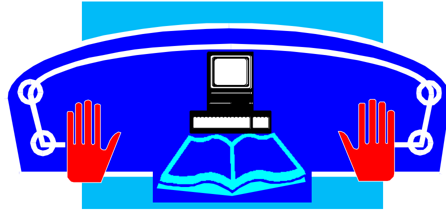


Arctic Development
Library

Aboriginal Land Claims In The Northwest Territories: Mechanics, Impact And The Future

Date of Report: 1991

Author: G.n.w.t. - Legislative Assesmbly

Catalogue Number: 9-5-371

Library Managed By Economic Planning Section, Economic Development and Tourism Government of the NWT, and by:
The Inuvaluit Community Economic Development Organization (CEDO), Inuvik, NWT
Financial assistance provided by Indian and Inuit Services.

ABORIGINAL LAND CLAIMS IN THE
NORTHWEST TERRITORIES: MECHANICS,
IMPACT AND THE FUTURE
Sector: Reference Material

9-5-371
Policy Material/Related Library

ABORIGINAL LAND CLAIMS IN THE NORTHWEST TERRITORIES:

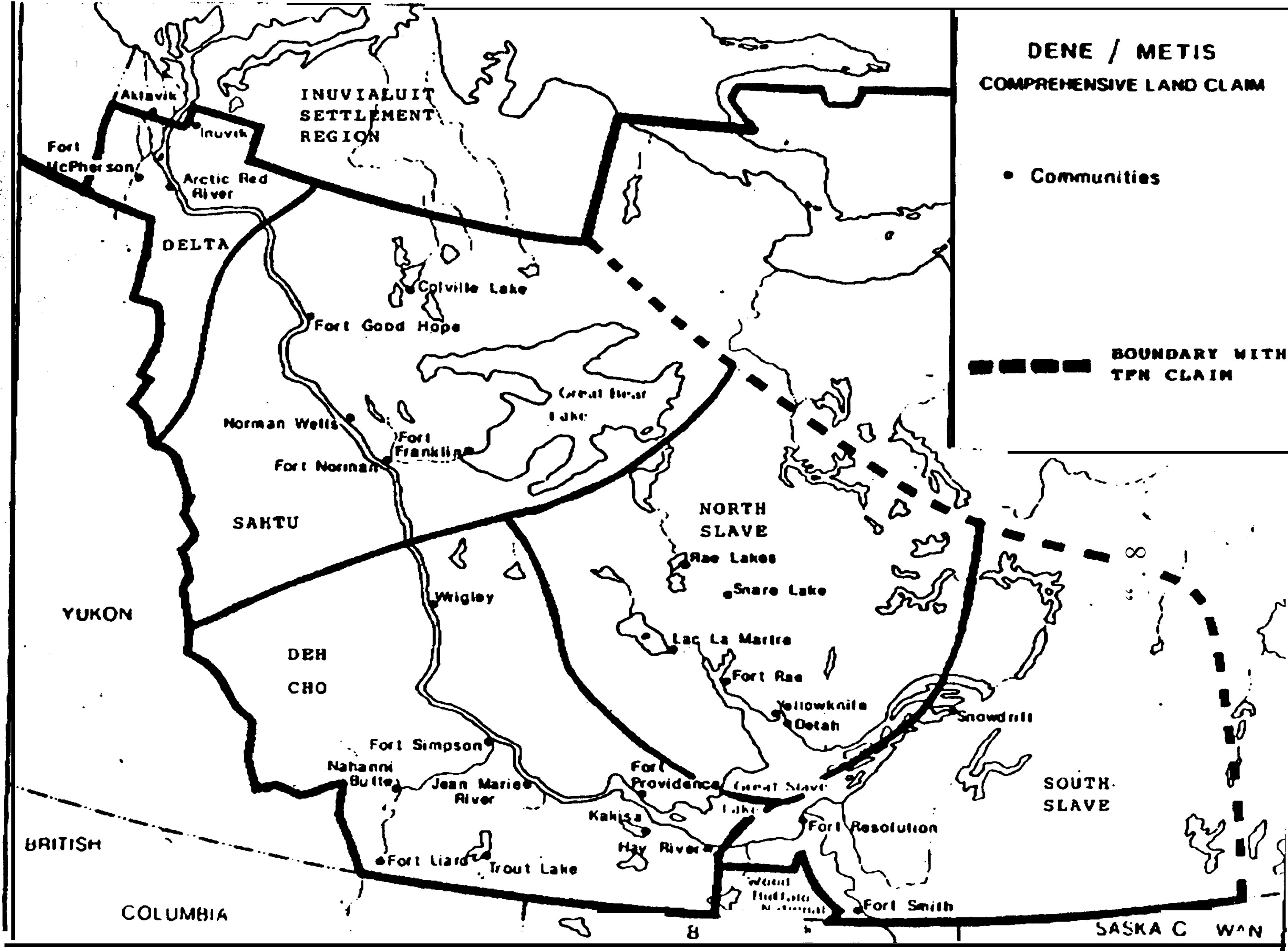
MECHANICS, IMPACT AND THE FUTURE

PREPARED FOR THE
31ST CANADIAN REGIONAL CONFERENCE
COMMONWEALTH PARLIAMENTARY ASSOCIATION

Victoria, British Columbia
August 10 - 14, 1991.

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

NWT
LA
Abo
1991


DENE / METIS
COMPREHENSIVE LAND CLAIM
Communities
BOUNDARY WITH TPN CLAIM
INUVIALUIT SETTLEMENT REGION
Aklavik
Inuvik
Fort McPherson
Arctic Red River
DELTA
Colville Lake
Fort Good Hope
Great Bear Lake
Norman Wells
Fort Franklin
Fort Norman
SAHTU
YUKON
NORTH SLAVE
Rae Lakes
Snare Lake
Lac La Martre
Wrigley
DEH CHO
Fort Rae
Yellowknife
Detah
Snowdrift
Fort Simpson
Nahanni Butte
Jean Marie River
Fort Providence
Great Slave Lake
Kakisa
Hay River
Fort Resolution
SOUTH SLAVE
BRITISH COLUMBIA
Fort Liard
Trout Lake
Fort Smith
SASKA C WAN

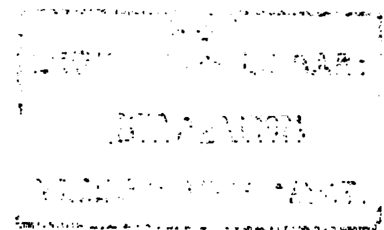
NWT GOVERNMENT LIBRARY
3 1936 00024 435 8

ABORIGINAL LAND CLAIMS IN THE NORTHWEST TERRITORIES:

MECHANICS, IMPACT AND THE FUTURE

PREPARED FOR THE
31ST CANADIAN REGIONAL CONFERENCE
COMMONWEALTH PARLIAMENTARY ASSOCIATION

Victoria, British Columbia
August 10 - 14, 1991.



LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

The people and the government of the Northwest Territories have been occupied with the negotiation and implementation of aboriginal land claims for over 20 years. We are familiar with the promises " and challenges -- and also with the disappointments -- that have characterized the process.

This paper comments on our experience with the mechanics of land claims in general, and then provides a brief overview of the history and current status of each of the claims in the Northwest Territories. We note several interesting issues we have encountered with land claims, concluding with some informal thoughts on Northern expectations of the Federal Royal Commission.

The Northwest Territories and its People

As media, academic and political attention has focused on issues north of the 60th Parallel, we have have been pleased to observe the rest of Canada become more interested in, and more knowledgeable about, our lands and our peoples.

Even so, it is sometimes helpful to begin with a reminder of the vast geographic area that forms our home. The 3,376,698 square kilometers of the Northwest Territories represents about a third of the total area of Canada and spans three time zones. The diverse physiography includes coastal plain, mountain highlands, boreal forest and fertile delta.

As diverse as our geography, the population of the Northwest Territories represents a coming-together of Dene, Metis, Inuit and non-native residents. Aboriginal languages, traditions and social organization, while subject to European influence over the past 100 years, have remained strong and regionally distinct.

Mechanics of the Claims Process in the Northwest Territories

The Northwest Territories is concerned, at this time, exclusively with *comprehensive claims,* based on traditional use and occupancy of land. They are confined to situations in which aboriginal title has not been previously dealt with by treaty, and normally involve a group of Indian bands or aboriginal communities within a geographic area. Settlement agreements are comprehensive in scope, including SUCh elements as land title, rights to the harvesting of wildlife, financial compensation, taxation of benefits, and others.

Comprehensive claims have arisen in other parts of Canada, as well, including Yukon, Labrador, and most of British Columbia and northern Quebec. They are distinguished in federal policy from *specific claims,* which are based on allegations that government did not fulfil specific obligations to aboriginal people under treaties, other agreements, or the *Indian Act.*

In all claims, the Government of the Northwest Territories has become involved in negotiations once they start, but not as a third party at the table. Strictly speaking, the Territorial government has been a member of federal negotiating teams, even though the opinions of the two governments are not always the same.

Recently, the Territorial Government has undertaken an examination of its role and a consideration of greater effective autonomy, particularly with respect to claims by Dene-Metis groups.

The Territorial Government has developed a specific infrastructure to deal with claims, modelled loosely on the organization of corresponding sections of the Department of Indian Affairs and Northern Development. There is a central agency, the *Aboriginal Rights and Constitutional Development Secretariat.* Formed in 1980, the Secretariat provides advice and support to the minister responsible and coordinates the government's input on both aboriginal rights and constitutional development matters.

Within the negotiation process, however, it is the native organization or *claimant group* that first proposes the matter for negotiation and drafts its opening position. Subsequent revisions and drafts are prepared by each side until all parties at the table have an agreement they can live with.

A series of sub-agreements are negotiated, eventually leading to the establishment of an Agreement-in-Principle for the settlement of the claim. Once negotiators have initialled the Agreement-in-Principle, it is recommended to the claimant group for consideration and acceptance. It is from the Agreement-in-Principle that the final settlement is negotiated.

Each Final Agreement must undergo a vigorous approval process, including public discussion and culminating in a vote of prospective beneficiaries. Voting on the Final Agreement, at the community level, is usually spread over a period of several days in order to provide the greatest number as possible with an opportunity to participate in ratification.

If ratified by a pre-determined proportion of voting beneficiaries in each affected community, the Final Agreement is then submitted for approval by the Executive Council of the Northwest Territories. Only Cabinet approval is required, although any aspect of the Agreement may be subject to debate in the whole Legislative Assembly before, during or after community voting on ratification.

Upon approval of the Territorial Government, ratification by Cabinet at the federal level is sought. Upon approval, enabling legislation is prepared by the federal government and proceeds through the Parliament of Canada.

The Inuvialuit Claim

The only claim through which we have had experienced all these phases was passed into law by Parliament on July 25th, 1984, and is known as the ***Inuvialuit Final Agreement.*** Enabling legislation in that case was given speedy passage with an all-party agreement in Parliament.

Inuvialuit are the people of the Western Arctic and are distinct from other Inuit groups in language, distribution and in the nature of their historical contact with non-native culture. Approximately four thousand Inuvialuit were included as beneficiaries of the claim. Among the benefits received was title to 91 thousand square kilometers of land out of the 435 thousand square kilometers they had traditionally used and occupied.

This amount includes surface and subsurface rights to 1800 square kilometers. A further 78,000 square kilometers of land was granted with rights to sand and gravel, but not oil and gas. Two thousand square kilometers were also set aside for management as a protected, non-development area.
In the financial compensation package, the Inuvialuit received a total of $45 million (in 1977 dollars) over a 15-year period, plus $17.5 million in one-time-only economic and social development program support.

All aboriginal claims, titles and interests were surrendered in exchange for protection of hunting, fishing and trapping rights, title to the specified land and financial compensation.

Mechanics for Implementation of the Inuvialuit Agreement. The claimant group established for the purpose of negotiation, the *Committee for Original Peoples Entitlement (COPE),* dissolved after finalization of the claim. In its place six non-profit Inuvialuit Community Corporations were established -- one for each community involved with the claim. Together they control the *Inuvialuit Regional Corporation* which received all the settlement lands and financial compensation for distribution among four other Inuvialuit corporations.

These other corporations include:

> The *Inuvialuit Land Corporation* which owns lands received through the Inuvialuit Settlement and administers licensing and management functions relative to the lands. It is also responsible for participation in the environmental protection of Inuvialuit lands.
>
> The *Inuvialuit Development corporation* which contributes a portion of the financial compensation package to Inuvialuit business ventures and investment. Commercial ventures have included: the marketing of local products; exploration and production of oil and gas properties; contract drilling and spill response capability; ground, marine and air transPortation services; and real estate development.
>
> The *Inuvialuit Investment Corporation* which undertakes a range of investment ventures as dictated by an investment strategy set out by the Regional Corporation. A total mean return of 2.7% on assets to 3.4% on equity was achieved during the interval between 1982 and 1987.

The *Inuvialuit Trust Fund* which owns other subsidiary corporations on behalf of the Regional Corporation and the individual Inuvialuit.

Implementation Issues with the Inuvialuit Agreement. While regional development and economic benefits of the Inuvialuit Claim have been clear, there have been some interesting problems with implementation. In many ways, this can be linked to the fact that this agreement was negotiated early in the history of aboriginal claims in Canada, before federal implementation policy was fully developed.

Land access arrangements are a good example. The access to, and use of, private Inuvialuit lands requires approval and licensing from the Inuvialuit Lands Administration. The Inuvialuit Final Agreement gives the Territorial Government a right of "free access" for purposes of enforcement and administration, but is not specific with regard to the issue of government "use" of Inuvialuit private lands. Under certain circumstances -- such as when wildlife harvesting studies need to be completed -- the line between "access" and "use" tends to become somewhat blurred.

Currently, the Government of the Northwest Territories and the Inuvialuit are negotiating an agreement to govern access and use of settlement lands. At the present time, this is regarded as preferable to any legislative solutions that may be available.

Unclear wording, as well, created some uncertainty as to which payment responsibilities were federal, and which were territorial. This has been particularly true of some wildlife management provisions, and negotiations may be necessary to arrive at subsequent agreement on these matters. New federal policy requiring the establishment and Cabinet approval of an implementation framework earlier in the negotiation process will hopefully reduce the risk of similar difficulty in future claims.

Other problems with the implementation of the Inuvialuit Agreement seem to be more general in nature. It has been argued, for instance, that the small pool of trained beneficiaries has led to a heavy reliance on "outside consultants" within the Inuvialuit corporate structure,. resulting in a disproportionate funneling of the financial package to Southern Canada in the form of professional fees.

Others have suggested that unrealistically high expectations for social and economic change were created among beneficiaries during the claims process, resulting in periodic impatience with the implementation timeframe for economic development and a continuing lack of employment opportunity in the region.

But, for the most part, the completion of the Inuvialuit Agreement brought an infusion of capital and spirit that has the capacity to enhance the quality of life for beneficiaries, strengthen the economic base of the region, and inspire determination among Inuit and Dene claimant groups elsewhere in the Territories.

The Nunavut Claim

The claim to aboriginal land title by the Inuit of the central and eastern Northwest Territories is the largest in Canada. The claim addresses a land area of approximately 1,916,602 square kilometers plus adjacent offshore areas. Inuit constitute over 80% of the population in their claim area.

The claim process was initiated in February 1976 by the *Inuit Tapirisat of Canada,* but stalled due to an impasse over Inuit proposals to create a new territory of Nunavut. Negotiations resumed in late 1980, and in 1982, the *Tungavik Federation of Nunavut (TFN)* replaced the *Inuit Tapirisat.* Negotiations made relatively steady progress, with an Agreement-in-Principle signed April 30, 1990.

Preparation of the Final Agreement and land selection is underway at the present time, with plans to initial the agreement before the end of December 1991. Community voting would likely take place three to six months following that date.

The Agreement-in-Principle would give Inuit land ownership of approximately 350 square kilometers of land, (with subsurface mineral rights to about 10%) guaranteed wildlife harvesting rights, participation in environmental protection regimes and a variety of other rights and benefits.

The Agreement-in-Principle also reaffirms federal and territorial support in principle if Northerners agree to create a separate *Nunavut Territory* or "Inuit Homeland". The settlement would not create *Nunavut* itself, but commits the Territorial Government and *TFN* to set up a strategy for achieving consensus on division outside the land claim process. This external process is well on its way, with Motions passed during the most recent Session of the Legislative Assembly to recommend a plebiscite on the boundary to divide the Northwest Territories.

While progress has been made on most aspects of this claim, some dissenting voices have been heard over the past year to challenge the notion of extinguishing aboriginal title. There is strong disagreement, as well, between Dene-Metis and Inuit claimant groups with respect to the boundary proposed between their respective land claim settlement areas. Further, Chipewyan peoples of northern Manitoba and Saskatchewan are disputing the inclusion of lands which they have traditionally used within the Inuit settlement area. The potential impact of these issues on the settlement of the Inuit claim is presently uncertain.

The Dene-Metis Claim

The history of efforts to settlement joint Dene and Metis claims to land in the western Northwest Territories extends back to the early 1970's. Initial efforts at negotiation were severely hampered by the lack of policy parameters for federal negotiators, incessant lobbying over the agenda for negotiation, and frequent philosophical differences between the claimant groups. Little progress was made until 1983, when the *Dene Nation* and the *N.W. T. Metis Association* agreed to establish a joint *Dene-Metis Negotiations Secretariat.*

An Agreement-in-Principle was signed in September 1988 and a Final Agreement was initialed in April 1990. However, at a meeting of Dene and Metis leaders on July 18, 1990, the majority refused to accept the Final Agreement, instead passing a resolution calling for renegotiation of portions of the agreement and consideration of court action to force recognition of aboriginal and treaty rights. The central issue was an unwillingness to extinguish undefined aboriginal title in favour of the certainty of a settlement.

Relations within the aboriginal organizations were, and continue to be, strained by this development. Representatives from G w *i c h' i n* communities of the Mackenzie Delta and the *Sahtu* region at the northern end of the Mackenzie River Valley withdrew their negotiating mandates from the Dene/Metis leadership and immediately worked toward the initiation of regional land claims.

<u>The Gwich'in Agreement</u> With the failure of the joint agreement in July 1990, the federal government agreed to negotiate the claims of Dene and Metis in the Northwest Territories on a regional basis. A Final Agreement has now been accepted by the *Gwich' in Tribal Council,* comprising Band membership and Metis hailing from four communities in the vicinity of the Mackenzie River delta. The vote on ratification of the claim will be complete by September 21, 1991.

The *Gwich' in* Agreement is not without some controversy, though. The *Dene Nation,* generally critical of the principle of regional claims, has threatened to oppose the agreement because of potential precedents that could be set with regard to the extinguishment of treaty rights and aboriginal title. The Government of the Yukon recalled its Legislative Assembly for an emergency debate on terms of the Agreement which extend rights to 600 square miles of land, traditionally used exclusively by the Gwich'in, within the Yukon borders.

<u>The Future of Other Regional Claims</u>. Apart from the *Gwich' in,* only the northern Dene and Metis of the *Sahtu* Region have undertaken to pursue a regional claim process with the federal government. Their initial request to negotiate financial compensation and land from the original Dene/Metis package on the basis of settlement area -- rather than *per capita* -- was rejected by the federal Minister. Recently, *Sahtu* leadership has indicated that it would be willing to negotiate according to benchmarks in the April 1989 Agreement.

Currently, no other Dene or Metis groups have expressed an interest in the regional claims process. Indeed, resolutions passed on August 3, 1991, at the *Dene Nation's* National Assembly affirmed that organization as the legitimate claimant group for Dene in the Northwest Territories, and recommended direct contact with the Prime Minister of Canada, in part to bypass Territorial Government interests. The settlement of land claims in the Western Arctic promises to continue to be a lively experience!

Lessons from the Past -- D' ections for the Future

Benefits from Negotiated Settlement Of Claims. Even with the virtual "roller-coaster ride" experienced over the history of the lands claims process in the Northwest Territories, negotiated settlements are still preferable to the lure of legislated solutions. Parallels to the *Alaska Native Claims Settlement Act* reveal a considerable risk that legislative processes may leave a greater residue of uncertainty respecting aboriginal rights, a slower rate of implementation, and costly litigation in interpretation of the *Act*.

Generally, there is greater potential for open public discussion and awareness building during ratification of a negotiated settlement than the more stifled approaches we use to craft legislation in our Committees and Legislative Assemblies.

An enhanced sense of commitment and ownership and cultural integrity is achieved, particularly when aboriginal claimant groups interface with non-native government structures.

The Federal Royal Commission. Within this context, it is clear that the *negotiation* of aboriginal land claims should be a political and administrative fact of life within Canada for years to come. The issue has been suggested as one area for consideration by the proposed Royal Commission.

From a northern perspective, the most troublesome aspect of the entire process has been the federal position on *extinguishment.* The concept has tended to scare and confuse claimants at the community level and to elevate the emotionality of negotiations. A full review of the concept and its application to federal land claims policy by the Royal Commission would be welcomed.

The link between land claims settlement and self-government has been established within federal negotiating policy as an indirect one. But some would argue that aboriginal self-government could and possibly should be a logical extension of the process for settling claims on our historical lands and protection against concern over the surrender of aboriginal title. A full discussion of concepts surrounding aboriginal self-government and a framework for political evolution toward that goal would be valued outcomes from the work of the Commission, as well.

MAP SHOWING TFN SETTLEMENT AREA

A & B - TFN Area

A1 - Sverdrup Basin (Excluded from Land Identification)