

# INTEGRATING ENVIRONMENTAL AND SOCIAL SUSTAINABILITY

## *Corporations and Aboriginal People and the Mackenzie Valley Pipeline*

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### 1. INTRODUCTION

Times are changing. Aboriginal peoples are moving from the margins of Canadian society into its mainstream. While much remains to be done, Aboriginal business organizations formed out of comprehensive land claim agreements are leading the way by taking an active role in the market economy. Even more impressive, the Inuvialuit, Sahtu and the Gwich'in, all of whom have settled their land claims, are part of the Aboriginal Pipeline Group (APG) that has a one-third share in the natural gas pipeline associated with the Mackenzie Gas Project. The Mackenzie Gas Project proposes to develop natural gas fields in the Mackenzie Delta and deliver the natural gas to markets through a 1220-kilometre pipeline extending along the Mackenzie Valley to northern Alberta where the pipeline will be connected

to the existing Canadian pipeline system. The Mackenzie Gas Project is touted to transform the economy of the Northwest Territories. In turn, the Aboriginal Pipeline Group provides the business medium for these Aboriginal organizations to benefit from this industrial mega-project.

Forty years ago, such developments were unthinkable. During the Berger Inquiry, one Aboriginal leader after another claimed that a similar industrial project, the 1974 Mackenzie Valley Gas Pipeline Project, would destroy Aboriginal peoples and their culture. However, the *Calder* decision in 1973 marked the beginning of new opportunities for Aboriginal peoples who held Aboriginal title to their ancestral lands. Coming out of the *Calder* decision, Aboriginal title now had a legal status, thus providing a trump card in determining ownership

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This research was funded in part by a grant from the Social Sciences and Humanities Research Council of Canada. This paper builds an earlier paper that appeared in the *International Journal of Small Business and Entrepreneurship* (Anderson, et al. 2004). As a result, much of the early story as it relates to the *Calder* decision, The Berger Inquiry, and Inuvialuit Agreement is the similar, but a great deal of new material has been added that has occurred subsequently, particularly with respect to the Mackenzie Valley Pipeline.

of crown land. Added to that fact, resource corporations now realize that having a partnership with the Original Peoples of the Mackenzie Basin is an advantage to ensuring the approval of industrial projects. Today, Aboriginal leaders, like Nellie Cournoyea, who is the President of the Inuvialuit Regional Corporation and a Director of Aboriginal Pipeline Group, strongly support the Mackenzie Gas Project.

## 2. THEORETICAL FRAMEWORK

How can we understand such a mindset shift by the players in the Mackenzie Gas Project given its place within the global economy? Simply said, the market economy in Canada has evolved, allowing Aboriginal organizations to play a role in resource development which is closely tied to the global economy. We can relate this shift to economic theories. Modernization theory saw economic development taking place within the private sector. Such development was seen as having a positive impact on living standards of people. On the other hand, dependency theory interpreted economic development as having a negative impact on local people. Contingency theory is a modification of modernization theory. Contingency theory recognizes the evolution of the global economy whereby some local people, such as Aboriginal peoples in Canada, are able to participate in economic development and therefore have an opportunity to move from the margins of Canadian society.

A contingency perspective is a relatively new version of modernization theory. In the 20th century, the interpretation of economic development in Third World countries focused on the modernization and dependency perspectives. In retrospect, these two theories of economic development within a capitalist world, though looking at the same events, led to different conclusions. 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, 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 and their government in a developing region. In this vein, Corbridge claims that there has been a powerful trend towards “theories of capitalist development [that]

emphasize contingency ... a new emphasis on human agency and the provisional and highly skilled task of reproducing social relations” (Corbridge, 1989, p. 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, p. 16). This view is certainly consistent with the two contrasting views of Tom Berger on two similar industrial projects, the Mackenzie Valley Pipeline (1977) and the Mackenzie Gas Project (2006). What has changed over 40 years? Profound changes occurred in the socio-environment situation of the Mackenzie Basin, in the role of Aboriginal organizations, and in the position of the players towards involvement in mega industrial projects.

## 3. THE CALDER DECISION AND BEYOND

In its 1973 *Calder* decision, the Supreme Court of Canada recognized that Aboriginal people have an ownership interest in the lands that they and their ancestors have traditionally occupied. In this landmark decision, the Court held that this right had not been extinguished unless it was specifically and knowingly surrendered. Following this decision, the federal government was forced to rethink its position on Aboriginal title. In doing so, the federal government accepted the legal concept of Aboriginal title as outlined by the Supreme Court. Ottawa also created a negotiating structure to settle land claims of lands under Aboriginal title. These two concepts — Aboriginal title and a negotiating structure — are both complex and interrelated.

### (1) The concept of Aboriginal title

The existence of Aboriginal legal rights to lands other than those provided for by treaty or statute is known as Aboriginal title. Until a settlement is reached, these public lands remain under the ownership of the federal and provincial governments. They are legally known as Crown lands.

Aboriginal title is rooted in Aboriginal peoples’ historic “occupation, possession and use” of traditional territories. Aboriginal title is obtained after proof of continued occupancy of the lands in question at the time at which the Crown

**Figure 1.** Recent Supreme Court of Canada Decisions

<i>Case</i>	<i>Date</i>	<i>Outcome</i>
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 The Constitution Act 1982 containing the term 'existing rights' was defined as anything unextinguished.
Delgamuukw	1997	Oral history of Indian people must receive equal weight to historical evidence in land claim legal cases. Commercial development of traditional resource ruled a possibility.
Marshall	1999	Mi'kmaq have the right to catch and sell fish (lobster) to earn a 'moderate living'.

asserted sovereignty. Aboriginal title is held collectively by all members of an Aboriginal nation and decision regarding the use of the land and resources are made collectively. At first, Aboriginal title was restricted to the right to hunt, trap and fish within the traditional subsistence economy. Later, the rights expanded to include certain commercial rights.

But how did this evolution take place? Since 1973, the Supreme Court has ruled on a number of claims by First Nations and, in doing so, the Supreme Court has expanded the definition of Aboriginal title to include commercial rights (Figure 1). In its 1997 decision, *Delgamuukw v British Columbia*, the Supreme Court extended the rights under Aboriginal title to commercial activities. In 1999, the Supreme Court ruling on the *Marshall* case declared that the Mi'kmaq Indians in Nova Scotia had the right to catch and sell fish. While the Supreme Court recognized Aboriginal title, the devil is in the details. Accordingly, the Supreme Court in both the *Delgamuukw* ruling and the *Marshall* decision called for negotiations between the First Nation and the respective government to determine the details of such rights within the existing laws and regulations of Canada and those found in province or territory.

## (2) The concept of a negotiation structure for Indian claims under Aboriginal title

A negotiation structure for Indian claims under Aboriginal title was a necessary outcome of the *Calder* decision. In 1973, Ottawa announced its Comprehensive Claims Policy. This policy acknowledged legality of Aboriginal title and put into place a system for the negotiated settlement of Aboriginal land claims. While this new policy was divided into two broad categories—specific and comprehensive land claims, only comprehensive land claims negotiations applied to Crown lands claimed by Aboriginal peoples. Later, the 1973 Comprehensive Claims Policy was modified to take into consideration Section 35 of the Constitution Act, 1982 that recognizes and affirms Aboriginal and treaty rights now existing or that may be acquired by way of land claim agreements. Since 1973, a series of land claims agreements and treaties have moved the Aboriginal people in Canada a considerable distance toward their goal of control over their traditional lands and resources and resolved the question of extinguishment of Aboriginal rights.

From 1973 to 2006, ten comprehensive claims were settled. They include the James Bay

and Northern Quebec Agreement and the North-eastern Quebec Agreement, the Inuvialuit Final Agreement, the Gwich'in Agreement, the Nunavut Land Claims Agreement, the Council of Yukon Indians Umbrella Agreement (presently encompassing four final agreements), the Sahtu Dene and Metis Agreement, the Nisga'a Final Agreement, the Selkirk First Nation Final Aboriginal Agreement, the Little Salmon/Carmacks Final Agreement, the Tr'ordek Hwech'in Final Agreement, the Ta'an Kwach'an Council Final Agreement, the Tlicho Agreement, the Kluane First Nation Final Agreement, and the Labrador Inuit Land Claims Agreement. Over this same period there has been a change in the government's approach to settling land claims.

Initially, the view was that such rights were an impediment to development and that agreements were essential to remove this impediment. This view was captured in the policy of extinguishment that was central to the early agreements. In 1995, for example, Ottawa agreed to enter into discussions of self-government as part of the comprehensive land claim negotiations.

One of the triggering events that pushed the federal government to change its position on Aboriginal title and land claims negotiations was the Mackenzie Valley Gas Pipeline Proposal and the Berger Inquiry. In the 1970s, the classic struggle between developers and Native peoples took place. This struggle of the 1970s is being replayed some 40 years later—but with a different playing field and a different mix of players.

#### **4. THE MACKENZIE VALLEY GAS PIPELINE PROJECT AND ITS INQUIRY**

The construction of a gas pipeline from Prudhoe Bay on the shores of arctic Alaska to the delta of the Mackenzie River and then up the Mackenzie River valley to Zama, the northern terminal of the national gas pipeline system in Alberta was one of the grand industrial projects of the 20th century. The Canadian part of this grand project was known as The Mackenzie Valley Gas Pipeline Project. In 1968, huge oil deposits were discovered at Prudhoe Bay. Within ten years, oil was flowing from Prudhoe Bay to

the port of Valdez. These huge oil deposits also contained natural gas. While the market for Prudhoe Bay oil was California, its natural gas market was the American Mid-West centred on Chicago. Consequently, a natural gas pipeline was proposed that would connect Prudhoe Bay with Chicago via the Mackenzie Valley. Accordingly, in 1974, a consortium of multinational oil companies (called Arctic Gas) made 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. At the time, most believed that the application would be approved. However, events proved otherwise.

In March 1974, Justice Thomas Berger was appointed to head an inquiry that would consider issues surrounding the pipeline. As the inquiry proceeded, the presentations fell into two camps—those opposed to the project and those favouring the project. Many opposed were local residents who felt that they would bear the social costs of the project, people in Dene communities located along the proposed pipeline route felt threatened by the project. Aboriginal spokespersons saw the project as destroying their culture and leaving their people with few economic benefits and many social costs. Environmental organizations from outside the region saw the pipeline as one more example of industry's attack on the environment. Both groups saw development as a menace and thus viewed development from the dependency perspective. On the other hand, 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, p. 105). They did not deny that the process would have negative impacts on traditional Aboriginal society. In fact, in their view development "required the breakdown and eventual replacements of whatever social forms had existed before" (Usher 1993, p. 104). They agreed that the process would be painful for Aboriginal people, 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,

p. 114). This view was based on the 'colonial' belief that title to all land and resources had passed from Aboriginal people to the Crown. Such a view, while valid prior to the *Calder* decision, remained in play in the minds of the developers and governments until challenged in the Berger Inquiry and the courts.

During the Berger Inquiry, Aboriginal leaders challenged Arctic Gas spokespersons. The Aboriginal argument was that the pipeline project would introduce "massive development with incalculable and irreversible effects like the settlement of the Prairies" (Usher 1993, p. 106). However, unlike the proponents, they did not feel that this was a desirable outcome for Aboriginal residents in the Mackenzie Valley. Instead, they feared the worst for their peoples. The Dene had more power than before for two reasons. First, the Berger Inquiry provided them with a platform to present their views to the Canadian public. Second, the impact of the 1973 *Calder* decision began to penetrate into the inner circles of the Prime Minister's cabinet. These two factors allowed Dene leaders to play their trump card, Aboriginal title to the lands across which the pipeline must proceed.

Within the context of global economic development, Usher made a persuasive argument that had the 1974 pipeline proposal proceeded, it would have had disastrous impacts on Aboriginal peoples and their traditional culture. As one of the principal researchers for Justice Berger, his view mirrors the dependency theory of development:

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, pp. 106-7)

In the context of Aboriginal society and economy in the 1970s, Justice Berger recognized that the Dene of the Mackenzie Valley were not ready to participate and therefore benefit from the project. In fact, great harm might come to their culture. Berger therefore recommended a 10-year delay. By then, the Dene should be

ready for such a massive construction project. Justice Berger put it this way:

Postponement will allow sufficient time for native claims to be settled, and for new programs and new institutions to be established. (Berger 1977, p. xxvii)

Berger's decision ushered in a new era in the relationship between Aboriginal people, the federal government, and corporations that wished to develop resources on traditional Aboriginal lands. A key characteristic of this new era has been the emergence of Aboriginal business development based on financial capacity provided by land claim settlements and by the decision of Aboriginal leaders to participate in the market economy. This shift in attitude towards industrial projects resulted in the formation of the Aboriginal Pipeline Group.

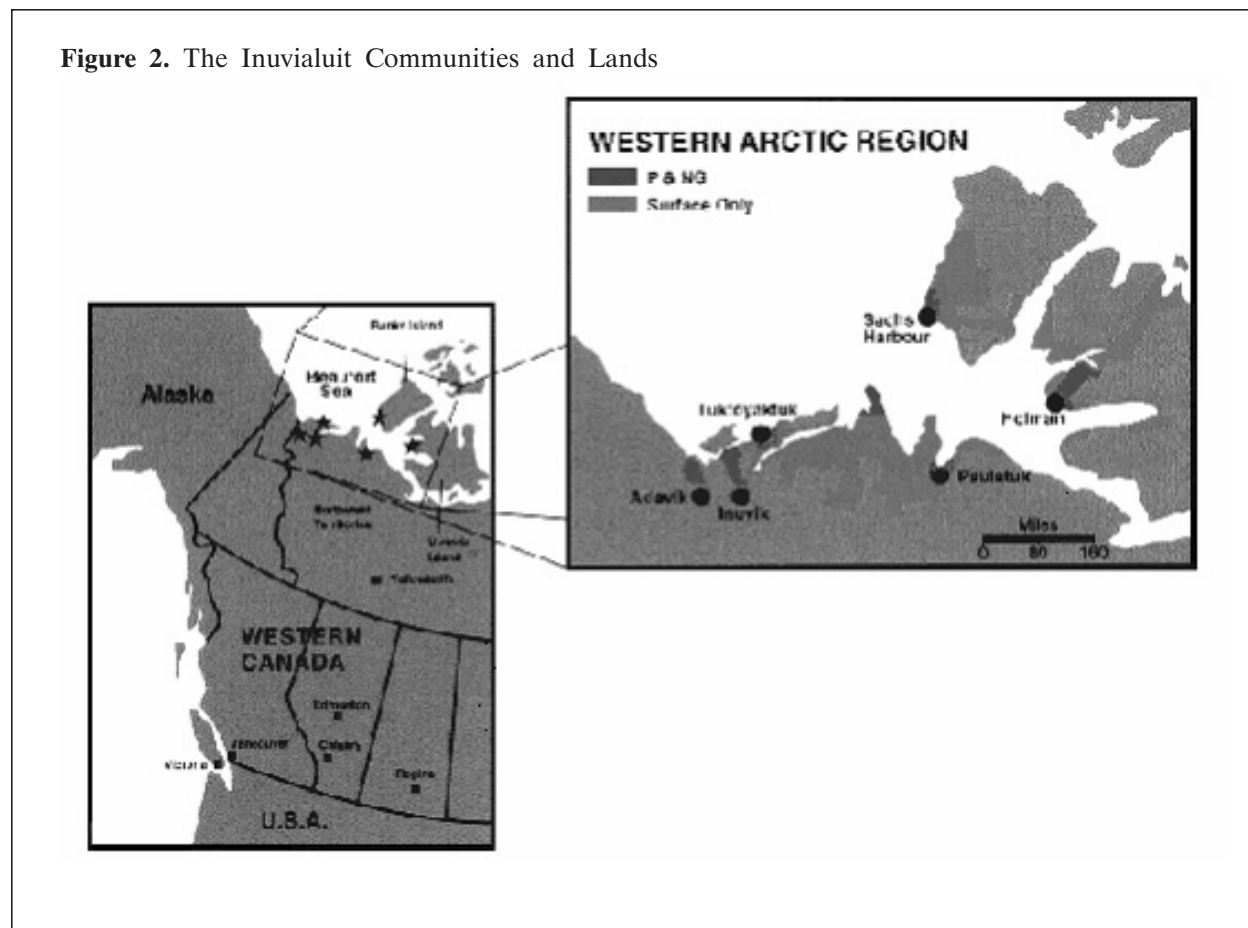
## 5. THE INUVIALUIT LAND CLAIM SETTLEMENT

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). The goal of the Inuvialuit negotiators was to maintain their traditional way of life and, at the same time, venture into the market economy (Bone 2003, p. 193). This dual objective was achieved by the creation of a business sector (the Inuvialuit Regional Corporation) and a wildlife sector (the Inuvialuit Game Council). While our focus is on the Inuvialuit Regional Corporation, it is important to note that the traditional way of life remains vibrant. For example, in 2002, Usher reported that, though the Inuvialuit population had doubled from 1960 to 2000, the harvesting of wildlife for human consumption remained at levels in the 1960s with a value of \$3.35 million (Usher 2002, p. 25).

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 kilometres excluding oil and gas and specified mineral



**Figure 2.** The Inuvialuit Communities and Lands



rights” (Frideres 1993, 118). The Inuvialuit also received \$45 million in cash compensation to be paid out over 13 years (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, p. 4). According to the introduction to the 1997 Annual Report of the Inuvialuit Corporate Group (ICG 1997, p. 4), 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.

The question is—are the Inuvialuit succeeding in the market economy? 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.

### **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 finan-

cial 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, p. 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.

### **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, p. 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, p. 1). While some of its business ran into difficulties and a few failed, most were profitable.

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 successful joint ventures is a holding company called NorTerra owned in partnership with the Nunasi Corp., representing the Inuit of Nunavut. The company leaves both groups well positioned to participate in the much anticipated rebirth of the oil and gas industry. Gary Lamphier writing in the *Edmonton Journal* says

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 projec-

tions. 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 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 northwest 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, p. 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, p. 2).

In 1995, IPC purchased off 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, p. 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 has borne fruit. Indeed, following the announcement by Imperial Oil Resources Ltd., Shell Canada Ltd., Mobil Oil Canada and Gulf Canada Resources Ltd. of the rebirth of the MacKenzie Valley Pipeline project, Aboriginal leaders representing the Inuvialuit, the Sahtu, the Gwich’in and the Deh Cho, met in Fort Laird and Fort Simpson. As a result of these meetings,

the Aboriginal Pipeline Group (APG) was formed in June of 2000. Much more will be said about this and events since later in this paper.

**Socioeconomic Impact of the Inuvialuit Corporate Group**

Together the companies of the Inuvialuit Corporate Group made a considerable contribution to the Inuvialuit people since the settlement. For example, according to the Inuvialuit Regional Corporation Annual Reports, the beneficiaries' equity rose to \$299.3 million in 2004 from \$283.5 million 2003. The ICG (including its business subsidiaries) earned a combined profit of \$18.5 million in 2004 compared to \$15.5 million in 2003. The 2004 profit was earned on revenues of \$199.4 million. Revenues in 2003 were \$170.8 million. Revenues, after tax profit and beneficia-

ries' equity from earlier years are presented in Table 1. The performance over the 10 years between 1995 and 2002 has been impressive, resulting in a 117% increase in beneficiaries' equity. During this same period the ICG also distributed \$11.6 million in dividends to beneficiaries.

Table 2 provides more detail about payments from the ICG companies. In earning its 2002 profits (the latest year for which a full set of figures is available), the ICG paid out at 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 almost \$800,000 in payments to various community groups and individuals. In total, the ICG

**Table 1.** Inuvialuit Corporate Group's Revenue, Profit and Net Assets (\$000)

	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995
Revenue	199,386	170,800	203,982	183,615	277,187	159,188	133,296	146,283	130,285	87,736
Profit	18,499	17,523	3,641	(1,035)	52,464	5,635	7,974	12,581	11,255	(18,496)
Beneficiaries' equity	299,313	283,458	267,545	265,682	269,691	212,474	209,423	211,958	168,553	137,922
Dividends to Beneficiaries	2,347	1,341	1,313	2,702	568	1,195	1,332	820	none	none

Source: Inuvialuit Regional Corporation Annual Reports

**Table 2.** Inuvialuit Corporate Group's Contribution to Communities and Individuals

	2004	2003	2002	2001	2000	1999	1998	1997	1996
Wages and Salaries	n/a	n/a	10,926	9,514	8,977	8,042	6,058	6,158	4,096
Honoraria	n/a	n/a	628	557	527	603	638	526	399
Student Financial Support	366	360	308	283	197	191	207	342	335
Payments to Elders	297	268	457	454	369	397	462	495	756
Dividends to Beneficiaries	2,347	1,341	1,313	2,702	568	1,195	1,332	820	11,618
Community Corporations	679	595	708	777	390	390	390	390	390
Other Payments	n/a	n/a	761	351	577	304	285	146	175
Total	3,689	2,564	15,101	14,638	11,605	11,122	9,372	8,877	6,151

Source: Inuvialuit Regional Corporation Annual Reports



provided almost \$15.1 million to Inuvialuit individuals, groups and communities, at least \$5 million of which was paid to individuals and communities for non-business (i.e. social) purposes. This is a considerable increase over the already impressive \$14.7 million paid out in 2001 and \$11.6 million in 2000. In total, between 1996 and 2004, the ICG gas contributed \$83.1 million dollars to communities and individuals, and this includes only partial figure for the final two years. If salaries in 2003 and 2004 are at least similar to 2002, this amount will rise to well over \$100 million for the nine years. 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, land holdings, and their impressive accomplishments since the dawning of the new millennium, saw the 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, resulting in a far different interplay among the actors and relationships depicted in Figure 1 (our theoretical perspective on Aboriginal communities in the global economy) than was present during the Berger Inquiry. The same is true of two other groups, the Sahtu and the Gwich'in both with settled land claims. The fourth major group in the region, the Deh Cho, have not signed a land claim agreement. As a result, the unfolding relationship and interactions between the Deh Cho and the other actors in the model can be expected to differ from those of the Inuvialuit, Sahtu and the Gwich'in, as well from the relationship that existed in the 1970s.

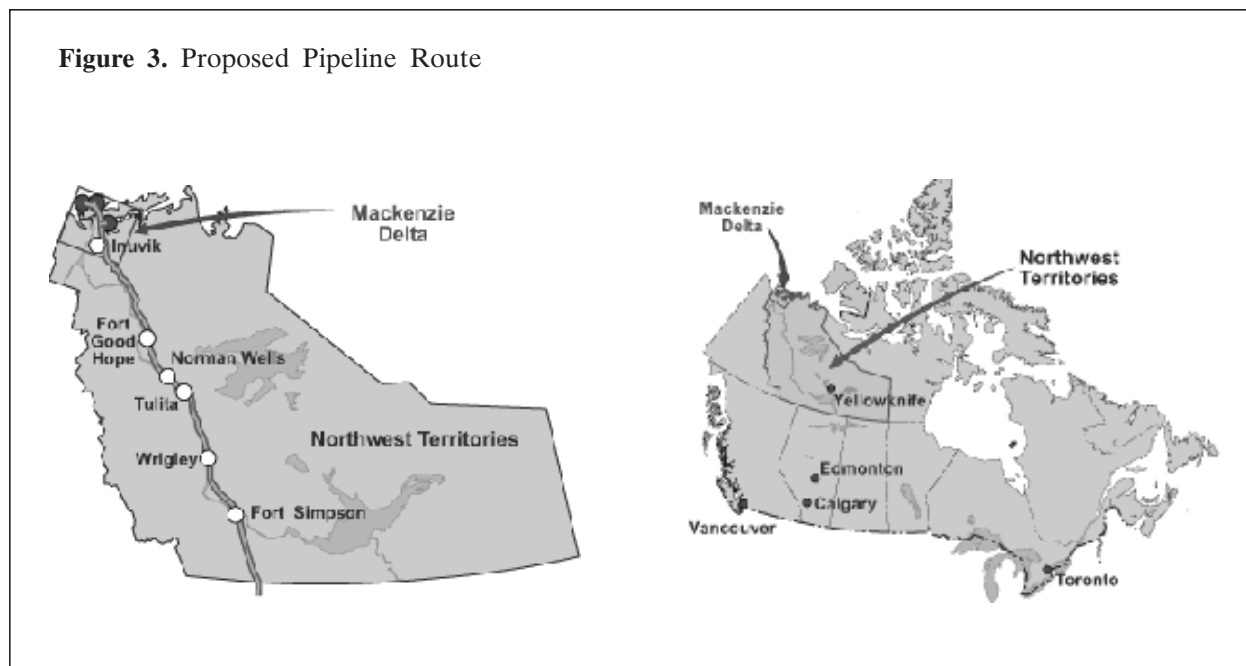
The Inuvialuit Final Agreement saw the Inuvialuit obtain the rights to subsurface resources. These lands and subsurface resources are managed by the Inuvialuit Land Administration. In 2002, the Inuvialuit Land Administration received 54 applications from petroleum exploration companies for use of Inuvialuit lands, resulting in over \$2.4 million revenue. One of these applications involved a geotechnical investigation in preparation for a Mackenzie Valley pipeline (Inuvialuit Regional Corporation: Geotechnic).

## 6. THE MACKENZIE VALLEY PIPELINE, ACT 2

The end of the 20th Century saw a rebirth of interest in the energy resources of northern Canada and Alaska, and a pipeline to bring these resources south to the American market. The reasons were threefold: (i) constantly increasing demand and resulting record-breaking prices; (ii) "technological advances in pipeline construction and drilling have significantly reduced the cost of tapping the resource"; and, most importantly, (iii) the fact that "native land claims—the main stumbling block to the pipeline dreams of the 1970s—have, for the most part, been resolved" (Bergman 2000). The implications of the qualifying phrase "for the most part" will turn out to be significant in the story that unfolds.

Act 2 of the Mackenzie Valley Pipeline saga began in February 2000 when four of Canada's largest energy companies—Imperial Oil Resources Ltd., Shell Canada Ltd., Mobil Oil Canada and Gulf Canada Resources Ltd.—launched a joint study into the feasibility of developing and transporting Mackenzie Delta gas through a pipeline to southern markets. This prompted proponents of an alternative route—Westcoast Energy Inc. and TransCanada PipeLines Ltd.—to announce that they re-evaluating their Foothills Pipe Lines Ltd. Project first proposed in the 1970s that would take Alaskan natural gas southward along the Alaska highway route through the Yukon, British Columbia and Alberta to the United States. With proponents of each, these two routes have been seen as rivals by many, particularly governments and communities, seeking to stay ahead of the other. Interestingly this is not so for corporations involved, notably TransCanada PipeLines Ltd. as they are involved in both projects. In the remainder of this section the focus will be on the Mackenzie Valley route, but it is important to recognize that one of the factors pushing forward the Mackenzie Valley route is the spectre of the competing Alaska Highway route.

Following the announcement by Imperial Oil Resources Ltd., Shell Canada Ltd., Mobil Oil Canada and Gulf Canada Resources Ltd., 30 Aboriginal leaders (representing the Inuvialuit, the Sahtu, the Gwich'in and the Deh Cho) met in Fort Laird and Fort Simpson. As a result of

**Figure 3.** Proposed Pipeline Route

these meetings, the Aboriginal Pipeline Group (APG) was formed in June of 2000. The first three have signed on as full members of the APG, while the Deh Cho have chosen to sit out until they sort out a land claim and self-government initiative with the federal government (Cattaneo 2004).

According to the APG's brochure

The main reason for creating APG was to offer a new model for Aboriginal participation in the developing economy, to maximize ownership and benefits from a proposed Mackenzie Valley pipeline and to support greater independence and self-reliance among Aboriginal people. (APG 2004, p. 1)

In 2000, the APG received \$500,000 from the government of the Northwest Territories to develop a business plan for achieving these ends. They did so. The central feature of the plan is for the group to acquire a one-third equity interest in the pipeline. The full cost for this one-third interest is expected to be \$1-billion.

Negotiations between the APG and the corporations culminated in an agreement announced on June 19, 2004. According to Claudia Cattaneo writing in the *National Post*:

The deal calls for the APG to receive an annual dividend of \$1.8-million for the next 20 years if no new reserves are found and the pipeline carries 800 million cubic feet of natural gas a day, increasing to \$8.1-million after 20 years, when debt is paid off.

If significant reserves are found and the pipeline is built to move, for example, 1.5 billion cubic feet a day, the APG would receive an annual dividend of \$21.2-million, increasing to \$125.8-million after 20 years.

The other major APG goals are to have a say in the way the pipeline is developed, and to have the highest possible aboriginal participation in its construction and operation. (Cattaneo 2004)

While the negotiations went on for almost three years, the corporations never had any objection to the APG becoming a full partner in the project. Indeed the companies actively courted them, considering their participation key to a successful project—so very different than the corporate attitude at the time of the Berger Inquiry. All the parties sought a business-to-business relationship of equals. It was the APG's ability, or rather inability, to finance their

share of the \$250-million cost of the first phase of the project that caused the delay. The group needed to raise \$80-million. Ottawa refused to help APG. So APG turned to the private sector. TransCanada PipeLines Ltd. agreed to loan the APG \$80-million which was to be repaid from pipeline revenues. The way in which the \$80-million was finally secured also serves to further illustrate a fundamental change from the 1970s. TransCanada PipeLines Ltd. a proponent of the Alaska route was and is also a supporter of the Mackenzie Valley route. Gas from the Mackenzie Delta will feed into the company's existing pipeline network, increasing utilization and reducing costs to shippers (Cattaneo and Haggett 2003). The company also has a long-standing and sophisticated interest in, and history of, working with Aboriginal groups as captured by Hope Henderson:

With pipeline and power facilities now within 50 km of more than 150 Aboriginal communities, TransCanada realizes a significant business advantage by nurturing long-term relationships with its "First neighbours." In 2001, a Corporate Aboriginal Relations Policy was adopted, which outlines commitments to employment, business opportunities and educational support through scholarships and work experience. (Henderson 2003)

Consistent with this approach and in its own interest,

TransCanada PipeLines Ltd. will lend the aboriginal group \$80-million so it can pay its share of funding for the project definition phase. The gas producers group, which also includes ConocoPhillips, Shell Canada Ltd. and Exxon Mobil Corp., has agreed to give the pipeline firm an option to buy 5% of their equity stake in the pipeline. (Cattaneo and Haggett 2003)

The agreement negotiated between the APG, the pipeline corporations and TransCanada is another reflection of the changing relationship between Aboriginal communities, corporations and governments in the new economy as captured below:

"We're very excited that this has been done by the private sector and that the corporations have seen that its part of their role to work with the aboriginal

community," said Indian Affairs minister Robert Nault in an interview. "We've been in Washington talking about the Alaska line and arguing that market-distorting subsidies aren't acceptable. This shows that we walk the talk." (Haggett 2003)

At the same time as the Aboriginal Pipeline Group and the corporations were negotiating their agreement, the Deh Cho was seeking a land claim agreement with the federal government. Almost 40% of the proposed pipeline route is on lands claimed by the Deh Cho. Such lands have a legal connotation—Aboriginal title—which means that the developers must deal with the Deh Cho question. The pipeline corporations called on Ottawa to reach a land claims agreement which, the corporation believed, would resolve the pipeline corridor issue. On April 17, 2003, the federal government and the Deh Cho reached an interim Resource Development Agreement that will last for 5 years or until a final land claims agreement is reached. Under the terms of the interim agreement, each year the federal government will set aside on behalf of the Deh Cho a certain percentage of the royalties collected from the Mackenzie Valley. The amount will be paid out to the Deh Cho when a final agreement is concluded. In the interim the Deh Cho will be able to access up 50% of the total each year (maximum \$1,000,000) for economic development. As part of the agreement, 70,000 square miles of Deh Cho claimed lands will be set aside as part of a system of protected areas, while "50 per cent of the 210,000 square kilometres [of] the land with Aboriginal title will remain open to oil, gas and mining development, subject to [the] terms and conditions set out by the aboriginal group" (Canadian Press 2003). Environmental groups praised the deal. The World Wildlife Federation called it a "tremendous achievement." The group has awarded the Deh Cho and the federal government the Gift to the Earth, an international conservation honour for environmental efforts of global significance.

With the interim agreement in place, the pipeline project should move forward to the next stage, environmental review. But such has not been the case. By November of 2003, the Deh Cho were threatening to seek a court injunction to halt the review and approval process "unless the government renegotiates the terms

of the process to include Deh Cho representation. 'Decisions are being made without us. We should be able to have input just like the rest of the regions,' [those with settled land claims] said Keyna Norwegian, chief of the Liidlii Kue band in Fort Simpson" (VanderKlippe 2003). VanderKlippe goes on to say that there is a strongly held belief among the Deh Cho that "protecting traditional areas is more important than using their land to transport Arctic gas. 'We're pretty rich in our own resources,' said Norwegian. 'We can live without the pipeline.'" They have allies among the environmental groups who have serious concerns about the project, including risk to the already threatened Bathhurst caribou herd, the stability of the pipeline in permafrost under conditions of global warming, risk to the 500 rivers that the pipeline must cross, and a general resistance to ongoing reliance on petrochemicals. The dispute remained unresolved as of June 6, 2004 (Weber 2004) when this solution collapsed. The Deh Cho thought they had reached an agreement in May that would give them a seat on the review board. The federal negotiator's view of that agreement differed. His understanding was that the agreement reached examined ways in which the Deh Cho could participate. Chief Norwegian of the Deh Cho accused the regulators of renegeing on an agreement and the impasse continues (Weber 2004).

## 7. THE MACKENZIE VALLEY PIPELINE, ACT 3

On January 25, 2006, the National Energy Board commenced its public hearings into the application of Imperial Oil Resource Ventures Ltd. for permission to construct and operate the Mackenzie Valley Pipeline. The National Energy Board is concerned about the project's economic, safety, and technical issues. Two weeks later, on February 14, a seven-member Joint Review Panel commenced parallel hearings into environmental, socio-economic and cultural issues. The Inuvialuit, Sahtu and the Gwich'in are involved in these hearings, hoping that there will be an early start to construction. As part owners of the proposed gas pipeline, their past efforts established a partnership with the developers succeeded. As owners of the AGP, their

relationship with government has been similar to that of their non-Aboriginal corporate partners, namely a relationship of applicant to regulator.

For the Deh Cho, they wish to be a full partner in the project, but only after their land and other rights have been recognized and entrenched. With little progress on the Deh Cho claim, the Mackenzie Gas Project appeared stalled. However, in April 2003, Ottawa announced the Resource Development Agreement that was designed to bridge the Deh Cho concerns. Thus, the project could reach its first phase, namely the National Energy Board hearings before their land claims are settled. Accordingly, the Deh Cho will receive access to funds each year for economic development projects. In 2005, the agreement provided nearly \$1-million for Deh Cho firms to undertake both large and small economic development projects within the lands claimed by Deh Cho.

## 8. Conclusion

Much has changed over the past forty years. The theoretical framework for interpreting these changes fit best within the contingency theory. The factors supporting the contingency perspective related to the powers now expressed by local forces as opposed to global ones. First, many land claims have been settled. Second, as a result of these settlements, Aboriginal organizations that emerged have elected to engage in the market economy. Third, companies are perfectly prepared — maybe even eager — to have the Aboriginal groups participate as equal equity partners in the Mackenzie Gas Project. Nellie Cournoyea, Chair of the Inuvialuit Regional Corporation, expressed this new business climate as "the biggest change since the 1970s is that the oil and gas industry realizes aboriginal people are an integral part of development, and that they must receive a fair share of resource revenue and have the opportunity to invest directly in pipelines and offshoot businesses" (Bergman 2000). Fred Carmichael, President of the Gwich'in Tribal Council and Chairman of the Aboriginal Pipeline Group summed it all up by saying "We're ready," at the opening of the National Energy Board Hearings (Jarmeko 2006). Fourth, the environmental and social concerns about pipeline development trampling fragile northern environments and Aboriginal set-



lements that, in the 1970s, lacked the strength to protect traditional livelihoods and lifestyles no longer exist. As Thomas Berger stated in his remarks to Edmonton Journal reporter Gordon Jaremko (2006):

The recommendations I made have been carried out. How events unfold in an area as dynamic as the Mackenzie Valley will depend on the people of the Mackenzie Valley. I'm confident they'll decide what's in their best interests.

The shift in relationship between the Aboriginal groups, especially the Inuvialuit, Sahtu and the Gwich'in, and environmental groups deserves attention. Aboriginal groups and environmentalist were strong allies during the Berger days. Now the Inuvialuit, Sahtu and the Gwich'in are proponents of the project. Environmental representatives are not. The position of the Deh Cho is somewhat ambivalent. On the one hand, this First Nation has accepted the interim agreement which permits the Mackenzie Gas Project to proceed to the National Energy Board Hearings. On the other hand, the Deh Cho are still very focused on environment issues as part of their land claim and still seek the environmental groups as allies in their land claim negotiations. As the National Energy Board Hearing proceed, the position of the Deh Cho will be critical. While they are not opposed in principle to economic development, they wish to control such development within the framework of their comprehensive land claim agreement. If the Deh Cho becomes dissatisfied with the Resource Development Agreement, the gas pipeline project could be in trouble.

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