proposal called for a gas processing plant to be built on Melville Island with 10 compressor stations along the route (with an additional 20 stations to be added later to bring the

pipeline to capacity). The PGP group also filed for approval of a combined pipeline - liquid natural gas (LNG) tanker project to move gas from Melville Island to an east coast port. The proposal called for the construction of a 22" pipeline from the Drake Point gas field on Melville Island to a LNG terminal on the southeast coast of the island. The PGP Group referred to this as the "Polar Gas Pilot Project" (PGPP) since it was considered to be a first step in getting gas from the Arctic Islands into southern distribution systems, and would provide the much needed cash flow to mobilize the larger PGP.

Late in the 1970s, the oil and gas play in the NWT was dealt a serious blow with the recommendation, by an inquiry led by Justice Berger, that the Mackenzie Valley Gas Pipeline proposal be rejected, and that future resource developments in the area be delayed to allow for the settlement of Native Land Claims. Bone (1992) notes that the process of exhaustive community consultation and media coverage through the Berger Inquiry put the industry on notice that Canadians generally were aware of the injustices being perpetrated on the Aboriginal people of the region, and that their social, economic and cultural systems, and the northern environment, were not to be brushed aside in the pursuit of profit. The report by Justice Berger in 1977 marks another critical pivot point in the temporal trajectory of oil and gas activity in the NWT.

Falling reserve estimates in Western Canada and sharp increases in the international oil price led to the National Energy Programme (NEP) of 1980. Most significant for the northern oil and gas play was the creation of the Canada Oil and Gas Act (COGA), and through it some very generous incentives for companies exploring in the Frontier. Specifically, the Petroleum Incentives Program (PIP) was designed to accelerate exploration in the Frontier by subsidizing, on a sliding scale (i.e., a function of the percentage of a company that was Canadian owned), the cost of frontier exploration.[4]

The combination of a high international oil price and confidence in its continued upward momentum along with the incentives embodied in the COGA gave rise to many large projects in NWT in the early 1980s. Projected higher demands on the Norman Wells oil field led Imperial Oil to initiate an expansion program aimed at increasing productive capacity from 3,000 bpd, in 1981, to 25,000 bpd. Also, Interprovincial Pipelines Ltd. (IPL) received permission from the National Energy Board (NEB) to construct a 12" diameter pipeline from Norman Wells to Zama Lake in northern Alberta where connecting pipelines would transport NWT crude oil to Edmonton for refining. Approval for the Norman Wells pipeline was granted despite the Berger Commission's recommendation of a 10-year moratorium on pipeline construction in the Valley.[5] Also, the NEB announced its intention to hold public hearings on the plans for the PGP in 1982.

In 1984, Gulf Oil made the most important discovery in the history of exploration in the Canadian North when they discovered the "Amauligak" oil and gas field in the Beaufort Sea. Gulf announced that initial testing results indicated that Amauligak might have the largest productive capacity of any field in Canada (although subsequent testing proved this field to be far smaller than that needed to act as the lead field in the Beaufort). In 1985 oil began flowing through the IPL line to Zama Alberta at a rate of 25,000 bpd. By the end of 1985 the central processing facility at Norman Wells, along with two final artificial islands (in the Mackenzie River), were completed. By the end of 1985 some 38 wells were active at Norman Wells.

Panarctic made history once again in 1985 by delivering the first ever shipment of oil from the Canadian Arctic Islands to southern markets. Panarctic received the first production licence for Arctic oil and proceeded to ship nearly 200,000 barrels (via tanker) through the Northwest Passage

4/ Savoie (1990) notes that between 1981 and 1986 the PIP bolstered the NWT's GDP by approximately $500M annually. He also notes that between 1982 and 1986, PIP grants accounted for 96% of total capital assistance payments made to the NWT, and on average over this time frame PIP grants accounted for 47% of total government expenditure in the NWT.

5/ Bone (1992) notes that the proposal was subjected to the same assessment standards as the Mackenzie Valley Pipeline proposal. The Norman Wells project however, was far smaller in terms of geographic scope relative to the Mackenzie Valley proposal, and the proposed pipeline route included zones of discontinuous permafrost that significantly lessened environmental concerns over subsidence and a subsequent pipeline breach. These facts, along with considerable efforts on behalf of IPL to address the issue of subsidence by chilling the oil prior to sending it through the pipeline led to the approval of the project.

to a PetroCanada refinery in Montreal. 1986 marked the end of Panarctic's 19-year drilling campaign in the high Arctic. The cessation of Panarctic's exploration activities in the NWT was precipitated by a significant drop in the international oil price that also all but destroyed the chances of the PGP becoming a reality.

By 1987 the proportion of delineation drilling to exploratory drilling in the NWT was increasing steadily, suggesting that industry was focusing their reduced levels of activity on proven fields and not drilling exploratory "wildcat" wells as they had in the past. Exploratory activity continued to decline on all Frontier Lands in 1988 and 1989 as a direct result of plummeting international oil prices. Imperial Oil continued to explore in the Beaufort in 1989 by drilling an exploratory well north of Richards Island from a "spray-ice" platform. Panarctic's Bent Horn facility yielded two tanker loads of oil in 1989 that were transferred to Norwegian tankers and shipped to Denmark. By 1990 the international oil price had fallen below $25/bbl. (1992 dollars), and industry was no longer willing to invest in continued exploration in the Arctic.

In December of 1994, the Northern Oil and Gas Directorate of DIAND announced a "Call for Bids" for oil and gas exploration rights to five parcels totalling 526,526 hectares (2,025 miles) in the Central Mackenzie Valley of the NWT. This Call for Bids was the result of a significant response by the industry to the earlier "Call for Nominations" that followed on the heels of the recent settlement of two Comprehensive Land Claims with the Gwichin and Sahtu.

Also, 1994 saw significant attention by industry to the southern portion of the NWT around Fort Liard. After DIAND opened the area for bidding by oil and gas companies, the community of Fort Liard hosted Amoco, Chevron, Ocelot, Paramount, Ranger and Shell on December 8th, 1994 to announce these companies as winning bidders for exploration licences in the area of the community. The bids totalled over $22M for eight parcels (Department of Indian Affairs and Northern Development, 1994). DIAND also invited industry to post parcels that might be of interest to them in the Beaufort Sea and Mackenzie Delta including the Tuk Peninsula and the westernmost Arctic Islands. Into the latter half of the 1990s, with the clarification of land ownership issues in much of the NWT through Comprehensive Land Claim Agreements, the federal government (through DIAND) has begun to open up tracts of land for oil and gas exploration (Department of Indian Affairs and Northern Development, 1996a; 1996b; 1997a).

The oil and gas play in the NWT has, at present, come to a relative stand-still. Small amounts of exploration are being conducted as mentioned above, but until oil prices climb substantially and remain high for a significant period of time, large-scale oil and gas activity in the NWT will remain elusive. Croasdale and McDougall (1992) outline several economic oil development scenarios for the discovered reserves of the NWT, but the realization of any of these hinges primarily on available supplies in "more hospitable" jurisdictions. What this brief chronology of oil and gas activity in the NWT makes clear is the fact that public intervention, specifically by the federal government, has been instrumental. Indeed, the fact that the Government of Canada was able to act unilaterally in the NWT in all matters pertaining to oil and gas operations is clear.

3. The Regulation of Oil and Gas Land in the NWT: Past and Present

The Dominion of Canada purchased Rupert's Land and additional areas known as the Northwestern Territory from the Hudson's Bay Company in 1870, and shortly thereafter, an Imperial Order in Council gave the federal parliament jurisdictional authority over these lands. Between 1868 and 1875, the Northwestern Territory was governed under a series of temporary legal provisions. In 1875 the Northwest Territories Act established the legal framework for the dominion government's rule of this vast expanse.[6] The more populous areas of this territory were transformed into the Yukon Territory in 1898 and the provinces of Manitoba in 1870, and Saskatchewan and Alberta 1905. In 1912 the provinces of Alberta, Saskatchewan, Manitoba, Ontario, and Quebec were expanded northward to their current limits. The residual territory was named the Northwest Terri-

6/ With subsequent amendments, this Act (the NWT Act) still stands for the NWT today (Outcrop, 1990).

tories (NWT), and has remained unchanged, in terms of spatial extent, to this day. In its current form, the NWT accounts for just under one third of Canada's land mass and less than 0.5% of its population. Given the ponderous size of the region, its meagre population, and considerable resource base, this portion of Canada has long been viewed as a hinterland, and has remained the domain of the federal government.

It is important to note that the NWT is a territory and not a province, and was created by an act of the federal Parliament (the NWT Act). Originally, all province-like powers in respect of the NWT rested with the federal government. Since 1967, the Northern Affairs Programme of DIAND has held these responsibilities. Over the past several decades many of these province-like responsibilities have been devolved to the GNWT, but up to the present, the federal government retains authority over all land and resources in the NWT, including and especially oil and gas resources (Dacks, 1988; 1990; Cameron and White, 1995; White, 1998).

Dacks (1988) notes that one of the most significant deficiencies of territorial status *vis-à-vis* the provinces is the lack of a crown (i.e., there is no Crown in Right of the NWT). As a result, the GNWT is incapable of owning or exercising sovereignty over its land and resources. The majority of the land in the NWT (save for that which has been ceded to Aboriginal groups through treaties and that which is classed as Commissioners Land[7]) is Crown land (i.e., the property of the Crown in Right of Canada). The federal government of Canada therefore exercises sovereignty over much of the land in the NWT and regulates all actions on this land, and is the sole recipient of any rents associated with the resources contained therein.

Throughout the late 19th and early 20th centuries, the federal government's role in the North was mainly regulatory. Little attempt was made to manage or use the more remote areas. The Commissioner of the Royal Canadian Mounted Police (RCMP) acted as the Commissioner of the NWT until 1918, and had responsibility over all resource related regulations, which, to that time, concerned mainly the fur trade. The discovery of oil at Norman Wells in 1919 prompted the signing of Treaty 11 with the Mackenzie Valley Dene, and the appointment of the first Council under the amended Northwest Territories Act. The Council was chaired by the Deputy Minister of the Interior, and this Deputy Minister also acted as the Commissioner of the NWT presiding over six Councillors; all were senior federal officials. Between 1920 and 1928, this appointed Council held mainly "housekeeping duties" (Outcrop, 1990). Until 1946 the Territorial Council remained composed entirely of senior federal officials, and until 1963 the position of Commissioner of the Territorial Council was held by the Deputy Minister of the Department of the Interior, and its successor department, Northern Affairs and Natural Resources. All regulations for the operation of oil and gas activities at Norman Wells came through the Department of Northern Affairs and Natural Resources (DNANR) seated in Ottawa.

Political development in the NWT proceeded at a rapid rate through the 1960s. The first Native member of the NWT Council was appointed in 1965, and in 1966 the area above the tree line received elected representation for the first time (Outcrop, 1990). In the early 1960s residents of the Mackenzie District proposed division of the NWT into eastern and western territories in order to accelerate political development in the West (i.e., the east is nearly 90% Inuit, while the west is largely Dene and Metis). Federal legislation to divide the territories died in the House of Commons, and in response the federal government established the Advisory Committee on the Development of Government in the NWT led by the Hon. Dean Carrothers. The Carrothers Commission reported in 1966, and in 1967, the federal government accepted its recommendations. They included the establishment of a seat of government at Yellowknife, NWT, and the establishment of a resident territorial administration (Stabler, 1985; Abele, 1987; Dacks, 1988; 1990; Stabler and Howe, 1990; Outcrop Ltd., 1990; Bone, 1992; Hamley, 1993). By 1970, three task forces had reported to the Minister of DIAND on the structure of the GNWT, and the transfer of province-like powers to the fledgling government. In 1970

7/ There are cases where title to land has been granted to the Commissioner of the NWT. There is very little Commissioners Land in the NWT. It is generally located around various communities – land ceded to territorial jurisdiction for the purposes of municipal zoning and planning, and for residential use.

power over education, social assistance, economic development and municipal affairs was transferred to the GNWT. (See Dacks (1990) for a fuller accounting of devolution of powers to the GNWT.) By the late 1970s, while much of the infrastructure to govern the NWT from within had been put in place, the power still resided in Ottawa. On August 2, 1977 Hon. C.M. Drury was appointed as the Special Representative of the Prime Minister for Constitutional Development in the NWT. The Drury Commission reported in January of 1980 and recommended the gradual withdrawal of the federal government from decision making in the NWT, and the transfer of further powers to the GNWT with the exception of control over land and non-renewable resources.[8] Transferring control over most matters to the GNWT was considered by the Drury Commission to be part of the constitutional development, whereas control over non-renewable resources involved rights/ownership issues, and, as such, was intertwined with the settlement of Native land claims. By virtue of the Proclamation of 1763 and the Indian Act, the federal government alone has responsibility for Aboriginal people in Canada. Many writers have noted that considerations of "National Interest" compelled the federal government to retain its authority over a territory rich in resources and small in population (Dacks, 1981; Coates, 1985; Coates and Powell, 1989; Outcrop, 1990; Bone, 1992).

The Canada Oil and Gas Land Regulations (COGLR) were promulgated in 1961 and covered all aspects of oil and gas exploration, development and production on the Canada Lands which, at the time, in the eyes of the industry, consisted solely of the NWT. Included were regulations relating to the amount of land to be granted under permits and leases, the number of years a permit could be held, royalty rates on production, liability for oil spills, and work requirements (the amount of money that had to be invested in exploring an area in order to maintain the permit for it), etc. The COGLR included sizeable tax incentives and low royalty rates to encourage the development of the frontier reserves. The COGLR have been criticized as being too generous to industry and insensitive to Aboriginal concerns. Indeed little mention is made of Native land claims in the COGLR even though such concerns had been voiced loudly in the Legislative Assembly of the NWT (Dacks, 1981).

These regulations did stimulate a small amount of drilling activity in the North, particularly in the lower Mackenzie Valley, and in the Sverdrup Basin, but the impact of these regulations was dwarfed by the discovery of the Prudhoe Bay oil and gas field off Alaska's North Slope in 1968. Total exploration spending in the NWT increased from $30M in 1968 to $200M in 1972. This discovery also had a lasting impression on Ottawa in terms of it's perception of the oil and gas potential of the NWT, and the benefits to be derived from them.

In the early 1970s, the Trudeau government created the Foreign Investment Review Act (FIRA), and established the Crown corporation PetroCanada to break the dominance of the multinational oil and gas companies in Canada (Bone, 1992). PetroCanada, like the foreign multinationals, was to have the financial strength, technology, and long-term perspective to undertake large expensive projects like oil sands development and Arctic exploration. Ottawa transferred its equity in Panarctic Oils Ltd. to PetroCanada in 1976. This, combined with PetroCanada's acquisition of Pacific Petroleum in 1978, acted to place Ottawa in a serious conflict of interest in that it had become both the regulator and developer of Arctic oil and gas.

In October of 1980 the National Energy Program (NEP) was presented to Parliament. In December of 1981, the Canada Oil and Gas Act (COGA) or Bill C-48 was passed by the House of Commons to amend the earlier COGLR. The COGA came in response to concerns that the earlier COGLR was overly generous to industry, and in recognition of the fact that given high world prices, Ottawa no longer had to generate industry interest in the Arctic oil and gas play. As such, Bill C-48 imposed more stringent work requirements on holders of exploration permits, created strict requirements for Canadian ownership, provided the federal crown with a 25% interest in any and all holdings in the frontier, and established a new royalty regime to capture extra revenues from

8/ Indeed, it was the Drury Commission's Report that provided the impetus to change the fiscal relationship between the federal government and the GNWT in a manner that would facilitate the development of responsible government in the NWT.

extremely profitable wells or fields (Dacks, 1981; Department of Indian Affairs and Northern Development, 1981). Most significant for the northern oil and gas play was the introduction, through the COGA, of the Petroleum Incentives Program (PIP). The PIP replaced the superdepletion allowance[9] of the previous COGLR with as many as three payments.[10] In the extreme case, 80% of exploration costs could be born by the Canadian taxpayers. The PIP was designed to put more firms into a better position to explore the Canada Lands, especially the NWT, since many smaller enterprises, like Panarctic, could not qualify for the earlier superdepletion allowance. The NEP also provided incentives to defray the costs associated with development.

Bill C-48 also established the Canada Oil and Gas Lands Administration (COGLA) by combining the Resource Management Branch of the federal Department of Energy, Mines and Resources (EMR) with elements of the Non-Renewable Resource Management Branch of DIAND's Northern Affairs Programme (NAP). By virtue of Bill C-48 responsibility for the Canada Lands was split as of 1981; COGLA was responsible for the territorial North, while EMR was responsible for all other Frontier lands. Between 1981 and 1989 COGLA acted as the primary federal regulatory agency responsible for management of oil and gas activities in the NWT. COGLA was responsible for land management (i.e., permitting and licencing), engineering, resource evaluation, environmental protection and socio-economic benefits in the NWT. With COGLA acting on behalf of both EMR and DIAND in the NWT, each of these agencies assumed their originally intended roles. DIAND for example, through its Northern Affairs Program (NAP) focused on its responsibility to advance northern social, economic, and political development in conjunction with the Territorial Governments and through the coordination of federal policies. The National Energy Board was also involved in the NWT establishing guidelines for royalty schemes, production limits, length of time and work requirements for exploration permits in the North in addition to being responsible for any oil or gas pipeline systems which crossed interprovincial or international boundaries. North of 60, COGLA was responsible for administering the rules and regulations of the NEB as well as those set out in the COGA.

Presently, the management of oil and gas resources in the NWT is a federal responsibility that is administered by the Northern Oil and Gas Directorate of DIAND which has the mandate to ensure that these resources are used wisely, and in a manner which balances the needs of nation with those of the northern governments and their constituencies. The Frontier Energy Policy Statement of 1985 forms the basis of the current regulatory framework for all oil and gas activities on Frontier lands including the NWT. That is, petroleum resource management on Crown land in the NWT is exercised under two federal statutes: the Canada Petroleum Resources Act (CPRA) and, the Canada Oil and Gas Operations Act (COGOA). The CPRA and the COGOA serve to distribute all regulatory authority for the NWT oil and gas play between three federal agencies; DIAND, the NEB, and The Governor in Council (i.e., the Privy Council of Canada). The CPRA governs the allocation of Crown lands in the NWT to the private sector, the length of time these lands may be used in particular ways, and the setting and collection of royalties. The COGOA, on the other hand, regulates the industrial activities in the interest of conservation of the resources, protection of the environment, and the safety of the workforce (Department of Indian Affairs and Northern Development, 1998b).

9/ In an effort to attract exploration capital to the Canada Lands, the federal government offered many incentives. Most important were the depletion allowances, which consisted of deductions from taxable earnings that were tied to the expenditures of the taxpayer. The more a firm committed earnings to exploration activity, the greater was the reduction in taxable income. In the federal budget of March1977 the federal government introduced an enhancement of the earlier "earned depletion allowance" called the "superdepletion allowance" (SDA). The SDA essentially provided an extra reduction to taxable income for those firms drilling expensive wells (i.e., those costing more than five million dollars). The superdepletion allowance was therefore only available to the more exotic operations such as those in the Beaufort Sea (e.g., Dome Petroleum benefited greatly from the SDA in its Beaufort Sea campaign).

10/ The PIP included an incentive payment of 25% of approved costs incurred by any firm in 1981 and thereafter, an additional subsidy equal to 10% of approved costs for those companies that were at least 50% Canadian owned and controlled, and for those firms that were at least 65% (increasing to 75% by 1986) Canadian owned and controlled, an additional subsidy of 35% of approved costs.

The Mackenzie Valley Pipeline (Berger) Inquiry was a turning point both for the oil and gas play in the NWT, and for the relationship between government and industry with respect to these resources. The regulatory regime that exists in the NWT today is industry driven; industry, through a "Call for Nominations," is able to identify those parcels of land they wish to explore. Royalty regimes have also been changed substantially in the favour of the industry. Successful explorers are also able to control the timing of development. Once a discovery is made, and the NEB confirms that a significant discovery has been made, a "Significant Discovery Licence" is issued for an indefinite term to the explorer. This indefinite term is in recognition of the fact that discoveries may not be immediately economic (Department of Indian Affairs and Northern Development, 1998b).

This brief review of the development of the regulatory environment in the NWT respecting oil and gas activities makes one point very clear; the federal government, and not the GNWT, is in control of oil and gas operations in the NWT. The GNWT has no jurisdiction in the area of oil and gas activity, and as such, the pace, timing, scale, and location of oil and gas developments in the NWT have had, and will continue to have, much more to do with national interests in terms of economic growth and development than with the development of the NWT.

4. Forces of Change

The GNWT has progressed from being an administrative branch of the federal government, to a vibrant home-grown institution. The mandate of this government, and its power to take decisions on various aspects of life in the NWT has been expanding continuously through the ongoing process of devolution. Politically, the region has developed a unique system of consensus government based on the Canadian parliamentary system. To be sure, the NWT is a region in transition. The forces of change acting on the region currently are no less significant than those alluded to above. Most relevant to the topic at hand are issues surrounding further constitutional development in the NWT and Native Land Claims, and through these, Aboriginal Self-government. Each is discussed below.

Constitutional Development

> *"Given the dependence of their economies on natural resources, the territories' ability to plan for their future economic development is limited to the extent that their ownership and control of land and resources are not absolute." (Dacks, 1988, p.73).*

Section 45 of the Constitution Act, 1982 gives each province unilateral authority to amend its own constitution. Such power is not extended to the territorial bodies. The Parliament of Canada has the full power and authority to legislate for the future welfare and government of the NWT and the Yukon. This subordinate position of the NWT *vis-à-vis* the provinces is perhaps best illustrated by the limited jurisdiction of the GNWT. As recently as the early 1960s, the GNWT existed as a NWT Commissioner and an NWT council composed largely of appointed federal civil servants. Ottawa held all of the province-like powers and responsibilities for the NWT including education, economic development, social assistance, resource development, justice, labour relations etc. Over time, most of these responsibilities have been devolved to the GNWT. As mentioned above, this expanded jurisdiction of the GNWT does not include the power to regulate, or to share in the revenues generated by, resource activity.

The AIP on a Canada-NWT Accord (i.e., Northern Accord) represents an attempt on behalf of both the GNWT and the federal government of Canada to go beyond the scope of devolution initiated by the Drury Commission report of 1977, and to share authority over the management of oil and gas activity in the NWT, and revenues stemming from these activities, with the GNWT. In terms of implementation, the 1988 AIP specified that the government of Canada would transfer responsibility for the management of onshore oil and gas resources to the GNWT including:

- the disposition and administration of oil and gas rights;
- the determination and administration of oil and gas revenues, including royalties, bonus payments, rentals and licence fees;
- the regulation of oil and gas exploration, development and production activities; and,
- the management of territorial benefit programs.

The AIP also notes that the GNWT agrees that the existing legislative framework for onshore oil

and gas activity will be the CPRA (discussed above) and that the eventual territorial onshore oil and gas legislative regime would be modelled after the existing regime. With respect to offshore activity, the AIP notes that the government of Canada and the GNWT agree to share responsibility under an agreed upon administrative regime, and that all revenues, save for those stemming from activity in the Beaufort Sea shall flow to the GNWT. The fact that the 1988 AIP was never ratified means that all of this responsibility currently rests with the federal government as it has since 1912.[11]

The NWT is a hot-bed of political and constitutional debate, and significant progress is being made on many fronts which should pave the way for an acceptable accord in the near future. This future Accord, however, will be much more complex than the AIP just discussed since many of these issues are bound to be intertwined with the provisions included in the various Comprehensive Land Claim Agreements (CLCAs) which have been signed in the region, and in those pending. Indeed, any future Accord will likely have to be negotiated between the Government of Canada, several autonomous Native and public governments created via the self-government provisions embodied in the various CLCAs, and the government of the residual western NWT. It is interesting to note that as the GNWT quickly gains ground in terms of jurisdiction, it is also being eroded from within by the federal government's growing recognition of the inherent right of Aboriginal people to self-government. It is very likely that in the process of its further development, it will dissolve into a number of smaller, more powerful Native and public governments. This geopolitical evolution and its interplay with federal legislative and administrative agencies in the North is the subject of ongoing research by this author.

Native Land Claims and Aboriginal Self-Government

> *"Decisions about land rights and land management regimes will affect every aspect of the North's future, from cultural health to economic development, from the distribution of resources to peoples ability to participate in Canada's political institutions."* (Royal Commission on Aboriginal Peoples (RCAP), 1996: Vol.4; pp. 399).

For decades, disagreement regarding the ownership of land in the territorial North has been a thorn in the side of federal and territorial interests who see large scale resource developments as a panacea for the region. Indeed, the federal commitment to settling Native Land Claims is motivated largely by the desire to clarify ownership issues and to clear a path for the future exploitation of the resource potential of the North. The issue of Native land claims is relevant to this discussion of the regulatory environment surrounding oil and gas operations in the NWT for three principle reasons. First, nearly all land in the NWT is claimed by various Aboriginal groups, and through the settlement of these claims, provisions are made such as the transfer of fee simple title (i.e., ownership) to tracts of land in the claim area to the claimant groups (a small portion of which usually includes surface as well as sub-surface rights). Second, also included are provisions for the sharing of management authority over resource development and environmental protection in the settlement area with the claimant group.[12] Finally, the agreements also include provisions for the creation of Aboriginal governments that, upon implementation, could have autonomous regulatory authority over the resources in these areas in the future.

The notion of Aboriginal Rights underlies all Native claims in Canada. Native people assert that

11/ In May of 1993, the Government of Canada and the Yukon Territorial Government signed a final Canada-Yukon Oil and Gas Accord. Bill C-8, an Act of the federal parliament to implement this accord, has passed First Reading. Under this Accord, the Government of Canada has agreed to transfer to the YTG both administrative and legislative jurisdiction over oil and gas resources in the Yukon. Bill C-8 amends the Yukon Act to confer to the YTG the power to make laws in relation to oil and gas. These powers are analogous to those of a provincial government. The Government of Canada can regain administration and control responsibilities transferred to the YTG if necessary for the settlement of a Native land claim. Laws and ordinances passed by the YTG respecting oil and gas operations will supercede the CPRA and COGOA which apply currently.

12/ For example, the preamble of the actual Nunavut Land Claim Agreement includes the following as one objective of the agreement: "to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore." (DIAND, 1993).

their rights to land stem from their original occupancy of land, and point to the fact that Aboriginal title[13] has been recognized by the dominant European society through various judicial decrees and actions of the government. Frideres (1993) notes that no treaties were ever made for about half of the territory in Canada where Native people have ceded their lands to settlement, and/or resource development. It is on this basis, i.e., that Aboriginal title to these lands has been acknowledged in the courts yet lands have been taken without redress, that status Indians, non-status Indians and Inuit are now negotiating land claims with the federal government of Canada.

There are two major categories of claims now being pursued by Native people in Canada: Comprehensive Land Claims (CLCs) and Specific Claims (SCs). The former deal with areas of the country where Native people continue to live and where treaties with the federal government (for the use and occupancy of land to which Native people have clear title) were never signed. The latter are based on allegations that governments did not fulfil specific obligations to Aboriginal people under treaties, or other agreements of the Indian Act (Legislative Assembly of the NWT, 1991; Frideres, 1993). Comprehensive Land Claim Agreements (CLCAs), otherwise known as "Modern Treaties," recognize Aboriginal ownership of, or interests in, land, water, subsurface resources, and renewable resources throughout the settlement area (Muir, 1992).

The NWT has been host to four CLCAs, namely, the Committee for Original Peoples Entitlement (COPE or Inuvialuit) CLCA, the Tungavik Federation of Nunavut (TFN or Inuit) CLCA, and the Gwich'in and Sahtu Dene and Metis regional CLCAs. In addition, several more CLCs are in various stages of negotiation (e.g., the Dog Rib Dene CLC, the North Slavey Dene CLC, and the Deh Cho Dene). These northern claims focus on a demand for formal legal recognition of Aboriginal land title and all of the rights that derive therefrom. Cameron and White (1995) note that each of the CLCAs in the North has unique features reflecting the priorities of the various Aboriginal groups, the specific context of the individual negotiations, and the precedents set by previous CLCAs. These differences aside, all of the CLCAs share common attributes including:

- fee simple title to tracts of land in the claim area;[14]
- financial compensation for past uses of claimed land without the benefit of treaties;
- terms for the future negotiation of self-government agreements;
- royalty sharing provisions; and,
- guarantees of participation on resource management and environmental protection boards.

In exchange for these measures and provisions, claimant groups agree to the extinguishment of Aboriginal title, i.e., their rights to land, water and resources, to the bulk of the claim area (Frideres, 1993; Cameron and White, 1995; Hicks and White, 1998).

In terms of the regulation and administration of oil and gas land in the NWT, the CLCAs have essentially created a three-tiered regulatory regime, one tier for each of three different classes (or types) of land:

- land to which the Crown has retained surface and sub-surface rights (i.e., Crown land);
- land to which claimant groups hold surface rights while the Crown holds the subsurface rights; and,
- land to which the claimant group holds surface and sub-surface rights.

On lands that qualify as type 1, the Crown has ceded nothing and retains complete ownership of the surface and sub-surface. As such, these lands remain Crown lands, and the CPRA sets out how DIAND issues oil and gas rights and interests to

13/ Aboriginal title is a legal concept used to recognize the fact that by continual occupation of land over many years, perhaps centuries or even millennia, Native people have a "right" to occupy these lands, and have "title" to it. Unlike the United States, Australia and other countries, Canada never denied the existence of this inherent right. While this is true, Canada's niggardly progress in explicitly incorporating this into law has been a source of considerable consternation amongst Native peoples in Canada.

14/ It is interesting to note that a close reading of the actual legal agreements for these various CLCAs suggests that ownership of land, including the sub-surface resources, does not mean that the federal government cannot expedite the development of these reserves at their will. The difference being that now when such development has to take place, and consent from the land owner cannot be gained, compensation is provided, in addition to rent paid for time on Native land by the developer, and a share of the royalties, i.e., the economic rent stemming from these resources.

these lands to the private sector, and the COGOA, under the auspicious of the NEB, sets out the rules for operations, environmental protection, and worker health and safety. On type 2 land, the claimant group holds fee simple title to the surface, but the Crown retains ownership of the sub-surface. As such, following the rules of the CPRA and COGOA, DIAND can issue calls for nominations and bids, and award permits and licences for these sub-surface areas even though they lie beneath land ceded (surface only) to a claimant group. In such cases, the CLCAs provide mechanisms for access to the sub-surface resources. Type 3 land is land to which the claimant group has complete ownership of the surface and sub-surface. By definition, type 3 land is no longer Crown land and, as such, the CPRA does not apply (i.e., DIAND does not issue rights to these lands). The COGOA on the other hand, which sets health and safety, environmental and operational guidelines, do apply to type 3 lands.

The first CLC to be settled in the NWT was the Committee for Original Peoples Entitlement (COPE) claim. The COPE is the political arm of the Inuvialuit people of the Mackenzie Delta which negotiated their claim with the Government of Canada. The COPE claim was precipitated by the Beaufort Sea oil and gas boom of the 1970s and 1980s. The Inuvialuit Final Agreement (IFA) was passed into law on July 25, 1984. Through the IFA, approximately four thousand beneficiaries of the claim received:

- fee simple title to 91,000 km^2 of land (out of the 435,000 km^2 traditionally used and occupied), just over 8,000 of which include mineral rights (i.e., solid, liquid or gaseous and all granular materials);
- $45 million $1997) in financial compensation over a 15 year period;
- a $17.5 million one-time-only grant for economic and social development program support; and,
- the protection of hunting, fishing and trapping rights over the entirety of the settlement area (Legislative Assembly of the Northwest Territories, 1991).

The IFA also provides for several boards through which the Inuvialuit can participate in the co-management of resources and in environmental protection across the entire settlement area. In return, all Inuvialuit claims, titles and interests to land in the remainder of the claim area were surrendered.

The Inuvialuit Settlement Area (ISA) therefore contains over 340,000 km^2 of type 1 land, 83,000 km^2 of type 2 land, and just over 8,000 km^2 of type 3 land. As such all type 1 land is Crown land, and is managed by DIAND as before the CLCA. With regard to the management of type 2 land, section 7 sub-section 98 of the IFA notes the following:

> *"...it may be agreed that laws and regulations that apply only to Crown lands shall apply to Inuvialuit lands if the Inuvialuit or the appropriate minister so request and the other party consents."* (DIAND, 1984: pp. 13)

This means that laws of general application, e.g., the CPRA, the NEB Act, and the COGOA, can be made to apply to type 2 (and indeed type 3) land granted to the Inuvialuit if both parties agree. Barring this, section 10 of the IFA notes that in the case where rights have been issued by Canada, i.e., DIAND, to Inuvialuit lands, i.e., type 2 lands,

> *"...access on and across shall be guaranteed by the Inuvialuit Land Administration...subject to the payment by the developer of fair compensation to the Inuvialuit for such access, for any damage to Inuvialuit lands and for any diminution of the value of their interests in their lands." (DIAND, 1984: p.15).*

Sub-section 3 goes on to note that the

> *"...ILA shall have the right to negotiate with the developer/applicant an appropriate land rent (not to include royalty revenues) and a Participation Agreement that may include specific terms and conditions respecting the nature and magnitude of the land use for which the access is being sought."15 (DIAND, 1984: pp. 15)*

The Inuvialuit Land Administration (ILA) is responsible for administering and managing the lands received through the IFA, and for type 3 lands in the ISA. It reviews and approves all ap-

15/ These Participation Agreements, according to section 10, sub-section 3 of the IFA, include: a) costs associated with any ILA inspection of the development work sites; b) wildlife compensation, restoration and mitigation; c) employment, service and supply contracts; d) education and training; and e) equity participation or other similar types of participatory benefits (DIAND, 1984).

plications to access and use Inuvialuit lands, in addition to ensuring that the Inuvialuit receive business, employment and training benefits, and monitors land use operations to ensure protection of the land and the environment (through the entire settlement area).[16]

The second CLCA in the NWT was brought forward originally by the Inuit Tapirisat of Canada (ITC) and later by the Tungavik Federation of Nunavut (TFN) representing the Inuit people of the eastern portion of the NWT including the high Arctic Islands not included in the IFA.[17] This claim to Aboriginal land title by the Inuit of the central and eastern Arctic is the largest of its kind in Canada. The claim addresses an area of approximately 1.9 million km^2 and essentially divides the existing NWT into two halves. The Agreement in Principle (AIP) on the TFN CLC was signed on April 30, 1990, ratified by the Inuit people in November of 1992, signed by the Prime Minister of Canada on May 25, 1993, and passed through Parliament in June of 1993. The Nunavut Final Agreement (NFA) creates approximately 1.5 million km^2 of type 1 land, 315,000 km^2 of type 2 land, and 35,000 km^2 of type 3 land in the Nunavut Settlement Area (NSA). It also provides to the beneficiaries of the claim, capital transfer payments of nearly $1.2 billion over 14 years, a $13 million training fund, and a share of federal royalties from oil, gas and mineral development on all type 1 (Crown-Crown) and 2 (Aboriginal-Crown) land in the NSA. Also, the TFN CLCA includes a political accord that provides for the establishment of the new Territory of Nunavut by April 1, 1999, and through this a form of self-government for the Inuit of Nunavut. Through the NFA, the Inuit also receive equal representation with government on a new set of wildlife, resource and environmental management boards, and of course the right to hunt, fish and trap on lands and water throughout the entire Nunavut settlement area. The regulatory authority for oil and gas activities in the NSA is divided according to the type of land as discussed above for the IFA.

The Dene and Metis of the western NWT have had a far more difficult time in their pursuit of a CLCA relative to the experience of the Inuvialuit and the Inuit. This stems from the fact that the Dene-Metis leadership has largely been unwilling to accept the notion of the extinguishment of Native rights and title to land (Hamilton, 1994; Cameron and White, 1995; RCAP, 1996). In 1988 an AIP was reached between the federal government and the Dene and Metis of the western NWT on their CLC. The AIP and the Dene/Metis Final Agreement (DMFA) reached in April of 1990 provided to the Dene and Metis:

- fee simple title to 181,000 km^2 of land (10,000 of which included subsurface rights);
- a tax free capital transfer of (1990) $500 million to be paid over a 15 year period, and;
- guaranteed Dene/Metis participation on boards for wildlife and resource management.

Like the COPE and TFN CLCAs, the DMFA required that the Dene/Metis cede their claims and title to all other lands and waters within Canada. In July of 1990, the negotiators for the Dene/Metis brought the DMFA to a general meeting for ratification. Misgivings, especially among the Deh Cho and Treaty 8 Dene about the extinguishment of aboriginal title to land and the lack of specific self-government provisions in the DMFA led to in-fighting amongst the various Dene/Metis groups (Hamilton, 1994). Particularly, the Gwich'in and Sahtu Dene pressed for ratification noting that while the agreement was not perfect, it did represent a basis for further development. The Deh Cho and Treaty 8 Dene pressed for re-negotiation to include firm self-government provisions, but the federal government refused to re-open negotiations (Cameron and White, 1995). Hamilton (1994) notes that this was Ottawa's way of asserting political dominance in the fractious western NWT. The DMFA therefore was never ratified.

Upon the failure of the DMFA, Ottawa held open the possibility of negotiating regional claims modelled on the DMFA. The Gwich'in reached a settlement quickly and the final agreement was in place as of 1992. The Sahtu final agreement followed in 1994. While these claims are not exactly

16/ Inuvialuit Regional Corporation (1998). Available on line at www.irc.inuvialuit.com/ilandad.html.

17/ Initially, the Inuvialuit and the Inuit of the eastern Arctic were united in the Inuit Tapirisat of Canada (ITC) claim. Due to internal disharmonies, and differing attitudes toward resource development, the Inuvialuit split away from the ITC and formed the COPE (for more detail on this see Duffy, 1988 and Hamilton, 1994). The Inuit then re-organized under the Tungavik Federation of Nunavut (TFN) and pressed their claim independently.

alike, they follow generally the provisions of the DMFA. Title to land was extinguished in exchange for title to tracts of land, mineral rights, royalty sharing, cash, and participation on resource management boards. Both the Gwich'in and Sahtu Final Agreements include commitments by the federal government to pursue self-government that is appropriate to the people of the Gwich'in and Sahtu settlement areas and in conformity with the Constitution of Canada (Cameron and White, 1995). Applications to access type 2 lands in both the Gwich'in and Sahtu Settlement Areas (e.g., for oil and gas exploration, development and/or production) are adjudicated by the Gwich'in/Sahtu Surface Rights Boards. Type 3 access in these areas requires that developers apply directly to the Band offices.

While these four land claims represent the only comprehensive claims that have been settled in the NWT to date, there are several more at various stages of development and negotiation. Clearly, the issue of oil and gas management in the NWT is overlaid by a layer of geopolitical complexity by virtue of the various claims to title over land, and concessions given through settlements to clarify ownership issues. DIAND officials, however, while admitting that the claims make the regulation and administration of oil and gas activities in the region more complex, also set out (in varying degrees of clarity) the rights and obligations of all parties active in the NWT, including oil and gas companies and federal, territorial and Native agencies.

Aboriginal self-government is a phrase that is usually associated with the issue of Native Land Claims. It is important to note that they are not synonymous. To understand the concept of Aboriginal self-government one should begin by focusing on the current position of Native peoples and their role in the current Canadian polity. Native peoples in Canada have been wards of the state, without a government or economy to call their own, since the Royal Proclamation of 1763 and the 1764 Treaty of Niagara (Burrows, 1994). The federal government of Canada, by virtue of the Indian Act, has a fiduciary responsibility for all Native people in Canada, including the Dene, Metis, and Inuit (and Inuvialuit) people of the NWT. Native people throughout Canada generally, and in the NWT specifically, have been attempting to change their constitutional position within Canada for decades.

Native self-government therefore refers simply to the establishment of an autonomous governmental structure for Native peoples. Through such a government, Native people would have control over their land, resources, justice system, education system, health care etc., and would no longer be federal charges. Given the fact that most Canadian Native peoples are tied to specific territories, self-government, when implemented will have to be place specific. In the NWT for example, all CLCAs have provisions within them for future negotiations with Canada for the establishment of autonomous Native governments. To date, the most significant progress in this regard is the TFN CLCA (i.e., Nunavut). The TFN CLCA includes a political accord for the establishment of a new territory that will share the same constitutional position as the NWT and Yukon. However, by virtue of the fact that Nunavut is nearly 90% Inuit, and given the fact that the public government to be established in Nunavut will be highly decentralized and community based, the Inuit will attain some measure of self-government when implementing legislation comes into force on April 1, 1999.

It is conceivable that the formation of autonomous northern Native and public governments will have implications for the regulation and administration of oil and gas lands. As mentioned above, through the CLCAs Native people in the region already have considerable power in terms of influencing the location, scale, and local benefits stemming from oil and gas activities. The implementation of Native self-government in the NWT can only solidify this power sharing arrangement.

5. Conclusions

The colonial nature of the relationship between the Government of Canada and the Government of the Northwest Territories is clear to see when jurisdiction over oil and gas is singled out and examined. The federal government is wholly responsible for oil and gas activities in the NWT presently (i.e., with the exception of type 3 lands) as it has been since 1912. The regulatory regime that exists in the NWT has evolved over the decades in response, mainly, to the financial concerns of industry and the nation-building concerns of the federal

government. The processes of Native land claim settlement and self-government implementation together with the devolution to the northern governments of title to and regulatory power over northern oil and gas resources stand to significantly alter the texture of the northern oil and gas play. Should large-scale oil and gas operations ever return to the NWT, the responsibility for all aspects of this activity, and the benefits flowing from them, will be shared jointly by the federal government of Canada, the western NWT, and those autonomous Native and public governments created through the various CLCAs. What remains to be seen is how committed the federal government is to the implementation of the Native people's inherent right to self-government, and to the constitutional development of the existing GNWT.

The NWT therefore is very clearly a region in transition. The geopolitical fabric of the region is in a state of flux, as some would say it has been since 1912. The interplay between constitutional, political, economic, and social matters in the NWT will determine how oil and gas resources in the NWT are managed in the future, who owns them, and the extent to which the imminent exploitation of these resources contributes to the sustainable economic development of the more than 60 communities of the region. These various dimensions are all interrelated, and they intersect on a common plain - economic development. The interrelationship of all of these factors to the economic development potential of the NWT is the subject of ongoing research by this author.

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