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Indigenous Land Claims and Economic Development: The Canadian Experience

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**Indigenous Land Claims and Economic Development:
The Canadian Experience**

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Abstract:

This paper examines the role that Indigenous people's rights to land and resources play in business and economic development in Canada and elsewhere. It does this in four parts. The first provides background information about the socioeconomic circumstances of Aboriginalⁱ people in Canada, and about their response and the response of the Canadian government to these circumstances. The second is a brief discussion of development theory. The third looks at the impact of a particular Aboriginal land claims settlement on the economic development activities of the Aboriginal people involved. The final section presents some concluding comments about the experience of Indigenous people in Canada and the relevance of this experience elsewhere in the world.

Key words: Indigenous people, Indigenous rights, economic development, entrepreneurship, business development.

The current socioeconomic circumstances of the Aboriginal people in Canada are abysmal. According to the 1991ⁱⁱ census, 42% of Aboriginal people received social welfare, as opposed to 8% of the Canadian population as a whole. In the same year, unemployment among Aboriginal people stood at 24.6%, almost two and one-half times the national rate of 10.2%. The Aboriginal population will rise by 52% between 1991 and 2016, while the working age Aboriginal population will increase by 72% (compared to 22% and 23% respectively for non-Aboriginal people). This means that as bad as these circumstances are, the prospects for the future are worse unless something is done to change the relative socioeconomic circumstance of Aboriginal people vis a vis other Canadians.

Aboriginal people in Canada have not been standing idly by accepting their socioeconomic circumstances. They have established development objectives and a process for attaining them (see Figure 1). Entrepreneurship and business development lie at the heart of this process and the realization of Aboriginal and treaty rights to lands and resources are critical to its success. These rights are a considerable 'capital' that Aboriginal people bring to the economic table. As described later in this paper, the Canadian government has come to share this view about these rights, albeit recently and reluctantly.

Based on government claims policy and Aboriginal claims, the Royal Commission estimated that government expenditures on Aboriginal issues will increase by between \$1.5 and \$2 billion per year over 1996 levels during the first decade of the 21st Century, most of this for land claims settlements and other capacity-building activities. By the year 2016, the Commission estimates that the economic development fostered by this investment in capacity could result in Aboriginal people making a \$375 million dollar contribution to the Canadian economy, as opposed to imposing an estimated \$11 billion cost should their socioeconomic circumstance remain as they are relative to other Canadians.

Figure 1: Aboriginal Approach to Economic Development

1. A predominantly collective one centered on the First Nation or community.

For the purposes of:

2. Attaining economic self-sufficiency as a necessary condition for the preservation and strengthening of communities.
3. Control over activities on traditional lands.
4. Improving the socioeconomic circumstances of Aboriginal people.
5. Strengthening traditional culture, values and languages and the reflecting of the same in development activities

Involving the following processes:

6. Creating and operating businesses that can compete profitably over the long run in the global economy to
 - a) exercise the control over activities on traditional lands
 - b) build the economy necessary to preserve and strengthen communities and improve socioeconomic conditions.
7. Forming alliances and joint ventures among themselves and with non-Aboriginal partners to create businesses that can compete profitably in the global economy.
8. Building capacity for economic development through: (i) education, training and institution building and (ii) the realization of the treaty and Aboriginal rights to land and resources.

Adapted from Anderson and Giberson 2003

The question is—can the Aboriginal approach to development deliver the anticipated results? The next section addresses this question from a theoretical perspective.

DEVELOPMENT THEORYⁱⁱⁱ

The modernization and dependency perspectives dominated development thinking throughout the middle decades of the Twentieth Century, the former as the operational paradigm

driving the development agenda and the later as a critique of the failure of this agenda to deliver anticipated development outcomes. Even as modified in recent years (So, 1990), the two perspectives present incompatible views of the relationship between a developing people/region and the developed world. In a specific circumstance, one or the other of these approaches can explain *what happened*. However, when applied in any particular instance in search of insight into *what might happen*, the two produce conflicting answers as illustrate by the Inuvialuit case that follows.

In the closing three decades of the 20th Century, the conflict between the modernization and dependency perspectives led many to conclude that both are incomplete (as opposed to wrong) with each describing a possible but not inevitable outcome of interaction between a developing region and the global economy. Instead, it is argued that the outcome experienced at a particular time and in a particular place is contingent on a variety of factors many of which are under at least the partial control of the people of a developing region. In this vein, Corbridge claims that there has been a powerful trend towards “theories of capitalist development which emphasize contingency ... a new emphasis on human agency and the provisional and highly skilled task of reproducing social relations” (Corbridge, 1989, 633). As Tucker says, this allows “for the possibility of incorporating the experience of other peoples, other perspectives and other cultures into the development discourse” (Tucker 1999, 16). This view is certainly consistent with the judgment of Justice Berger discussed in the section of this paper on the Mackenzie Valley Pipeline Inquiry.

Regulation theory is one of the new approaches to development that emphasize contingency and human agency. Hirst and Zeitlin say that it executes “a slalom between the orthodoxies ... to produce a rigorous but nondeterministic account of the phases of capitalist development that leaves considerable scope for historical variation and national diversity” (Hirst

and Zeitlin, 1992, 84). It analyzes the relationship between nations and regions and the global economy in terms of *modes of development* based on combinations of the currently dominant *regime of accumulation* and various *modes of social regulation*. For example, Torfing describes a mode of development as the articulation of “a regime of accumulation with the institutional features of a mode of regulation into a regulatory ensemble capable of generating growth, prosperity and social peace in the context of the international division of labor” (Torfing, 1991, 77).

Because modes of social regulation reflect the history, values and aspirations of particular groups of people, so do modes of development. For example, Scott (1988, 108) saying that new economic spaces result from a "very specific articulation of local social conditions with wider coordinates of capitalist development in general". Dicken agrees (1992, 307) emphasizing that successful participation in the global economic system "is created and sustained through a highly localized process" and that "economic structures, values, cultures, institutions and histories contribute profoundly to that success". The strategy emerging among Aboriginal people in Canada is an example of this 'highly localized process' of development involving participation in the global economy. The question is – will they succeed? Regulation theory's answer is not 'yes, they will'; nor is it 'no they won't'; rather it is '*perhaps, they can*'.

ABORIGINAL LAND CLAIMS AND ECONOMIC DEVELOPMENT

Their struggle to regain control of land and resources has put Aboriginal people in conflict with Canada's national and provincial governments. The root cause of the conflict can be traced back to what Aboriginal people agreed to give-up, what they expected to retain and what they expected to receive as a result of treaties signed with the colonial power—Great Britain. In no case did the Aboriginal people involved view the land and resources as something they owned. Because of this none saw the treaties between them and Great Britain as a transfer of

ownership of land and its resources. Rather, they saw the treaties as the basis upon which the land and its resources would be shared. The view of the Crown differed. It believed that it had acquired title to the land and resources and that it could sell or use both as it saw fit. In return, the Crown felt that its only obligation to the Aboriginal people was to provide what it specifically promised in the treaties. This conflict is not restricted to Canada; it prevails in Australia and New Zealand as well.

Largely as a result of the efforts of the Aboriginal people involved, over the last 25 years of the 20th Century the policy of the federal government has shifted from contesting Aboriginal claims to land, resources and some form of 'nationhood', to negotiation. Accompanying this shift to negotiation there has been another fundamental change. Increasingly, the national government has come to view the settlement of Indigenous claims less as a cost and more as a vehicle for improving Aboriginal socioeconomic circumstances, a view long held by the Aboriginal people.

The two events that triggered this change in government policy occurred in the 1970's. The first was the decision of the Supreme Court of Canada in the Calder case in 1973. The second was the Mackenzie Valley Pipeline Inquiry. In both, Aboriginal people successfully contested the actions of governments and businesses demanding that their Aboriginal right to land and resources be respected.

The Calder Decision

In its 1973 Calder decision, the Supreme Court recognized that Aboriginal people have an ownership interest in the lands that they and their ancestors have traditionally occupied, and the resources that they have traditionally used. Further, the Court held that this right had not been extinguished unless it was specifically and knowingly surrendered. As a result of the Calder decision, the federal government adopted a land claims policy "to exchange claims to undefined Aboriginal rights for a clearly defined package of rights and benefits set out in a settlement

agreement” (DIAND 1997, 1). Since this change in policy, there has been a series of land claims agreements and treaties that have moved the Aboriginal people in Canada a considerable distance toward their goal of control over their traditional lands and resources.

The MacKenzie Valley Pipeline Inquiry

In 1974, a consortium of multinational oil companies (called Arctic Gas) made an application to the Canadian government to build a pipeline to carry natural gas from the fields in the MacKenzie Delta and Prudhoe Bay in Alaska to markets in southern Canada and the United States. In March of 1974, Mr. Justice Thomas Berger was appointed to head an inquiry established to consider issues surrounding the pipeline. Once the inquiry began, it became clear there were contending views on the project and its possible benefits to the people of the region and of Canada as a whole.

Arctic Gas and other proponents of the pipeline argued that industrialization in northern Canada was “inevitable, desirable, and beneficial—the more the better” (Usher 1993, 105). They did not deny that the process would have negative impacts on traditional Aboriginal society. In fact, consistent with the modernization perspective, in their view development “required the breakdown and eventual replacement of whatever social forms had existed before” (Usher 1993, 104). They agreed that the process would be painful for Aboriginal people but from it would emerge “a higher standard of living, a better quality of life, and greater personal choice” (Usher 1993, 104-105). In addition to their views on the desirability of industrialization and the inevitability of modernization, proponents of the project held the view that “all Canadians have an equal interest in the North and its resources” (Page 1986, 114). This view was based on the 'colonial' belief that title to all land and resources had passed from Aboriginal people to the Crown and was 'at odds' with the position of Aboriginal people and the recent Calder Decision.

Aboriginal groups agreed that the pipeline project would introduce “massive development with incalculable and irreversible effects” (Usher 1993, 106). However, unlike the project’s proponents they did not feel that this was a desirable outcome. Instead, they argued from the dependency perspective that “this massive assault on the land base of Native northerners threatened their basic economic resources and the way of life that these resources sustained ... when all the riches were taken out from under them by foreign companies, Native land and culture would have been destroyed and people left with nothing” (Usher 1993, 106-7). This alternative view of the modernization process was accompanied by a different view about the land in question. Far from believing the lands and resources belonged to all Canadians equally, Aboriginal people felt that these were their traditional lands over which they held ‘Aboriginal title’. This view was consistent with the Calder decision.

In 1976 Justice Berger issued his report. In it, he recommended a ten-year moratorium on pipeline construction in the MacKenzie Valley “in order to strengthen native society, the native economy ... and to enable native claims to be settled” (Berger 1977). In Berger’s view such settlements “must be part of a fundamental re-ordering of the relationship between white and native, in order to entrench their rights to the land and to lay the foundations for native self-determination under the Constitution of Canada” (Page 1986, 119). In reaching this conclusion, Justice Berger captured the essence of a new era emerging in the relationship between Canada and the Aboriginal Peoples living within its borders; something different than that anticipated by either the modernization or dependency perspectives and more in line with regulation theory. A key characteristic of this new era is the emergence of business development, based on capacity provided by land claim settlements, as an important aspect of the drive by Aboriginal people for economic development and self-reliance as they define it.

The Inuvialuit Agreement and the resulting development activities described in the next section illustrate what has followed. There are many other similar stories; the Inuvialuit one was chosen because it was the first agreement following the Berger Report and it relates to a portion of the land that was subject to the Berger Inquiry.

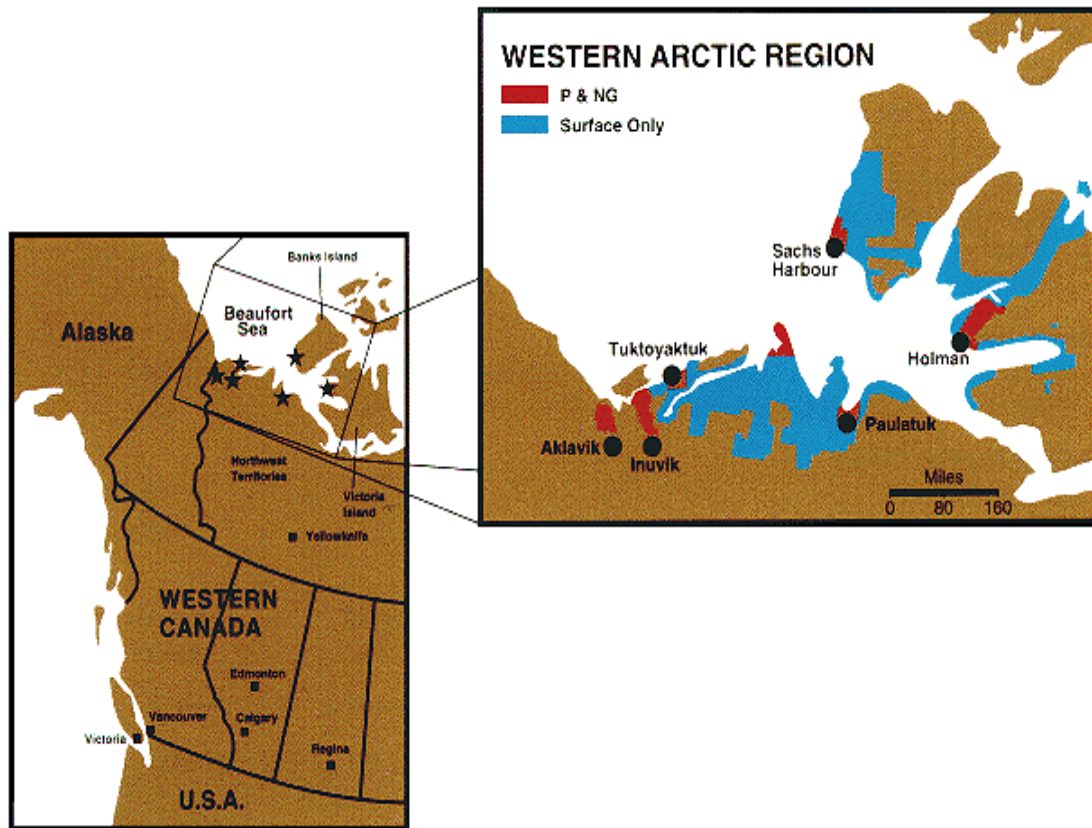
THE INUVIALUIT FINAL AGREEMENT

In May 1977, the Committee of Original Peoples' Entitlement (COPE) submitted a formal comprehensive land claim on behalf of approximately 4,500 Inuvialuit living in six communities in and around the mouth of the MacKenzie River. Negotiations between the Inuvialuit and the federal government continued through the late 1970s and early 1980s culminating in the Inuvialuit Final Agreements (IFA) in May 1984 (see Figure 2). Under the terms of the IFA the Inuvialuit retained title to "91,000 square kilometres of land, 13,000 square kilometres with full surface and subsurface title; 78,000 square kilometers excluding oil and gas and specified mineral rights" (Frideres 1993, 118). The Inuvialuit also received \$45 million in cash compensation to be paid out over 13 years (1984 to 97), a \$7.5 million Social Development Fund (SDF) and a \$10 million Economic Enhancement Fund (EEF).

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" (ICG 1997, 4). According to the introduction to 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. Protect and preserve the Arctic wildlife, environment and biological productivity" (ICG 1997, 4). The question is—are the Inuvialuit succeeding? In an attempt to answer this question the activities of the major subsidiaries of the IRC, the Inuvialuit

Development Corporation (IDC), the Inuvialuit Petroleum Corporation (IPC) and the Inuvialuit Investment Corporation (IIC), are described in the three subsections that follow.

Figure 2: The Inuvialuit Communities and Lands



The Inuvialuit Development Corporation

The Inuvialuit Development Corporation was created to address one of the objectives of the IFA; that is, “to enable the Inuvialuit equal and meaningful participation in the Western Arctic, circumpolar, and national economies” (ICG 1998, 1). In pursuing this objective IDC says it will “build and protect a diversified asset base, generate financial returns, create employment, and increase skills and development among the Inuvialuit” (IDC 1998, 1).

The IDC has created or acquired over 30 companies operating in eight sectors— technology and communications, health and hospital services, environmental services, property

management, manufacturing, transportation, northern services and real estate development. These companies operate in the north, throughout southern Canada and internationally. Many are joint ventures often with non-Indigenous partners. In 2000, the combined revenue of the IDC companies and joint ventures was \$174.8 million and the profit after taxes \$1.7 million. In 1999 revenues were \$136.6 and profits \$1.6 million.

Both in purpose and process, the approach to development of the Inuvialuit through the IDC has been consistent with the Aboriginal approach described in Figure 1, and the outcomes have been promising.

The Inuvialuit Petroleum Corporation

The Inuvialuit Petroleum Corporation was formed in 1985. The IPC began operations by purchasing shares in two small publicly-trade companies. The IPC grew steadily through the late 1980s and early 1990s. In 1994, the IPC sold all its oil and gas assets except for one property in northwestern Alberta. “IPC received a total price of \$83.4 million which after the deduction of all associated costs, resulted in an extraordinary profit of \$29.5 million. This extraordinary gain is very notable as it was realized for the Inuvialuit on an equity investment of \$11.9 million” (ICG 1998, 2). As a result of the sale of its oil and gas assets, the company ended 1994 with a \$50 million investment portfolio to be used “to investigate internally generated oil and gas prospects, pursue acquisition opportunities and finance ongoing commitments for Inuvialuit benefits” (ICG 1998, 2).

In 1995, IPC purchased of the assets of Omega Hydrocarbons and formed Inuvialuit Energy Inc., a joint venture 60% owned by the IPC. The IPC’s strategy has been successful. In 1997, the company reported a profit of \$5.6 million on revenues of almost \$29.6 million. Profit in 1996 was \$4.2 million. In 1999, the IPC sold its interest in Inuvialuit Energy Inc. Proceeds from this sale were added to those from earlier sales and invested in a portfolio of marketable

securities. This portfolio earned \$2.1 million in 2000. IPC's strategy is to "hold the marketable securities in anticipation of opportunities to participate in discoveries on Inuvialuit lands within five years" (ICG 2001, 25). With the resurgence of interest in petroleum and natural gas resources of the Beaufort Sea and the renewed interest in the MacKenzie Valley Pipeline, this strategy is likely to bear fruit.

The Inuvialuit Investment Corporation

According to the 2000 Annual Report of the ICG, the Inuvialuit Investment Corporation (IIC) "was established to receive the bulk of the financial compensation that came from the IFA. ... invest these funds in low risk investments and to preserve the capital for future generations of Inuvialuit" (ICG 2000, 39). The company maintains a conservative and diverse portfolio of investments in national and international securities. In 2000, the IIC recorded a net income of \$6.5 million from interest and dividends on its investments, up from \$5.97 million in 1996.

Socioeconomic Impact of the Inuvialuit Corporate Group

Together the companies of the Inuvialuit Corporate Group made a considerable contribution to the Inuvialuit people in 2000. 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 2000 with total assets of \$384 million up from \$281 million at the end of 1999. Liabilities increased from \$68 million at the end of 1999 to \$114 million at the end of 2000. As a result of the increase in assets and smaller increase in liabilities, beneficiaries' equity rose from \$212 million to \$270 million. The ICG (including its business subsidiaries) earned a combined after tax profit of \$52.5 million in 2000 up from \$5.6 million in 1999. The 2000 profit was earned on revenues of \$277.2 million. Revenues in 1999 were \$161.8 million.

In earning its 2000 profits (see Figure 3), the ICG paid out a total of \$9.0 million in wages and salaries to Inuvialuit people. In addition to these salaries, the Group paid honorariums of

\$577,000, provided student financial support of \$197,000, made payments to elders of \$368,000, distributed \$568,000 in dividends to beneficiaries, paid \$390,000 to Community Corporations and made other payments of \$577,000 to various community groups and individuals. As a result of these payments, in 2000 the ICG provided a total of more than \$11.6 million to Inuvialuit individuals, groups and communities. This is a considerable increase over the already impressive \$11.1 million paid out in 1999, and a very respectable annual return on the \$62.5 million compensation received under the IFA. In the case of the Inuvialuit at least, a just settlement of land claims has provided the capital for successful entrepreneurship and business development, and has contributed to a significant improvement in socioeconomic conditions.

Figure 3: Payments by the Inuvialuit Corporate Group to Individuals, Groups and Communities, 2000

Wages and salaries	\$9,000,000
Honorariums	577,000
Student financial support	197,000
Payments to Elders	368,000
Dividends to beneficiaries	568,000
Payments to community corporations	390,000
<u>Payments to community organizations and Individuals</u>	<u>577,000</u>
Total	\$11,600,000

CONCLUSION

As a result of centuries of struggle by Aboriginal people buttressed by decisions of the Supreme Court of Canada, during the final three decades of the 20th Century the Canadian government's approach to Aboriginal claims has shifted from contention to negotiation and enterprise. No longer does the state contest the existence of Aboriginal rights to land, resources and some form of 'self-government'. Instead, it seeks to negotiate agreements based on these rights that will form the foundation for prosperous Indigenous 'nations' within Canada.

Aboriginal entrepreneurship and economic development building on this foundation is the key to achieving such prosperity. Based on the experience of the Inuvialuit, this approach seems promising.

These circumstances not limited to Canada. Indigenous people elsewhere are also seeking recognition of their land and other rights. This particularly true in New Zealand and Australia where the Maori and the Aborigines have rights and aspirations similar to Indigenous people in Canada. The experience of the Inuvialuit suggest that the just settlement of Indigenous land claim might be a financially effective way for a state to address the unacceptable socioeconomic circumstances of its Indigenous people while at the same time addressing their land and other claims.

We feel the relevance of the Canadian experience extends further. Everywhere one looks—in Central and South America, Africa, the Near East, the Far East, the North, the Indian Subcontinent, the former Soviet Union, and so on—‘original peoples’ are struggling to regain control of their traditional lands and rebuild their communities. In most locales they face resistance and even oppression from the ‘state’ and as a result are often resorting to violent and revolutionary responses; and the outcomes benefit neither. Perhaps both states and Indigenous Peoples can learn from the Canadian experience and move to a mutually beneficial approach as opposed to and antagonistic one.

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ⁱ In Canada the word Aboriginal is used to describe people descended from the pre-colonial occupants of the lands now within the state's borders.

ⁱⁱ Chosen because 1991 is the base year for the projections of the Royal Commission on Aboriginal People.

ⁱⁱⁱ For a more comprehensive discussion of theory as it relates to Indigenous development in the 'new economy' see Anderson and Giberson 2003.