

SHARING CANADA'S PROSPERITY A HAND UP, NOT A HANDOUT

Final Report Special Study on the involvement of Aboriginal communities and businesses in economic development activities in Canada

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Standing Senate Committee on Aboriginal Peoples

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PART IV: SECURING ACCESS TO LANDS AND RESOURCES

Transforming Aboriginal economies from dependence to self-reliance will not be easy. The greatest boost for most nations will come from access to a fair share of lands and resources.
1996 Report of the Royal Commission on Aboriginal Peoples

Changing the Opportunity Structure: The Importance of Lands and Resources

There is no doubt that the alienation of land and resources has been a major contributor to the economic marginalization of Aboriginal peoples in this country. The 1996 *Report of the Royal Commission on Aboriginal Peoples* called for a major redistribution of lands and resources upon which Aboriginal people could rebuild their nations and secure a level of economic self-reliance. The Assembly of First Nations stated that, from a First Nations economic point of view, fundamental access to land and natural resources represent some of the most critical issues faced by First Nations. Audrey Poitras of the Métis National Council told the Committee that:

This lack of a land and resource base continues to be the single greatest impediment to achieving self-sufficiency within our communities.

Witnesses were emphatic that increased access to lands and resources is fundamental to the economic well-being and prosperity of their communities. In testimony to the Committee, Professor Fred Wein of Dalhousie University, argued that it is through an expansion of the land and resource that the structural causes of poverty will be addressed. Only in this way, he argued, can we ultimately *change the opportunity structure* for Aboriginal peoples:

One of the themes that the Royal Commission emphasized and perhaps the central point when it came to economic development, was to try to change the opportunity structure for the communities. In other words, do not just put in another manpower training program or a small business loan program or something like that, but try to do something about the fact that many communities are very poor.

Professor Wien went on to suggest that where the opportunity structure for a particular community has changed – whether through a land claim settlement or

a court decision affirming greater access to resources – it would seem likely that economic benefits and opportunities for that community would correspondingly expand. The Committee heard evidence from communities with land claim settlements to support this contention. During our fact-finding mission to the Northwest Territories we met with several groups who have settled their land claims, including the Inuvialuit and the Tlicho. The Tlicho, whose comprehensive claim and self government agreement came into effect in August 2005, told us they are very confident that, as a result of their agreement, they will be better positioned economically.

Research suggests that communities whose access and jurisdiction over lands and resources has been successfully negotiated enjoy greater economic benefits than those communities who have not concluded land claim agreements. Land and cash transfers to Aboriginal people, as a result of settled land claims, will be important economic drivers in the future. In testimony to the Committee, Ian Cramer, Senior Business Advisor, Assembly of Manitoba Chiefs, told us that:

[It] is critical because many of the First Nations are looking to access land that they can access under those agreements for economic purposes. In the urban settings, absolutely, we believe that creates huge economic opportunities. The main issue is that First Nations have been pushed out of the way, so to speak, in terms of where the reserves are, to let others develop the resources and the economy of this land. By claiming back some of the land, hopefully they can access land that is not out of the way, that has an economic value, and that can create much-needed wealth for the First Nations.

Land claim settlements benefit not only Aboriginal Canadians, but the general Canadian economy. A study by Grant Thornton Management Consultants estimated the economic benefit in British Columbia alone as a result of settled land claims ranges from \$7 billion to \$11.6 billion.¹⁰⁵ Conversely, the protracted nature of land claim negotiations - which can often take up to twenty years - has significant implications for resource development and investment in areas where Aboriginal title remains unresolved. In 1990, Price Waterhouse calculated the cost to British Columbia of not settling treaties to be \$1 billion in lost investment and 1,500 jobs a year in the mining and forestry sectors alone. Another notable instance of the impact of unresolved claims has been the significant delays to the \$7 billion Mackenzie Gas Pipeline project as a result of the Deh Cho First Nation's unsettled land claim.

In testimony to the Committee, the Auditor General of Canada discussed how delays in settling land claims impede economic growth:

Without agreements on the use of land, uncertainty can develop, which makes development all that more uncertain.

Economic Benefits of Land Claims: The Inuvialuit Final Agreement

In May 1977, the Committee of Original Peoples' Entitlement (COPE) submitted a formal comprehensive land claim on behalf of approximately 4500 Inuvialuit living in six western Arctic communities that lie in and around the mouth of the MacKenzie River. Negotiations between the Inuvialuit and the federal government culminated in the Inuvialuit Final Agreements (IFA) signed in May 1984. Under the terms of the agreement the Inuvialuit retained title to 91,000 km² of land. They also received \$45 million in cash compensation to be paid out over 13 years (1984–1997), wildlife harvesting and management rights, a \$7.5 million Social Development Fund (SDF) and a \$10 million Economic In 1984 the Inuvialuit Regional Corporation (IRC) “was formed to receive the lands and financial compensation obtained by the Inuvialuit”. The corporation was given “the overall responsibility of managing the affairs of the settlement to achieve the objectives in the IFA”. According to the introduction in the 1997 Annual Report of the Inuvialuit Corporate Group, “these objectives are to preserve the Inuvialuit culture, identity and values within a changing northern society; enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and protect and preserve the Arctic wildlife, environment and biological productivity”. Are the Inuvialuit succeeding?

Together the companies of the Inuvialuit Corporate Group made a considerable contribution to the Inuvialuit people in 2002 and the years preceding. Building on the foundation provided by the land rights and the \$62.5 million in cash received between 1984 and 1997 under the terms of the land claims agreement, the ICG ended 2002 with total assets of \$351 million up from \$349 million at the end of 2001. Liabilities were virtually unchanged at \$83.5 million. As a result, beneficiaries' equity rose from \$265.6 million to \$267.5 million. The ICG (including its business subsidiaries) earned a combined before tax profit of \$7.67 million in 2002 compared to a before tax loss of \$2.5 million in 2001. The 2002 taxes were \$4 million and after tax profit \$3.67 million. The 2002 profit was earned on revenues of \$204 million. Revenues in 2001 were \$184 million.

In earning its 2002 profits, the ICG gave almost \$15.1 million to Inuvialuit individuals, groups, and communities, at least \$5 million of which was paid to individuals and communities for non-business (i.e. social) purposes. This is a considerable increase over the already impressive \$14.7 million paid out in 2001 and \$11.6 million in 2000. In the case of the Inuvialuit, a just settlement of land claims has provided the capital for entrepreneurship and business development, and contributed to the rebuilding of the Inuvialuit 'Nation', by preserving the Inuvialuit culture, identity, and values within a changing northern society.

Inuvialuit Corporate Group's contribution to communities and individuals

	2002	2001	2000
Wages and salaries	10,925,783	9,513,631	9,000,000
Honoraria	627,783	556,676	577,000
Student financial support	307,658	282,794	197,000
Payments to elders	456,500	454,000	368,000
Dividends to beneficiaries	1,312,800	2,702,007	568,000
Community corporations	672,534	750,000	390,000
Other payments	796,438	378,348	500,000
Total	15,099,696	14,637,456	11,600,000

Source: Journal of World Business, Volume 41, Issue 1, February 2006.

Despite the economic benefits of settling land claims in a timely fashion, several witnesses talked passionately about how government failure to recognize Aboriginal rights continues to limit their access to land and resources. Deputy Grand Chief Terry Waboose of the Nishnawbe Aski Nation remarked:

Our access to and control over our own resources continues to be limited. Governments continue to ignore both the Constitutional recognition of our rights and the direction of the Supreme Court of Canada that those rights should be acknowledged and respected in all matters pertaining to lands and resources for Aboriginal peoples.

Other witnesses strongly criticized the implementation of existing land claims by the Department of Indian Affairs and Northern Development. In 2003, the Auditor General's report on *Transferring Federal Responsibilities to the North* similarly concluded that the Department of Indian Affairs and Northern Development "seems focussed on fulfilling the letter of the land claims' implementation plans but not the spirit" and that while "officials may believe that they have met their obligations" they have in fact "not worked to support the full intent of the land claims agreements".

In November 2003, Aboriginal leaders, organizations and governments that had achieved land claim settlements met in Ottawa to urge the government to develop a new land claims implementation policy. Several witnesses appearing before the Committee suggested that the Government of Canada act to implement the key elements of a new policy, including:

- Recognition that the Crown in right of Canada, and not the Department of Indian Affairs and Northern Development, be party to the land and self government agreements;
- A federal commitment to achieve the broad objectives of land claim agreements, as opposed to mere technical compliance with narrowly defined obligations;
- Implementation be handled by appropriate senior level federal officials representing the entire Canadian government;
- An independent implementation audit and review body, separate from DIAND, be established.

Apart from securing jurisdiction over a defined land and resource base, land claim agreements generally contain a variety of economic development provisions, such as resource revenue sharing arrangements and impact benefit agreements. Nunavut Tunngavik spoke of the economic benefits to their communities derived from such arrangements:

Impact benefit agreements are provided for in the Nunavut Land Claims Agreement and can secure community employment and commercial benefits from mining developments. The Nunavut Land Claims Agreement also provides for a small portion of Crown royalties to be paid

to the Nunavut Trust...The land claim agreement provides that 50 per cent of the first \$2 million of Crown royalties shall be paid to Nunavut Trust. Above royalties of \$2 million, 5 per cent will be paid out.

Officials from the Department of Indian Affairs and Northern Development also remarked on the associated employment and business development benefits of land claim agreements:

Two factors that have greatly assisted in the development of both employment and business opportunities, particularly in the mining sector in the Northwest Territories are the impact and benefit agreements and the associated socio-economic arrangements.

Witnesses also emphasized the importance of resource revenue sharing arrangements. The Report of the Royal Commission on Aboriginal Peoples stated that such arrangements were critical in respect to providing greater access to resources needed for the alleviation of conditions of exclusion, poverty and unemployment. The Committee heard from the Grand Council of the Crees that the 2002 Paix des Braves or New Relationship Agreement signed with the Québec government goes some way in addressing this fundamental issue and includes provisions for sharing resource revenues from three sectors: electricity, mining and forestry.

Agreements that include resource revenue sharing arrangements, such as the one concluded between the Grand Council of the Crees and the Québec government, however, are far from common. The Federation of Saskatchewan Indian Nations told us that they have no meaningful way to share in revenues from development that takes place within their traditional territories (outside reserve boundaries):

Many First Nations still experience extremely limited access to resources. There is no process for formalized agreements to allow for benefits to be transferred to First Nations for development activity conducted on traditional territories.

The exclusion from benefiting from resource development activities within their traditional territories was of great concern to many witnesses. The Manitoba Keewatinook Ininew Okimowin (MKO) proposed that federal legislation be developed requiring revenue sharing arrangements on resource development projects over which federal approvals are necessary. Examples could include pipeline or hydroelectric projects:

We also strongly urge the committee to propose legislation to ensure that resource revenue sharing, benefit sharing and resource access arrangements are required by Canada as policy and as a statutory condition of federal approvals or licences for energy, water and natural

resources developments, where approvals from Canada are required — for example, the development of hydroelectric stations that require approvals from both Fisheries and Oceans Canada and Transport Canada, and in any other circumstance where federal authority is required.

In this respect, the Committee notes that in November 2004, the Supreme Court of Canada ruled that the Crown - federal and provincial - has a duty to consult Aboriginal peoples, and where appropriate *accommodate* their interests, when contemplating activities that may adversely affect Aboriginal rights and title. Importantly, the Court's rulings apply in situations where Aboriginal rights and title are as yet unproven, but the claim is credible. Within this context, the Committee believes that the proposal put forward by the MKO is particularly relevant and warrants further investigation. Moreover, such measures would go some way in establishing a process of reconciliation. On this point, the Supreme Court of Canada wrote:

The jurisprudence of this Court supports the view that the duty to consult and accommodate is part of a process of *fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution.*

The Committee feels that it is critical to give meaningful effect to the federal consultation and accommodation obligations, especially over development activities in the traditional territories of Aboriginal peoples, and recommends, accordingly:

Recommended Action:

That the Government of Canada, in collaboration with Aboriginal organizations and communities, develop and implement a national Aboriginal Consultation and Accommodation Framework, consistent with Supreme Court of Canada rulings, and that such a Framework identify steps to ensure that resource revenue sharing arrangements be negotiated with affected Aboriginal groups in instances where federal approvals for resource development projects are triggered.

Capacity to Manage Lands and Resources

The continued economic and social marginalization of Aboriginal people and communities suggest that current approaches to these issues have not worked. There can be no doubt that access to lands and resources is essential to reducing these disparities. Recent developments present some important opportunities in this regard. These include:

- Supreme Court of Canada decisions recognizing Aboriginal rights over natural resources within their traditional territories;
- Creation of co-managed resource boards through land claim agreements;
- The transfer of lands and resources through the modern treaty-making and treaty land entitlement processes.

The Committee is concerned, however, that access to land and resources without the appropriate technical and scientific capacity to manage and develop those resources will result in diminished economic outcomes. We agree with Professor Jon Altman, Director of the Centre for Aboriginal Economic Policy Research that:

[H]aving ownership of property like oil and gas reserves is only of value in terms of either negotiating for their exploitation or having the capacity to exploit those resources yourself. It is fair to say that, in general, indigenous peoples in both Canada and Australia have not had the capacity to exploit those resources.

On the issue of capacity, Lucy Pelletier, Chairperson, Saskatchewan Indian Equity Foundation Board, remarked that:

Due to the impact of treaty land entitlement, First Nations communities will be the largest land owners in the region. It is a challenge, as trustees have been established under the TLE framework, which is resulting in some First Nations, chiefs and councils being left behind in the area of governance and corporate knowledge. This could possibly be solved by educating the chiefs and councils in the area of corporate governance, as opposed to just the accountability principles.

Likewise, the First Nations Land Advisory Board told the Committee that:

We need a training institute that focuses on that capacity development so communities will understand the process and the future and have the tools to manage their lands and resources. This is one of the missing pieces of the puzzle.

In discussing the creation of resource management boards through land claim agreements in the north, the Auditor General noted that government must work to “develop skills related to quality standards, obligations and regulations that would increase the board’s accountability.”

In the following section on institutional development, we argue that few federal programs are in place to support the land and resource management capacity of Aboriginal people and communities. The Committee is convinced that increased access to land and resources, while essential, is not a sufficient condition for economic development in today’s economy. The capacity to make use of those resources is equally important.

Accordingly, the Committee recommends:

Recommended Action:

That the Government of Canada develop targeted programs to support the land and natural resource management capacity of Aboriginal communities, including the possible establishment of an Aboriginal land and resource management agency.

Conclusion

Aboriginal peoples view the recognition of their rights to land and resources as critical to ending dependency and attaining a measure of economic self-sufficiency. Lands and resources are the foundation upon which Aboriginal peoples can rebuild their economies and strengthen their communities. In turn, governments are realizing that unresolved land claims, and the ensuing uncertainty over lands and resources, have a direct economic cost, not only to Aboriginal peoples, but to Canadians generally.