



Hickling Johnston  
Management Consultants

PROCEEDINGS OF THE  
RESOURCE DEVELOPMENT IMPACTS SEMINAR

EDMONTON

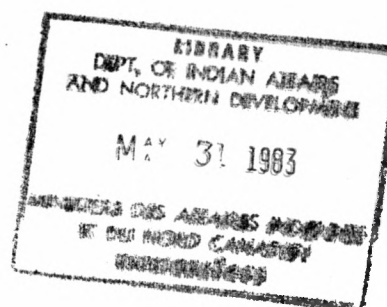
NOVEMBER 3-5, 1981

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## PREFACE

The following report on the proceedings of the Resource Development Impacts Seminar held in Edmonton, November 3-5, 1981, was prepared by Claudia Chowaniec, senior consultant, Hickling-Johnston Limited, Ottawa office, on contract to the Resource Development Impacts Branch, Department of Indian Affairs and Northern Development, Ottawa.

The material on the first day's presentations at the seminar included in this report was prepared by the Resource Development Impacts Branch. Observations and comments with respect to the other days' activities are those of the consultant.

It is hoped that this report will be distributed by the Regional Offices of DIAND to those who attended the seminar to serve as a record for future gatherings of this kind.

An evaluation of the funding allocated in support of the Cold Lake and Alsands intervention processes has been commissioned by the Evaluation Branch, Department of Indian Affairs and Northern Development, Headquarters; the project is expected to be completed by March 1982.

RESOURCE DEVELOPMENT IMPACTS SEMINAR

AGENDA

HOLIDAY INN, EDMONTON

NOVEMBER 3,4,5, 1981

The following is the actual agenda:

November 3, 1981.

- 9:00-9:15 a.m.      Opening Remarks  
Duncan Marshall, Director, Resource Development  
Impacts Branch, DIAND, Ottawa
- 9:15-10:00 a.m.    Method and Criteria used to determine 1981-82  
Allocations and Review of Process to Recommend  
1982-83 Allocations  
Eugene Seymour, Resource Development Impacts,  
DIAND, Ottawa
- 10:00-10:15 a.m.   Coffee
- 10:15-12:00        Treasury Board Terms and Conditions  
Gilles Cormier, Resource Development Impacts,  
DIAND, Ottawa
- 12:00-1:00 p.m.    Lunch
- 1:00-4:30 p.m.     Regional Update on Projects and Activities

November 4, 1981.

- 9:00-11:00 a.m.    The Tar Sands and a Native Development Program  
Syn crude Film and Slide Presentation by Mariella  
Sneddon, Native Development Officer and Merle  
Rudiak, Business Development Officer

November 4, 1981 (cont'd)

11:00-12:30 a.m. Canstar Oil Sands Limited: Project and Policies  
Relating to Native Employment

Canstar Presentation by Ron Wallace, Team  
Leader, and Melva Walsh, Environmental and  
Social Affairs

12:30-2:00 p.m. Lunch

2:00 - 4:30 p.m. The Cold Lake and Alsands Projects Interventions

Presentation by Phillip Ketchum, Federal  
Department of Justice, Edmonton, and Raymond  
Orr, Environmental Protection Service,  
Environment Canada, Edmonton

November 5, 1981.

7:50-8:45 a.m. (Municipal Airport - Flight No. 541) Edmonton to  
Fort McMurray

9:00-10:00 a.m. Bus Transportation to the Syncrude Plant

10:15-11:30 a.m. Tour of the Syncrude Plant

11:30-12:30 p.m. Lunch

12:30-1:30 Return to Fort McMurray

1:30-3:00 p.m. Free time in Fort McMurray

3:45 p.m. (Fort McMurray Airport - Flight No. 544) Fort  
McMurray to Edmonton Municipal Airport

## RESOURCE DEVELOPMENT IMPACTS

## SEMINAR PARTICIPANTS

HOLIDAY INN, EDMONTON, NOVEMBER 3-5, 1981

NAME	ADDRESS	TELEPHONE
Duncan Marshall	Dir. Resource Development Impacts, Ottawa, DIAND	(819) 994-1300
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NAME	ADDRESS	TELEPHONE
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Marnie Clark	Senior Policy Advisor, DIAND Ottawa	(819) 994-2362
Howard McMaster	Saskatchewan Government, Regina	
Gordon Polson	Algonquin Council, Quebec Region	



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Claudia Chowaniec	Consultant, Resource Development Impacts, Ottawa (HJ Limited)	(613) 238-7715
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Melva Walsh	Canstar Oil Sands Ltd., Calgary	(403) 262-8821
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Mariella Sneddon	Synchrude Canada, Fort McMurray	(403) 743-9110
Merle Rudiak	Synchrude Canada, Fort McMurray	
Jim Tobacco	Grand Rapids, Manitoba	
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Charles Pareault	Treaty No. 3, Kenmore, Ontario	
David Daniels,	Consultant, DOTC, Winnipeg, Man.	
Mel Tait	Port Simpson Band Council, Port Simpson, B.C.	
Jim Dalglish	Meadow Lake District Chiefs, Meadow Lake, Sask.	
Lawrence Courteoreille	Former Chairman, Athabasca Tribal Council (unable to attend)	

## RESOURCE DEVELOPMENT IMPACTS SEMINAR

### SEMINAR NOTES

Day 1 - November 3, 1981

Chairman: Duncan Marshall, Director, Resource Development Impacts Branch, DIAND, Ottawa

#### Funding Distribution of Fiscal Year 1981/82 Budget

Allocation of \$2.0 Million:

Regional Concerns with Allocations made to  
October, 1981

9:15 - 10:00 a.m. Presentation by Eugene Seymour, Resource Development Impacts Branch, DIAND, Ottawa.

The \$2.0 million allocation was distributed without the direct involvement of the regional offices. A process for the allocation of the potential \$3.0 million budget for 1982/83 must be planned to allow greater participation by the regional offices.

#### BRITISH COLUMBIA REGION

- The capacity of the Indian group to receive funds should be taken into consideration when making funding distributions for resource development impact activities.

#### ALBERTA REGION

- Priority funding should be given to projects already on stream.
- Initial progress reports scheduled to be completed in January 1, 1982 should consist simply of the contribution agreements signed by the regional offices and the Indian groups.
- Summary reports from the Indian recipients should be made prior to the end of March, 1982.

#### SASKATCHEWAN REGION

- Summary reports from Indian recipients who are undertaking new projects should not be compulsory by the end of March, 1982.

- The distribution of fiscal year 1982/83 funding should be based on a weighting system developed by the regional operations of the department as opposed to a system developed by Treasury Board.

#### MANITOBA REGION

- The weighting system utilized to distribute funding should not be a strict numerical weighting but should take into consideration subject matters that are clearly identifiable parameters of resource development projects.

#### CONCLUSIONS AND RECOMMENDATIONS:

- I Course of Action for the Distribution of fiscal year 1982/83 budget allocation of \$3.0 Million:
  - 1) Headquarters will solicit in writing input from all regions on any and all concerns with the methodology of distributing funding.
  - 2) Headquarters will convene a working group of regional representatives which will meet in mid-January, 1982, for the purpose of compiling a process for distributing funding allocations for fiscal year 1982/83.
  - 3) Headquarters will host a national workshop with all regional representatives in early March, 1982, prior to distributing the 1982-83 funding allocation. Suggestions and recommendations developed by the regional working group in mid-January, 1982, will be reviewed.
- II Matters Requiring Clarification:
  - 1) The exact limits of financial authority of regional operations and headquarters operations for distributing resource development impact, planning and organizational support funds.
  - 2) The exact amount of monies that will be taken into consideration when determining the Treasury Board total contribution limit of \$3000,000.00 per resource

development project. Does this limit apply to the total of all contributions funds allocated by the Resource Development Impacts Branch, or does this limit take into consideration all monies received by an Indian group under contributions agreements with the department?

- 3) The exact procedures of project final approvals and cash flow of funding from Headquarters to Regions to Indian groups.
- 4) The methodologies that will be applied to financially audit funds made available from the resource development impact allocations.

**Treasury Board  
Terms and Conditions**

10:15 - 12:00 a.m. Presentation by Gilles Cormier, Resource Development Impacts Branch, DIAND, Ottawa

**PROGRAM:**

Contributions to Indian Bands, Settlements, Corporations, or their legal entities, to enable them to respond to the impacts of major resource developments, for the remaining period of fiscal year 1981-82 and fiscal year 1982-83.

**CLASS OF RECIPIENTS:**

Indian Bands, Settlements, Corporations or their legal entities.

**DELEGATED AUTHORITIES:**

- a) Authority to sign contribution arrangements will be granted to the following organizational positions: Deputy Minister; Senior Assistant Deputy Minister, Finance and Professional Services; Assistant Deputy Minister, I&I Program; Regional Directors General; Regional Directors (Yukon and NWT).
- b) Authority to sign contribution arrangements, the value of which exceeds \$50,000 per annum, will be granted to organizational positions at or above the Assistant Deputy Minister, I&I Program.
- c) Authority to approve payments by certifying that they are in accordance with the contribution arrangement will be granted to Departmental Officers not lower than that of project officer or above as detailed in the delegation of signing authorities document; the maximum dollar limit would be the total value of the contribution arrangement.
- d) Departmental officers will continually review progress, demonstrated capability and results achieved in light of Departmental objectives; future funding decisions will take into account the success of previous undertakings.
- e) In every instance, the contribution arrangement must be countersigned at the appropriate level by one of the following financial officers: Director, Departmental Accounting Operations; Chief, General Accounting and Internal Control; Regional Directors of Finance; Regional Managers, Accounting Operations.

- f) The Department will have the authority to sign contribution arrangements with an Indian Band, Settlement, Corporation or their legal entities, up to an aggregate amount of \$300,000 without requiring Treasury Board approval. Treasury Board approval is required where the aggregate amount of the contribution arrangements to any one Indian Band, Settlement, Corporation or their legal entities exceeds \$300,000 in any one fiscal year.\*

#### REVIEW PROCEDURE:

Prior to approving a contribution arrangement, Regions and Districts will ensure that the funds requested relate specifically to planning and organization in order to respond to major resource development project impacts.

- the inclusion of items such as consultant fees in a contribution arrangement must be backed up with a statement of exactly what is to be provided;
- other contribution arrangements that have been funded must be taken into account;
- contribution arrangements/proposals must be scrutinized to ensure that the objectives to be achieved are clearly indicated. Care will be taken to weigh items such as honoraria, meeting expenses, capital expenditures, etc., against the objectives i.e. that there is a balanced relationship between such items and others. Care should be taken to eliminate items not related to resource development impacts planning and organization, such items would be alcohol rehabilitation, tourist/recreational developments and other items which would fall under other programs such as social and economic development;
- funding from other sources such as other federal departments, private industry, province/territory, etc., must be taken into consideration;
- that consideration is given to the needs of the Band(s) with respect to the Band(s) own resources to effectively deal with the impacts of resource development.

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\*\$300,000 limit to apply to Resource Development funding only.

The following will be included in a contribution arrangement:

- recipient(s) must be clearly identified;
- a clear statement of the purpose and objectives for which the funding is sought;
- an operational plan that details the planned physical accomplishments for the provision of the service or activity;
- a financial expenditure plan that details the anticipated annual expenditure requirements. This will include a breakdown of projected expenditures by the month;
- where a fee for consultant is included, this must be backed up with a statement of what is to be provided;
- an accountable advance for an initial three month period may be issued for approved and signed contribution arrangements;
- thereafter monthly payments will be issued subject to approved financial statements and progress reports except where the department is satisfied that a longer subsequent period is required, to a maximum of three months;
- final payment may be withheld if the required reports/statements are lacking;
- where non-allowable expenditures have been reimbursed it shall be understood that consideration will be given to recovering that amount from future contribution arrangements being entered into;
- Band Council Resolutions (BCR's) must be provided with all contribution arrangements where an Indian organization is to act on behalf of Indian Bands.

**AUDIT:**

A description of required audit arrangements in accordance with TB requirements will be forwarded shortly.



## EVALUATION:

To assess the effectiveness in meeting the objectives of Indian involvement in major resource development the following general outline will be used.

Program Component: whether access to opportunities such as employment, business ventures, revenue sharing, equity participation, etc., which would include short and long term job training opportunities, Band profiles, skills inventories, community awareness, meetings/negotiations with developers/provinces, etc. is enhanced.

Organization and Resources: whether financial assistance, advice and guidance in conjunction with the appropriate regional office, to Indian people to enable them to respond to the positive and negative aspects of resource development projects.

Principal Outputs: whether long and short term employment is available for Indian people and affirmative action agreements negotiated; whether business opportunities are made available; whether compensation for adverse effects is negotiated; whether specific socio-economic problems arising as a result of resource development projects are identified.

Objectives: whether in the long term there are:

- enhanced employment/training opportunities
- enhanced business opportunities.

Whether negative aspects are minimized i.e. terrain damage, water/air pollution, loss of hunting/trapping areas.

Whether in the short term there are:

- land use studies, etc., completed;
- Indian awareness of the resource development project;
- gathering of baseline data in order to be able to measure subsequent impacts.

Whether band/community profiles are undertaken;

Whether plans of action are set out, etc.



DURATION:

These Terms and Conditions are interim and expire on March 31, 1983 or an earlier date on which a submission relating to Terms and Conditions for comprehensive contribution arrangements is approved.

**Regional Update on Major Resource  
Development Projects and Activities**

1:00 - 4:30 p.m.      Presentations by representatives of DIAND  
Regional Offices

**BRITISH COLUMBIA REGION**

- The major resource development projects in British Columbia consist of mining, hydro and shipping facility developments.
- The major resource development activities in northern British Columbia are beginning to accelerate.

**ALBERTA REGION**

- The tar sand developments in northern Alberta are beginning to accelerate and are of a megaproject dimension.
- Major hydro developments are being considered in southern Alberta.

**SASKATCHEWAN REGION**

- Uranium developments in northern Saskatchewan are beginning to accelerate.
- Tar sand developments in Alberta and Saskatchewan and heavy oil developments in central Saskatchewan are being considered.
- Potash mining developments in southern Saskatchewan are presently under way and will be expanded.

**MANITOBA REGION**

- Coal and gold mining developments are being considered in northern Ontario, along with the development of thermal hydro projects.
- Uranium refinery developments in central Ontario are being made.
- Oil and gas exploration is being accelerated in the James Bay area.

- Ontario Provincial Government is considering a comprehensive land use plan for development in northern Ontario.
- Chemical pollution for resource developments is having an impact on Indian communities in southern Ontario.
- Indian cottage developments in north western Ontario are having an impact on the non-Indian communities.

#### QUEBEC REGION

- The Indians affected by the James Bay Hydro development agreement are having extreme difficulty in making the Provincial and Federal Governments fulfill their obligations under the terms of the Agreement.
- The James Bay Cree Indians are undertaking resource development activities on their lands designated under the terms of the James Bay Agreement.
- Other hydro developments are being considered by the Provincial Government along the north shore of the St. Lawrence.

#### ATLANTIC REGION

- The Federal Government has provided the Sysco steel mill, a provincial crown corporation in Sydney, Nova Scotia, with additional funding to continue operations and the Indian communities of the area are seeking employment opportunities.
- The Maritime-Quebec pipeline is being considered across northern New Brunswick and across central Nova Scotia.

## RESOURCE DEVELOPMENT IMPACTS SEMINAR

### SEMINAR NOTES

Day 2 - November 4, 1981

Chairman for the Morning Session: Fred Jobin, Intergovernmental Affairs, Alberta Region, DIAND.

#### The Tar Sands and a Native Development Program

9-11 a.m.      Presentation by Syncrude Canada Limited  
Mariella Sneddon, Native Employment Officer  
Merle Rudiak, Business Development Officer  
Syncrude Office, Fort McMurray (403-743-9110)

The presentation by Syncrude focused on the nature and scope of the corporation's Native Development Program. The program was established for the purpose of extending native opportunities for employment in both the construction and operation phases of the Syncrude Tar Sands project at Mildred Lake near Fort McMurray.

As early as 1973, Syncrude senior management, headed up by the late Frank Spragins, then president of the corporation, had committed itself to the initiation of a native employment program. A position paper, entitled "Employment of Residents of Northeastern Alberta", prepared under the president's guidance, laid out the following objectives for an employment program:<sup>1</sup>

- .      to increase the number of native employees,
- .      to improve retention and stability rates,
- .      to stress development of the quality and skills of the workforce,
- .      to encourage and equip individual natives and entire communities to benefit from resource development.

1. Marnie Clarke, "Native Development Program: Syncrude Canada Limited". December 1981.

An Action Plan for Native Training and Counselling Programs was developed in 1975 under the direction of Syncrude's Community Relations group. This document formed the basis for the Syncrude Indian Opportunities Agreement which was signed in 1976 by the federal Department of Indian Affairs and Northern Development and the Indian Association of Alberta. The policy agreement included measures to improve the training, recruitment, employment, and promotion of Indian people in all of Alberta, and to encourage and assist the development of Indian businesses in obtaining contracts with Syncrude in the Fort McMurray area. Implementation of the terms of the agreement is the responsibility of the Native Employment/Community Relations Department. The Manager of the department reports to the Senior Vice-President of Operations. The three parties to the Agreement are supposed to meet every three months to discuss its implementation and how it might be improved.

This Agreement was one of the earliest of its kind; while imperfect in many respects it has served to some extent as a model for subsequent agreements.

Details of the program are contained in the pamphlet Syncrude's Native-Employment-Program; a number of more up to date figures were included in the presentation.

Approximately 200 natives, of which 77 are Treaty Indians, are employed by Syncrude out a total of 3,500 employees and 2,000 - 3,000 contract workers. In terms of actual numbers of native employees, the figure has remained more or less constant at about 200 since 1979. A Syncrude projection of the number of native workers by 1984 predicts an increase to 375, but there seem to be no planned changes in program delivery designed to achieve this figure, which is almost double the current native employment figure. The corporation's reluctance to set quotas for the hiring of native employees is based on Syncrude's stated aim to create careers rather than short-term job opportunities for natives:

"Syncrude... had two major objectives for the native employment program. The first was to maximize opportunities for native employment and to steadily increase the number of native employees in the company. This objective was not to be considered in terms of numbers only. New native employees were to be given the opportunity for careers with the organization, not just a job which offered no further development."<sup>1</sup>

1. Syncrude's Native Employment Program, 1980.

The Indian communities that will feel the primary effects of the Cold Lake and Al sands developments have attempted to establish more substantive employment goals in negotiations with the corporations. The draft agreement<sup>1</sup> put together by the Tribal Council Association sets out specific figures for both training and hiring of Indians and includes plans for a management training program. The time frame within which program goals are to be met is defined.

The Syncrude program itself is a multi-faceted one, which claims to emphasize the hiring of a stable workforce, that is, the achievement of a low native employee turnover rate, instead of "playing the numbers game", by which a quota for hiring native employees would be set.

Programs within the Native Employment Program include:

- . letter of intent to hire
- . rotation program - overburden removal project  
- tailings pond project
- . mine trainee program
- . secretarial training program
- . labour pool
- . summer student program

Job and family counselling services and a cross-cultural course are provided by the Community Relations and Northern Employment Branch of Syncrude which is responsible for administering the training programs.

In addition to these on-site programs and services Syncrude has developed a number of external programs:

1. Included in the material comprising the presentation to the ERCB from the Tribal Council Association, May 1979.

- (a) School-visits: Career counsellors visit schools in the native communities of northeastern Alberta on a regular basis to speak of career opportunities at Syncrude and elsewhere in the province.
- (b) Student awards-program: Encouragement is offered to students in Grades 9 and 10 to continue schooling, if necessary, outside the community.
- (c) Scholarship-fund: Financial support is available for tuition and books for up to 4 years.
- (d) Community workshops: Syncrude Native Employment Program staff speak to community members about how to apply for work at Syncrude, the qualifications required, and how the change in lifestyle is likely to affect individuals and families.

# WHERE THE NATIVE PEOPLE WORK AT THE SYNCRUDE SITE

AREA OF ACTIVITY	TOTAL NO. OF NATIVES	NO. OF TREATY INDIANS
Mine Area - "cat" operator, bucket wheel reclaimer, drag line operator. Natives are participating in a 4 year trainee program. Special operator training is begun in the 3rd year.	72	24
Mine Mobile Area - cleaning heavy equipment	9	6
Mine Maintenance - heavy duty mechanics, welders	12	4
Upgrading Maintenance - refinery area, pipefitters, instrument mechanics, millwrights	15	1
Process Operators - refinery area, control room	2	
Lab Technicians	2	1
Administration - secretarial staff	28	11
Native Employment Program staff.	4	
General Workers - take soil samples	6	
Secretarial Trainees	3	2
Overburden Rotation Program	6	3



ACTIVITY	TOTAL NO. OF NATIVES	NO. OF TREATY INDIANS
Tailings Pond Rotation Program	24 <sup>1</sup>	16
Extraction	5	
Essential Maintenance Area-carpenters, road maintenance	14	3
Employee Services - laundry, dry cleaning, mending	13	6
Conservation Department - greenhouse	<u>2</u>	<u>      </u>
	217	77

1. This is a seasonal rotation program; employees work six months of the year but receive benefits on a full year basis.

## AVERAGE PAY 1981

LEVEL	PAY
Trainee A	\$1,700/mo.
Secretarial Trainees	\$1,200/mo.
Mine Worker, Welder top rate, pre-supervisory level	\$2,300-\$2,400/mo. plus overtime
Summer Student	\$1,200/mo.

In addition to the Native Training Program, Syncrude states that it encourages the maximization of business opportunities for natives resulting from mining spin-off activities. The Business Development Officer is responsible for liaising with Syncrude and native contractors in order to advise native communities of potential business opportunities and provide information on Syncrude's contracting procedures.

Since Syncrude opened in 1978, 30 contracts have been negotiated with 10 native businesses, of which 5 were new. The most significant is a 5 year contract with the Goodfish Band for the provision of laundry, dry cleaning and mending services for the plant. Another group administers a labour pool comprising 38 natives who handle sulphur loading and blocking, which is a by product of the refinery process and shipped on a daily basis.

Native persons invited to bid on a contract must have the equipment needed to carry out the service being contracted and must be a viable business enterprise. Syncrude emphasizes it is not a charitable organization; all contractors must be able to compete in an open market and meet the obligations of the contract. The corporation is, however, prepared to offer advice in the preparation of a proposal.

#### GROUP DISCUSSION

Asked the question of whether Syncrude was prepared to help new companies not yet bondable get started, the response offered was that the corporation had no specific program to deal with this problem and tends to deal only with bonded companies.

A brief discussion followed on the nature of the Syncrude Agreement which sets out no quantifiable goals for hiring native workers as compared with the Amok-Cluff Lake Agreement signed with the Saskatchewan Government which does set out employment quotas based on the actual number of natives available for work, and which has already more than achieved its goals of a fifty percent northern work force.<sup>1</sup>

Syncrude reiterated that it was not in the "numbers game" and had no active hiring program based on a top management annual goal setting exercise.

In response to a question on management training programs, Syncrude does not at present offer such a program.

Questions were also asked about Syncrude's support to native and Indian business development. The reply given was that 32 contracts had been issued to the end of 1980. Native business contracts from 1977 to December 1980 totalled \$4,108,759.<sup>2</sup> This figure includes a \$2,000,000 dry cleaning contract as well as sulphur blocking, installation of barrier gates, road clearing, tree planting, installation of guard rails, overburden removal, and landscaping. In addition Syncrude provides funding to the Indian Oil Sands Economic Development Corporation and the Indian Oil Sands Equity Foundation.

1. Amok-Cluff Lake Project: Northern Employment Program pamphlet.

2. Marnie Clark, Ibid.

## Canstar Oil Sands Ltd.

### Project and Policies Relating to Native Employment

11-12:30 - Presentation by Ron Wallace, Team Leader  
and Melva Walsh, Environmental and Social Affairs,  
Canstar Oil Sands Ltd.

The Canstar Project is still in its early development stages. It is the first all Canadian project, joint ventured by NOVA and PetroCanada. It has made a commitment to provide for 10 percent equity participation in the corporation by Alberta's natives and Indians. The details of such an arrangement have yet to be worked out. However, this will provide an opportunity for Indian and native involvement through policy participation and revenue sharing in the development of a project that will be an important long-term economic influence on the Indian and native communities to be affected.

Canstar is currently planning its native training and employment program and is in a position to learn from other corporations' successes and failures. More importantly, it provides an opportunity for native peoples with experience of the effectiveness of other corporate programs such as Syncrude's, to lobby for specific program goals to be included in any agreement signed by government and Indian and native groups with the corporation. In particular, issues such as management training programs and hiring and training quotas can be negotiated while the policy and programs are still in their inception.

As would seem to be indicated by the document Canstar presented at the Resource Development Impacts Seminar, Proposed Oil Sands Project and Policies Relating to Native Involvement, project proposals are still at the strategic planning stage. Corporate objectives are generally phrased and do not explicitly refer to native employment and training goals. This may provide an opportunity for northeastern Alberta Indian and native communities to be affected by the project to sit down with Canstar now and obtain agreement on specific corporate objectives prior to the potentially adversarial confrontation which may occur at future ERCB hearings scheduled for December 1982.

Canstar stated that a general corporate objective involved a philosophy of native involvement; public participation of the Indian communities implicated should therefore be a part of the planning process. Some suggestions were offered to initiate the process of public participation: workshops, identification of needs and issues, establishment of a Citizens' Advisory Council, funding of community self-studies, and establishment of a regular channel of communication with the community. A Community Impact Coordinator might be identified to be responsible for setting up business and employment programs and, in particular, for establishing mitigative measures.

### Summary of Morning Session Seminar Presentations

Synchrude's presentation would seem to reflect what is and has been historically the corporate style of dealing with the likely affect of a major resource development on the lifestyle of neighbouring communities and on the environment. Canstar's situation provides a glimpse of what might be the corporate response if corporate, government and native interests can be brought to the bargaining table in a mood of open discussion and compromise. The time to begin such a dialogue is now while the corporation is in its planning phase and there is still time for bargaining.

The point was made that Alberta's Guidelines for Environmental Assessment Procedures do not have the force of law. Here is an area where DIAND and Alberta Indian and native organizations might lobby the provincial government to establish and enforce more stringent standards.

Canstar suggested it would be prepared to provide funding to Indian communities to carry out their own socio-economic studies, labour force surveys, and environmental assessment and monitoring. The offer should be considered. If the ERCB hearings are to be held in December 1982, time and money will be required for collection of material and preparation of reports on socio-economic and environmental concerns as well as recommendations for mitigative measures.

The Athabasca Tribal Council and local Indian and native communities to be affected have not yet officially stated their position vis à vis the project. The communities are waiting to see what the corporation and government will do before they take a final stand. Perhaps it is time for them to develop their own strategy built upon all the issues that may affect them in the context of resource development from which they can actively negotiate with both government and corporate interests. As knowledge and experience is gained an active as opposed to a reactive stance is a stronger position from which to negotiate.

There is, in particular, Canstar's promise to offer 10% of its shareholdings for native and Indian equity participation in the corporation. This is an opportunity to establish some basic principles of Indian and native equity ownership which may ultimately serve as a model for other projects of this kind. It is an idea to be explored fully while the corporation is still in its planning phase.

## RESOURCE DEVELOPMENT IMPACTS SEMINAR

Chairman for the Afternoon Session: Richard Price, Director, Long Range Planning and Liaison, Alberta Region, Department of Indian Affairs and Northern Development

Panel: Phillip Ketchum, Federal Department of Justice, Edmonton, and Raymond Orr, Director, Environmental Protection Service, Environment Canada, Edmonton.  
(Unfortunately Laurence Courteoreille, former Chairman of the Athabasca Tribal Council, was unable to attend.)

### Department of Indian Affairs and Northern Development:

#### The Cold Lake and Alsands Intervention Processes

The discussion which follows focuses on the chronology of events relating to the Cold Lake and Alsands interventions as it has unfolded to date. The events are recorded here in order that the experiences recounted may serve to guide in some way future intervention processes, though it must be remembered as well that each situation has its own peculiarities.

At the beginning it must be stated that the Alberta Regional Office of DIAND's intervention in 1978-79 in support of Indian bands concerned with the impacts of these two major resource development projects is unique.

In the fall of 1978, Joe Dion, then President of the Indian Association of Alberta, toured the reserves of northeastern Alberta to discover the nature of the concerns Indian and native communities had. Not only were the positive benefits of job opportunities of interest, but there was great concern expressed about the environmental impacts that would be felt.

Dion asked Dave Nicholson, then Regional Director General, Indian and Inuit Affairs, Alberta Region, to get involved. DIAND reviewed the socio-economic impact assessment statements prepared by Esso and Environment Canada was requested to review Esso Resources Preliminary Environmental Impact Statement. On the basis of these reviews it was decided jointly that the Tribal Council Association would ask Canada to file an intervention at the regulatory hearing.



After receiving clearance at the ministerial level, the first intervention by DIAND occurred at the Alberta Energy Resources Conservation Board hearing in December 1978. The Department of Justice was requested to help in presenting evidence. This first hearing was a controversial one, neither side had had any previous experience. From the beginning, however, the Tribal Chiefs Association, who were representing the position of the Indian and native communities to be affected by the project, stressed the need for a written agreement for jobs with Esso clearly stating training and employment goals.<sup>1</sup>

During the December 1978 ERCB hearing, Environment Canada discovered that data that had been accepted by the Board on pollution levels in the Beaver River had been inaccurately filed by Esso. Environment Canada requested permission to speak again at the hearings in order to challenge the figures, but was at first denied the opportunity to introduce an objection to previously presented information. The ERCB Act, however, requires the Board to "fully hear" all cases. Thus DIAND at the request of the TCA chiefs forced the ERCB to reopen its hearings in May, 1979, on the issue of this legal technicality.

The Alsands hearings which followed proceeded more smoothly. Lessons had been learned from the Cold Lake experience. More time was available and parties worked together more closely. The critiques of the socio-economic and environmental impact statements that had been prepared by Alsands and filed with the Board were presented together. In June 1979, the 5 Bands represented by the Athabasca Tribal Council spent one day at the ERCB presenting their case in their native Cree and Chipewyan tongues. The loss of traditional hunting grounds was a major concern. However, from the outset native employment was the principal issue.

Environment Canada, Alberta Region, was an important player in these proceedings. Before receiving a formal request from DIAND, Environment Canada had had little formal involvement in the Cold Lake and Alsands developments. The Department had, however, provided funding to the province to carry out environmental research in the area through the Alberta Oil Sands Environmental Research Program.

1. Tribal Chiefs Association Presentation, May 1979.



In the fall of 1978, Duncan Marshall and Richard Price, from the Alberta Regional Office of DIAND, had approached Raymond Orr in the Edmonton office of Environment Canada for advice and information. The available documents were reviewed and a report prepared enumerating where environmental problems might occur. When DIAND made its presentations to the ERCB, Environment Canada was there in support.

The federal Department of Justice and Phillip Ketchum, Her Majesty's Council for Canada, also played a leading role in the Cold Lake and Alsands intervention processes. Although Alberta questioned the federal Department of Justice's presence, the issue of federal jurisdiction over federal lands -the Indian reservations that would suffer the impact of the development, unquestionably gave Justice the right to present a case.

By the time of the Alsands hearings the issue of who had the right to present a case at the ERCB in opposition to the resource developers was no longer being questioned. DIAND, Environment, and Justice were by then identified with the Indian interest and stood in opposition to the numerous experts produced daily by Alsands who contended that neither the environment nor the socio-economic life style of the Indians would be substantially affected.

#### Alberta Affirmative Action Legislation and the Supreme Court Case

Ultimately the central issue at the ERCB hearings was the one of provincial affirmative action legislation.

It should be noted at this point that the Board had been established in the early 1930s as the Oil and Gas Conservation Board with the mandate to maintain an inventory of energy related projects in Alberta. Until very recently when the provincial government broadened the Board's mandate, it had not been involved in either environmental or socio-economic issues. The members of the Board have traditionally focused their attention on the technical and financial aspects of resource development and have little experience in dealing with environmental and socio-economic concerns.

The issue of what Alsands was going to do for the Indians was the question. The Indians requested that the licence to Alsands be conditional on the corporation's guaranteeing in writing certain undertakings for the Indian communities to be affected. Alsands contended that if it made a written commitment to the Indians this would be contrary to the Alberta Employment Rights Protection Act, a kind of reverse discrimination.

The ERCB adjourned to consider the ruling and promised to make a recommendation to the provincial government on this issue. However, when their report was released there was no comment on this issue of critical concern.

Both the federal government and the Indians had expected a favourable response from the ERCB with respect to the demand that there be a written agreement from Alsands guaranteeing certain specific undertakings. When the Board did not make this recommendation, Laurence Courteoreille, then chairman of the Athabasca Tribal Council, decided to bring the issue of Alberta's affirmative action legislation before the Supreme Court.

A judgement was pronounced June 22, 1981, by Honourable Mr. Justice Ritchie:

"... the Energy Resources Conservation Board did not have jurisdiction to prescribe the implementation of an "affirmative action program" as a condition of the approval of a tar sands plant pursuant to s. 43 of the Oil and Gas Conservation Act. As this conclusion disposes of the appeal we need not pronounce upon the question whether the proposed "affirmative action program" would, if implemented, involve discrimination against non-Indians in Contravention of s. 6(1) of the Individual's Rights Protection Act. Furthermore, I find support in choosing not to do so in the fact that, immediately after the Court of Appeal's decision, the Alberta Legislature, reacting to the concerns voiced by Mr. Justice Morrow of that Court, amended the Individual's Rights Protection Act, S.A. 1972 c. 2 by S.A. 1980 c. 27, (proclaimed in force on September 1, 1980) enacting a mechanism for "affirmative actions programs" when needed."<sup>1</sup>

This was a significant judgement concurred in by all. The Supreme Court had decided the ERCB did not have the mandate to involve itself in this area. It had been set up as a technical board and was not meant to carry the burden of environmental review and socio-economic impact studies. However, the conclusion was clearly that benign discrimination would not be contrary to the Individual Rights Protection Act.

1. See Appendix A for the complete Supreme Court statement.

Thus the case was lost with respect to forcing Alsands to set quotas, because the ERCB was deemed not to have the power to place hiring quotas on a resource developer, but won in the settling of the affirmative action issue.

In terms of the future role of the ERCB, while it may hear arguments and evidence on environmental and socio-economic issues, it may only decide on whether a project should be approved on a general basis if it is good for the province. It can not apply any conditions related to affirmative action hiring or environmental pollution standards to the proponent.

Phillip Ketchum, from the federal Department of Justice, indicated that this can change only if Alberta amends the Act to give the Board the right to address these specific concerns. Some lobbying has occurred to change the Board's enacting legislation, but no changes have been made to date. When the next resource development hearings are scheduled perhaps new pressure will be brought to bear on the situation.

To bring the record of the Cold Lake and Alsands intervention processes to the present, it now appears that the Alsands project has overtaken the Esso Resources project. According to two recent newspaper articles<sup>1</sup> secret talks are currently underway between the federal and provincial energy ministers and the corporation.

#### DIAND's Role in Future Interventions

Presently each province's legislation in the area of affirmative action is different. What is needed in each case where a resource development project is likely to affect Indian and native lifestyle and the environment is a clear definition of what is to be done before the project commences. As an example, the Saskatchewan government obtained a firm agreement from Amok-Cluff Lake uranium mining project on hiring and training programs for Indians, and natives as well as on mitigative measures for environmental and socio-economic problems, before the project was given the go ahead.

1. "Secret talks herald Alsands approval", Financial Post November 28, 1981, and "Talks likely to assure Alsands go-ahead", Globe and Mail, December 2, 1981; both articles are attached as Appendix B.

An important issue raised during this presentation was whether DIAND should intervene without band support. It was generally acknowledged that DIAND's role in the intervention process was most effective when it followed the Indian party's lead, supporting and amplifying the points raised. However, in a situation where the bands likely to be affected by a major resource development project could not agree on a united stand, DIAND might nevertheless play a useful role in critiquing the proponent's statements and reports and identifying major deficiencies and inaccuracies in the data. The bands would decide for themselves how to utilize the material in responding to the developer.

Intervening at regulatory hearings is only one way to respond to the potential benefits and costs of a developer's actions. Alberta was a unique experience; it is not necessarily the model for action in every province, in every situation. Different avenues may be explored; for example, discussions might be held directly between Indian bands and the proponent. In any case, one of the most important points is the need to get involved early. Hearings such as the ones held by the Alberta ERCB are just a stage in the process. It would not be wise to wait until then to communicate with the corporation planning the development project. In fact, in some regions the provincial government may decide not to hold hearings.

#### GROUP DISCUSSION

In the discussions which followed the comment was made that the basic premise should be that the proponent is responsible for the provision of adequate mitigative measures. How much should the corporation have to pay is the critical question. The figure of one-ninth of the total cost of the project was put forward as a conservative figure, but in reality whatever is necessary to be done, must be done. There is a point where one has to resist giving in to quantitative arguments when the destruction of a culture is at stake.

The point was highlighted that Indian and native peoples should depend on each other as advisors and consultants. Each group that has been involved with such a project has learned something, has a useful experience to relate.

The role of DIAND has been and should continue to be a supportive one acting, in particular, to plan the availability of funding to continue the process of discussion between Indian and native communities and the resource developer and to host workshops and seminars like this one to exchange information on those experiences which may be useful in other circumstances.

With respect to future information exchange sessions on resource development impacts, participants at the seminar were requested to comment on: who should be host, what format worked best, what specific information was being sought, how could the information best be recorded and shared, and to what extent should Indian and native groups be involved. The following comments and suggestions were offered: it was generally felt that two days was not long enough for a group as large as the one which gathered in Edmonton to exchange views; the first day's agenda principally covered internal departmental concerns which were of little interest to the Indian people; more time for discussion in the evening would have been valuable; topics of interest to be discussed after the formal day's agenda could be addressed to the chairman of the session who might arrange a room and time for discussion at the end of the day; more formal meal arrangements might have allowed participants a greater opportunity to get to know each other.

In conclusion, it was recommended that a session focused on departmental interests related to allocation of resource development impacts program funds be scheduled for March and a session concentrating on topics similar to the day 2 agenda in Edmonton be planned for June, 1982.

### Day 3 - November 5, 1981

#### Activities

About thirty seminar participants joined the tour of the Syncrude plant at Mildred Lake near Fort McMurray which had been arranged by the Edmonton office of the Department of Indian Affairs and Northern Development.

A Syncrude guide provided an informative description of the mining and refinery operations during an hour long bus tour of the site. Unfortunately, there was no opportunity to view the tar sands operations at close hand. Following the tour Syncrude treated the group to an excellent lunch in the cafeteria which serves the outside contract workers.

Before returning to the airport our Edmonton hosts arranged for a tour of Fort McMurray, which has grown rapidly from a community of 6,000 to a thriving town with a population of about 30,000.

**APPENDIX A**

**SUPREME COURT JUDGEMENT**



Supreme Court of Canada

Cour suprême du Canada



THE ATHABASCA TRIBAL COUNCIL

THE ATHABASCA TRIBAL COUNCIL

v.

c.

AMOCO CANADA PETROLEUM COMPANY LTD. et al.

AMOCO CANADA PETROLEUM COMPANY LTD. et autres

-and-

-et-

THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA

LE PROCUREUR GENERAL POUR LA PROVINCE DE L'ALBERTA

CORAM:

CORAM:

The Right Honourable Bora Laskin,  
P.C., C.J.C.  
The Hon. Mr. Justice Martland  
The Hon. Mr. Justice Ritchie  
The Hon. Mr. Justice Dickson  
The Hon. Mr. Justice Beetz  
The Hon. Mr. Justice Estey  
The Hon. Mr. Justice McIntyre  
The Hon. Mr. Justice Chouinard  
The Hon. Mr. Justice Lamer

Le très honorable Bora Laskin,  
C.P., J.C.C.  
L'honorable juge Martland  
L'honorable juge Ritchie  
L'honorable juge Dickson  
L'honorable juge Beetz  
L'honorable juge Estey  
L'honorable juge McIntyre  
L'honorable juge Chouinard  
L'honorable juge Lamer

Appeal heard  
December 4 and 5, 1980

Appel entendu  
les 4 et 5 décembre 1980

Judgment pronounced  
June 22, 1981

Jugement prononcé  
le 22 juin 1981

Reasons for judgment by

Motifs de jugement par

The Hon. Mr. Justice Lamer

L'honorable juge Lamer

Concurred in by

Souscrivent à l'avis du juge Lamer

The Hon. Mr. Justice Martland  
The Hon. Mr. Justice Beetz  
The Hon. Mr. Justice Estey  
The Hon. Mr. Justice Chouinard

L'honorable juge Martland  
L'honorable juge Beetz  
L'honorable juge Estey  
L'honorable juge Chouinard

Reasons concurring in result by

Motifs au même effet par

The Hon. Mr. Justice Ritchie

L'honorable juge Ritchie

Concurred in by

Souscrivent à l'avis du juge Ritchie

The Chief Justice  
The Hon. Mr. Justice Dickson  
The Hon. Mr. Justice McIntyre

Le Juge en chef  
L'honorable juge Dickson  
L'honorable juge McIntyre

Counsel at hearing:

Avocats à l'audience:

For the appellant:

Pour l'appellant:

Mr. Kenneth E. Staroszik

M<sup>e</sup> Kenneth E. Staroszik

For the respondents  
Amoco Canada et al.:

Pour les intimées  
Amoco Canada et autres:

Mr. D.O. Sabey, Q.C.  
Mr. Brian O'Ferrall

M<sup>e</sup> D.O. Sabey, c.r.  
M<sup>e</sup> Brian O'Ferrall



For the respondent  
The Energy Resources Conservation  
Board of Alberta:

Mr. Michael J. Bruni  
Mr. Keith F. Miller

The the intervenant  
The Attorney General for the  
Province of Alberta:

Mr. B.A. Crane, Q.C.

Pour l'intimée  
The Energy Resources Conservation  
Board of Alberta:

M<sup>c</sup> Michael J. Bruni  
M<sup>c</sup> Keith F. Miller

Pour l'intervenant  
Le Procureur général pour la  
province de l'Alberta:

M<sup>c</sup> B.A. Crane, c.r.

SUPREME COURT OF CANADA

IN THE MATTER OF THE ENERGY RESOURCES CONSERVATION ACT:

AND IN THE MATTER OF APPLICATIONS NOS. 780724 and 790191  
PURSUANT TO SECTION 43 OF THE OIL AND GAS CONSERVATION  
ACT BY AMOCO CANADA PETROLEUM COMPANY LTD. *et al* (KNOWN  
AS THE ALSANDS PROJECT GROUP) FOR APPROVAL OF A SCHEME  
FOR THE RECOVERY OF OIL SAND, CRUDE BITUMEN OR PRODUCTS  
DERIVED THEREFROM

BETWEEN:

THE ATHABASCA TRIBAL COUNCIL (appellant)

-and-

AMOCO CANADA PETROLEUM COMPANY LTD., CHEVRON STANDARD  
LIMITED, DOME PETROLEUM LIMITED, GULF CANADA  
RESOURCES INC., HUDSON'S BAY OIL AND GAS COMPANY  
LIMITED, PACIFIC PETROLEUMS LIMITED,  
PETROFINA CANADA LTD., SHELL CANADA RESOURCES  
LIMITED and SHELL EXPLORER LIMITED

-and-

THE ENERGY RESOURCES CONSERVATION BOARD OF ALBERTA

(respondents)

-and-

THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA

(Intervenant)

CORAM: The Chief Justice and Martland, Ritchie,  
Dickson, Beetz, Estey, McIntyre,  
Chouinard and Lamer JJ.

LAMER J.

I have had the advantage of reading the opinion  
set out by my brother Ritchie. For the reasons given by him  
I agree that there is no error in the judgment of the Court of  
Appeal holding that the Energy Resources Conservation Board  
did not have jurisdiction to prescribe the implementation of  
an "affirmative action program" as a condition of the approval

of a tar sands plant pursuant to s. 43 of the *Oil and Gas Conservation Act*. As this conclusion disposes of the appeal we need not pronounce upon the question whether the proposed "affirmative action program" would, if implemented, involve discrimination against non-Indians in contravention of s. 6(1) of the *Individual's Rights Protection Act*. Furthermore, I find support in choosing not to do so in the fact that, immediately after the Court of Appeal's decision, the Alberta Legislature, reacting to the concerns voiced by Mr. Justice Morrow of that Court (reiterated by our brother Ritchie and which I earnestly share), amended the *Individual's Rights Protection Act*, S.A. 1972 c. 2 by S.A. 1980 c. 27, (proclaimed in force on September 1, 1980) enacting a mechanism for "affirmative actions programs" when needed.

By that amendment, section 11.1 was added to the Act:

"11.1(1) The Lieutenant Governor in Council may make regulations

(a) exempting a person, class of persons or group of persons, or the Crown or any agent or servant of the Crown, from the operation of this Act or any of the provisions of it,

(b) authorizing the undertaking by a person, class of persons or group of persons, or by the Crown or any servant or agent of the Crown, of programs that, in the absence of the authorization, would contravene this Act, and

(c) respecting the procedure to be followed by the Commission in carrying out its functions under this Act.

(2) The Lieutenant Governor in Council may by regulation delegate to the Commission any of his powers under subsection (1).

(3) A regulation made under subsection (1)(a) or (b) may

(a) be specific or general in its application, and

(b) provide that the exemption or authorization that it grants is subject to any terms and conditions that the Lieutenant Governor in Council or the Commission, as the case may be, considers advisable."

I would dismiss the appeal.

IN THE SUPREME COURT OF CANADA

IN THE MATTER OF THE ENERGY RESOURCES CONSERVATION ACT:

AND IN THE MATTER OF APPLICATIONS NOS. 780724 and 790191  
PURSUANT TO SECTION 43 OF THE OIL AND GAS CONSERVATION  
ACT BY AMOCO CANADA PETROLEUM COMPANY LTD. ET AL (KNOWN  
AS THE ALSANDS PROJECT GROUP) FOR APPROVAL OF A SCHEME  
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BETWEEN:

THE ATHABASCA TRIBAL COUNCIL

Appellant

- and -

AMOCO CANADA PETROLEUM COMPANY LTD., CHEVRON STANDARD  
LIMITED, DOME PETROLEUM LIMITED, GULF CANADA RESOURCES  
INC., HUDSON'S BAY OIL AND GAS COMPANY LIMITED,  
PACIFIC PETROLEUMS LIMITED, PETROFINA CANADA LTD.,  
SHELL CANADA RESOURCES LIMITED and SHELL EXPLORER  
LIMITED

and

THE ENERGY RESOURCES CONSERVATION BOARD OF ALBERTA

and

THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA

Respondents

Coram: The Chief Justice and Martland, Ritchie,  
Dickson, Beetz, Estey, McIntyre, Chouinard  
and Lamer JJ.

RITCHIE, J:

This is an appeal from a judgment of the Court of  
Appeal of Alberta dismissing the appellant's appeal from a  
decision of the Energy Resources Conservation Board of Alberta  
(the Board) whereby it was determined that the Board did not  
have jurisdiction under s.43 of the Oil and Gas Conservation  
Act, R.S.A.1970 c.267, or otherwise to prescribe the imple-  
mentation of an "affirmative action" program as a condition  
of its approval of a tar sands plant proposed to be created  
by the respondent corporations (hereinafter collectively re-  
ferred to as Alsands) in the Fort McMurray region of Alberta.

The facts giving rise to this appeal are accurately stated in the reasons for judgment of Mr. Justice Laycraft speaking on behalf of the majority of the Court of Appeal of Alberta and it appears to me to be desirable to reproduce the following excerpts from those reasons which are now conveniently reported in [1980] 5 W.W.R. at pages 167 and 168:

The respondent oil companies joined together in a project known as 'the Alsands Project' to manufacture synthetic crude oil from the bitumen deposits in the tar sands located in northeastern Alberta. The scale of the project is indicated by the proposed expenditure of more than 4 billion dollars (in 1978 dollars) on the required facilities. They applied to the ERCB under s.43 of the Oil and Gas Conservation Act, R.S.A. 1970, c.267, for approval of the project. The procedure prescribed by this section requires a public hearing by the board which may disapprove the project, or, with the authorization of the Lieutenant-Governor in Council, may approve the scheme proposed by the application. The board conducted a public hearing lasting several weeks, commencing in June 1979.

The Athabasca Tribal Council consists of the chiefs of five Indian bands living in the general area of the proposed plant. The tribal council, with the assistance and support of the federal Department of Indian Affairs and Northern Development, intervened in the hearing before the ERCB calling witnesses and making submissions through counsel. The tribal council, in general, supported the proposed project but did so 'only if certain terms and conditions are imposed on the applicant' giving preference in employment and business opportunities to the members of the five bands. Terms and conditions imposed for the benefit of groups suffering from economic and social disadvantages, usually as a result of past discrimination, and designed to assist them in achieving equality with other segments of the population are referred to as 'affirmative action' programs.

No issue was raised in this court whether the Athabasca Tribal Council is an entity entitled to sue or be sued. Whether or not it is that type of entity the tribal council clearly represents persons having a direct interest in the project who would be entitled, under ERCB rules, to intervene in the hearing. Such persons could appear in this court with appropriate amendments to the procedure. We therefore assume for the purposes of this decision that the tribal council was entitled to launch this appeal.

The members of the five Indian bands do not comprise the sole population of the area in the vicinity of the proposed project. Some Metis and white persons also live in the area. We are told that all of the people in the general area may be said to suffer economic, educational and social disadvantage when compared to other Albertans. In some of the communities in the area, unemployment rates exceed 50 per cent compared to an overall rate of 5 per cent for the province as a whole.



In applying to the Board under s.43 of the Oil and Gas Conservation Act, Alsands indicated its readiness to include in its proposal provisions designed to assist the Indian population in adapting to the dramatic changes which the scheme involved, and this was apparent also from the attitude taken by Alsands at the public hearing before the Board, but in intervening at the Board's hearing the Athabasca Tribal Council insisted on the Board's approval being made conditional upon the incorporation of further provisions for the benefit of Indians in the area and for the assurance of their welfare under the altered conditions which would inevitably flow from the implementation of the plan. It is these provisions which have come to be collectively referred to as an "affirmative action" program. This so-called program proposed by the Tribal Council was for the most part phrased in general terms, but it is clear that its main objective was to afford the Indians in so far as conditions would allow, an equal opportunity with other inhabitants to participate in the tar sands plant undertaking.

The proposal to this end is described in the following terms in the Report to the Lieutenant-Governor in Council filed by the Board after the hearing:

Alsands' proposed recruitment policies and procedures received general approval from interveners, but native communities wanted the applicant to establish specific goals and mechanisms for recruitment, training, counselling, and support of native business development.

The Athabasca Tribal Council asked that Alsands establish a native employment office, and employ a native industrial co-ordinator to liaise with the native communities; that the federal government and Alsands finance full-time native recruiters for Fort Chipewyan, Fort Mackay, and other native communities; and that native communities be encouraged to run their own training programs with funding from the federal government. The Tribal Council also wanted Alsands to sponsor a native business opportunities program for a period of ten years from approval of the project.

The Department of Indian Affairs and Northern Development supported the position of the Tribal Council in the matter of affirmative action programs and also urged that contractual arrangements be made between Alsands and native communities. In fact the Department endorsed the recommendation that affirmative action programs be made a condition of the Board's approval of the plan. It is clear that the Board and Alsands were generally sympathetic to the plight of the Indians and looked with favour on the taking of steps to assimilate these native people into

the new environment which the tar sands proposal would bring about, but, as will hereafter appear, I am of opinion that the "steps" recommended in the "affirmative action program" are beyond the powers of the Board.

In the course of the reasons for judgment which he delivered on behalf of the majority of the Court of Appeal, Mr. Justice Laycraft recognized that the approval of the Alsands project was initially governed by the provisions of the Energy Resources Conservation Act, (S.A. 1971 c.30) and by the Oil and Gas Conservation Act. It is the former act which establishes the Board and controls its powers and procedures, and, like Mr. Justice Laycraft, I find it to be a central consideration in determining the issue before us to examine the purposes of the Act which are set forth in s.2 thereof and which provide:

2. The purposes of this Act are

- (a) to provide for the appraisal of the reserves and productive capacity of energy resources and energy in Alberta,
- (b) to provide for the appraisal of the requirements for energy resources and energy in Alberta and of markets outside Alberta for Alberta energy resources or energy,
- (c) to effect the conservation of, and to prevent the waste of, the energy resources of Alberta,
- (d) to control pollution and ensure environment conservation in the exploration for, processing, development and transportation of energy resources and energy,
- (e) to secure the observance of safe and efficient practices in the exploration for, processing, development and transportation of the energy resources of Alberta,
- (f) to provide for the recording and timely and useful dissemination of information regarding the energy resources of Alberta, and
- (g) to provide agencies from which the Lieutenant Governor in Council may receive information, advice and recommendations regarding energy resources and energy.

It will be seen that the purposes of the Act are limited to matters concerning energy resources and energy in the Province of Alberta, considerations which govern the Board's jurisdiction. This becomes all the more apparent from a consideration of s.24 of the Act which provides:

24. (1) The Board may, and at the request of the Lieutenant Governor in Council shall, at such places, at such times and in such manner as it considers advisable

- (a) make inquiries and investigations and prepare studies and reports on any matter within the purview of any Act administered by it relating to energy resources and energy, and

(b) recommend to the Lieutenant Governor in Council such measures as it considers necessary or advisable in the public interest related to the exploration for, production, development, conservation, control, transportation, transmission, use and marketing of energy resources and energy.

(2) The Board may recommend to the Lieutenant Governor in Council the making of such arrangements as it considers desirable for co-operation with governmental or other agencies in or outside Alberta in respect of matters relating to energy resources and energy.

In the same context it is essential to consider the "purposes" of the Oil and Gas Conservation Act as the Alsands' application is made pursuant to s.43 of that Act. These purposes are set forth in s.5 of the Act which provides:

5. The purposes of this Act are

(a) to effect the conservation of, and to prevent the waste of, the oil, gas and crude bitumen resources of Alberta,

(b) to secure the observance of safe and efficient practices in the locating, spacing, drilling, equipping, completing, reworking, testing, operating and abandonment of wells and in operations for the production of oil, gas and crude bitumen,

(b.1) to provide for the economic, orderly and efficient development in the public interest of the oil, gas and crude bitumen resources of Alberta.

(c) to afford each owner the opportunity of obtaining his share of the production of oil or gas from any pool or of crude bitumen from any oil sands deposit,

(d) to provide for the recording and the timely and useful dissemination of information regarding the oil, gas and crude bitumen resources of Alberta, and

(3) to control pollution above, at or below the surface in the drilling of wells and in operations for the production of oil, gas and crude bitumen and in other operations over which the Board has jurisdiction.

It will be seen that while these purposes, like those of the Energy Resources Conservation Act, relate to energy resources in the Province of Alberta, they are specifically directed to "the oil, gas and crude bitumen resources of Alberta", and it was accordingly appropriate that the Alsands' application for approval of tar sands plant should be initiated under s.43 of the Act which reads:



- 6 -

43. (1) No scheme or operation for the recovery of oil sands, crude bitumen or products derived therefrom shall be proceeded with unless the Board, upon application, has approved it in accordance with this section...

(2) Upon receipt of an application pursuant to subsection (1), together with any information prescribed or required by the Board, the Board shall hold a hearing of the application and may, if so authorized by the Lieutenant Governor in Council, approve the scheme or operation proposed in the application, or make such other disposition of the application as it considers suitable ...

(4) An approval granted under this section shall be subject to the terms and conditions therein prescribed and, without restricting the generality of the foregoing, may stipulate the period during which the approval will be in force and the maximum volume or rate of production of oil sands, crude bitumen or products derived therefrom.

As has been indicated, a hearing was duly held by the Board and after several weeks an extensive report was made to the Lieutenant Governor in Council which clearly reflected the Board's sympathy for and interest in the native peoples of the area but which failed to include the affirmative action program upon which the intervenant Tribal Council had insisted. In due course an appeal from the Board's recommendations as contained in this report was taken to the Appellate Division of the Supreme Court of Alberta pursuant to s.42(1) of the Energy Resources Conservation Act which reads:

42. (1) Subject to subsection (2), upon a question of jurisdiction or upon a question of law, an appeal lies from the Board to the Appellate Division of the Supreme Court of Alberta. (The italics are my own).

The question of jurisdiction involved in the appeal related to whether or not the Board was clothed with the authority to recommend the proposals entailed in the affirmative action programs. On behalf of the majority of the Court of Appeal, Mr. Justice Laycraft held that the provisions of the enabling statutes did not extend so as to include the area of social rehabilitation which the program envisaged for the Indians.

In asserting this appeal from that judgment the appellant has put the following points in issue:

1. That the Court of Appeal erred in holding that the Energy Resources Conservation Board did not have jurisdiction to prescribe the implementation of an 'affirmative action' programme as a condition of the approval of a tar sands plant, pursuant to s.43 of The Oil and Gas Conservation Act.

2. That the Court of Appeal erred in holding that an affirmative action programme based on racial criteria would be in breach of The Individual Rights Protection Act.

As to the first point, I take the view, which I have perhaps indicated, that the Board's jurisdiction is governed and controlled by the statutes to which I have referred and in conformity with the purposes for which these statutes were enacted, that jurisdiction is limited to the regulation and control of the development of energy resources and energy in the Province of Alberta. The powers with which the Board is endowed are concerned with the natural resources of the area rather than with the social welfare of its inhabitants, and it would, in my view, require express language to extend the statutory authority so vested in the Board so as to include a program designed to lessen the age-old disadvantages which have plagued the native people since their first contact with civilization as it is known to the great majority of Albertans.

It is however true that the expenditure of \$4 billion in the creation of a new town and a new industry in an area formerly enjoyed exclusively by the native peoples undoubtedly presents new problems for those people and it may well be that some form of legislation could be devised and adopted to meet their needs. No such legislation appears to have been enacted in Alberta and in my opinion it is no compensation for this lack of authority to seek to apply legislation designed for the conservation of energy resources to the amelioration of social inequalities.

It will accordingly be apparent that I do not find any error in the judgment of the Court of Appeal holding that the Energy Resources Conservation Board did not have jurisdiction to prescribe the implementation of an "affirmative action" program as a condition of the approval of a tar sands plant pursuant to s.43 of the Oil and Gas Conservation Act.

In reaching the above conclusion I have not overlooked the argument of the appellant to the effect that the references to "the public interest" in s.24(1)(b) of the Energy Resources Conservation Act and s.5(b)(1) of the Oil and Gas Conservation Act are of themselves a sufficient indication of the intention of the legislature to endow the Board with authority to recommend measures directed towards the development and control of the

social welfare of the Indian people. As I have indicated, however, I do not feel that such an interpretation can be attributed to the enabling statutes which are exclusively concerned with the development of "energy resources and energy".

Notwithstanding all the above, there are grounds for thinking that Alsands, and indeed the Board itself, might possibly have gone further than they did in meeting the demands of the Indians had it not been for the fact that legal advice had been received to the effect that any provision made for the implementation of the program would have been held to be inoperative as being in conflict with the provisions of the Individual's Rights Protection Act of Alberta, S.A. 1972 c.2. The Court of Appeal held that the program was based on racial criteria and it would thus be in breach of that statute and it is this finding which gives rise to the second point placed in issue by the appellant.

Having regard to the opinion which I have expressed concerning the first point, I do not consider that it is necessary for the determination of this appeal to deal at any length with the second issue raised by the appellant, but as it was made the subject of considerable argument on the appeal before this Court and as I reach a different conclusion from that of the Court of Appeal, I think it desirable to express my views separately.

The preamble to the Individuals' Rights Protection Act contains the following recital:

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, age, ancestry or place of origin; ...

It is contended on behalf of the respondent that implementation of the proposals contained in the affirmative action program would result in the preferment of Indians for employment in the Alsands tar sands plant or at least in certain aspects of the development envisaged by that plan. This contention is founded on the proposition that the benefits which the plan would confer

on Indians would involve discrimination against non-Indians in the area in contravention of s.6(1) of the Individual's Rights Protection Act which provides that:

6.(1) No employer or person acting on behalf of an employer shall ...

(b) discriminate against any person with regard to employment or any term or condition of employment.

and it is also urged on behalf of the respondent that the terms of s.7(1) of the same statute support the same contention and provide additional mechanics for the enforcement of s.6. Section 7 of the statute reads as follows:

7. (1) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant,

(a) that expresses either directly or indirectly any limitation, specification or preference as to race, religious beliefs, colour, sex, age, ancestry or place of origin of any person or,

(b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, ancestry or place of origin.

(2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational qualification.

The core of this contention is concerned with that portion of s.6(1)(b) which precludes any employer from discriminating against any person with regard to employment. Adoption of the respondent's contention would in my view mean that in the Province of Alberta it would be unlawful to pursue a policy favouring any individual or group of individuals on the ground that in so doing other individuals would be discriminated against. This theory has been characterized as "reverse discrimination" and it has been considered in the United States Supreme Court where it has met with differing treatment in the cases of Regents of University of California v. Bakke (1978), 98 S. Ct. 2733, where a special admission program applying to "economically or educationally disadvantaged members of minority groups was held to be invalid, and the case of the United Steelworkers of America v. Weber (1979) 99 S. Ct. 272 where an affirmative action program was upheld.

I find no material assistance in a consideration of these American authorities because each of them is dealing with a situation fundamentally different from that facing the Athabaskan Indians.

In the present case what is involved is a proposal designed to improve the lot of the native peoples with a view to enabling them to compete as nearly as possible on equal terms with other members of the community who are seeking employment in the tar sands plant. With all respect, I can see no reason why the measures proposed by the "affirmative action" programs for the betterment of the lot of the native peoples in the area in question should be construed as "discriminating against" other inhabitants. The purpose of the plan as I understand it is not to displace non-Indians from their employment, but rather to advance the lot of the Indians so that they may be in a competitive position to obtain employment without regard to the handicaps which their race has inherited.

I have already referred to the preamble of the Individual's Rights Protection Act and in this regard I adopt the view expressed by Mr. Justice Morrow in the course of his dissenting reasons in the Court of Appeal where he said:

I am fortified in my approach by what I read from the preamble, which as my brother Laycraft has observed can be useful in indicating the purpose of the Act, remembering always those cautionary limitations put on such approach as he sets forth in his reasons. Of particular significance in my opinion is the use of the words 'all persons are equal in dignity and rights without regard to race'. If these high sounding words have any meaning and significance at all, surely one cannot read the statute in a way to result in or to have the effect of reaching the very opposite effect to the declared purpose.

It will accordingly be seen that as to the second point placed in issue by the appellant, I am of opinion that the Court of Appeal was in error in holding that an affirmative action program based on racial criteria would be in breach of the Individual's Rights Protection Act.

In the result, I agree with the reasons for judgment of Mr. Justice Laycraft in respect of the first issue but differ from the majority of the Court of Appeal in the conclusion reached on the second issue.

In view of all the above, I would dismiss this appeal but, like the Court of Appeal, I would award no costs.

**APPENDIX B**

**NEWSPAPER ARTICLES - ALSANDS PROJECT GO AHEAD**



# Talks likely to assure Alsands go-ahead

By JENNIFER LEWINGTON  
Globe and Mail Reporter

OTTAWA — Government concessions to assure a go-ahead for the \$15-billion Alsands oil sands project are expected to be hammered out when federal and Alberta representatives meet in three weeks.

The concessions, still under discussion by both governments, will likely include both equity participation and loans from Alberta, while the federal Government may opt to phase in its petroleum and gas revenue tax to ease the fiscal burden on the project in the early years of production.

The government meeting in the third week of December, expected to be led by federal Energy Minister Marc Lalonde and his Alberta counterpart, Mervin Leitch, is to set a joint approach by the two governments for financial and

other assistance to the consortium led by Shell Canada Ltd. of Toronto.

The governments are expected to deliver their message to the consortium before it meets later this month to decide whether to proceed with its winter works program.

The consortium has said earlier that it needs a response from the governments this month to ensure the project, designed to produce 137,000 barrels a day of synthetic oil by the end of the decade, is not delayed any further.

While the federal and provincial cabinets still have to agree on their respective concessions, it is apparent that for political and economic development reasons, the two governments, especially Ottawa, are anxious to announce some positive news on the energy front.

Earlier this week, the

Conference Board of Canada estimated that growth in energy investment is expected to slow to 2.4 per cent in 1982 from 10.6 per cent this year.

The purpose of the government concessions is to give sufficient encouragement to the project's sponsors to proceed in the knowledge of receiving a return of about 20 per cent on a discounted cash flow basis.

In the wake of the Ottawa-Alberta energy agreement in September, which set out a world price schedule for new oil, including Alsands production, the consortium said there was not sufficient return to proceed.

As a result, the two governments and the companies have been negotiating possible financial incentives, including changes in the federal taxation system to give a higher return for the sponsors.

By one estimate, the combined worth of the governments' concessions could be equivalent to as much as \$3-billion, equal to 20 per cent of the value of the project.

Alberta, backed by its cash-rich Alberta Heritage Savings Trust Fund, is in a stronger financial position than Ottawa to provide some form of loan assistance to the consortium.

Several years ago, for the synthetic oil plant of Syncrude Canada Ltd. of Edmonton, the Alberta Government provided loans. Last month, Alberta converted \$236-million in loan debentures into shares in the project, thereby doubling its equity participation to 16.75 per cent.

For its part, Ottawa is cash-short and is only likely to match Alberta's assistance with tax concessions such as further reducing the initial take of the petroleum and gas revenue tax.

Even if the two governments send a positive signal to the consortium this month, it is expected that the final terms of the Alsands package will not be concluded until early next year.

# Secret talks herald Alsands approval

By Giles Gherson  
and Dunnery Best

AFTER ALMOST two years in limbo, sponsors of the \$13-billion, 140,000-barrel-per-day Alsands megaproject are on the verge of an agreement with the federal and Alberta governments. The formalities appear likely to be concluded before Christmas.

"We're positive there is going to be a deal done," says Dick Aberg, Alsands senior vice-president and a veteran of this third attempt by Shell Canada Ltd. to put its project on the rails.

Apparently stimulated by a major push instigated by federal Energy Minister Marc Lalonde, the federal departments most affected by the project earlier this month formed the "executive committee on Alsands," comprised of senior deputy ministers, headed by Gordon F. Osbaldeston, secretary to the minister of state for Economic Development, Senator Bud Olson, and described by Ottawa observers as "one of the two or three most influential deputy ministers in Ottawa."

"The whole town is united in support of the federal negotiators," says one committee member.

The Alsands committee is, in effect, the "single window" promised by Ottawa in the September agreement "as a focal point...in matters relating to new synthetic-oil projects."

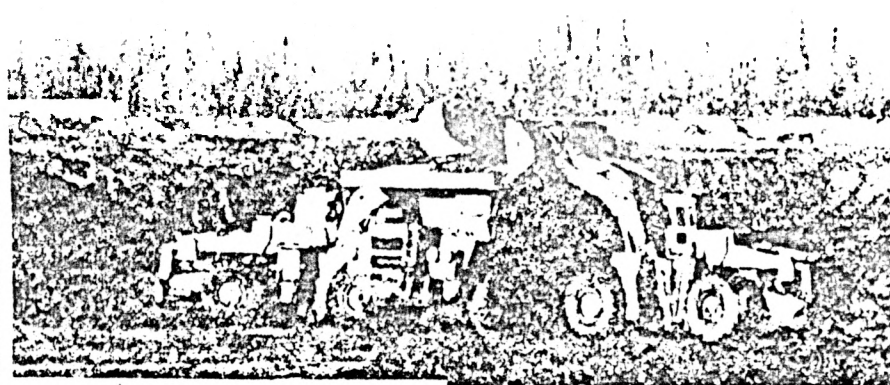
Interestingly, despite speculation earlier this autumn that soaring construction costs had dealt a death blow to Alsands, it has grabbed the pole position in the race to get under way from the rival Cold Lake, Alta., project championed by Esso Resources Canada Ltd. Like Alsands, Cold Lake is also burdened by mushrooming cost estimates.

Shrouded in secrecy, details of the government-Alsands negotiations that have shifted weekly from Toronto to Edmonton to Ottawa are hazy. The Post has learned that a sizeable low-cost government loan and/or possible reduction in Ottawa's petroleum and gas revenue tax (PGRT) are two options contemplated in Ottawa and Edmonton as the final incentive needed to prod the Alsands consortium into moving full speed ahead. A final decision is unlikely until key Alberta negotiators, Energy Minister Merv Leitch and his deputy Barry Mellon, return from a conference (and vacation) in Japan at the end of the month.

## Tax environment

Alsands has stated that a congenial financial and tax environment must be in place by early December. Otherwise, the winter building season is lost and an additional \$26 million in inflationary costs is piled up. As well, any further delay will surely test dwindling patience in Shell's Toronto corporate headquarters. At the very least, Alsands would like to spend \$50 million this winter, clearing muskeg and extending the site's airstrip, says project spokesman Joe Mariash, in Calgary.

Mindful of the time pressures, federal and Alberta officials have been assiduously trying to devise a tax environment — or "fiscal regime" — that will ensure project sponsors their bottom-



Lalonde and Leitch: Their officials are clearing the way for Alsands

Lake to proceed. Sponsors of both projects disagree. They argue the energy agreement merely provides for a 15% rate of return on investment — rather than 20% — which in the current economic environment would render it unprofitable.

It is understood the sponsors of the two projects have leveled three specific complaints.

- That the governments have overestimated future world oil prices — and hence, potential revenue flow from the project. (Last summer, it was estimated the combined gross revenues from both projects had risen to almost \$800 billion from a suggested \$180 billion in 1979.)

CONTINUED ON P 2

line 20% rate of return on equity.

"We have a sense of urgency," says Alsands' Aberg. "We've made progress, but there still has to be a solution."

In the opinion of the signatory governments, the Sept. 1 Ottawa-Edmonton energy accord contained terms sufficiently generous for Alsands and Cold



## Secret talks

Continued from p. 1

• The projects' sponsors fear that construction and plant operating costs may rise faster than the governments predict, reducing profit margins.

"The cost of the project is not calculable to the nearest billion dollars," says one member of Ottawa's Alsands committee. "The figure is taken out of thin air. No one will know for certain until it is built."

• The terms of the energy agreement would generate a maximum rate of return for both projects only if Alsands and Cold Lake sponsors made full use of available tax writeoffs. However, some project sponsors — for example, Esso Resources, which wants to retain a 50% share of the \$15-billion Cold Lake project — will be shouldering a huge cost burden. They simply won't earn enough income from other operations to utilize writeoffs to the full extent allowable. As well Shell Explorer Ltd., of Houston, Tex., which has a 20% share of the Alsands project, earns no income in Canada against which to write off projects.

"If the government can persuade some of the project sponsors to reduce their shares and take on more participants, the fiscal regime would look more attractive," one source says.

### Combination

It is understood the combination of Ottawa's investment tax credit, the 33½% depletion allowance for oil-sands plants, and the 30% capital-cost allowance — all of which may be applied against income from other operations — could reduce the expected Alsands project cost to its sponsors by \$4.8 billion. This "tax expenditure" by the federal government during the construction phase is equivalent to 35% of the estimated project cost.

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On the other hand, Ottawa's rate of return on this huge tax expenditure will be substantially higher than in a tentative agreement struck in 1979, which gave Ottawa 25% of the project revenue flow. But now, in addition to an effective federal corporate tax rate of 27%, Ottawa will collect its new PGRT, levied at a rate of 8% until the plant achieves payout (after seven years), a reduction of 4% from the rate currently paid by Canada's other oil and gas producers. After payout, the rate jumps to 12%.

For its part, Alberta's corporate tax rate is 11%, and it is taking a 30% royalty after payout, instead of the 35% royalty envisioned in 1979.

During the past month, the governments have moved to within several percentage points of the analysis presented by the Alsands sponsors. Says one source: "I think it is clear the governments agree the present fiscal regime is still a little tight."

This realization has led to the discussion of loans and tax reductions. Together, these possible concessions may give the beleaguered Canadian economy a \$13-billion Christmas shot in the arm.

**APPENDIX C**

**LIST OF RELEVANT REPORTS**

## LIST OF RELEVANT REPORTS

Presentation to the Alberta Energy Resources Conservation Board  
From the Tribal Chiefs Association, May 1979.

Presentation to the Alberta Energy Resources Conservation Board  
from the Athabasca Tribal Council, June 1979.

Alberta Region Indian and Northern Affairs Intervention to the ERCB  
Hearings on the Alsands Project Group, 28 May 1979.

Environment Canada's Review of the Alsands Project Group  
Environmental Impact Assessment, May 1979.

Environment Canada's Review of the Cold Lake Draft Final  
Environmental Impact Assessment Prepared by Esso Resources, 1979.

Synchrude's Native Development Program: A Stake in the Future,  
1980.

Canstar Oil Sands Ltd: Proposed Oil Sands Project and Policies  
Relating to Native Involvement, November 4, 1981.

DIAND Interventions in Support of Indian and Inuit People, 1979.

Major Resource Impact Evaluation (Suncor and Synchrude).