1982

Provincial and Federal Legislation Affecting Exploration, Development, Transmission and Marketing of Petroleum and Natural Gas in Canada: An Overview and Comment

Peter A. Cumming
Osgoode Hall Law School of York University

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/scholarly_works

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License.

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.
PROVINCIAL AND FEDERAL LEGISLATION AFFECTING EXPLORATION, DEVELOPMENT, TRANSMISSION AND MARKETING OF PETROLEUM AND NATURAL GAS IN CANADA: AN OVERVIEW AND COMMENT*

PETER A. CUMMING**

INTRODUCTION

The purpose of this paper is to provide a brief historical overview of federal and provincial legislation affecting exploration, development, transmission and marketing in Canada with respect to petroleum and natural gas. This will be done within the context of identifying the development of current major energy policy issues, with particular reference to the federal government's National Energy Program (NEP), announced October 28, 1980, and the subsequent "Energy Pricing and Taxation Agreement" between Alberta and the federal government September 1, 1981.

Let me say at the outset that some people will disagree with a good deal of what I say. My response is that we are talking about issues in respect of which there is a great deal of rhetoric and posturing on all sides, and that my perspective is not beholden to any particular participant in the current energy debate. I think it especially important for the participants from the United States to see the issues identified clearly.

There is one underlying basic issue in Canadian energy policy today: revenue-sharing on rising prices. Virtually every other issue is a manifestation of this basic question. The revenue-sharing question is present due to the historical nature of Canada as a federal state, and the resolution of the question will profoundly influence Canada's future as a federal state. In analyzing the problem, one must necessarily convey his own vision of Canada as a nation-state—past, present, and future.

Editor's Note: This article is footnoted according to Canadian citation form based on the extensive use of Canadian materials in the article and the anticipated use of the article by the Canadian Bar. Citation form follows J. A. Yegis, I. M. Christie, Legal Writing and Research Manual (2d Ed. 1974).

* This article is based on a presentation given at the International Energy Development Conference, April 7, 1981, at Brigham Young University but has been updated to include consideration of the September 1, 1981, Memorandum of Agreement between Canada and Alberta regarding Energy Pricing and Taxation.

** Peter A. Cumming is Professor of Law at Osgoode Hall Law School of York University, Toronto, Canada.
Constitutional Framework for Provincial and Federal Control

The British North America Act of 18671 (B.N.A. Act) together with later amendments is Canada's Constitution. As you may know, we are presently going through a process of constitutional reform, with constitutional amendments (in particular, a Charter of Rights) being considered by the present Parliament.8 Although constitutional reform continues to be extremely controversial from a political standpoint, the legality of the federal government's approach has been recognized by the Supreme Court of Canada.8 If constitutional reform is completed in the form of the amending bill, the existing B.N.A. Act will be known as the Constitution Act, 1867. Its provisions will remain, but with additional provisions which relate to natural resources in the Constitution Act, 1981.

The basic scheme of the present B.N.A. Act is to leave powers to deal with matters of a national interest with the federal parliament and matters of local concern with the ten provincial legislatures. The critical point in respect of this division of mutually exclusive powers between Parliament and the provincial legislatures is to determine where a given matter falls. A power that comes within one class, say a provincial power, cannot be within another class, that is a federal power, and vice-versa. For the sake of brevity, let us consider this division of jurisdiction by considering how the oil and gas industry operates from a functional standpoint.

Ownership of natural resources within provincial boundaries is left with the provinces,4 and legislative competence to manage and sell public lands belonging to the provinces rests with the provinces.4 As the two main producing provinces entered Confederation fairly recently6 and did not receive a transfer of natural resources until 1930,8 the bulk of resources are still under provincial public ownership and are not privately

2. Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada. Annex A contains the proposed "Canada Act."
2.1. In The Matter of references concerning the effect and validity of the amendments to the Constitution of Canada sought in the 'Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada', decided on September 28, 1981. The divided Supreme Court of Canada ruled that the proposed resolution affected provincial powers. It further ruled, in the quintessential Canadian compromise, that amendments which affect provincial powers constitutionally do not require provincial consent but conventionally do. In other words, the resolution is legally but not politically acceptable.
3. B.N.A. Act, supra, footnote 1, s.109.
4. Id., s.92(5).
5. Both Alberta, with 86.5% of Canada's oil and 84% of the country's natural gas, and Saskatchewan, with 9.6% of Canada's oil in 1905.
6. The B.N.A. Act, 1930, 20 & 21 Geo. 5, c.26 (Imp.).
owned.

The third main producing province is British Columbia, which came into Confederation in 1871 and received ownership to its resources at that time. This situation is in relative contrast to lands within the American states, where there is substantial ownership of mineral interests by both the federal government and the private sector.

Therefore, provincial control over oil and natural gas at the exploration, development, and production stages has been easy and effective, due to the two facts of public ownership and the constitutional power to legislate with respect to the sale and management of public lands belonging to the province. Hence, the Alberta petroleum and natural gas lease (in law a bar license, there being no interest in land conveyed by the so-called lease) provides that the lessee shall comply with provincial legislation and, specifically, the Mines and Minerals Act and regulations (which determine provincial Crown royalties). The lessee covenants to use the oil and gas within the province unless the provincial government consents otherwise. The Alberta Petroleum and Marketing Act provides that production must be sold through an entity of the provincial government, the Alberta Petroleum Marketing Commission (APMC), to an approved list of purchasers.

The province may dispose of publicly owned oil and gas as an incident of its ownership; and the province through its power of management and sale, has sole jurisdiction at the first stage of activity, the allocation of property rights. This includes the selection of the exploring party, all the conditions of sale (such as the nature, extent, and duration of such rights) and the consideration paid for such rights (i.e. the production royalty payable to the province, bonus bids, and lease rentals). To retain as much control as possible, the province wants to retain ownership so that the oil and gas interests remain publicly owned, and can be regulated within s. 92(5) B.N.A. Act. The timing of the passage of ownership will be important; for once ownership passes, the province loses its main constitutional head of power over oil and gas (s. 92(5) of the B.N.A. Act).

Alberta has drafted its lease to ensure that it is not a grant. The lease has a determinable limitation. Non-compliance by a lessee with provincial regulation after production would end the lease for failure to comply with its conditions, and the remaining oil and gas still in those

---

7. With 10.6% of the country's natural gas production.
lands covered by the lease would continue to be owned by the province. Therefore, a lessee must comply with the lease or its future rights are ended, and the province thereby exercises control beyond the point of production, at which ownership of its minerals passes.

As we have seen, provincial control at the first stage of activity, allocation of rights, is complete, given provincial ownership coupled with s. 92(5) of the B.N.A. Act. Similarly, provincial control is exercised at the second stage of activity, exploration. I emphasize again that the permit or lease does not convey property rights (prior to production) so the province can control both as owner and also because it has the power to regulate exploration under s. 92(5).

At the third stage of activity, production, the province similarly exercises control. The pertinent Alberta legislation is its Oil and Gas Conservation Act, under which the Alberta Energy Resource Conservation Board regulates production from the standpoint of conservation, assigning maximum rate limitations to oil wells and pools, and prohibiting waste. It also regulates production from the marketing standpoint, administering a system of market demand prorationing for oil and allocating this demand among oil producing pools and wells.

The provinces do have other constitutional powers that come into play—s.s. 92(13) and 92(16) B.N.A. Act, which allow the provincial legislatures to legislate with respect to “Property and Civil Rights in the Province” and “Generally All Matters of a Merely Local or Private Nature in the Province.” Thus, a province can legislate with respect to the price of oil and gas consumed in that province. It should be noted as well that the provinces have the power of direct taxation and thereby impose an income tax on production profits by s. 92(2) B.N.A. Act. However, the production royalty the province exacts as owner is the main provincial fiscal instrument for oil and gas, with land sales and bonus bids for production rights also an important source of revenue.

A particular constitutional problem has arisen in Saskatchewan with respect to the attempts of the provincial government to design a royalty to capture a high proportion of the resource value from production. The scheme was struck down by the Supreme Court of Canada as being unconstitutional, on the basis that it was an “indirect tax” and violated the federal “trade and commerce” power. The provinces have viewed this problem as being an unjustified infringement of provincial

12. P.S.A. 1970, c.267, as am.
ownership of natural resources. The Constitution Act, 1981\textsuperscript{14} will pro-
vide expressly that a province can tax by any mode, directly or indi-
rectly, in respect of primary production. Thus, constitutional reform will
expand provincial jurisdiction to at least this extent. As for the impact
of constitutional reform upon "trade and commerce," it is somewhat
uncertain.

Until 1973, regulation of oil and gas was left almost entirely to the
provinces. Federal legislation was limited to the National Energy Board
Act,\textsuperscript{15} enacted under the federal trade and commerce power\textsuperscript{16} dealing
with four areas: (1) performing an advisory function to the federal gov-
ernment (e.g., oil and gas supply demand forecasts); (2) approval of in-
terprovincial pipelines; (3) approval of traffic, tolls, and tariffs for such
pipelines; and (4) approval of the export from Canada of petroleum and
natural gas.

As well, Canada legislates\textsuperscript{17} and administers with respect to federal
lands (called "Canada lands"), including the Northwest Territories,
Yukon Territory, and offshore continental margin. These areas were rel-
atively unimportant until the Prudhoe Bay discovery in February, 1968,
and the energy crisis beginning in 1973. There have been recent signifi-
cant oil discoveries in both the Beaufort Sea of the Arctic Ocean and
offshore Newfoundland. Parliament is presently considering Bill C-48,
the "Canada Oil and Gas Act," the intended new legislation for Canada
lands, which we shall return to shortly.

In summary, until 1973 the regulation of oil and gas with respect to
provincial lands was left virtually to the provinces with the exception of
those matters of national interest (interprovincial transportation and in-
ternational trade) covered by the National Energy Board Act.

So far as the federal parliament is concerned, its powers include the
regulation of trade and commerce,\textsuperscript{18} general laws "for the Peace, Order
and Good Government of Canada" (POGG),\textsuperscript{19} control of federal lands,\textsuperscript{20}
the competence to deal with interprovincial works and undertakings,\textsuperscript{21}
and the power to declare by Act of Parliament works wholly situated
within a province to be for the general advantage of Canada.\textsuperscript{22} Thus,
Parliament has considerable constitutional powers to deal with the regu-
lation of petroleum and natural gas.

\textsuperscript{14} Part VII, s.56(1), which adds to The Constitution Act, 1867 s.92A.(4).
\textsuperscript{15} R.S.C. 1970, c.N-6, as am.
\textsuperscript{16} B.N.A. Act, supra, footnote 1, s.91(2).
\textsuperscript{17} Territorial Lands Act, R.S.C. 1970, c.T-6, as am., and the Oil and Gas Production
and Conservation Act, R.S.C. 1970, c.0-4, as am.
\textsuperscript{18} B.N.A. Act, supra, footnote 1, s.91(2).
\textsuperscript{19} B.N.A. Act, 1871, 34-35 Vict., c.28 (U.K.).
\textsuperscript{20} B.N.A. Act, supra, footnote 1, s.91(1A).
\textsuperscript{21} Id., ss.91(29) and 92(10)(a).
\textsuperscript{22} Id., ss.91(29) and 92(10)(c).
Until 1973 there was no controversy, and indeed, as illustrative of the general satisfaction with respect to the divisions of constitutional powers, the subject of natural resources was not even raised at the conference on constitutional reform in Victoria in 1971. 23

The fourth stage of activity is transportation, which involves a number of subjects. Intraprovincial pipelines (like Alberta Gas Trunk Line) are regulated provincially, but at the point that a provincial system can be said to be more than merely physically hooked up to extraprovincial facilities, it would be part of an interprovincial “work and undertaking” (such as the natural gas pipeline of Trans Canada Pipeline Company and the oil pipeline of Interprovincial Pipeline Company) within federal jurisdiction by s. 92(10)(a), s. 91(29), and also by virtue of the federal trade and commerce power, s. 91(2). Note that s. 91(10)(c) also allows Parliament to declare by legislation any “work in a province to be for the general advantage of Canada,” and thus bring such work under federal constitutional power (by s. 91(29)). Such power has not been used in respect of oil and gas, but constitutionally (if not politically) could be utilized with respect to all intraprovincial works—pipelines, feeder and gathering lines, processing plants and refineries, and even Christmas trees and drilling rigs. However, as Alberta owns the natural resources on publicly owned lands and has the constitutional power to manage and sell such resources, the federal declaratory power could not be used, in itself, to force production of petroleum and natural gas out of the ground.

We now come to the fifth and critical stage of activity, marketing, which involves two components, movement of the commodity and the pricing thereof. As to movement, insofar as we are speaking of interprovincial and extra-territorial trade, such is clearly within the federal sphere of constitutional power. 24 Movement simply within a province and the decision as to whether there will be exports from a province are considered to be within provincial control. 25

Now, let’s consider pricing, which is at the heart of the revenue-sharing dispute.


Until the advent of the OPEC cartel in 1973, the wellhead price of Alberta oil was generally set by provincial authority with reference to the prices of alternative sources of supply in North America. The system was a “netback” approach, the wellhead price being determined by the

---

23. The subject of natural resources was not mentioned in the Victoria Constitutional Charter of 1971.
24. B.N.A. Act, supra, footnote 1, s.91(2).
25. For example, the export from Alberta of natural gas is controlled by The Gas Resources Preservation Act, R.S.A. 1970, c.157, s.4(c), as am.
deduction of transportation costs to the location of competitive
interface. 6

By September 1973, Alberta producers were supplying at a wellhead
price of $3.80\textsuperscript{7} per barrel as far as the Chicago market, when the price
suddenly rose sharply due to the supply difficulties caused by the Mid-
dle East conflict and the OPEC cartel's pricing policy. The Trudeau
Government responded with a temporary price freeze on oil consumed
in Canada, coupled with an export tax\textsuperscript{8} on oil sold to the United States.
The export tax was set at the difference between Canadian and United
States' prices. The Alberta government opposed both the domestic price
freeze and the export tax. However, in January and April 1974 at fed-
eral-provincial First Ministers Conferences, an agreement was achieved
whereby the wellhead price of oil would rise by $2.70 per barrel (to $6.50
per barrel), and the federal government would retain the correspond-
ingly reduced export tax. This initial tranquility was relatively short-
lived due to the continuing instability in the international oil market
caused by the OPEC cartel.

The OPEC cartel is nothing more than a classic cartel of producers
who, through a near monopolistic control of supply coupled with a fairly
inelastic demand curve of consumers, have been able to force the price
of oil higher and have been able to gain considerably more in revenues
for their oil. Thus, in 1981, the price for a barrel of oil from Saudi Ara-
bia is some eighty times higher than the cost of production for that bar-
rel. Such an approach can be achieved in a non-competitive interna-
tional market. The monopolistic or windfall profits accruing to OPEC
are considerable. Leaving aside the question of what pressures might be
brought to bear upon OPEC, it is the impact of OPEC within Canada
that is to some considerable extent within the control of Canada and the
provinces. Both levels of government must be held accountable for poli-
cies devised to respond to the domestic ramifications of OPEC. My com-
ments shall focus upon Alberta at the provincial level because it ac-
counts for some 85\% of the nation's production, and Alberta is the main
protagonist on behalf of the three western provinces in resource disputes
with the federal government.

1974-1978

In summary, the formation of the OPEC cartel had a two-fold effect
upon Canada. First, our security of supply was threatened, for the west-

---

Law Rev. 146 at 168, 169.
27. All figures are given in Canadian dollars.
legislation was in place, the National Energy Board, in effect, imposed and collected the
tax through its control of export permits.
ern oil pipeline extended only to Ontario and the national gas pipeline extended only as far as Montreal in Québec. Therefore, Québec and the Maritimes were dependent upon the uncertainties of supply of offshore OPEC oil.

Second, given that about 25% (425,000 bbl/day) of our total domestic consumption is imported from OPEC countries, with escalating world prices, there were significant domestic ramifications. The decision was made by the Trudeau Government to have a uniform domestic price for this basic commodity (subject only to transportation differentials) and to maintain the domestic price below the world price with the domestic price rising gradually. This necessitated price regulation with respect to the April 1, 1974, price of $6.50 per barrel; the price was allowed to rise only pursuant to federal-provincial agreement. By 1975 the federal Petroleum Administration Act29 was enacted under the trade and commerce power, retroactive to April 1, 1974.

It must be emphasized that the trade and commerce power in Canada has generally been considered by the courts as being limited to interprovincial and international trade30 and is not seen as extending to the wellhead, as in the United States.31 In any event, the Petroleum Administration Act expressly limits itself to interprovincial and international trade in oil and gas. However, the regulated price for both oil and natural gas (85% of the price of oil) was agreed to over the years by the producing provinces and the federal government until July 1, 1980, so that this legislation (Part II) imposed a regulated price based upon federal-provincial agreement until that point in time. Similarly, the price for natural gas was agreed to by the producing provinces and the federal government until September 1, 1980. The agreed-upon price was then imposed upon the industry by Part III of the Petroleum Administration Act.

As well, the export tax (retroactive to April 1, 1974) on oil was now imposed by this Act (Part I) upon oil exported from the western provinces to the United States, whereby the difference between the domestic price and export price (determined by the National Energy Board on a what-the-market-will-bear basis) was used to subsidize eastern refinery importers who were importing at the world price and selling at the lower domestic price. The subsidies were paid and administered by a board set up under the Petroleum Administration Act (Part IV). In essence, Canada would use the tax dollars generated by selling western oil to the United States at the world price and pay OPEC for imported oil at the

29. S.C. 1974-75-76, c.47 as am.
world price, maintaining a lower, uniform domestic price.

The energy crisis quickly resulted in a dramatic change from the previous perception of a country with a virtually unlimited supply of both oil and natural gas to that of a country with rapidly dwindling supplies of domestic conventional oil. Incidentally, if one wanted to identify a single reason for a significant change in public attitude at that time and since toward the industry—rightly or wrongly—it would be the shocked realization that the data supplied by industry to the National Energy Board, upon which the forecasts of virtually unlimited reserves were made, was now somehow incorrect. The impression left was that, when the industry wanted exports, supplies were seen as limitless; while after OPEC the argument of industry (wanting a higher price and profit) was that prices had to rise to finance the exploration and development of new discoveries, as the country was in desperate short supply.

The federal government reacted to the new short supply perception and argument by embarking upon a policy of gradually phasing-out oil exports to the United States, introducing new tax incentives (for example, the frontier exploration allowance 32), and introducing measures for greater Canadian equity and control (for example, the creation of Petro Canada in 1976,33 with preferential treatment for it—such as the "back-in" for a 25% interest before discovery on Canada lands 33 and support of an acquisition program by Petro Canada).

As oil exports from Canada fell and the price for OPEC oil continued to rise rapidly, the federal government could no longer pay the Arabs by taking from the Americans. An increasing deficit was resulting from the net drain on the federal treasury due to subsidizing eastern importers. The only way to reduce this subsidy was to allow the federally regulated uniform domestic price to rise. As it rose, there was then an intense struggle between the provinces and federal government over the "windfall profit" revenue from domestic production.

Alberta moved very quickly in 1973, amending its royalty regulations under s. 132 of the Mines and Minerals Act, so that it could capture the lion’s share of the rising wellhead price. The federal government counter-attacked by making provincial royalties nondeductible for income tax purposes.34 The industry was caught in the middle between

---

32. This tax provision, (Regs. 1207 of the Income Tax Act, S.C. 1970-71-72, c.63), operated such as to result in an after-tax cost of about seven cents on the dollar for the bulk of exploration expenditures in offshore activities.

32.1 The Petro Canada Act, S.C. 1974-75, c.61.


34. The Income Tax Act, S.C. 1970-71-72, c.63, s.18(1)(m), as am. by S.C. 1974-75-76,
the two governments. To some extent the industry was worse off than it was before the wellhead price rose in 1974 (at least in Saskatchewan, where the province levied a royalty equal to 100% of the price increase, but such royalty was not deductible in calculating federal income taxes).

By 1976 both levels of government backed-off somewhat and relative stability returned to the overall fiscal system. The federal government introduced in its June 23, 1975 budget a resource allowance for income tax purposes equal to 25% of resource production profits, effective January 1, 1976. This provided a partial offset to the full disallowance of provincial Crown royalty payments. Alberta also introduced partial rebates for provincial income taxes and modified its royalty take. By the beginning of 1976, relative calm had descended upon the domestic revenue-sharing dispute.

The new norm for revenue-sharing was for the provinces to receive about 45% of the revenues represented by the wellhead price. The historical royalty percentage to Alberta was 16 2/3% and was only about 23% in 1973. Thus, as shown in Table 1, the provinces were able to establish the new norm for revenue-sharing at about double their 1973 share. This percentage share was being determined upon a wellhead price that would rise from $3.80/barrel in 1973 to $16.75/barrel at the time of the announcement of the Trudeau Government's National Energy Program, October 28, 1980. Provincial revenues expanded ten times in quantitative terms from 1972 to 1979.

At the same time, the national government was left with less than 10% of the gross revenues (its traditional percentage) and having to pay an increasing subsidy, amounting to about $3.5 billion annually by 1980 for offshore imports due to the widening gap between the domestic price and the world price for oil.

Given the new norm for revenue-sharing as between the producing provinces and the federal government from 1974 to 1980, there was a significant domestic impact upon the fiscal structure of the country. Due to rising prices, there was a tremendous transfer of wealth by the consuming provinces (in particular Ontario, having about 36% of the country's population) and a lower standard of living plus greater unemployment in all provinces east of Saskatchewan. For the first time since World War II, there was an accelerating regional disparity, caused by the revenue-sharing structure.

Finally, the revenue-sharing phenomenon had a profound impact upon "equalization" payments from 1974 onwards. The equalization

c.26, s.7.
37. From about $.5 billion to about $5 billion. See National Energy Program, p.13.
scheme, first established in 1957, is implemented through a Federal-Provincial Fiscal Arrangements and Established Programs Financing Act every five years, based upon federal-provincial agreement. The Act has as its policy objective the reduction of regional disparity accomplished by minimum levels of public services being provided through the transfer of "equalization" dollars from the federal treasury to have-not provinces, thus reducing the incidence of provincial taxes that otherwise would be necessary in such provinces in order to provide basic services. Specifically, equalization payments were designed to ensure that no province has access to less than the all-province average of per-capita revenues. It should be noted that the federal government raises its revenues for all purposes, including equalization, mainly from its corporate and individual income tax bases. Ontario residents paid some $30 billion more in income taxes to the federal government from 1957 to 1980 as a consequence of the equalization scheme.

The equalization formula focuses upon provincial revenues, with revenues being equalized over some 29 revenue sources (e.g., personal and corporate tax income sources) including royalty and other revenues from natural resource development. Equalization payments are a very significant source of revenue to six "have-not" provinces, with each of the four Atlantic provincial governments receiving more than 25% of total provincial revenues from this source. Only two provinces, British Columbia and Alberta, have negative equalization entitlements under the formula. Saskatchewan is in the position of just about having a nil balance.

The equalization scheme, due to rising resource revenues to the producing provinces, results in equalization entitlements being triggered from the federal treasury (not the treasuries of the producing provinces) to the remaining provinces. Because the financial impact was so adverse upon the federal treasury, the federal government unilaterally amended the equalization formula in 1974 (altering the original concept of "full equalization"). This was followed by further amendments in 1977 and 1981, whereby only one-half of all energy revenues are taken into consideration for equalization purposes and any province (being Ontario)


39. The formula was modified in 1974 to provide that resource revenues up to the 1973/74 levels would continue to be eligible for full equalization while thereafter only one dollar out of every three would be eligible to enter the formula.

40. After 1977, only one-half of all provincial resource revenues would be eligible for equalization.

41. This amendment built in the limitation as to per capita income. See S.C. 1981, c.46.
where per capita income is above the national average in the current year, as well as for the two previous years, is, as of such current year, ineligible to receive an equalization payment, even though its overall equalization entitlements become positive.

Thus, the revenue-sharing from oil and gas revenues made the equalization system unworkable. The formula went through a series of amending adjustments, all of which depart from the original concept of “full equalization” and the policy objective of reducing regional disparity and fostering regional growth.

As well, given that the federal treasury funds equalization payments to the have-not provinces and that the federal treasury raises its revenues in the main from its income tax base, the impact of higher oil and gas prices has meant higher income taxes. As the residents of Ontario constitute about 40% of the federal income tax base, higher oil and gas prices have had a two-fold impact upon Ontario residents. Ontario consumers pay higher prices and also pay higher income taxes toward equalization. And while the governments of Manitoba, Québec, and the Atlantic provinces have supported the producing provinces in their quest for higher oil and gas prices (in part because Manitoba, Québec, and the Atlantic provinces thereby gain some equalization entitlement), there is, of course, a higher private cost to their residents through increased prices and income taxes.

At this point it is appropriate to keep in mind certain national policies since World War II which in my view are illustrative of national values and norms.

**Historical National Policies**

There are at least four basic federal policies since World War II to keep in mind, before considering the present energy dispute further. First, the federal government in 1961 devised a National Oil Policy which provided a captive domestic market west of Québec for western oil, the price of which was about 15% higher than for offshore oil until 1973.

Second, the federal fiscal system has always provided significant subsidies through tax expenditures for the oil and gas industry. Thus, automatic depletion (replaced in 1974 by earned depletion), the frontier exploration allowance from 1976 to 1980, supplementary depletion allowance since 1978 with respect to heavy oil projects and tertiary recovery, coupled with fast write-offs for exploration expenses (100% in the current year), development expenses (30%), and investment tax credits

---

42. This policy was adopted following the Second Report of the Royal Commission on Energy (July, 1959).
43. The precise geographical division point is the Ottawa River valley.
PETROLEUM LAWS

have all resulted in significant subsidies through the federal tax system.

Third, pipeline subsidies and financial guarantees were provided by the federal government with respect to the great inter-provincial pipeline projects.

All three of the aforementioned federal policies were promulgated for the purpose of facilitating growth and development of the petroleum and gas industry in western Canada with consequential regional growth and corresponding reduction in regional disparity, all of which was seen as being in the national interest.

A fourth example of this basic federal policy objective of reducing regional disparity was the introduction of "equalization" payments from 1957 forward, as already discussed. Of interest is that Alberta received equalization payments until 1967.

All of the above national policies are illustrative of the continuing objective of Parliament to reduce regional disparities, foster regional growth, and effect a redistribution of national income. However, as we have seen, the revenue-sharing structure for resource revenues that was put into place for 1974 to 1980 ran counter to these historical national objectives. Let us now return to the pricing/revenue-sharing dispute.

1978-1980

With the Iranian revolution in January, 1979, and OPEC's consequentially increased control over a reduced supply, the world price again quickly escalated from about $18.00/bbl. to $32.00/bbl. A second energy crisis fell upon Canada revitalizing all of the 1974-1975 problems. In particular, the federal government was faced with a rising deficit due to subsidies for eastern imports of oil.

The Conservative Government under Prime Minister Joe Clark was elected on May 22, 1979, and introduced an energy budget on December 18, 1979. On the price side, the Clark budget would have increased the domestic price for oil, within four years, to 85% of the world price or the Chicago price, whichever was less. This approach would have had the positive benefit of reducing the import subsidy deficit significantly, achieving greater conservation as oil users were forced to pay higher prices, and would have increased the cash flow to industry which would have improved the finding and development of domestic supplies, leading the nation closer to domestic self-sufficiency.

However, on the revenue-sharing side, the Clark budget would have compounded the existing problems, for that budget would have maintained the producing provinces' share at 45%, doubling the federal government's share from 10% to 20% by reducing industry's share to 35%. Moreover, since this approach left the Clark Government with a shortfall of needed monies for other programs, the budget proposed an $.18/gallon excise tax upon the consumer at the gasoline pump. The
budget, with a very sound approach on pricing, was a disaster on the revenue-sharing side and would have only hastened the rate of growing regional disparity within Canada. The budget was consistent with the Clark Government's limited view that Canada is simply a community of communities. The Clark Minority Government was defeated in a vote in the House of Commons on its budget. Another Trudeau Government was elected on February 18, 1980, followed by its energy budget and National Energy Program of October 28, 1980.

As a main plank in its election platform, the Liberal Party had stated that it would keep the prices of petroleum and natural gas lower than the Tories' budget would have provided. This had great appeal in Ontario, and it was the Ontario electorate which swung from the Conservatives in 1979 to the Liberals in 1980 causing the change in government.

The newly elected Trudeau Government, faced with continuing energy problems, made an election pledge to keep prices down, and a furious Alberta government (which had just missed getting through in the Clark budget the pricing/revenue-sharing package it wanted) then embarked upon the formulation of a National Energy Program. It would be apparent to the astute observer that a key element in that program would necessarily be to keep the wellhead price from rising rapidly, thus in effect tending to limit Alberta's and the industry's revenue shares and imposing new federal taxes subsequent to the point at the wellhead, thereby raising both federal revenues and the eventual price to consumers and, at the same time, reducing the subsidy for offshore imports by narrowing the gap between the domestic price to consumers and the world price. The point is: the regulation of pricing was to be a main instrument in effecting revenue-sharing.

The then existing federal-provincial agreement on domestic pricing for oil expired on July 1, 1980, due to the impossibility of federal-Alberta agreement on revenue-sharing.

As of the announcement of the National Energy Program (October 28, 1980), the federal government unilaterally continued its wellhead price for oil by regulation under Part II of the Petroleum Administration Act. Alberta was allowed to raise its wellhead price by $2.00 per barrel, to $16.75, as of August, 1980; but the stage was set for unilateral federal action.

44. Published under the authority of The Minister of Energy, Mines and Resources Canada, Report EP80-4E.

The National Energy Program

The National Energy Program (NEP) was announced on October 28, 1980, together with the Trudeau Government’s budget. Its three policy objectives are (1) security of supply, (2) the Canadianization of the industry, and (3) a fair pricing/revenue-sharing regime.

The first objective, security of supply, is not controversial. The approach is an “off-oil policy”—reducing oil consumption by facilitating the substitution of natural gas which is in abundant supply. Just as the oil pipeline from western Canada was extended in 1975 to Montreal to give greater security to Québec (which was vulnerable to a curtailment of OPEC supplies), the natural gas pipeline from western Canada is being extended from Montreal to Québec City and under the NEP is to be extended further to the Maritimes. By providing pipeline subsidies and a natural gas price of 65% relative to oil, the federal government hopes to achieve the virtual elimination of oil imports by 1990.

The second NEP objective, Canadianization of the industry, is to be met by such means as Petro Canada acquisitions and a federal grants system (the Petroleum Incentives Program, or PIP as it is called) in support of exploration and development activities, which discriminates in favor of persons depending upon their “Canadian Ownership Rate” (COR). Undoubtedly, there are many arguments for and against the Canadianization objective and the various means employed. However, one point must be kept in mind in the context of the central theme of this paper: the federal/provincial struggle over pricing/revenue-sharing. Given that about 72% of the petroleum and natural gas industry was foreign-owned at the time of the NEP, not only is there a significant windfall element to owners of conventional oil and natural gas due to a rising domestic price, but also, given the degree of foreign ownership, there are significant ramifications in terms of the potential outflow of funds from the country, balance of payments, and the value of the dollar. Given these factors, it makes very good sense for the federal government to do what is possible to achieve a much higher degree of Canadian equity ownership in the petroleum and natural gas industry.

Let’s now consider the intended impact of the NEP upon the federal-provincial pricing/revenue-sharing dispute; that is, the third objective of the NEP, fairness in the pricing/revenue-sharing regime. The NEP proposed to maintain the now unilaterally federally regulated wellhead price under the Petroleum Administration Act, with only gradually staged increases for conventional oil and a somewhat higher price schedule for non-conventional (oil sands and tertiary recovery) oil.

This approach would implicitly restrict the growth in the producing

45. See the Schedule at p. 26, The National Energy Program.
46. Id.
provinces' share and producer netbacks, both dependent upon the price at the wellhead. Clearly, the Petroleum Administration Act is constitutionally valid, being premised upon the trade and commerce power under s. 91(2) of the B.N.A. Act.

Alberta's reaction to this approach was to announce a cut-back in oil production of 180,000 bls/day, phased-in in three stages each of 60,000 bls/day, to be completed on September 1, 1981. This approach meant an increase in costly imports and more federal subsidies for such imports. Alberta, as owner, and with the constitutional power to manage the sale of its resources under s. 92(5) of the B.N.A. Act similarly had the clear power to take this action. Although the federal government could constitutionally employ its declaratory power to seize the works of the industry in Alberta, it could not force production. The federal government could probably use its "Peace Order and Good Government" (POGG) power to expropriate provincially owned natural resources for an emergency period. However, Premier Lougheed of Alberta was careful to state, when he announced the intended cut-back in production, that Alberta would re-establish such production in an emergency situation.

The NEP also introduced several excise type taxes subsequent to the point of production at the wellhead. The first was the Petroleum Compensation Charge (PCC) imposed upon the refinery. The PCC would have risen from $2.55/bbl in December, 1980, to $10.05/bbl by 1983, and at that point in time would equal nearly 45% of the wellhead price of $22.75/bbl. The wellhead price together with the PCC constitute what is called the "blended price."

The purpose of the PCC is to shift the burden of paying the subsidy for imported oil from the federal treasury directly to consumers. The total cost of the subsidy for 1981-82 will be about $4.6 billion. By increasing the blended price through increasing the PCC to consumers, there is a corresponding reduction in the amount necessary to be raised by federal subsidies for imported oil.

As well, the NEP would have levied an excise tax on all natural gas and natural gas liquids sales at the point of distribution and an 8% petroleum and gas revenue tax (PGRT) upon the producer. Both of these taxes proposed by the NEP have been modified in the subsequent agreement of September 1, 1981, between Alberta and the federal government. I will discuss the taxes further in that context.

Finally, through the Canadian Ownership Charge (COC), an excise

---

47. B.N.A. Act, supra, footnote 1, ss.91(29) and 92(10)(c).
49. Id., p. 35.
50. Id., p. 37.
51. Id., p. 51.
tax at the point of consumption, consumers are paying for Petro Canada's acquisitions, the first of which, since the NEP, has been the $1.45 billion purchase of Petrofina Canada. This has resulted in a Canadian ownership charge of $1.15/bbl and $.15/mcf.

In my opinion, all of the above-mentioned taxes proposed by the NEP are within the federal government's constitutional powers of taxation and trade and commerce.\textsuperscript{55}

However, the Alberta government challenged the bill\textsuperscript{54} introduced in Parliament to enact the excise tax on natural gas and gas liquids by way of a reference case to the Alberta Court of Appeal. The test case deals with a natural gas well on provincially owned lands drilled and operated by the province itself. Thus, it was not disputed that the natural gas in question was the property of the Province of Alberta.

Alberta asserted that Parliament could not impose a tax levy because of B.N.A. Act s. 125 which provides that "no lands or property belonging to Canada or any Province shall be liable to taxation." This provision has been interpreted in the past so as not to restrict the validly exercised federal taxation and trade and commerce powers.\textsuperscript{56} If the federal legislation imposing the tax is classified as being in relation to a matter within ss. 91(2) or 91(3) B.N.A. Act, it would be valid notwithstanding its simply incidental impact upon provincial lands or property. However, the provincial Court of Appeal\textsuperscript{56} held that simply because the natural gas and gas liquids levy was in the nature of a tax, it was constitutionally invalid in respect of the factual situation referred to the Court. If this decision were to stand and was followed literally, it might mean that a province could expropriate its producing industry or structure a regime whereby the provincial Crown is made the producer in law with respect to provincial oil and gas production, thereby immunizing such production from federal taxes. However, this decision has little significance, given the Agreement of September 1, 1981, between Alberta and the federal government, which resolves the dispute.

Thus, the period from October 28, 1980, to September 1, 1981, saw an intense confrontation between the federal government and the producing provinces, with Alberta challenging the constitutionality of the federal excise tax on natural gas, cutting-back on domestic oil production by 10\%, refusing to issue permits to allow major tar sands projects (Alsands and Cold Lake) to proceed, and British Columbia simply refus-

\textsuperscript{52} B.N.A. Act, \textit{supra}, footnote 1, s.91(3).
\textsuperscript{53} Id., s.91(2).
\textsuperscript{54} Bill C-57, s.43, proposed to amend the Excise Tax Act, R.S.C. 1970, c.E-13.
\textsuperscript{55} (Liquor Import Case) [1924] A.C. 22 (P.C.). \textit{See generally}, Crommelin, "Jurisdiction over Onshore Oil and Gas in Canada," (1975), 10 U.B.C. L. Rev. 86.
ing to pay the federal excise tax on natural gas. At the heart of the disputes was, of course, the continuing pricing/revenue-sharing question. However, a settlement of the dispute was achieved between Alberta and the federal government on September 1, 1981. Since that time, settlements substantively similar have been achieved between each of British Columbia\(^\text{56.1}\) and Saskatchewan\(^\text{56.2}\) and the federal government.

**The September 1, 1981 Memorandum of Agreement Relating to Energy Pricing and Taxation Between Alberta and Canada**

The Energy Pricing and Taxation Agreement of September 1, 1981 (hereinafter the Agreement), sets forth the compromise arrived at between Alberta and the federal government with respect to pricing and revenue-sharing for petroleum and natural gas. The Agreement is to cover the period September 1, 1981, to December 31, 1986.

The Agreement provides for substantially higher producer prices at the wellhead than those proposed by the NEP. By July 1, 1986, old oil\(^\text{57}\) will have a price of $57.75/bbl\(^\text{58}\) and new oil of $77.48/bbl\(^\text{59}\) whereas under the NEP old oil would have been priced at $38.75/bbl\(^\text{60}\).

The NEP had introduced the Petroleum Compensation Charge (PCC) as an excise tax at the refinery. The generated revenue was to compensate the federal treasury for subsidies paid to refineries for the higher cost of oil sands production and imported oil. The PCC is to be extended under the Agreement to cover the higher cost to refineries of new oil, as well as the higher cost for imported oil.\(^\text{61}\) The wellhead price for old oil plus the PCC is to be the "blended price."

The Agreement provides\(^\text{62}\) that natural gas destined for domestic markets east of Alberta will be priced at the Alberta border, with such price to increase by $.25 per Mcf every six months, commencing February 1, 1982.

The Government of Canada will continue to levy the NEP-an-
nounced excise tax on natural gas and gas liquids (NGGLT) produced in Canada but will fix the rate at zero on exports of natural gas from Canada. Thus, the federal government has agreed to forego taxing exported natural gas, to which tax Alberta and British Columbia took strenuous objection.

On domestically sold natural gas, the wholesale price for natural gas at the Toronto City Gate is to be approximately 65% of the average price of crude oil at the Toronto Refinery Gate. This differential is to encourage conversion from oil to natural gas usage and is part of the “off-oil” policy of the federal government.

To assist in the expansion of the natural gas pipeline east of Montreal, Alberta will pay to the federal government 30% of the Alberta border price times the annual volume of new sales of gas east of Alberta. The federal government will use such monies to subsidize pipeline expansion through to the Maritimes.

The 8% Petroleum and Gas Revenue Tax (PGRT), another quasi-excise tax announced by the NEP and effective January, 1981, on Canadian net production revenues and royalty incomes (other than the royalties received by governments), has been increased to 16% under the Agreement, effective January 1, 1982. However, there is to be a new resource allowance deduction of 25% of all oil and gas production revenues for producers paying provincial royalties. The Petroleum and Gas Revenue Tax is viewed by the Government of Canada as generating the funds necessary to finance the Petroleum Incentive Program payments, plus providing a net surplus approximately equal to 75% of federal corporate income taxes from the oil and gas industry.

The Agreement also provides that the federal government will impose a new tax, the Incremental Oil Revenue Tax (IORT), effective January 1, 1982. This tax, at a rate of 50%, will be upon incremental old oil revenues after deduction for the related royalty payable to the province.

As the Agreement is in very general terms, it is very difficult to calculate the critical factor of “netback” to producers resulting from the Agreement. A good many assumptions must be made in interpreting the

63. Id., p. 9.
64. Id.
65. Id., Schedule C., p. 514, 515.
66. Only operating expenses are deductible under the NEP. Net production revenues are computed before deduction of Crown royalties and like charges, depletion, depreciation, exploration, and development expenses, interest and other financial expenses, and research expenses.
67. The Agreement, supra, footnote 59, p. 10.
68. Id., p. 10; Schedule D, p. 517.
69. Id., Table 3, p. 22.
70. Id., p. 10.
Agreement, and it will be for the federal and provincial governments in the coming months to provide a definitive interpretation to the Agreement and make adjustments. The federal government is expected to introduce in Parliament by the end of 1981 a bill respecting a proposed Energy Security Act, 1981 which will put in place at the federal level the necessary legislation to implement the Agreement.\textsuperscript{70.1}

Certainly, with respect to new oil, which will include frontier oil, the movement to world pricing should yield a substantial increase in "netback," with a corresponding stimulation toward renewed growth in oil industry activity in the western provinces and the frontier regions. However, the "netback" for old and new natural gas and old oil may be slightly less than under the NEP, as the preliminary interpretations of some analysts suggest.\textsuperscript{71} If this is the situation, it may not accurately augur the attraction of exploratory activity when at present a producer in the United States can obtain more than twice as much as in Canada for an mcf of natural gas. As well, companies in the United States can cash in on their finds immediately. However, the Agreement itself asserts that the revenues to industry under the Agreement will be some $10 billion more than under the NEP.\textsuperscript{72}

The Agreement provides for significant increases in price for domestic petroleum and natural gas, bringing Canadian prices to near world prices over the next five years. This approach will have the positive benefit of removing the deficit to the federal treasury due to subsidies for imported oil. It will also tend to achieve conservation and will provide a cash flow both to facilitate the "off-oil" policy and, hopefully, to provide greater incentives for industry to explore and develop new sources of supply.

However, on the revenue-sharing side, it is apparent that the Agreement takes the lion's share of revenues for the public sector and, more significantly, leaves to Alberta the bulk of those revenues flowing to government. Of the total estimated gross revenues of $212.8 billion\textsuperscript{73} from oil and gas production over the period, 25.5\% will be received by Canada, 30.2\% is to go to Alberta, and 44.3\% will be received by the industry. As I have said, first impressions indicate that there is considerable skepticism as to the true "netback" to producers. However, it is apparent that Alberta (and the other producing provinces of Saskatchewan and British Columbia through their similar agreements) is the victor in the federal-provincial struggle of the past eight years over resource revenues. As Table 1 to this paper indicates, although the per-

\textsuperscript{70.1} Energy Security Act (not yet introduced).
\textsuperscript{71.} See, for example, "Energy Pricing and Taxation Agreement," Clarkson Gordon news release of September 11, 1981.
\textsuperscript{72.} The Agreement, supra, footnote 59, Table 3, p. 22.
\textsuperscript{73.} Id.
percentage share of the provinces has dropped to about 30%, the wellhead price for conventional "old" oil will have increased approximately 20 times from 1973. Whatever the precise figures, the point is that the provincial government representing about 9% of the country's population will be receiving revenues in such immense quantities that regional disparity will grow. Consuming provinces will suffer a corresponding negative impact of inflation and unemployment as the transfer of wealth takes place to Alberta with the federal government having relatively few energy dollars to recycle to those provinces and otherwise manage the economy. This phenomenon is in marked contrast to other energy-rich countries, including federal states like Australia or unitary states such as Norway and the United Kingdom, where the national government captures most of the revenues accruing from resource development. As well, federal revenues (in contrast to provincial revenues) through the taxes imposed pursuant to the Agreement, will diminish if the world price for oil flattens or is reduced, as seems likely given the present glut of supply and reduced demand for OPEC oil.

Moreover, given the lack of monies generally on the part of the federal government in Canada with which to carry out its programs and effectuate a redistribution of wealth, its posture at present is to endeavour to reduce federal funding for shared cost programs with the provinces. The overall consequence of the revenue-sharing settlement, accomplished by the September 1, 1981 Agreement, insofar as government revenues are concerned, is for the producing provinces to get wealthier at the expense of the seven eastern provinces, all of which must suffer a diminution in their level of public services and standard of living. If the federal government had raised the domestic price for oil and gas to near world levels, as the Agreement does and which approach makes great sense, but had insisted upon reducing the producing provinces to their historical pre-OPEC percentage share of revenues, the producing provinces would have continued to have the dynamic economies they presently have and also would have continued to be by far the wealthiest region of the country; but the federal government would have had the dollars necessary to redistribute to the "have-not" provinces so that they could have regional growth as well. Thus, the Agreement of September 1, 1981, while welcomed generally because it brings an apparent end to seemingly endless, destructive federal-provincial conflict, builds into confederation a policy and financial impact that runs counter to historical policies and values of reducing regional disparity and fostering regional growth.

CONTINUING AND FUTURE ISSUES AND CONFLICTS

It is doubtful that any confederation can have generally happy and satisfied citizens in the long term if it contains both Kuwaits and Bangladeshes within its borders. The next great issue in Canadian public policy, now that the energy dispute is seemingly put to rest and constitutional reform will shortly be completed, will be a revamping of the equalization scheme as the present Federal-Provincial Fiscal Arrangements and Established Programs Financing Act,76 expires March 31, 1982. As we have seen, its structure, objectives, and values have already been compromised due to the resources revenue-sharing dispute. The Premiers of the producing provinces have already stated that the federal government should not look to their resource dollars to provide the monies for equalization. In the meanwhile, the federal government has said that it must reduce generally its transfer payments to the provinces. Federal-provincial negotiations on equalization and shared-cost programs should prove interesting. The battles undoubtedly will equal those over resources revenue-sharing and constitutional reform.

Before concluding, it should be mentioned that there is a remaining dispute: that of resource revenue-sharing from the continental margin. There have been significant discoveries to date on Canada's continental margin in the Beaufort Sea and offshore Newfoundland (Hibernia).

The existing federal legislation77 as well as Bill C-48, the proposed Canada Oil and Gas Act, expressly embrace the entire continental margin as federal lands. The same position has been asserted in other federal states, such as the United States78 and Australia.79 In my opinion, all of the continental margin adjacent to Canada is in law federal lands,76 so that federal legislation, which provides the entire regulatory regime for the exploration and development of oil and natural gas on federal lands ("Canada lands") is valid legislation. As federally owned lands, Parliament has the exclusive constitutional authority to legislate in respect of such lands by B.N.A. Act s. 91(1A).

Given federal ownership to the continental margin, the fact that the federal treasury has financed about 90% of all offshore exploratory ac-

---

76. See, Territorial Sea and Fishing Zones Act, R.S.C. 1964, c.22, s.3, as am.
79. See, Reference Re Ownership of Off-Shore Mineral Rights [1968], 65 D.L.R. (2d) 353 (S.C.C). Although this decision, in favor of the federal government, dealt only with the continental margin adjacent to British Columbia, the reasons are applicable to the entire continental margin, unless another province can establish an exceptional history. Section 2 of Bill C-48, the proposed Canada Oil and Gas Act, in defining "Canada lands" asserts federal ownership and jurisdiction to the full extent of the continental margin.
tivity through tax expenditures via subsidies through the federal income tax regime and the importance of the continental margin to the national interest, one might expect that the federal government would want to retain ownership of the continental margin and constitutional jurisdiction over it.

Moreover, given the historical policies of redistribution of wealth through equalization and other federal transfer payments, it should be remembered that Newfoundland has derived almost 30% of annual provincial government revenues from the federal government since its confederation with Canada in 1949. I have calculated these federal transfers to be a total of almost $7 billion.

The discoveries off the east coast of Canada may be enormous, perhaps rivaling those of the North Sea and the coastal provinces, particularly in Newfoundland, which should be able to influence the pace and nature of that development and benefit substantially from it. No Canadian would want otherwise. However, Newfoundland and Nova Scotia both assert sovereignty to their adjacent continental margin and, indeed, have introduced regulatory regimes for their respective areas on the incorrect premise that they have the constitutional right to do so.

Newfoundland became a province in 1949 and came into Confederation with whatever lands it had sovereignty to at the time. The question as to whether this included its adjacent continental margin turns upon whether customary international law had developed by that point in time such as to provide that a state had sovereignty to its adjacent continental margin. Although it is clear that such doctrine had developed by at least 1958, it is very doubtful that such was the law in 1949. My own view is that in law the entirety of Canada's continental margin accedes to Canada as the adjacent coastal sovereign state. The issue as to Newfoundland's rights over its adjacent continental margin may proceed to a court case, if there is not a federal-provincial political resolution of the dispute as to revenue-sharing from the continental margin in the near future.

The Conservative Government of Joe Clark had entered into a tentative agreement on September 14, 1979, which stated the intent of his government to transfer ownership of the continental margin adjacent to


Newfoundland to the province, so that the province would be owner and the full range of provincial constitutional powers applicable to provincial lands would apply, including s. 92(5) B.N.A. Act. This approach, again consistent with the limited vision that Canada should be no more than a community of communities, would have placed Newfoundland in the position, with respect to its offshore, that Alberta is in at present with respect to its lands. Newfoundland has less than 600,000 people, being only 2\% of the nation’s population. The percentage share accruing to a producing province from oil and natural gas production since 1973 (as seen in Table 1 to this paper), if applied to Newfoundland, could easily turn that province from its present situation as the poorest province into being far the wealthiest province within the next generation. Newfoundland could easily be the Alberta of the year 2000. The disparity in wealth between Newfoundland and nearby Prince Edward Island could be in the order of ten times the magnitude. The Clark approach would have fostered regional disparity inconsistent with the very national policies which have fostered regional growth in the Atlantic provinces.

The Clark Government was, of course, defeated in the February 18, 1980, general election. To this point in time, the position of the Trudeau Government has been that the federal government should retain ownership and constitutional jurisdiction to the continental margin, yet allow Newfoundland to receive revenues in the nature of those received by a province, until Newfoundland achieves the national average in terms of wealth, and to allow Newfoundland to share in the management decisions for development. Negotiations between the federal government and Newfoundland will commence shortly, and it must be hoped that the federal government will remain firm in retaining ownership and constitutional jurisdiction to the continental margin. Moreover, the precedent established with Newfoundland, and through any subsequent agreements with other coastal provinces, will undoubtedly influence the question of the eventual constitutional development of the two federal territories, the Yukon Territory and the Northwest Territories, which have a present a total of only 65,000 people, and the development of the adjacent Beaufort Sea, the other great area in the offshore frontier with the promise of petroleum and natural gas for a nation that has been so blessed with an abundance of natural resources.
TABLE 1

REVENUE-SHARING FROM OIL AND
NATURAL GAS PRODUCTION IN CANADA

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Producing Provinces’ Revenue Share</td>
<td>16%-23%</td>
<td>more than 45%</td>
<td>45%</td>
<td>43%</td>
<td>30%</td>
</tr>
<tr>
<td>Federal Government’s Revenue Share</td>
<td>10%</td>
<td>less than 10%</td>
<td>20%</td>
<td>24%</td>
<td>26%</td>
</tr>
<tr>
<td>Industry’s Revenue Share</td>
<td>67%</td>
<td>less than 45%</td>
<td>35%</td>
<td>33%</td>
<td>44%</td>
</tr>
</tbody>
</table>


*aThe price referred to is for the lowest priced oil, being conventional old oil. The new oil reference price in 1986 is $77.48/bbl; see the Agreement, pp. 2,4.