



The Indigenous Land Claims in New Zealand and Canada: From Grievance to Enterprise

by Robert B Anderson and Corinne Barnett

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This paper explores the struggle by Indigenous people in Canada and New Zealand¹ for the recognition of their rights to their traditional lands and resources and the role that these resources are expected to play, and indeed have played, in providing Aboriginal people and Maori the capacity to pursue development on their terms both economically and as ‘nations’ with Canada and New Zealand.

While we focus on these two groups, it is important to emphasize that the issue of Indigenous land rights and development are not just important in Canada and New Zealand. The United Nations estimates that approximately 5,000 groups fit its definition of Indigenous and that there are between 300 million to 500 million Indigenous peoples worldwide representing as much as 80% of the cultural diversity on this planet (Indigenous Peoples’ Human Rights Project, 2003). The list of nation states without an Indigenous population is very small. Further, according to the World Bank “Indigenous peoples are commonly among the poorest and most vulnerable segments of society” (World Bank, 2001). Wherever they are found, Indigenous peoples are engaged in a struggle to preserve their societies, retain or regain their rights, improve their socio-economic conditions and rebuild their nations on their terms. Land rights are critical in every instance in this effort. How much better for all, Indigenous and non-Indigenous, if states follow the path grudgingly trod by Canada and New Zealand that we describe in this paper and negotiate the settlement of land rights claims as part of a strategy to support Indigenous communities in their pursuit of development as they define it; rather than pursuing the more commonly followed alternative of the refusal to recognize Indigenous rights, oppression and poverty.

¹ Aboriginal peoples is the general inclusive term used when referring to the Indigenous people in Canada. Included under the term Aboriginal people are the First Nations, the Métis and the Inuit populations in Canada as recognized in the *Constitution Act, 1982*. The Maori are the Indigenous people of New Zealand. We will use the word Indigenous as inclusive of both groups.

We conduct our exploration in four sections. The first sets the context by describing the historic events in Canada and New Zealand that have resulted in the demands by Indigenous people for the recognition of their rights to land and resources that have been long denied, and the response by the Canadian and New Zealand governments and courts to these demands. In the second section we present an overview of the current circumstance of Aboriginal people in Canada and Maori in New Zealand and their response to these circumstance, which emphasizes development economically and ‘nationally’ on their own terms, with this development ground on capacity provided by their traditional lands and resources. We take the expressed development approach and objectives as given both in this section and in the case studies. For us, success is achieved when the Indigenous group in question achieves its expressed objectives. In this paper, it is not our purpose or place to critique either the approach or the objectives.

In the third section we present the cases which examine four land claim agreements and the development efforts related to them. These are the James Bay and Northern Quebec and Inuvialuit Agreements from Canada and the Tainui and Ngai Tahu Agreements from New Zealand. The conclusion is the fourth and final section in which the following questions are addressed:

1. Have comprehensive claims agreements served the purposes of the Indigenous people that signed them?
2. If so, will they continue to do so in the future?
3. If not, what must be done to see that they do?
4. Will and should non- Indigenous people support the land claims and treaty-making process?

The Context

World-wide, states, supranational organizations, the organizations of the civil sector, and corporations are recognizing the rights of Indigenous people to their traditional lands and resources. The following excerpt from the 1993 Draft United Nations Declaration on the Rights of Indigenous Peoples captures a sense of this agenda:

RECOGNIZING the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,

Article 21

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation (Economic and Social Council Commission on Human Rights, 1993).

Typical of Indigenous people around the world, Aboriginal peoples in Canada and Maori of New Zealand are struggling to reassert their nationhood within the post-colonial states in which they find themselves. For both, claims to their traditional lands and the right to use the resources of these lands are central to this drive to nationhood. The importance of land and resources are integral to this process for two reasons. First, traditional lands are the ‘place’ of the nation and are inseparable from the people, their culture, and their identity as a nation. Second, land and resources are the foundation upon which Maori and Aboriginal peoples in Canada intend to rebuild the economies of their nations and so improve the socioeconomic circumstance of their people – individuals, families, communities and nations.

The struggle to regain control of land and resources has put Maori and the Aboriginal peoples in conflict with the policies of the governments of their respective post-colonial states. While differences exist, causes of this conflict are similar and stem from a common British colonial past. In both cases, the root of the conflict can be traced back to what Indigenous people agreed to give up, what they expected to retain and what they expected to receive as a result of the treaties. Neither Maori nor the Aboriginal peoples viewed the land and its resources as something they owned, therefore, neither group saw the treaties as a transfer of ownership. Rather, they saw the treaties as providing a basis upon which the use of the land and its resources could be shared. They would allow the newcomers to use the land and, in return, they would receive certain things from these newcomers.

In New Zealand a single treaty, the Treaty of Waitangi was signed in 1840 between Maori and the British Crown.

In the Maori text the chiefs ceded 'kawanatanga' to the Queen. This is less than the sovereignty ceded in the English text, and means the authority to make laws for good order and security, but subject to Maori interests (Maaka and Fleras 2000, 100)

Subsequently, the Crown abrogated its treaty responsibilities by supporting military action and compulsory taking of lands where tribes resisted settlement or passed legislation allowing for the individuation and privatization of Maori land or purchased land itself, which it usually resold to settlers. The Maori have struggled to redress these wrongs ever since and finally achieved success with the signing of the Treaty of Waitangi Act in 1975, which established a Commission to hear Maori claims for recent breaches of the Treaty. A further amendment in 1985 allowed claims to be heard back to the original signing of the Treaty of Waitangi.

In Canada, the situation is more complex. Rather than a single treaty, there were a series negotiated as European settlement moved westward. Further, some Aboriginal groups never signed treaties, notably the First Nations in British Columbia and the Inuit and Dene in the far north. Where treaties were signed, Aboriginal peoples involved dispute the Crown's interpretation of what was intended. As with Maori, the Aboriginal sense was one of sharing the right to use the land and resources, not a transfer of ownership and control. In contrast, in the view of the Crown it acquired title to the land and resources and it could sell or use the land and resources as it saw fit. In return, the Crown felt that its only obligation to the Indigenous people was to provide only what was specifically promised in the treaties. Besides disputing the nature of the original agreements, Maori and Aboriginal peoples claim that the governments have not lived up to their treaty obligations. Further, in areas where no treaties were signed (notably in British Columbia and the far north), Aboriginal peoples maintain that they have never given up their right to use their traditional lands and resources as they have 'from time immemorial'. They argue that the Crown must live up to the intent and the terms of

the treaties signed. It must also negotiate new agreements (modern treaties) to share the land and resources where no treaties were signed. The Crown in Canada has only come to accept this in the waning decades of the 20th Century.

In summary, Indigenous people in both countries always disputed their state governments' interpretation of the treaties and have struggled with them to have their interpretation accepted. Furthermore, both claim that neither government has honoured their commitments under treaty. Unfortunately, until the 1970's Indigenous protests and claims met with little success. Then two events occurred, one in each country, which were to usher in a new era.

In Canada, the Supreme Court of Canada ruled on the *Calder* case, relating to the Nisga'a people in British Columbia. In its decision, the Court recognized that Aboriginal peoples 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, a federal government policy for the settlement of land claims was adopted in 1973. The thrust of the policy "was 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). The comparable event in New Zealand was the already mentioned *Treaty of Waitangi Act* of 1975.

While not apparent at the time, the *Calder* decision and the *Treaty of Waitangi Act* initiated a fundamental change in government policy for both Canada and New Zealand. Subsequently, over the last 25 years of the 20th century, grudgingly and in fits and starts, the policies of both governments shifted from contesting Indigenous claims to land, resources and some form of 'nationhood' to negotiation. Accompanying this shift to negotiation was another fundamental change. Increasingly, both state governments saw the settlement of Indigenous claims less as a cost and more as a vehicle for addressing Indigenous socioeconomic circumstances, a view long held by the Indigenous people.

Consistent with this shift, negotiated agreements in Canada and New Zealand reflect the emergence of an economic development policy objective. This can be seen in the *Inuvialuit and James Bay and Northern Quebec* comprehensive agreements in Canada and the *Ngai Tahu* and *Tainui* treaty settlements in New Zealand. This policy shift is a result of decades, even centuries, of struggle by the Indigenous people involved, which has enabled them to embark on a development journey based on the foundation that these rights provide.

The Circumstances and the Response

The current socioeconomic circumstances of the Aboriginal peoples in Canada are abysmal and lagging in comparison to the non-aboriginal population. An accurate proxy for welfare dependency is the proportion of personal income that is derived from government transfers. According to the 2001 Census², a much larger share of Aboriginal incomes was derived from government transfers as opposed to earnings than the rest of Canada, i.e. 20.8% compared to 11.6%, respectively. In the same year, the median income of Aboriginal persons 15 years of age and over was \$13,525. The median income of persons age 15 and over for the rest of Canada was \$22,120 or 61% higher. Unemployment among Aboriginal people stood at 19.1%, compared to 7.1% for the rest of the Canadian population. It has been forecasted that 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). As bad as these circumstances are, the prospects for the future is grim unless something is done to change the socioeconomic circumstances of the Aboriginal people vis-a-vis other Canadians.

Similarly, the Maori people compare unfavourably with the rest of the New Zealand population on a number of key economic and social indicators. In 2001, unemployment among Maori

² Data taken from the 2001 Census of Population and the Aboriginal Population Profile.

was 13%, in contrast with the national unemployment rate of 5.5%. The Maori population is youthful and growing at a much more rapid rate than the non-Maori. As with Aboriginal people in Canada, this will soon result in a rapidly growing working age population. This may place strains on the social welfare system, as the Maori tend to have a lower educational attainment than the non-Maori. In 1996, the proportion of Maori with a post-secondary qualification was 22.6% compared to 35.5% for the non-Maori. Consequently, there is also a disparity in personal income levels. In 1996, 30.9% of the Maori were in the lowest income quartile (Paulin 3 and Katschner, 3).

Aboriginal peoples 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 treaty rights to lands and resources are critical to its success. These rights make up considerable 'capital' that Aboriginal people bring to the economic table. The Canadian government has come to share this view about these rights, albeit only recently and reluctantly.

Based on the government claims policy and the Aboriginal claims, the Royal Commission on Aboriginal Peoples estimated that the government expenditure on Aboriginal issues will increase by between \$1.5 and \$2.0 billion per year over 1996 levels during the first decade of the 21st Century, most of which covers land claims settlements and other capacity-building activities. The Commission estimated that, by 2016, the economic development fostered by this investment in capacity could result in Aboriginal people making a \$375 million contribution to the Canadian economy, as opposed to imposing an estimated \$11 billion cost should their socioeconomic circumstances remain as they are relative to other Canadians.

Maori have also considered their land claims to be a first step towards improving their current social and economic situation. Their approach to development is quite similar to that of Aboriginal peoples in Canada and they have established similar development objectives and processes for

obtaining them. They have also exercised effective negotiating, management and administrative skills on behalf of their tribes (Buckingham and Dana, 7). To that extent, negotiations have been conducted through a localized process, whereby social objectives of the representative tribes have been accounted for with the expectation of achieving improvement and sustainability.

Figure 1: Aboriginal Approach to Economic Development³

1. Predominantly collective and centered on the First Nation or community or tribal level.

For the purposes of:

2. Attaining economic self-sufficiency as a necessary condition for the preservation and strengthening of communities.
3. Gaining control over activities on traditional lands.
4. Improving the socioeconomic circumstances of Aboriginal and Maori peoples.
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;
 - b) Exercising control over activities on traditional lands, and
 - c) Building the economy necessary to preserve and strengthen communities and improve socioeconomic conditions.
7. Forming alliances and joint ventures among themselves and with non-Aboriginal and non-Maori 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 treaty, Aboriginal, and Maori rights to land and resources.

The Cases

In this section we examine the terms and outcomes of four agreements, the James Bay and Northern Quebec, and Inuvialuit Agreements from Canada and the Tainui and Ngai Tahu Agreements from New Zealand. This will be done in two subsections, the first on Canada and the second on New Zealand.

³ Adapted from Anderson and Giberson, 2003.

The Canadian Cases

Before examining the two Canadian agreements, we will first look at an important precursor to both, the Mackenzie Valley Pipeline Inquiry

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 for carrying 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 1974, Justice Thomas Berger was appointed to head an inquiry established to consider issues surrounding the pipeline. The proponents of the pipeline espoused a modernization perspective on development. Their views were challenged by Aboriginal groups and others arguing from a dependency perspective.

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). To that extent, they did not deny that the process would have negative impact on traditional Aboriginal society. In fact, 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 peoples but from it would emerge a higher standard of living and a better quality of life. 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 which was ‘at odds’ with the position of Aboriginal peoples and the recent (at the time of the Inquiry) *Calder* decision.

Aboriginal groups challenged these views. They agreed that the pipeline project would introduce “massive development with incalculable and irreversible effects like the settlement of the

Prairies” (Usher, 1993, 106). However, unlike the proponents, they did not feel that this was a desirable outcome. Instead, they argued from a 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 development process was accompanied by a different view about the land in question. Far from believing that the lands and resources belonged to all Canadians equally, Aboriginal people felt that these were their traditional lands over which they held Aboriginal title, which was consistent with the *Calder* decision.

Justice Berger’s 240-page report, issued on May 9, 1977, recommended a ten-year moratorium on pipeline construction in the Mackenzie Valley in order to strengthen the native society and the native economy and to enable native claims to be settled. In reaching this conclusion, he foreshadowed the contingent perspectives on development, recognizing the unacceptable nature of the present approach whether the outcome resulted in modernization or dependency. His decision ushered in a new era in the relationship between Aboriginal peoples, governments in Canada and corporations that wished to develop resources on traditional Aboriginal lands. A key characteristic of this new era has been the emergence of business development, based on capacity provided by land claim settlements, as an important aspect of the drive by Aboriginal people for self-reliance, self-government and improved socioeconomic circumstances. Without a doubt, this is an instance of social entrepreneurship.

In the years since the *Calder* decision and the Mackenzie Valley Pipeline Inquiry, the Supreme Court of Canada has issued additional decisions that have further clarified the rights of Indigenous people to their traditional lands and resources (Figure 2). Responding to the Court’s rulings, the persistent demands of Indigenous people, pressure from civil groups, and the urging of

resource-based corporations for certainty of access to natural resources, the Government of Canada has entered into a series of land claims agreements and treaties. Every land claim agreement and negotiated treaty has succeeded in moving the Indigenous people in Canada a considerable distance toward their goal of attaining control over their traditional lands and resources. In fact, during the period 1973 to 2005, ten comprehensive claims were settled including the *James Bay and Northern Quebec Agreement* and the *Northeastern Quebec Agreement*. Over this same period there has been a significant change in the government's approach to settling land claims.

Figure 2: Recent Supreme Court of Canada Decisions

Case	Date	Outcome
Nowegijick	1983	Treaties must be liberally interpreted
Guerin	1984	Ottawa must recognize the existence of inherent Aboriginal title and a fiduciary (trust) relationship based on title.
Sioui	1990	Provincial laws cannot over rule rights contained in treaties.
Sparrow	1990	Section 35(1) of <i>The Constitution Act</i> , 1982 containing the term 'existing rights' was defined as anything unextinguished.
Delgamukw	1997	Oral history of Indian people must receive equal weight to historical evidence in land claim legal cases.
Marshall	1999	Mi'kmaq have the right to catch and sell fish (lobster) to earn a 'moderate living'.

Source: Anderson, Robert B. and Robert M. Bone. 2003. *Natural Resources and Aboriginal Peoples in Canada: Readings, Cases, and Commentary*. Toronto: Captus University Press: 6

The James Bay and Northern Quebec Agreement

As the drama of the MacKenzie Valley Pipeline Inquiry was being acted out in the Northwest Territories, an event of equal significance, the negotiation of the *James Bay and Northern Quebec Agreement* (JBNQA), was occurring in the province of Quebec. This agreement and its companion the *Northeastern Quebec Agreement* (NEQA) are particularly important because they mark the dawning of a new era. According to the Department of Indian Affairs and Northern Development, these agreements were "Canada's first modern land claim settlements" (INAC 1993, 1), while Bob Bone

describes the JBNQA agreement as “the first modern treaty” (Bone 1992, 220) between the Government of Canada and an Aboriginal People.

According to J. Rick Ponting, this new treaty and those that followed, *were designed to provide more than token economic support to Indians. They were framed to do so in a manner that would carry Indians forward with both a viable traditional sector for those who chose that way of life, and an adequate share of political-economic power ... to protect Indian interests and to create enduring economic opportunity of a non-traditional type* (Ponting 1991, 194).

This adequate share of political-economic power was to be achieved through: (i) cash compensation, (ii) outright ownership and control over an expanded land base, (iii) a right to participate in the management of activities on a far larger ‘shared’ land base and (iv) the establishment of a variety of governmental and administrative bodies to provide for the exercise of self-government and the pursuit of socioeconomic development.

The forces that gave rise to the JBNQA were the same as those underlying the MacKenzie Valley Inquiry. This was characterized as a struggle by Aboriginal peoples for control of their traditional lands and recognition of their Aboriginal rights. The event that precipitated the crisis and resulted in the agreement was the 1971 decision of Quebec to develop the hydroelectric potential of the rivers draining into James Bay. In that year, the province “created the James Bay Development Corporation to develop all the territory’s [northern Quebec] resources, including hydro, forestry mining and tourism” (INAC 1993, 1).

Understandably, the Aboriginal peoples who had occupied the region ‘since time immemorial’, the Cree, Inuit, and Naskapi, objected to the failure of the province to recognize their rights on and to these lands. In the fall of 1972, they petitioned the Quebec Superior Court for an injunction stopping all work on the James Bay hydro-electric project until their land claims were settled. The injunction was granted and, although it was subsequently overturned, “the determination

of Natives to protect their historic land-based interests led to negotiations toward a land claim settlement” (INAC 1993, 1).

An agreement-in-principle was reached between Canada, Quebec, the Cree and the Inuit in 1974 and the final agreement was signed on November 11, 1975. According to Bone,

The James Bay Agreement called for \$225 million to be paid to the Cree and Inuit over a ten-year period, outright ownership of 13,300 km², and exclusive hunting rights over 155,000 km² (Bone 1992, 220).

Subsequently, the Naskapi Indian Band of northeastern Quebec reached a similar agreement, the NEQA, which became part of an amended JBNQA in 1978. Under the agreement, the Naskapi received \$9 million in compensation. The fact is that this agreement is the first of the modern settlements and as such “may have set the terms for future modern treaties” (Bone 1992, 220). Thus, its terms are worthy of review in some detail.

The land provisions of the agreement are complex, involving three categories, each with a different level of Aboriginal ownership and control. Category I lands are set aside for the exclusive use and benefit of Aboriginal peoples of the Cree and Inuit communities of the James Bay region. The Cree received 2,158 square miles and the Inuit 3,130 square miles of such land. The various community corporations hold title to the land and it cannot be sold to anyone other than the province of Quebec. The JBNQA says the following about Inuit Category I lands,

Title to the land shall be transferred to Inuit Community Corporations for Inuit community purposes, which shall include the use of the lands by the Inuit Community Corporations for commercial, industrial, residential or other purposes (JBNQA, Section 7.1.3).

Category I lands or any portion thereof may not be sold or otherwise ceded except to the Crown in the right of Quebec. Subject to the provisions of this section, an Inuit Community Corporation shall enjoy the usual rights of an owner and, more particularly, may make with any person, including a non-Inuit, agreements in respect to servitude, leases and other rights of use and occupation respecting such lands (JBNQA, Section 7.1.5).

Similar terms and conditions apply to the Category I lands of the Cree.

According to Ponting, the issue of mineral rights on Category I lands was “resolved by having the rights remain with the Quebec government but also giving the native people the right to veto the Quebec government’s exercise of those rights ... compensation must also be paid for the use of such mineral or sub-surface rights” (Ponting 1991, 195). Ponting writes that treatment of mineral rights “enables the Cree [and the Inuit] to negotiate certain development terms in exchange for suspending their veto” (Ponting 1991, 195).

Category II lands are much larger in area, encompassing 25,130 square miles for the Cree and 35,000 square miles for the Inuit. The Cree and Inuit do not own this land. Instead,

Category II lands belong to the province, but Native governments share management for hunting fishing, trapping, tourism development and forestry. Native people have exclusive hunting fishing and trapping rights on these lands (DIAND 1993, 2).

In Section 5.2.6(a), the JBNQA says that non-native people can hunt, fish and/or trap on Category II lands “only with the consent of the native people.” As with the right to veto the Quebec government’s exercise of its mineral rights on Category I lands, this provision (relating to Category II lands) creates development opportunities in tourism and outdoor recreation.

The JBNQA says Category II lands,

may be appropriated by Quebec for development purposes, provided such lands are replaced or, if the Native people wish, and an agreement can be reached thereon, they are compensated ... ‘development’ shall be defined as any act or deed which precludes hunting, fishing and trapping activities” (JBNQA, Section 5.2.3).

This right of Quebec to pursue development, particularly hydro-electric development, affecting Category II (and Category III) lands has been a controversial aspect of the JBNQA from the outset and remains so today, as elaborated later in this section.

Category III lands, which totaled almost 350,000 square miles are a special category of Quebec public lands on which,

Both Native and non-Native people may hunt and fish subject to regulations adopted in accordance with the agreements [JBNQA and NEQA]. Aboriginal groups have exclusive rights to harvest certain aquatic species and fur-bearing animals and to participate in the

administration and development of the land. The Quebec government, the James Bay Energy Corporation, Hydro Quebec and the James Bay Development Corporation have specific rights to develop resources on Category III lands (DIAND 1993, 2).

Controversy over development on Category II and III lands has emerged with the Great Whale hydro-electric project (James Bay II). While opposition by the Cree and Inuit, as well as from environmental and other interest groups, resulted in the government of Quebec indefinitely ‘shelving’ the project in 1994, it in no way altered the government’s position that it was within its rights in pursuing such development even if it affected Category II lands. In fact, according to the Grand Council of the Crees at its 1997 Annual General Assembly,

(Hydro-Quebec) has recently made public a plan to divert the Whapmagoostuie River and the Rupert River into existing reservoirs of the La Grande complex ... this river diversion would totally submerge Epsikameesh (Lake Bienville), the headwaters of the Great Whale River ... a sacred area, a major calving ground for the inland caribou, and a sanctuary for marine life, water fowl and other forms of wildlife ... [this] proposed diversion would have the same impact as if the James Bay II scheme (now shelved) had gone ahead (GCC 1998(1), 4).

This is one of the ‘darker sides of the agreement’ that the Assembly of First Nations Grand Chief Mathew Coon Come referred to when he addressed the 1997 General Assembly of the James Bay Cree. Specifically, he said,

We have always declared that through the Agreement the Crees gave permission for one hydroelectric project in our territory. The governments have stated, however, that they believe we surrendered and gave up all our rights, title, and claims in and to our waters and lands (GCC 1998 (1), 2).

Compensation of \$235 million was provided under the terms of the JBNQA and paid out over 20 years as follows: \$75 million paid out in cash over 20 years, \$75 million in Quebec bonds maturing in 1995 and \$75 million when the hydro-electric project was completed (or by 1996). Of the total, the Inuit received approximately \$90 million and the Cree \$135 million. The Naskapi received \$9 million. In the case of the Inuit and the Crees, the moneys were paid to The Makivik Corporation and the Cree Regional Authority, respectively. These bodies were the legal entities established under the terms of the JBNQA “to receive and administer the compensation moneys, oversee the implementation of the

JBNQA and ensure the integrity of the agreements” (Makivik 1998a, 1). A brief review of the performance of the two bodies is given in the following subsections.

Makivik Corporation

The Makivik Corporation was officially created on June 23, 1978 to “administer the implementation of the Agreement [JBNQA], and invest the \$90 million in compensation, paid over 20 years from 1975-1996” (Makivik 1998d, 1). The mandate of the corporation is to foster socioeconomic development among the 14 Inuit communities⁴ that are signatories to the JBNQA. The compensation monies received to date exceed \$124 million. The following philosophy has guided Makivik in the pursuit of such development,

Makivik has always treated these compensation monies as a ‘heritage fund’ and its financial policies have had the objective of ensuring that these funds are available to future generations of Inuit (Makivik 1998 2, 1)

From its inception, the corporation’s accomplishments have been considerable. It has increased the value of Inuit compensation funds to \$145 million (from the \$124 million in total compensation received) while at the same time investing more than \$60 million in the construction “of much needed municipal facilities such as arenas and community centres to improve social conditions in Nunavik.” Furthermore, over \$6 million has been donated in donations to various Nunavik organizations” (Makivik 2005, 1).

During the same 20-year period, Makivik created several large subsidiary companies that now employ thousands of people. These companies include wholly owned subsidiaries.

- *Air Inuit is Nunavik's regional airline and was created in 1978. It provides passenger, cargo, and charter services to all Nunavik communities. It employs over 300 people in its various operations.*
- *First Air is a major air carrier in Canada's Eastern Arctic and was purchased by Makivik in 1990. It links the North to the South and the Canadian Arctic to Greenland. First Air employs over 1,150 people.*

⁴ The traditional territory of the people of the 14 Inuit communities that are signatories of the JBNQA is called Nunavik. The current population of the communities is approximately 7,000.

- *Nunavik Arctic Foods harvests wild meat in Nunavik, processes it in four community processing centers and markets the meat (caribou, seal, ptarmigan, Arctic char) in Nunavik and southern markets.*
- *Halutik Enterprises provides fuel services in Kuujuaq as well as heavy equipment rentals, and operates a rock crushing facility to make various grades of gravel. In 2004, the company did not produce a profit but broke even. There is growing confidence that the investment will pay off in the long-term. The company is a leader in projects that only a few years ago might have gone to companies in the south.*

Makivik Corporation's joint venture companies include:

- *Pan Arctic Inuit Logistics Inc. (PAIL), owned by Makivik Corporation, Labrador Inuit Development Corporation, Nunasi Corporation, Qikiqtaaluk Corporation, Sakku Investments Corporation, Kitikmeot Corporation and Inuvialuit Development Corporation. PAIL is a 50% owner with ATCO Frontec Corporation of Nasittuq Corporation. Nasittuq operates and maintains radar sites, which are part of the North Warning System on behalf of the Department's of National Defense in Canada and the United States.*
- *Unaaq Fisheries Limited is owned jointly with Qikiqtaaluk Corporation. Unaaq owns an offshore shrimp fishing licence, which is contracted for exploitation by Clearwater Inc., and fished by the M.V. Arctic Prawns and the M.V. Atlantic Enterprise. Makivik also owns a shrimp licence, which is contracted to Farocan Inc. and fished by the M.V. Aqviq.*
- *Nunavut Eastern Arctic Shipping (NEAS) is owned by Nunavut Umiaq Corporation (60%) and Transport Nanuk Makivik Corporation (40%). Qikiqtaaluk Corporation and Sakku Investments Corporation each own a third of Nunavut Umiaq Corporation. NEAS provides maritime shipping services to Nunavik and Nunavut communities with the vessels M.V. Aivik and M.V. Umiavut.*
- *Natsiq Investment Corporation, of which Makivik Corporation, Qikiqtaaluk Corporation, and Sakku Investments Corporation are each one third owners was created in March, 1999. The goal of the company is to harvest seals and develop markets for seal products in Asia and the North. (Makivik 2005, 1-2)*

The Inuit in Northern Quebec, through the actions of the Makivik Corporation, provide an excellent example of the Aboriginal approach to economic development. The focus is the community, present and future. The objective is socioeconomic development in a manner consistent with and supportive of traditional values and practices. For example, Seaku Fisheries and Nunavik Arctic Foods are designed to blend aspects of traditional life on the land and the modern dollar-based economy to improve the socioeconomic circumstance of those wishing to follow a primarily traditional life-style. The development processes adopted involve the creation of businesses to compete in the broader nation and global economy and often involve joint ventures with other Aboriginal and non-Aboriginal parties.

While the accomplishments of the Inuit through the Makivik Corporation over the past 20 years have been impressive, they pale in comparison to the challenges of the future. In 1996, 60% of the Inuit of Nunavik were under 30 years old and the population growth rate was four times the provincial average. Employment is a major concern and,

a recent survey [1996] conducted by the Kativik Regional Government's Employment and Training Department concludes that, in order to maintain even today's unacceptably low rate of employment, we will have to create 25% more jobs than presently exist in all of Nunavik by the year 2000. (Makivik 1998e, 1)

There has been a great deal accomplished by the Inuit of Nunavik since the establishment of the Makivik Corporation. However, just as there has been a lot accomplished by the activities of the Cree, much more is still needed in the future.

The Cree Regional Authority

The Cree Regional Authority (CRA) was established in 1978. Similar to the Makivik Corporation, its mandate is to administer the terms of the JBNQA and manage the financial compensation received. The membership of the CRA is the same as that of the Grand Council of the Crees. This was done to ensure,

coordination between political objectives and administrative actions. So the CRA Council, like the Grand Council, is composed of each band chief of the nine communities, and one other member from each community, in addition to the Grand Chief and the deputy Grand Chief, who are elected directly at the Cree Annual General Assemblies (CRA 1998a, 1).

The CRA coordinates and administers all programs falling under the JBNQA for the nine communities⁵. It also exercises Cree authority on Category II lands with respect to their exclusive hunting, fishing and trapping rights and represents Cree interests on Category III lands. Further, "the CRA has broad-ranging responsibilities for ensuring that the many provisions of the JBNQA designed to protect and enhance Cree life are implemented" (CRA 1998a, 2).

⁵ Nine Cree communities with a current population of approximately 12,000 are signatories of the JBNQA. They call their traditional territory Eeyou Astchee.

In 1982, the CRA created the Cree Regional Economic Enterprises Company (CREECO) “a holding company for all Cree-owned enterprises in which compensation moneys were invested” (CRA 1998b, 1). CREECO describes its approach as follows:

Aside from the objective of creating wealth, the CREECO companies also have a social mission of partnership with the Cree communities. This involves maximizing native employment in its ranks, and to that extent, CREECO has undertaken training programs in each of its companies.

The CREECO companies also participate enthusiastically in joint ventures....provide grants and funding to communities and regional activities.....promote support and cooperation in the business community, both in the Cree world and externally. (CRA 1998b, 1)

On formation, CREECO assumed ownership of two major companies that had already been formed using compensation money, Air Creebec and the Cree Construction Company. Both companies “had mandates beyond simply servicing the Cree communities themselves ... [they] were envisioned as commercial enterprises that aimed to be competitive in the business world ... [and] provide work for Cree people” (CRA 1998b, 1). Since formation, CREECO has established three additional companies. Valpiro Incorporated is a ground and aircraft service operation and Servinor and Jessel Foods are both food wholesalers.

According to its 1997 Annual Report, CREECO’s assets totaled \$68 million. In the same year, CREECO companies had combined revenues of \$86 million and combined expenses and write-offs of over \$87 million, resulting in a net loss after taxes of just over \$1.2 million. Valpiro Incorporated had revenues of \$1.3 million, while Servinor Incorporated and Jessel Foods had combined revenues of \$43.7 million. Cree Construction saw their revenues decrease quite significantly from \$36 million in 1996 to \$17 million in 1997. And finally, Air Creebec also had a decrease in flight operations revenue by 5% to \$23 million in 1997. The various CREECO companies employed a total of 525 employees of which 35% or 184 were native.

Employment growth among the Cree flowing from the JBNQA is not limited to the jobs created by these business ventures. Many Cree found employment in the government and community service sectors as the Cree Regional Authority and the local community governments assumed control over their own affairs and began delivering their own programs. According to a study by Salisbury (1988), during the 1970s and early 1980s there was a doubling of the number of Cree employed and a fivefold increase in the average wage. As a result “welfare and family allowance benefits ... dropped from 16 to 5 percent of total income, and salaries have increased from 23 to 52 per cent” (Hedican 1995, 150). As with the Inuit and the creation of the Makivik Corporation, much has been accomplished through the Cree Regional Authority since the signing of the JBNQA twenty years ago but much more can still be done.

Concluding Comments on the James Bay and Northern Quebec Agreement

A sense of where things stood for the Cree almost 25 years after the negotiation of the agreement is drawn from an address by former Grand Chief Mathew Coon Come to the Cree people in 1998. According to him, the Cree gained important rights under the JBNQA. These include:

***Political rights** such as guarantees of citizenship, certain aspects of self-government, membership, and nation-to-nation relations.*

***Social rights** such as education, health, social services, justice, housing, police, and community infrastructures.*

***Economic rights** such as economic development, the hunting, fishing and trapping regime, training and guarantees of employment and preferential access to contracts in the context of development in the territory.*

***Cultural rights** overlap with many other areas, but include education, and the right to continue with the Cree language, culture and traditional pursuits.*

***Other rights** including the right to participate in the development of laws and regulations concerning the environment, and to special participation in the assessment of the environmental and social impacts of proposed developments in the territory (GCC 1998, 2).*

The former Grand Chief remarked that the Cree had hoped that these rights “would provide sufficient guarantees that our people would be able to maintain our society, culture and way of life, and survive as a people” (GCC 1998a, 1). He also observed that this has not proven to be the case and

that the Cree Nation had reached a crossroads in its relations with the Quebec and Canadian governments and that Cree people are demanding,

more than ever the full recognition of our status and rights, and the right to benefit meaningfully from the resources and economic potential of Eeyou Astchee, our land. (GCC 1998a, 1)

The major difficulties the Cree have with the JBNQA and its implementation are with; (i) the extinguishment of their Aboriginal rights, (ii) the “fact that immense wealth – several billion dollars a year – is being taken of land in Eeyou Astchee ... and that we Crees get no share in the wealth, either in the form of royalties, business opportunities or work” (GCC 1998, 1), and (iii) the failure of both the federal and Quebec governments to fulfill their commitments under the agreement.

Concerning the first issue, at the time of the negotiations both the Federal and Quebec governments viewed the money, land and other rights the Cree and Inuit received as compensation,

*for the **extinguishment** of all aboriginal rights and claims, for renouncing the right to collect royalties or mining duties (past, present and future), and for the forfeiture of the right to block the James Bay hydro development project in the courts.* (Ponting 1991, 196)

The Cree (and the Inuit) do not take the same view. In his report, the former Chief Coon Come described the Cree case as follows,

The Crees have important rights as an Aboriginal people and as residents in Canada and the province of Quebec. These rights exist independently of the Agreement, and are reflected in Canadian law, including the constitution. The Agreement resulted in the Crees entering into a formal relationship with the two governments, and gave special [additional] rights in favour of the Crees (GCC 1998, 2).

The view expressed by the former Grand Chief on behalf of the Cree is not new. The extinguishment provision was controversial among Aboriginal peoples at the time of the negotiation and implementation of the JBNQA and has remained so. Indeed, subsequent land claims negotiations have been marked by increasingly effective efforts by Aboriginal peoples to have extinguishment dropped as a condition of their settlements. These efforts culminated in a 1986 decision by the Federal government to drop its policy “to only negotiate treaties if Aboriginal peoples accepted

extinguishment of their Aboriginal rights and title” (INAC 1996, 1). Instead, the Federal government expressed a willingness to negotiate alternatives to blanket extinguishment and has done so in subsequent agreements.

The second issue, the claim by the Cree “to an ownership and jurisdiction of adequate resources and direct and fair share of the benefit extracted from our traditional lands” (GCC 1998, 3) gave rise to Resolution 18 at the 1997 General Assembly of the Cree. This resolution states that the Crees have,

full ownership, titles, claims and interests in all minerals, trees, waters, and other resources in, under and over traditional Cree territory pursuant to their status as a Nation and distinct people; and that the JBNQA did not and does not completely extinguish all ownership, titles, claims and interests in all minerals, trees, waters, and other resources in, under and over traditional Cree territory; and that the JBNQA does not provide a just, fair and appropriate share to the Crees of these resources. (GCC 1998, 4)

The resolution goes on to mandate the CRA to “enter into discussions with the government of Quebec and Canada and with all developers operating in Cree traditional territory, to provide for the most equitable and just Cree participation in the use of the natural resources referred to above” (GCC 1998, 4). These discussions continue.

Only time will tell if the efforts of the Cree and the Inuit will be successful, but there is reason to be hopeful. The Cree’s view, and the similar view of the Inuit of Nunavik, that their Aboriginal rights’ to their traditional lands and resources should provide them a sound basis for socioeconomic development as a distinct people is consistent with the recommendations of the Royal Commission on Aboriginal Peoples. Their desire to participate equitably in the development of these resources in partnership with others in a manner that is compatible with their traditional pursuits and way of life is consistent with the Aboriginal approach to development as described in Figure 1.

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 Agreement* (IFA) in May 1984. 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 and 78,000 square kilometres 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, from 1984 to 1997, 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 of 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 at least from an economic development perspective, 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.

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 2002, IIC experienced a weaker performance earning \$1.6 million, which was down from \$3.5 million in 2001 (IDC 2002 Annual Report, 30).

The Inuvialuit Development Corporation

The Inuvialuit Development Corporation (IDC) 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). As the business arm of the IRC, the asset base of IDC is presently \$135 million, with revenues exceeding \$163 million in 2004.

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 corporate partners. One of the IDC’s successful joint ventures is a holding company called NorTerra owned in partnership with the Nunasi Corp., representing the Inuit of Nunavut. This augurs well for Inuit and Inuvialuit participation in the much anticipated rebirth of the oil and gas industry. In the Edmonton Journal on June 4, 2003, Gary Lamphier described the anticipated spin-offs of the Mackenzie Valley natural gas pipeline proceeds as follows:

The massive project would, in turn, spur demand for air travel and marine transportation throughout the North -- services NorTerra is ideally positioned to provide through its subsidiaries, Canadian North Airlines and Northern Transportation Co. Ltd. (Lamphier 2003)

These expectations led NorTerra president Carmen Loberg to say, “I hate to make projections. But with the opportunities that are out there, we should be a \$300 million to \$350 million company within five years” (Lamphier 2003). Revenues in 2002 were \$239 million.

The Inuvialuit Petroleum Corporation

The Inuvialuit Petroleum Corporation (IPC) was formed in 1985. The IPC began operations by purchasing shares in two small publicly-traded 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 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. 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 bearing fruit.

Socioeconomic Impact of the Inuvialuit Corporate Group

Together, the companies of the Inuvialuit Corporate Group (ICG) made a considerable contribution to the Inuvialuit people in 2004 and the preceding years. A news release issued by the Board of Directors of the Inuvialuit Regional Corporation (IRC) on April 28, 2005 reported that the ICG had a net income of \$18.5 million in 2004. As a result, a total of \$2,732,760 will be paid to 3,530 beneficiaries. 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 \$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 (Figure 3), the ICG paid out almost \$11 million in wages and salaries to Inuvialuit people, \$627,783 in honorariums, provided student financial support of \$307,858, made payments to elders of \$456,500, distributed \$1.3 million in dividends to beneficiaries, paid \$672,534 to Community Corporations and made around \$800,000 in payments to various community groups and individuals. In total, the ICG provided around \$15.1 million to Inuvialuit individuals, groups and communities, at least \$5.0 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.

As a result of their land claim settlement and their impressive accomplishments since, the dawning of the new millennium saw Inuvialuit well positioned to participate in the petroleum and natural gas development of the north in partnership with corporations and governments as anticipated by Justice Berger. The same is true of two other Aboriginal groups along the proposed pipeline route, the Sahtu and the Gwi’chn, both with now-settled land claims. The fourth major group in the region, the Den Cho, has not yet signed a land claim agreement.

Figure 3: 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	307,858	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	<u>\$15,099,696</u>	<u>\$14,637,456</u>	<u>\$11,600,000</u>

Source: Inuvialuit Regional Corporation. Annual Report, Inuvialuit Corporate Group 2000, 2001 and 2002.

The New Zealand Cases

As with the Canadian case, we will begin with a brief overview of the circumstances leading to the two agreements before looking at the cases themselves.

In the 1830s, the number of European immigrants settling in New Zealand was increasing. It was also during this time that the British Crown sought to establish sovereignty over the country. As a result, the Crown deemed it necessary to negotiate a treaty with the Maori, the country’s native people. In 1840, four Maori chiefs and several English residents at Waitangi in the Bay of Island signed the

Treaty of Waitangi. A further seven copies of the Treaty were circulated around the country to be signed by other chiefs; in the end, however, not all tribes became signatories.

Widespread debate and misinterpretation emerged from the signing of the Treaty, as a Maori version and a European version existed. Certain concepts did not translate well between the languages, particularly those relating to the nature of the land rights being transferred. Consequently, most tribes were dispossessed of much, if not all, of their land, which has contributed to the impoverished Maori conditions of today. The Maori have been fighting for redress almost since the moment the treaty was signed.

In 1975, the *Treaty of Waitangi Act* was signed and the Waitangi Tribunal was established to hear Maori claims for *recent* breaches of the Treaty. An amendment was made in 1985, which allowed for claims to be heard dating back to the original signing of the Treaty. In 1995, the New Zealand government allocated a NZ\$1 billion ‘fiscal envelope’ for the settlement of all treaty claims, in an attempt to acknowledge these past injustices. The decision was intended to restore equality among the Maori and the non-Indigenous population (Paulin, 4). The Tainui and Ngai Tahu Agreements are a direct consequence of these events.

The Tainui Agreement

In 1995, the Tainui, a tribe in the central North Island of New Zealand, and the Government signed the Waikato Tainui Settlement worth NZ\$170 million in compensation for the unjust confiscation of lands. The Deed of Settlement provided for the return of an Air Force base site, the transfer of 35,787 acres from the Crown to the Trust, transfer of accumulated economic rent from forests, reimbursement of NZ\$750,000 for the research and negotiation costs incurred in pursuing the claim, a NZ\$170 million land acquisition fund, 17% share of any total settlement amount for historic claims exceeding NZ\$1 billion, renunciation of claims to lands, minerals, and forests, and recognition

that the settlement does not include the Waikato River, West Coast Harbour or the Maori and Wairoa blocks of land (Buckingham and Dana, 6).

The Tainui tribe has since made investments in areas that have included land, forestry, education, and commercial enterprises. In 1994, the tribe's annual report showed total assets valued at NZ\$7.3 million. In 1998, its assets were reported to be valued at over NZ\$210 million. To manage all of these new assets, The Tainui Maori Trust Board, established by the *Waikato-Maniapota Settlement Act* in 1946, was delegated the responsibility for functions contributing to the economic and social development of the Maori people (Buckingham and Dana, 6). The board consists of the Group Holdings Ltd. and the Waikato Raupatu Lands Trust, each overseeing different corporate entities such as Maori Development Corporation Investment Holdings Ltd., Tainui Corporation Ltd., Tainui Development Ltd., Raukura Waikato Fisheries Ltd., Raukura Maona Fisheries Ltd., and Raukura Australia Pty Ltd. with core business in property, resorts and fishery (Katschner, 10).

Tainui began to experience serious cash flow problems in 2000 and subsequently sold several corporate assets. The Waikato Raupatu Land Trust recorded a net deficit of NZ\$42 million for the year 1999-2000, which was attributed to poorly performing investments and weak leadership. Major corporate restructuring was necessary to improve profitability and consequently the trust's commercial assets were transferred to the tribe's parent company, Tainui Group Holdings Limited (TGHL). In July 2003, TGHL successfully improved the financial performance with a 29% increase from the previous year (Katschner, 11).

Tainui Group Holdings Ltd. was formed in 1998 and its investment portfolio covers the four broad areas of property, fisheries, tourism, and managed funds. The property portfolio has an accumulated asset value of NZ\$140 million. It is segmented into investment and development, comprising a diverse mix of commercial office, retail, industrial, farming, forestry, educational, and residential properties. With respect to fisheries, the Tainui Group has both in-shore and deep-sea

fisheries quotas. Two companies, Raukura Moana Seafoods Ltd., and Raukura Moana Fisheries Ltd., have been charged with managing the assets of the fisheries portfolio. The tourism investments include the Mercure Grand Puka Park Resort at Pauanui and the Novotel Tainui Hotel in Hamilton, which is Waikato's first and only four-star hotel. The company also has interests in rural lands. It manages three farms, which include two dairy units, a beef and a sheep station. The group also owns 26 rural blocks of varying sizes.

In 2003-04, Tainui Group Holdings Ltd. experienced a 90% increase in net profit over the previous year, from NZ\$8.3 million to NZ\$15.8 million. The net operating profit excludes asset realizations that increased by 94% for the year from NZ\$4.7 million to NZ\$9.1 million. The group made a distribution of NZ\$5.45 million to its shareholder, the Waikato Raupatu Lands Trust, which represents the people of Waikato-Tainui. The company's total assets are now NZ\$180 million with no external debt.

The Ngai Tahu Agreement

Beginning in 1848, the Crown made ten major land purchases, totalling 34.5 million acres, from the Ngai Tahu people of the South Island of New Zealand. The Ngai Tahu is the third largest tribe in New Zealand (Paulin, 5) and comprises approximately 5% of the total Maori population (IOG, 21). Under the terms of the Treaty of Waitangi, the Crown had promised to establish hospitals and schools and undertook to set aside 10% of Ngai Tahu land as reserves for tribal economic development. The Crown failed to honour these promises. As a result the Ngai Tahu people were never able to participate in the land-based economy and consequently became an impoverished and landless tribe.

In 1906, the *South Island Landless Natives Act* was passed and as a result 116,000 acres of land were allocated to the tribe, which was equal to 31 acres per listed tribe member. This was not

nearly enough to redress the previous breaches of the treaty. Moreover, the land that was being allocated was unproductive and difficult to access (Paulin, 5).

Negotiations over 'Te Kereme O Ngai Tahu' were first initiated in 1991 and a settlement was finally reached in 1998. Te Kereme O Ngai Tahu was the first comprehensive land claim in the history of the Treaty of Waitangi and the settlement represented the largest land based claim the Waitangi Tribunal has ever considered. The quantum of the settlement package is worth NZ\$170 million.

The Office of Te Runanga O Ngai Tahu was set up by Ngai Tahu and serves as the executive arm, providing corporate services and monitoring functions for both the Ngai Tahu Holding Corporation Limited and the Ngai Tahu Development Corporation. The Development Corporation is responsible for improving the welfare of the tribal members through education, health, and cultural projects and grants. The Holding Corporation is responsible for guarding and increasing the money received in the settlement and to pass the profits onto the Ngai Tahu Development Corporation (Katschner, 11). The money is then used towards education, health, and customary fisheries. The asset base of the Tribe has increased from \$139,000 in 1990 to \$273 million in 2001 (IOG 22). Ngai Tahu is now the second largest landowner in the South Island; the Crown is the largest (IOG, 22).

The Ngai Tahu Holding Corporation Ltd. is the commercial arm of Te Runanga O Ngai Tahu (TRONT) and the wholly owned subsidiary of the Nhai Tahu Charitable Trust. It trades under the name Ngai Tahu Holdings Group. According to the Charter of the TRONT,

the role of the company is to use, on behalf of the Ngai Tahu Charitable Trust, the assets of the Trust allocated to it and "prudently to administer them and its liabilities by operating as a profitable and efficient businesses" (Ngai Tahu Holding Corporation Ltd. website).

The profits that are made by the company can then be used to increase tribal equity, provide returns to the Ngai Tribal Charitable Trust to facilitate current social, cultural and environmental initiatives, and to expand and grow the business for the future.

According to the 2004 Ngai Tahu Holdings Group Annual Report, total assets under management for the Ngai Tahu Holdings Group were NZ\$441 million, which was a growth of 12.7% from the previous year (Ngai Tahu Holding Group, 2005). Over the five years from 1999, total assets grew at an average rate of 10.2% per year. Group revenue increased to NZ\$170 million in 2003-04, up 16.6% over the previous year. Over the five years ending in 2004, revenue increased at an average rate of 24.3% per year. There was an increase in surplus from 1999 to 2004 at an average annual rate of 16.8% per year. For 2003-04, net surplus was NZ\$26.6 million. NZ\$14.7 million of the 2003-04 surplus was distributed to the Trust for social, economic, and environmental initiatives. Over the five years, a total of NZ\$71 million of the Group's surplus was distributed for these purposes.

Ngai Tahu Equities is developing a diversified portfolio that includes investments in managed funds, venture capital, and New Zealand Exchange Ltd. (NZX) equities as well as private equity. In 2003-04, Ngai Tahu Equities' total assets under management were NZ\$49 million and total contribution to the Group's revenue was NZ\$4.0 million. Ngai Tahu Property Ltd. has experienced significant growth since it was first established in 1994. Its asset base has grown from NZ\$5.6 million in 1994 to NZ\$181.5 million in 2004 and in that same year NZ\$47.5 million were added to the Group's total revenue. It is now one of the largest property companies in the South Island of New Zealand.

Ngai Tahu Seafood Ltd. is one of the top six seafood companies operating in the country and supplies both export and domestic markets. As of June 30, 2004, Ngai Tahu Seafood Ltd.'s assets were worth NZ\$113.5 million and consisted of a broad range of investments. It operates a number of processing facilities throughout New Zealand, prepares seafood for its numerous fresh chilled and frozen markets, and owns and operates Pacific Catch, a new retail brand that offers speciality seafood. The Ngai Tahu Seafood's total contribution to the Group's revenue was NZ\$82.3 million.

Ngai Tahu Tourism is the parent company for a collection of subsidiary tourism businesses. The diversity of the businesses include, boating experiences, guided walks, and eco-tourism ventures. In 2003-04, total assets under management were worth NZ\$60.5 million. In addition, Ngai Tourism contributed NZ\$34.6 million to the total revenue of the Ngai Tahu Holdings Group.

The last business subsidiary, Ngai Tribal Services, assists the Runanga (councils) in the pursuit and development of tribal based businesses and investment opportunities. It is designed as a “micro” business unit that consists of three pillars – commercial development unit, Ngai Tahu Finance Limited, and property management. Each micro area is designed to assist Ngai Tahu in establishing a sustainable business enterprise. The total assets under management in 2003-04 were worth NZ\$30.4 million and the contribution to the Group’s revenue was NZ\$1.5 million.

Concluding Comments on the Tainui and the Ngai Settlement Agreements

Control over resources such as land and capital, including human capital, has been a significant outcome of the New Zealand treaty settlement process. The companies that have been started as a result of the Ngai Tahu settlement and the Tainui settlement have contributed to economic development, wealth creation and increased economic growth. According to the New Zealand Office of Treaty Settlements in 2002, the Waikato Raupata Lands Trust and Te Runanga O Ngai Tahu, two of the major corporations in New Zealand, had total assets worth more than NZ\$30 million (Katschner, 10). Business performance outcomes, however, have been quite different for each tribe. The gross profit in 2000 was 14.8% for the Ngai Tahu, whereas for the Tainui it was minus 20.4% (Katschner, 10).

The Ngai Tahu settlement has resulted in better outcomes because of strong negotiation and business management skills. The returns on investments made by the corporations and subsidiary companies of the governing body, Te Runanga O Ngai Tahu, have ensured that the people of the Ngai

Tahu tribe will witness an improvement in their social and economic circumstances. In contrast, The Tainui Tribe has not been as fortunate and has suffered more setbacks. There have been internal rifts within the tribe due to poor investments that have resulted in debt problems and leadership that has been put into question (Buckingham and Dana, 7).

The Ngai Tahu has thus far followed a more professional and accountable way of doing business. The two arms of the Ngai Tahu Charitable Trust ensures that not only is profit made from business investments and ventures but that this profit is redistributed back to the Ngai Tahu people through the Development Corporation. The money is then used to fund education, health and cultural projects to aid socio-economic development for the future (Katschner, 11). According to Ines Katschner, there are several factors that can be viewed as determinants of professional and successful business management of the Ngai Tahu people. First, at least two of the board members of the holding corporation must be experts in a particular industry that the corporation assumes, regardless if they are Ngai Tahu people or not. Secondly, the subsidiary boards need to provide written reports about their activities, which will ensure that they are responsible for the decisions that they make. Lastly, there are financial accountabilities and standards put in place to ensure consistency among the various subsidiaries.

This is unlike the Tainui, who have experienced continual losses in poor investments. Smart investment is imperative to grow the wealth of the group and ensure long-term economic growth and prosperity. In addition, strong management practices emphasising accountability are also important to ensure business growth and longevity. However, the corporate reorganization of the Tainui Group Holdings Ltd. has been a positive step towards profit realization, the ability to reinvest those profits, and distribution of tribal grants for social development.

Conclusion

Now to return to the four questions about land claims and modern treaties in both Canada and New Zealand raised in the introduction. They were:

1. Have comprehensive claims agreements served the purposes of the Indigenous people that signed them?
2. If so, will they continue to do so in the future?
3. If not, what must be done to see that they do?
4. Will and should non-Indigenous people support the land claims and treaty-making process?

A report prepared in 1995 by ARA Consulting for the government of British Columbia summarized the impact of treaties and land claims settlement in Canada, the United States, New Zealand and Australia. The key findings of that report were:

- *In no case has the resolution of land claims brought political or economic chaos ... People adjusted to the new arrangements, political systems adapted, and businesses quickly found new ways of responding to the post-settlement environment.*
- *The business communities in the areas affected by land claims opposed negotiations initially. ... Over time business leaders came around. ... In the post-settlement era, non-Indigenous business capitalized on new opportunities (often in joint venture with aboriginal companies) and discovered a common interest in sustainable, mutually-beneficial economic development.*
- *All the modern treaties have respected and accepted private land holdings and leases. Although Indigenous groups have been forthright in their demand for land and resources, they have in each case accepted the rights of existing property owners.*
- *The most contentious issue surrounding treaty settlements relates to the management of resources. Non-Indigenous fears that final agreements will block access to minerals, timber, fish, wildlife and other resources has, in almost every instance, added fuel to the fires of discontent. ... it is vital that the approaches to resource use and control be fully explained in order to alleviate non-Indigenous concerns about the future of businesses and communities that rely on resource development.*
- *Treaties have provided Indigenous groups with the financial and administrative means to begin charting a new economic future for their people. The establishment of for-profit companies, joint ventures with non-Indigenous corporations, community development schemes, and the like are an integral part of the settlement process and treaty implementation. ... a basis for participating more fully in the broader economy.*
- *Indigenous groups have learned ... that education and training must figure prominently in post-settlement operations.*
- *Underlying the treaty process is a heart-felt desire among the Indigenous people to keep their language and culture strong, to recover from the difficulties of the past, and to interest non-Indigenous people in their heritage. (Coates 1995. 5-6).*

These findings suggest that in general there is reason for optimism. Comprehensive agreements and treaties seem to be having the outcomes expected.

In particular, the agreements seem to be fostering economic development among Aboriginal peoples in Canada and the Maori in New Zealand, often in mutually beneficial alliances with the rest of the population. Certainly the stories of the Makivik Corporation, CREECO, the Inuvialuit Corporate Group, Tainui Group Holdings, and the Ngai Tahu Holdings Group attest to this. However, as successful as these activities have been, they have yet to raise the socio-economic conditions among the affected Aboriginal and Maori groups to anything close to the level of the non-Indigenous peoples of Canada and New Zealand. One very encouraging aspect of the results to date is that in all four cases the progress achieved so far has not eroded the funds received as a result of the agreement. Rather, in all cases the assets have increased at the same time as socioeconomic benefits have been delivered to the people of the communities involved. Where there is progress like this, there is hope.

In closing, the answers to the four questions raised at the beginning of this summary are therefore:

1. Yes; to some extent at least, economic development has followed the signing of the agreements and valuable rights and powers over activities on traditional lands have been gained.
2. The terms of the agreements are evolving, and as they do it seems likely that the Aboriginal people of Canada and the Maori of New Zealand will build on their already considerable success. In particular, the battle to retain the traditional rights rather than lose them through extinguishment appears to have been won.
3. To ensure the ongoing success, Aboriginal peoples and Maori must continue to pursue development on their terms (i.e., the eight characteristics of Aboriginal development as described in Figure 1).
4. It is in the best interests of the non-Aboriginal Canadians and non-Maori New Zealanders to support the land claims and treaty process. As the ARA study found, communication is the key. Non-Aboriginal and non-Maori people need to know about the positive outcomes that have emerged following the implementation of previous settlements. In this respect, corporations, with their annual reporting mechanisms, are an integral part of this process.

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