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# Richard F. Salisbury Award Research Report

## *Introduction:*

My doctoral research, titled "People, Land, and Pipelines: Perspectives of Resource Decision Making Processes in the Sahtu Region, Northwest Territories", examines the ways in which three Aboriginal communities in the Sahtu Region of the Northwest Territories are participating in decisions and activities related to non-renewable resource extraction on Sahtu lands. Specifically, I examine local involvement in the assessment and regulation of a 1,220 km gas pipeline and related infrastructure, collectively termed the Mackenzie Gas Project, or MGP, currently proposed for the Mackenzie valley. The proposed MGP has been touted as a principal means of opening up Canada's northern energy frontier not only because of the capacity for the proposed pipeline to carry natural gas from current discoveries, but also because of its potential to transport natural gas from future exploration and production. As partial owners of the pipeline Aboriginal regional economic development corporations stand to gain significant economic opportunities in the form of capital payments and jobs if the pipeline is approved. Yet, Dene and Métis people in the Sahtu have overwhelmingly indicated that the maintenance of a land-based subsistence economy is of paramount importance and, at times, there are visible points of contestation and opportunity between community visions and goals, and those of non-local environmental management and development schemes.

The development of a pipeline through the Mackenzie Valley and the associated construction, transportation, and exploration infrastructure that follows would undoubtedly have considerable impacts on Aboriginal economic, social, and political systems throughout the Northwest Territories (Able 1993, Elias 1995, Espiritu 1997, Smith 1997, Wilson 1986). How Aboriginal communities in the NWT are affected by oil and gas activity and how they are participating in decision making processes concerning resource development is an emerging area of interest for scholars and policy makers alike. In Canada there has been very limited oil and gas production north of the 60<sup>th</sup> parallel due to marketing, transportation, logistical and other constraints (Zavitz 1997). Drilling through ice, getting supplies and personnel to exploration sites, and the exportation of oil and gas to southern markets are among a long list of project

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<sup>&</sup>lt;sup>1</sup> For example, there has been an increased focus on the study of the effects of oil and gas development on circumpolar peoples including the 2002 recommendation of Arctic Council ministers that there be an assessment of oil and gas activities in the Arctic by the Arctic Marine Assessment Programme, which culminated in the Arctic Council Oil and Gas Assessment, released in 2008.

<sup>&</sup>lt;sup>2</sup>A few exceptions to this are the Norman Wells oil field in the Sahtu which is operated by Imperial Oil, the Bent Horn oil field on Cameron Island which was operated by Panarctic Oils from 1985 to 1986, the Ikhil field/Inuvik Gas Project which is owned equally by the Inuvialuit Petroleum Corporation, AltaGas, and Enbridge pipelines.

challenges. And, while there has been extensive exploration for oil and gas in the Canadian North, including over one hundred and seventy exploratory test wells at onshore locations in the Mackenzie Delta, and another seventy off-shore wells in the south Beaufort Sea, and additional wells in the Arctic Islands and central Mackenzie Valley (Fast, Mathias & Banias 2001), there is still no licensed means to transport oil or gas to markets in the south, and future production is likely contingent on the approval and construction of the Mackenzie Gas Project or another similar undertaking.

In the 1970's, when a gas pipeline through the Mackenzie Valley was first proposed, questions of Aboriginal title to the land had not yet been resolved, and there was no formalized means for Aboriginal people to participate in land-use planning or resource decision making processes, though Justice Berger's Inquiry did make extensive use of Aboriginal peoples testimony at community and public hearings. Now, however, newly implemented land claim agreements have established resource co-management regimes and cooperative decision-making bodies that are intended to provide a space for Aboriginal peoples and political bodies at decision-making tables. Comprehensive land claim agreements in the Northwest Territories, as in other areas of the Canadian North, have established an integrated system of resource comanagement in an effort to involve Aboriginal people more directly in resource development decisions. Yet, these forms of environmental management and decision making processes also produce very specific consequences for local communities including altering local economies and changing governance structures (Kulchyski 2005, Mitchell 1996, Usher 2003). Paul Nadasdy (2003) and others (c.f. Ferguson 1990, Mitchell 1986, Mulrennan & Scott 2005, White 2002, 2006), have offered an excellent discussion of the ways in which modern land claims and comanagement arrangements often give the appearance of eliciting Aboriginal peoples input into resource and land management decisions, but also effectively extend the capacity of nation-states to govern land and peoples. Graham White has demonstrated how cooperative management models structured along Euro-Canadian lines of evidence, inquiry, and examination of testimony is incongruous with Aboriginal peoples forms of decision making, governance, and thought (2006). Harvey Feit, on the other hand, reminds us that public participation in impact review processes and co-management institutions can channel the demands of groups affected by resource developments and that "contestation by consulted groups often emerges in and expands beyond the context of the participatory regime" (2005:269). Indeed, it could be argued that the comprehensive land claim process in Canada began in just this manner.<sup>3</sup> This research explores how changing governance, social, and economic institutions influence the ways in which decisions about resource exploitation and land use planning are made within and between communities in the Sahtu Region of the Northwest Territories, including the often messy and contradictory positions taken by diverse community membership.

A main consideration of this research involves an examination of institutional decision making structures established as a result of comprehensive land claim agreements, and the experiences and negotiation of these processes by local peoples. More specifically, I examine how participation in oil and gas decision making practices is framed by very specific cultural

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<sup>&</sup>lt;sup>3</sup> The James Bay Hydro-electric development project was announced in 1971 without consultation with the James Bay Cree or the Inuit of Quebec; however, protests surrounding this development contributed to the establishment of the James Bay Northern Quebec Agreement which is considered to be the first modern land claims settlement in Canada (Mulrennan & Scott, 2005). Similarly, the report of the Berger Inquiry is considered to have contributed to the comprehensive land claim process in the Northwest Territories (*c.f.* Berger 1977, Auld & Kershaw 2005).

processes, and the social construction and evaluation of associated impacts. Indeed, local discourses surrounding the impacts and benefits of non-renewable resource extraction do sometimes conflict with environmental assessments attempting to predict the effects of large scale industrial projects. In the Sahtu, this conflict exists even when newly created environmental assessment regimes, established under comprehensive land claim agreements, fall under the rubric of resource co-management. As a result of the creation of complex bureaucratic institutions under land claim agreements and recent case law upholding Canada's fiduciary duty to consult with Aboriginal peoples regarding development decisions that have the potential to infringe upon rights and lands, Aboriginal peoples have had to adopt new and perhaps uncharacteristic ways of speaking, making decisions, and organizing in order to interface with industry and various levels of government (Asch 1984, Cruikshank 1998, Nadasdy 2003). Ways in which decisions are made, and how positions on resource development are taken, are influenced by multiple and complex factors neither wholly novel, nor wholly traditional. This weaving of traditional and novel ways of participating in decision-making processes allows interactions between Aboriginal communities, government, and industry representatives to be sites of creativity and contestation, continually redefining conceptions of knowledge, industrial impacts, rights, governance, and models of appropriate development (c.f. Lavie 1996).

## Research Context:

In July 1993, Dene and Métis people in the central Mackenzie valley voted to approve the Sahtu Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA). The outcome of many years of negotiations, the SDMCLCA provides the Sahtu Dene and Métis with fee simple title to 41,437 km² of the 283,171 km² of land within the Sahtu Settlement Area (SSA). The SDMCLCA also provides for federal government payments of \$75 million Canadian dollars over a fifteen year period to designated land claim institutions, Sahtu Dene and Métis rights to hunt and fish throughout the SSA, and the exclusive right for Sahtu Dene and Métis harvesters to trap on settlement lands. The SDMCLCA also includes provisions for an integrated system of resource co-management that seeks to involve Sahtu Dene and Métis people more directly in resource management decisions in the SSA, including decisions related to the management of renewable and non-renewable resources, land-use planning, environmental impact assessment, and the regulation of land and water use within the settlement area.

The SSA now encompasses large parts of the central Mackenzie valley including parts of the Mackenzie River, Mackenzie Mountains and Great Bear Lake. While Sahtu Dene and Métis people now live in permanent settlements, they continue to harvest the resources of their lands, and to teach their young people the stories, skills, and knowledge of their Elders. The Sahtu is home to five communities including Colville Lake, Déline, Fort Good Hope, Norman Wells, and Tulit'a which, as of 2006, have populations varying from between 126 and 761 people. With the exception of Norman Wells —which was established largely as a result of oil fields operated by Imperial Oil —all of the communities are 91% or more Dene or Métis. All of the communities are accessible by aircraft year-round, and can be reached by winter road from December to April and by boat when the waterways are clear of ice.

The implementation of the SDMCLCA has brought with it challenges and distress and, at times, tremendous opportunities. In some ways, the SDMCLCA can be viewed as entrenching Sahtu Dene and Métis rights and ownership of the land in ways that encourage economic development and increased local involvement in decision-making, particularly concerning lands, resources, employment, training, and business opportunities. However, some fifteen years after its ratification, individuals and institutions in the Sahtu are increasingly questioning the ability of the claim to meet the needs of Sahtu communities, particularly as certain parts of the claim are, thus far, yet to be implemented. More than once during the course of my field research I heard local people say that Sahtu Dene and Métis people are "worse off" after the implementation of the land claim and that it has not brought with it the benefits and independence that local people had anticipated.

## The Sahtu Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA):

The SDMCLCA arranges the SSA into three distinct geographical and administrative Districts. The land within these Districts is corporatized –held in fee simple title by respective District Land Corporations, which are, in turn, comprised of smaller community-based Land Corporations. Therefore, suddenly, after July 1993, Sahtu Dene and Métis people who had utilized the land in particular areas for generations now found their land part of a District, and subject to District administration.

Prior to the SDMCLCA land-use patterns and preferred harvesting areas were widely known and acknowledged, the systems of land-use and tenure remained flexible, fluid, and managed according to non-written laws. In the Sahtu, it is widely believed that the land is not owned (in the sense of common property law), but rather it is known. That is, that certain individuals and families have acquired more primary experiential knowledge of some areas of land through continued and frequent use, and thus these individuals and families are better equipped to successfully harvest the resources in that area (and employ conservation tactics to ensure sustainable harvesting for following years). However, traditional land-use areas are not sectioned into tidy bundles: they often overlap, intersect, and change as animals migrate or harvesting conditions change. Indeed, some harvesting areas are frequented by entire communities, such as the annual community caribou hunt held every fall-time by Colville Lake on the Barrenlands. Other areas tend to be particularly rich in seasonal resources (such as fish spawning locations) and are frequented by selected harvesters over a shorter period of time. Thus, for Sahtu Dene and Métis peoples, the ability to go out into the bush and successfully cultivate the resources of the land is not based upon asking permission to utilize the land, or obtaining some form of land ownership or proprietary rights, but rather in acquiring intimate knowledge of the landscape, and by conducting oneself in a proper way in relationship to human and other-than-human components of the environment. Acquiring this knowledge comes from conducting oneself in accordance with Dene Law, through spending time on the land with other individuals who have intimate knowledge of the landscape, by watching and listening to them, and by appropriately asking the advice of Elders and other knowledgeable individuals. Most frequently, this transference and acquisition of knowledge is established through close family members, but it can also be acquired through extended kin and social networks, thus interlinking individuals and communities through comprehensive networks of land use and practice. To a

large degree, land-use boundaries remained socially and morally negotiated through economic and social ties with individuals and groups both within the Sahtu and in surrounding regions.

In many ways, the SDMCLCA serves to restructure resource and land use decision making forums and forms of governance along non-local lines of authority and normative practice. Under the SDMCLCA, Sahtu Settlement Land is now 'owned' by corporate entities with corresponding rights and obligations under Canadian property law. Decisions about who gets to use the land and for what purpose are now under the authority of District corporations and regional co-management boards, such as the Sahtu Land and Water Board (SLWB) which is responsible for issuing land-use and water permits for lands throughout the SSA. The primary role of the various Land Corporations within the SSA is to administer Sahtu Settlement Lands and land use within their respective jurisdictions, and to manage of monies and royalties received from the Sahtu Trust. Incentives for District Land Corporations to open up Sahtu Settlement Lands for oil and gas activities include the negotiation of money, jobs, and business partnerships secured through Access and Benefit Agreements (ABAs), but also through the collection of limited subsurface royalties for oil or gas extracted from beneath the surface of the ground.<sup>4</sup> As a result of the SDMCLCA, permission and payment for access to the land is often secured through an ABA, the negotiation of which is conducted between proponents and the respective Land Corporation, and often occurs at the very early stages of development planning, prior to the submission of application permits, or other consultation processes. Negotiations for ABAs are conducted over the phone, via-e-mail and the internet, and to a more limited degree, through face-to-face meetings. Presidents and staff develop communicative competence in board room negotiations and the oil and gas field, and an in-depth knowledge of how oil and gas projects work. Strategies employed by Land Corporation Presidents often involve securing maximum benefits in the form of access payments, allocation of business contracts and opportunities, iointpartnership initiatives, training, and other community initiatives without jeopardizing the negotiation process. Land Corporation Presidents must be able to intuitively judge how much the corporation is willing to give, and under what conditions. And, they must have a general awareness of what other Land Corporations in other Districts or communities have negotiated in similar situations.<sup>5</sup> While a company wishing to conduct work on Sahtu lands will often arrange for at least one consultation meeting with local people in the community, most of the actual negotiations for ABAs occur in closed meetings. These meetings sometimes take place in the community, but are most often conducted in boardrooms in large urban centres, such as Calgary.<sup>6</sup>

<sup>&</sup>lt;sup>4</sup> Despite resource royalty sharing arrangements between the federal government and Sahtu Designated Organizations entrenched in the SDMCLCA, the current agreement does not provide Sahtu Designated Organizations with a total, or even equal share of monies collected from the extraction of oil and gas resources. In fact, the current resource-royalty 'sharing' agreement provides Sahtu Designated Organizations with a mere 7.5% of the first \$2.0 million CDN of resource royalties received by the federal government annually, and 1.5% of any additional resource royalties received thereafter in that same year (Indian Affairs and Northern Development 1992:27).

<sup>&</sup>lt;sup>5</sup> Because ABAs are confidential, even between communities, Land Corporations Presidents and Boards are often not aware of the terms of other ABAs, and thus are not able to use them as leverage in negotiation processes.

<sup>&</sup>lt;sup>6</sup> ABAs for the oil and gas industry often take place in Calgary where most company headquarters are located. ABAs for mining often take place in Vancouver, for the same reasons.

Yet, the exclusion of Sahtu beneficiaries from negotiation processes, either because the meeting is held remotely or because the meeting is 'closed', is in direct opposition to conventional decision-making processes in the Sahtu. Typically, when an important decision needs to be made in the Sahtu, or when important information must be shared, the entire community is invited to a gathering where Elders present long oratories and instruction through stories (Basso 1978). Elders are considered to be vast stores of important primary knowledge, and their words and advice are highly regarded. As one local man said, "prophets and Elders always talked about how we should live our lives in the future.... what to protect. We have to use this knowledge to make us stronger." However, the types of meetings typically held for ABA negotiations often exclude Elders in their conventional role as advisors. One Elder commented,

"Today, it is really different. We have young leaders so they have hardly been on the land. The young leaders don't ask the Elders, or involve them in the decision-making process. The young leaders just go out and make the decision right there."

Importantly, while Land Corporations and other institutions established as a result of the SDMCLCA deal directly with questions surrounding land access, ownership, management, use, regulation, and Sahtu Dene and Métis harvesting rights, nothing within the SDMCLCA deals directly with political institutions established under the *Indian Act*, education, health care, or other matters of community governance. Thus, the establishment of separate institutions for the management of lands and resources creates, in a very palpable way, divergent systems of community authority: one for the wider control of Sahtu Settlement lands, resources, and economies under the jurisdiction of the Land Corporation, one for the management of general municipal services in the form of a Hamlet government, and one for the administration of rights, duties, and programs for band members under the Indian Act, in the form of the Band Chief and Council. While the mandate and jurisdiction of each institutional authority may be explicit in terms of their respective economic and political spheres, in reality, the interests and activities of each overlap. These intersections come not only at the level of stewarding community direction, but also in the lives of individuals who must locate themselves on axis's of belonging and identity (as shareholders, band members, and members of a larger communities), and who must navigate the various and sometimes competing decision-making authorities in the course of their everyday activities. Thus, the ratification and implementation of the SDMCLCA in 1993 not only institutionalized specific lines of authority surrounding rights to land and resources in the Sahtu, it also transformed, in very fundamental ways, structures of social and economic relations.

From the perspective of many Sahtu Dene and Métis peoples, the negotiation of a comprehensive land claim in the Central Mackenzie Valley was a formal recognition of fundamental rights to land, resources, and lifeways exercised and cherished by their ancestors since time immemorial. Among many Dene and Métis people in the Sahtu, the primary motive for entering into a comprehensive land claim was the formal protection of land and culture, and to ensure that young people in the community could participate in meaningful employment while still being able to spend time out on the land. For Sahtu Dene and Métis people, the SDMCLC was widely seen as an instrument with the potential to balance traditional and wage-based economies, to provide for sanctioned participation in decisions that pertain to lands and

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<sup>&</sup>lt;sup>7</sup> Men's focus group.

<sup>&</sup>lt;sup>88</sup> Women's focus group.

economic practices within the SSA, and a means of protecting the fundamental relationships that Sahtu Dene and Métis people have with their land. And, despite the absence of provisions dealing with most aspects of community governance within the SDMCLC itself, there was, and continues to be, a strong feeling among local people in the Sahtu that the comprehensive land claim would (or ought to) provide Sahtu Dene and Métis with more control over their lands and their lives, their economies, and their visions of the future; Sahtu Dene and Métis people are now, after all, the legal "land owners."

Yet, while it was commonly assumed among people in the Sahtu Region that the SDMCLCA would provide local people with increased authority concerning Sahtu lands and resources, the general impression among Sahtu Dene and Métis people is that, at least in practice, it has not met their visions for the future. As many people within the Sahtu point out, very little within the SDMCLC resembles Dene Laws or local forms of land tenure, management, or community governance. Within the SDMCLCA the land is objectified as a thing that can be owned, commodified, controlled, and subject to corporate authority. District corporate entities are now landowners of disparate parcels of lands held in fee simple title. Sahtu Dene and Métis people, too, must now self-identify as shareholders in these corporations in ways that formalize and cement formally fluid social identities and relationships into bounded political, social, and economic units. Elders, who have served as guides and advisors, and who have tremendous repertoires of knowledge regarding the environment, the history of their people, and the values and norms of their community, are often prohibited from participating in land-use decisions in the course of ABA negotiations, either because they are not present during the meeting or because the ways in which the Elders speak about the landscape is not readily understood by the corporate community.

#### Discussion:

While many people in the Sahtu Region thought that the SDMCLCA would enhance local control over decisions surrounding lands and resources, many people in the Sahtu are growing increasingly frustrated with institutions formulated on non-local lines of authority and decision-making. Yes, local people are now participants on corporate and co-management boards that 'manage' lands and resources by issuing land-use permits, conducting environmental assessments, and negotiating terms of land access. However, in order to participate in land use decisions and stewardship of natural resources, these entities must adhere to the terms of modern-day treaties and rules that are at once at odds with how local people conceptualize appropriate uses of the land, and how decisions about the land ought to be made. People in the Sahtu thought that the comprehensive land claim would, in effect, increase local authority in a key aspect of what had previously been experienced as coercive state power to unilaterally make decisions about what kinds of activities could and would be conducted Sahtu lands. As it turns out, what the land claim actually does in terms of its structuring power is put Sahtu representatives on corporate and co-management boards in positions where they are now the agents and arbiters of federal (not Dene) laws concerning resource management and development.

A local critique of the SDMCLCA has begun to surface to surface in the Sahtu, though it is as yet difficult to voice. One of the complications surrounding an open critique of the SDMCLCA is that those who negotiated and ratified the claim are often vital members of Sahtu

communities; they are people's fathers, brothers, uncles, and friends. I have been fortunate to meet many of these people, and have come to understand that they believed at the time that the SDMCLCA would improve the lives of their people; and, although it has not brought with it the independence that many Sahtu Dene and Métis people had hoped, there is evidence that comprehensive land claims in general have contributed to improvements in local economic development (Saku 2002, Saku & Bone 2000a, 2000b). Second, there are several components of the SDMCLCA that have never been fully implemented, even fifteen years after its ratification. Some of the more significant of these components include a regional Protected Areas Strategy and land-use plan which would enable local Sahtu communities to set aside tracts of land that would be unavailable for future resource development. One of the significant fears of people in the Sahtu is that should the MGP receive approval before a ratified land-use plan is in place, the pace of development would quickly overrun areas that might be considered for protection. Third, an overwhelming number of Sahtu Dene and Métis individuals voted to ratify the SDMCLCA, and many more have enrolled as beneficiaries. In fact, with the exception of a small number of people in Tulit'a who have refused to sign or enrol in the SDMCLCA, most of those individuals who are eligible for enrolment, have done so with 3,173 individuals enrolled in the SDMCLCA as of 2008 (Sahtu Secretariat Incorporated 2008:15).

In a very real way Sahtu Dene and Métis peoples are and have always been participants in their comprehensive land claim, though not without constraints imposed by outside forces. However, this participation has not always been on Sahtu Dene and Métis terms, and in many ways Sahtu Dene and Métis participation has undermined local practices surrounding land, landuse, access to resources, and governance and simultaneously endorsed the corporatization of decision-making processes and the commodification of land. However, the alternative, that of not participating in a comprehensive land claim, would have resulted in a lack of security for Sahtu Dene and Métis rights, involvement in resource decision-making, and virtually no economic benefit resulting from resource development in the region. The results of this alternative can be seen among those in Tulit'a who have refused to enrol in the SDMCLCA, and among those Dene and Métis people without a comprehensive land claim in the Deh Cho Region of the Northwest Territories.

Somewhat paradoxically, it is through comprehensive land claims that many of the benefits of current and or potential oil and gas developments are attained. Likewise, despite critiques surrounding the extent to which current resource management regimes across the Canadian North reflect Aboriginal views of appropriate land use, modes of economic development, and forms of governance (*c.f.* Adelson 1998, Asch and Zlotkin 1997, Brody 1981, Ellis 2005, Kofinas 2005, Kulchyski 2005, Mitchell 1996, Nadasdy 2007, 2005, 1999, Stevenson 1996, Westman 2006, White 2006) it is through these newly implemented bureaucratic structures that participatory avenues and benefits of extractive projects are secured. The role of governance structures established under comprehensive land claims in non-renewable resource decision making, including ownership of sub-surface rights and the establishment of resource management regimes also influences the ways in which oil and gas activities and assessment are experienced at the local level.

The outcome of the MGP environmental assessment and regulatory decisions will likely have a significant impact on Sahtu economies and communities. Should the MGP receive approval from regulatory agencies, commencement of the construction of this mega-project as well as an overall increase in oil and gas exploration and production is expected. Over a relatively short period of time local land users may witness a mounting demand on nonrenewable resources, a demand that is perceived to interfere with land-based activities. Yet, at the same time, shifting local economies necessitate that Sahtu community leaders seek to maximize community benefits from extractive industries, including pursuing avenues to increase participation opportunities in a wage economy. Land-based activities including fishing, hunting, and trapping now require access to cash for supplies and fuel; many young people, though they emphasize that they wish to continue to engage in harvesting activities, also look to a future that includes employment in a cash economy. If the MGP is not approved, community governance bodies that have anticipated increased economic opportunity as a result of oil and gas economies may have to readjust views of oil and gas sectors as viable platforms for community and regional economic development. My doctoral fieldwork conducted in three Sahtu communities, as well as at consultation sessions, trade shows, and other decision-making venues in Calgary, allowed me to examine and document the complex and multi-layered nature of land use and resource decision-making processes in the Sahtu, and pointed to the complexity of newly created bureaucracies under the SDCLCA as a significant factor in changing governance and resource decision-making processes. I am particularly appreciative for support from the Richard F. Salisbury Award, which allowed me to return to Calgary at the time that the Joint Review Panel released its final report and recommendations. I presented the results of the research supported by the Richard F. Salisbury Award at the Canadian Anthropology Society's Conference in Montreal in May 2010. I have applied for and received a SSHRC Postdoctoral Fellowship to continue research into the consequences of regulatory decisions surrounding the MGP. My Postdoctoral research, which will begin at Nipissing University in September 2010, will include an assessment of potential opportunities and barriers to Aboriginal peoples' participation in nonrenewable decision making in the Canadian North, as well as the social, economic, and political consequences of such processes and their ultimate outcomes.

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### **ENDNOTES**

<sup>&</sup>lt;sup>1</sup> Statistics are from the 2006 Community Profiles compiled by Statistics Canada.