



Our Place in Canada

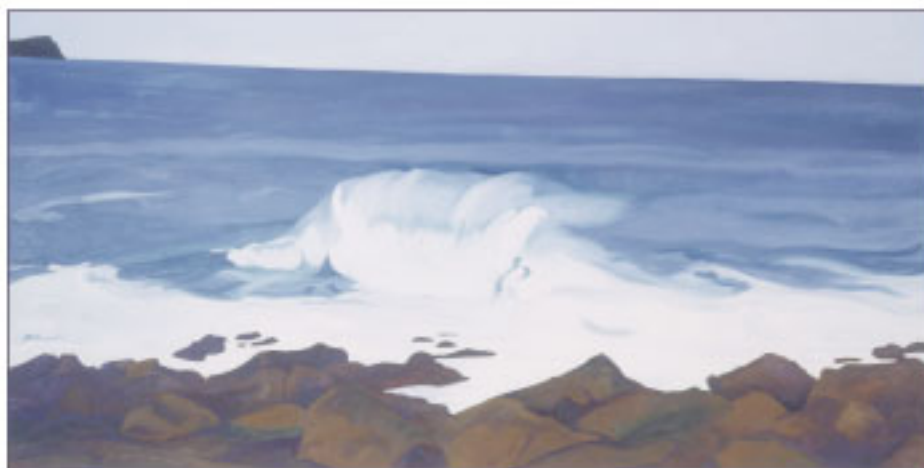
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Royal Commission on Renewing and Strengthening Our
Place in Canada

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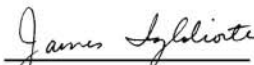
TO HIS HONOUR THE LIEUTENANT GOVERNOR IN COUNCIL

The Royal Commission on Renewing and Strengthening Our Place in Canada was appointed under Order in Council OC2002-187, dated April 19, 2002. We are pleased to advise that the Commission has completed its work and is now submitting its Report.

In the past fourteen months, it has been our privilege to meet with almost three thousand Newfoundlanders and Labradorians throughout this province and in expatriate communities. We have received valuable insights from these meetings, from written submissions and from our research program. We now present for your consideration a recommended Pathway to Renewal built on the foundation of a collaborative partnership between the Government of Newfoundland and Labrador and the Government of Canada.

It has been an honour to have served on this Commission. It is our hope that the work we have done will play a part in renewing and strengthening our province's place in Canada.

Respectfully submitted,


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OUR PLACE IN CANADA

**ROYAL COMMISSION ON
RENEWING AND STRENGTHENING OUR PLACE IN CANADA**

MAIN REPORT



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“What Is This Place That Holds Fast Our Hearts?”¹

We love thee, smiling land...
We love thee, frozen land...
We love thee, windswept land...
God guard thee, Newfoundland.
– Sir Cavendish Boyle

These words from the “Ode to Newfoundland,” still sung by Newfoundlanders and Labradorians long after Confederation with Canada, reflect the strong bonds between this place and the people who call it home. The bond is powerful; it remains no matter how far away we go, or how long we stay.

Relentless seas, barren landscapes, fertile valleys, stark mountains and rugged, ragged coastlines – these mark the geography of this place at the mouth of the Gulf of St. Lawrence in the northeast corner of North America. An island of 111,390 km², a coastal mainland region of 291,330 km² and an offshore of 1,820,000 km² define the geography of a province with a population of approximately 512,000 people. The Newfoundland and Labrador expatriate community is estimated at 220,000,² with most living in other parts of Canada and tens of thousands in the United States and elsewhere. Labrador is the easternmost part of the Canadian Shield and has some of the oldest rocks on Earth, while the island of Newfoundland consists of three areas of the prehistoric world melded by continental drift. The coastline is only about 12 per cent of the Canadian total, but this represents more than one-third of the Canadian coastline that is ice-free for at least six months of the year. The south-flowing, cold Labrador Current, the northwest-flowing, warm Gulf Stream, dramatic storms, fog, variable winds and flowing pack ice and icebergs add to the unique character of this place shaped by the sea.

Our history reflects the importance of the sea and its riches; it was this that first brought our ancestral peoples³ to these shores. The Palaeo-Indians, likely our first settlers, came to Labrador about 9,000 years ago. They developed the Maritime Archaic culture, which emerged in Labrador about 7,500 years ago, and on the Island about 5,000 years ago. A thousand years later the Palaeo-Eskimos reached Labrador, and about 3,000 years ago came to the Island. The Intermediate Indian culture is visible about 3,500 years ago in Labrador. Later, the Recent Indian culture developed and may have been the foundation of the Innu in Labrador and the Beothuk on the Island. The ancestors of the Labrador Inuit are the Thule, who came from the Canadian Arctic about 800 years ago. For reasons not entirely clear but certainly related to the coming of the Europeans, the Beothuk culture became extinct in the early nineteenth century. Loss of access to the vital resources of the sea, unknown and deadly illnesses such as smallpox, violence and competition with the settlers for hunting all contributed to their demise. The last known Beothuk was Shanawdithit, who died in 1829, having left the only written records of Beothuk life. Oral tradition suggests that the Mi'kmaq were living in Newfoundland long before the arrival of Europeans; however, archaeological evidence for prehistoric occupation is scarce, and we are not exactly certain when the Mi'kmaq first came to the Island. We do know that by the 1600s the Mi'kmaq frequented the Island from Bay St. George to Placentia Bay, and, during the 1760s, many moved to Newfoundland from Nova Scotia as a result of English conquests there.



So, you see, ups and downs has been my life all through, and now I am what I am.

*Lydia Campbell
"To See Things and to Understand"*

What Is This Place That Holds Fast Our Hearts?

The Norse arrived circa 1000 AD, but left soon after. The next wave of Europeans came in the sixteenth century, not for furs or gold as in other parts of North America, but for the vast resources of the sea. The Basques were primarily interested in whale oil; the other Europeans came mainly for cod.

The first official settlements began in the early 1600s, but extensive settlement did not occur until the later 1700s and early 1800s, really the last time this place has seen considerable immigration. Gradually, small fishing communities appeared all along the coastline, often isolated from each other. At first, the governance of this emerging colony was in the hands of fishing admirals, governors and English merchants. Representative government, a way to make this power base more responsive, was established when an elected Assembly was granted by the British Crown in 1832. Initially, only resident men on the Island voted. Women would not be given the right to vote until 1925, and Labradorians would first vote in 1946. The colony became self-governing in 1855 with responsible government. Although some believed that Newfoundland would become part of the Canadian Confederation in 1867 (indeed, Newfoundland delegates attended both the Charlottetown Conference in July 1864 and the Québec Conference in October 1864), union with Canada would not occur until more than eight decades later. The Dominion of Newfoundland would have its own coinage and bank notes, flag, stamps and ode. On the Island and in southern Labrador it had, and still maintains today, its own distinctive mid-Atlantic time-zone, which is one half hour earlier than the closest North American zone.

Newfoundland and Labrador began the twentieth century with great promise. The opening of the Bell Island mines in the 1890s, and the later establishment of pulp and paper mills in Grand Falls, Bishop's Falls and Corner Brook, led to a much more diversified economy. The railroad, necessary for land-based economic development, was finally completed – although at great cost to the public treasury. The Island, given its geographic location, became key to the development of transatlantic flights. The Balfour Declaration (1926) and the Statute of Westminster (1931) confirmed Newfoundland's status as a Dominion. In 1927, the Privy Council ruled in Newfoundland's favour in the dispute with Canada over Labrador's boundaries.

In the two world wars, Newfoundland and Labrador distinguished itself both by commitment to the cause and by the bravery of its people. Names such as Tommy Ricketts, John Shiwak, Frances Cluett, John Ford and Margot Davies remain in our memories of those wars. The Newfoundland Regiment fought bravely in World War I, first at Gallipoli and later at the Battle of Beaumont-Hamel, where more than 90 per cent of its soldiers were killed or wounded – a tragedy we remember and mourn every July 1. The Dominion was represented in the Imperial War Cabinet and at the Versailles peace talks. In World War II, men and women from Newfoundland and Labrador served with distinction in the British and Canadian Forces, as well as in the Newfoundland-based Escort Force, which protected convoys of supply ships crossing the Atlantic. The Dominion also provided land for American bases at Goose Bay, Stephenville, St. John's and Argentia. The people of St. Lawrence and Lawn showed their bravery and generosity in the rescue of the



Natuashish
Makkovik
Aniapskwij
L'Anse au Clair
Bristol's Hope
Ireland's Eye
Loch Lomond
Conception Harbour
Isle aux Morts
Bay D'Espoir
Heart's Delight
Fox Harbour
Swift Current
Come-By-Chance
St. John's

sailors and soldiers from the American destroyer USS *Truxton* and the supply ship *Pollux*, which went aground and were wrecked during a heavy storm.

The optimism of the earlier part of the century came to an end with the Great Depression of the 1930s. The devastation it caused, coupled with the heavy debts incurred by the war effort and the railway, made the finances of the Dominion untenable. As a result, Newfoundland's legislature voluntarily gave up self-government in 1934 and was replaced by a Commission of Government appointed by Britain. Its task was to administer Newfoundland until it become self-supporting again. In 1948, by referendum, the people chose union with Canada as an alternative to a return to responsible government or the continuation of the Commission. In 1949, the Dominion of Newfoundland became the tenth province of Canada. In 2001, the name of the province was changed to Newfoundland and Labrador.

In the 54 years since Confederation, Newfoundland and Labrador has become a modern place with characteristics common to any Western society. The people of the province enjoy the benefits of a social system with publicly funded health care and education. Manufacturing industries, mines and oil wells use the most advanced technologies. One of the fastest growing industries is information technology. Strong unions, a dynamic voluntary sector and a growing business sector have strengthened our social fabric. Sophisticated telecommunications, modern forms of entertainment and urban fashions mirror lifestyles found elsewhere in Canada. Today, in addition to the descendants of the Innu, Inuit, Mi'kmaq, French, English, Irish and Scottish, there are small numbers of immigrants from diverse ethnic and cultural backgrounds, who live mainly in urban centres. More than 95 per cent of the communities in which 90 per cent of the people live, from St. John's to Corner Brook to Forteau to Nain, are situated on coastal waters.

Our challenging geography and our history of hardship and struggle have created a people who have enormous pride in this place. We are confident in the gift we have brought to Canada. We celebrate the women and men who have built this home for us: the countless explorers, reformers, religious leaders, politicians, Aboriginal people, health care providers, musicians, artists and everyday Newfoundlanders and Labradorians have contributed to the making of this place. People such as Gudrid, Shanawdithit, John Cabot, Lord and Lady Kirke, William Carson, Armine Gosling, William Coaker, Bishop Michael Howley, Bishop Edward Feild, Emma Dawson, Philip Little, Robert Bond, Helena Strong Squires, Joseph R. Smallwood, John Joe Drew, Catherine Joe, Maniane Ashini, Lawrence Benoit, Mary Frances Webb, Martin Martin, Lydia Campbell, Elizabeth Goudie, Amos Voisey, Margaret Duley, Cassie Brown, Percy Janes, E.J. Pratt,

What Is This Place That Holds Fast Our Hearts?

Ted Russell, Tommy Sexton, Minnie White, Emile Benoit, Rufus Guinhard, Joan Morrissey, Harry Hibbs, Robert Bartlett, Mose Morgan, Myra Bennett, George Story and hundreds more have imprinted their spirits on this place. The men, women and children who carved the face of this land have left us a legacy of hard work, hope in difficult times, strength in working together, creativity in facing overwhelming odds and joy in celebrating our uniqueness.

Religion has always played a significant role in the lives of the people in this place. Aboriginal traditions often exhibit a deep spirituality intimately connected to the land. Submerged for many years, these traditions are today finding a new place in the lives and dreams of the Innu, Inuit, Labrador Métis and Mi'kmaq. Christianity has had a profound influence on the history, politics and culture of the communities settled by the Europeans. Christian organizations played key roles in the development of the education, health and social systems in the province. Today, our religious traditions are constantly being expanded with the arrival of immigrants who bring the richness of other world religions and spiritual beliefs to our culture.

Unlike other parts of North America, the Newfoundland and Labrador community did not rely on specialized artisans and artists to create its culture; rather, much was made by ordinary people. "Newfoundland art is vernacular art; it speaks directly to the condition of ordinary Newfoundlanders; most of it is about their everyday lives."⁴ Newfoundlanders and Labradorians built their own houses, boats and furniture; they knit clothing, stitched quilts and baked bread. In many cases, what is unique to Newfoundland and Labrador furniture, hooked mats, house decorations, fences, mitts and so many other things is that they were made through a combination of ideas from the individual, the community and the outside world.

The artists here have always expressed themselves through storytelling, recitations, songs and ballads, traditional dance and the music of the accordion and the fiddle. Themes from Newfoundland and Labrador folklore and folklife have furnished much of the subject matter for our plays and other theatrical performances. Novels, short stories and other literary forms often deal with the values and characteristics associated with outport life. We celebrate our unique heritage in old songs such as "Let Me Fish Off Cape St. Mary's," "I's the B'y," "Squid Jiggin' Ground" and "Star of Logy Bay." But we also celebrate it in newer compositions like "Sonny's Dream," "Woman of the Island," "Saltwater Joys" and "Sea of No Cares." Think of the names of some of our most famous musical groups: Figgy Duff, the Wonderful Grand Band and Great Big Sea. Look to the paintings of visual artists such as David Blackwood, Christopher Pratt, Helen Parsons Shepherd and Gerald Squires. And, of course,



literary works such as Bernice Morgan's *Random Passage* or E. J. Pratt's *Newfoundland* triumphantly explore our vibrant culture and history.

In the first two decades of Confederation, Newfoundland and Labrador faced the subtle but very real threat of assimilation into the Canadian culture. During that same period, there was a strong American influence on those living near the American bases. But in the 1970s, a nationalistic revival led to a cultural "renaissance,"⁵ which has evolved today into internationally renowned music, art and literature. In the words of Newfoundland-born, London-based independent journalist, Gwynne Dyer:

... the intellectual and artistic capital of the province has been growing at a faster rate than almost anywhere else in Canada ... writers, painters, musicians and films are making Newfoundland's special history and character known on the national and international stage as never before, and creating an attraction that brings artists here from all over the world ...⁶

The diversity of our ancestry and the melding of struggle and hope in our relationship with the land and seas are often reflected in our unusual place names. The Innu (Sheshatshiu, Utshimassit, Natuashish), the Inuit (Makkovik, Okak, Nutak), the Mi'kmaq (Miawpukek, Aniapskwaj, Pekwatapaq), the French (Port aux Basques, Port au Choix, L'Anse au Clair), the English (English Harbour West, Bristol's Hope, Windsor), the Irish (Ireland's Eye, Waterford Valley) and the Scottish (the Highlands, Loch Lomond) have imprinted their identities on this place. The strong influence of religion is seen in community names such as St. John's, St. Brendan's, St. Mary's, Mount Carmel, Conception Harbour, Angel's Cove and St. Lawrence. Our emotional response to the struggle and hope inherent in settling here is reflected in names such as Isle aux Morts, Port de Grave, Misery Point, Famish Gut, Bay D'Espoir, Heart's Content, Heart's Delight, Heart's Desire, Hopedale, Little Heart's Ease, Paradise and Harbour Grace. Our bond with nature is evident in names such as Fox Harbour, Gander, Deer Lake, Rose Blanche, Swift Current, Swan Island, Muskrat Brook, Corner Brook and Grand Falls. Our imagination and artistic bent have found expression in names like Come-By-Chance, Broom Point, Ladle Cove, Cape Onion, Bumble Bee Bight, Blow Me Down and Random Island. Above all, the sea permeates our imagery, as almost every community is named as Harbour, Bay, Cape, Tickle, Cove, Arm, Port, or Island.

Our provincial emblems reflect our ancestors' humour and resilience in facing the challenges of living in this place. We have the Atlantic puffin, which makes its home on the ocean and in the rugged cliffs; the pitcher plant, which lives in boggy marshes and is nourished by the insects it traps; Labradorite, or firestone, which combines an iridescent glow with the durability of ancient rock; the black spruce, which is a hardy and durable coniferous tree flourishing in a short growing season; and the endangered Newfoundland pony, possibly the oldest breed of domesticated livestock in North America. Our flag, designed by Christopher Pratt and adopted in 1980, captures the colours of snow and ice (white), the sea (blue), human effort (red) and confidence in ourselves (gold). As it seeks to link our past heritage with our present reality and future promise, the flag has visible links to the Innu and Beothuk cultures, our Commonwealth heritage, the Christian tradition and the Canadian maple leaf.

Despite life in the postmodern age, Newfoundlanders and Labradorians have retained an important sense of identity, a sense of place, that links the past with the present. We have a deep sense of belonging. We care about community and value a lifestyle that balances work and time with family and friends. We have a passionate appreciation of our cultural and artistic heritage, and enjoy a strong sense of connection to the land and the sea. Our sense of attachment to this place remains remarkably strong. This was evident when the Commission visited with young people. A predominant message, in both urban and rural communities, was the crucial importance of their sense of identity and their attachment to Newfoundland and Labrador as home. We know our culture is special and even unique. And other Canadians know it, too. In a Commission poll, 72 per cent of Canadians viewed Newfoundland and Labrador as culturally distinct from Canada.⁷

One event in the recent past that serves as an example of our character and sense of humanity was the province's response to the tragedies of September 11, 2001. By hosting thousands of airline passengers from around the world and providing them with a "home," we did instinctively what we thought should be done. "There is a tendency on the part of some of us not to recognize the event for what it was – singular and revelatory. This gentle openness of heart is a manifestation of the Newfoundland and Labrador spirit nurtured over time and insinuated into our character, and we often forget it is that spirit which fires our sense of belonging."⁸

Our identity and sense of place are, and perhaps have always been, vulnerable. The impact of the loss of responsible government on the young generation of the time has never been fully examined, but it's not difficult to conclude that it must have left a changed self-image, a fear of failure and a loss of confidence. Some argue that we experienced another significant loss in 1949. One expatriate told the Commission, "We have not found that identity in Canada, because our belonging began with a loss of who we were in the moment of Confederation. We are still, I believe, stuck in that moment ... the threat of losing ourselves altogether is very real."

Others see in the closure of the cod fishery, with which our identity is so involved, a terrible impact on the attitude and spirit of our people. We blame others, and we blame ourselves. Have we accepted what has occurred in many of our rural communities? Are we in denial? Consider the following two statements received by the Commission:

Our sense of belonging to this place and a way of life have been shaken to its roots and somebody has to be held responsible. Principally it has been governments, federal and provincial, heads of organizations, business leaders.⁹

... Laying blame at the feet of governments, big business, or other impersonal forces creates a milieu of victimization and erodes local agency and responsibility.¹⁰

This loss of confidence, the feeling of powerlessness, may suggest that a less enduring sense of place threatens to emerge unless we all work together to fight it.

"We must ... [allow] people to learn that the story of their past, despite its perceived shortcomings, is largely one of resilience, survival and even success over the centuries."¹¹ The need to maintain and revitalize our sense of self and sense of place is fundamental to renewing and strengthening our place in Canada. As one person told the Commission, "We haven't figured out how to use our culture and identity to our social and economic advantage, to transform us from being proud of who we are to being confident in who we are."

There is a wonderful Newfoundland and Labrador image: the dory. When you row a dory, you do not look in the direction in which you are going; but, in looking at the wharf or beach you have left, you are able to guide your way to the new place. "Renewing our sense of place ... is not to go back; it is to launch out anew. We must reclaim the independent spirit which sustained us over our first 400 years."¹²

Newfoundlanders and Labradorians are very much part of today's world. In our lifestyles, our ways of work, our music, our art, our connections around the world and our interests, we are a modern people enjoying the same experiences and facing the same challenges as Canadians everywhere. We name ourselves Canadians, proudly celebrating the values that make this country great. We have no desire to live in the past or to go back, but we have a deep conviction that the spirit which our ancestors brought here was special and lives on in each one of us. That spirit, that sense of identity, is the source of our belief



that we can make a better future for ourselves and all who will follow us. And that spirit is the unique gift we bring to the Canadian federation.

When Newfoundland and Labrador joined Canada, our nation finally became complete from sea to sea. It remains to Newfoundlanders and Labradorians at home and abroad to ensure that all Canadians know our rich history, rejoice in our uniqueness and understand our challenges. Only in this way will we feel that Canada is made complete by our presence, and that in Canada we have truly found a place of respect and dignity.

Ode to Labrador

Dear land of mountains, woods and snow
 Our Labrador
 God's noble gifts to us we know
 Our Labrador
 Thy proud resources waiting still
 Their splendid task will soon fulfil
 Obedient to thy Maker's will
 Our Labrador

E minasshkuat shash tshakat tshé utnakant
 (Thy stately forests soon shall ring)
 Ninan Napatau (Our Labrador)
 Tshé tshemekeishkanut
 (Responsive to the woodman's swing)
 Ninan Napatau (Our Labrador)
 And might floods that long remained
 Their raging fury unrestrained
 Shall serve the purpose God ordained
 Our Labrador

Kakkangit Pisugianga
 (We love to climb the mountains steep)
 Labradorvut (Our Labrador)
 Ubvalu imakkuluta
 (Or paddle on the waters deep)
 Labradorvut (Our Labrador)
 Our snowshoes scar the trackless plains
 We seek no city streets, nor lanes
 We are thy sons while life remains
 Our Labrador

Labradorvut

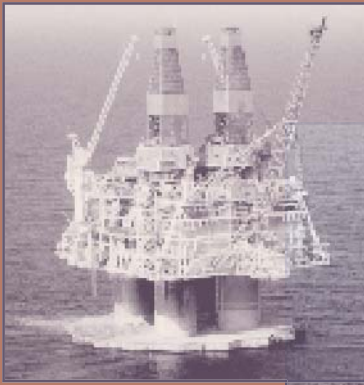
Ninan Napatau

Dr. H.L. Paddon wrote the lyrics for this song to the well known tune of "O Tannenbaum". Shirley Montague composed an original melody in 1988, incorporating the Inuktitut translation by Margaret Metcalfe and the Innu-aimun translation by Ann Rich (Nuna)

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Chapter 11

The Regulation of Natural Resources, Atlantic Accord and Churchill River



The equitable development of Newfoundland and Labrador's natural resources hold great promise to help move the province toward a future of enhanced prosperity and self-reliance. Whether this promise will be realized will be determined, to a certain extent, by external market forces. But, most importantly, it will depend on the federal and provincial governments' vision of the role natural resources should play in strengthening this province's place in Canada. In the view of the Commission, the federal and provincial governments have the strongest obligation to ensure that this province's natural resources are developed for the *long-term* benefit of Newfoundland and Labrador and Canada. With respect to many natural resources, the provincial government has the primary responsibility for ensuring that developments provide the maximum possible benefits to the people of this province. Other critical natural resources, however, require an essential partnership with the federal government.

This chapter focuses on offshore petroleum and the hydroelectric resources of the Churchill River, both developed and undeveloped. With respect to offshore petroleum, the vision and commitment the Commission seeks from governments already exists in the 1985 Atlantic Accord. The challenge now for the federal and provincial governments is to ensure that this commitment is realized. The Churchill River, particularly the undeveloped potential of the Lower Churchill at Gull Island, presents the federal government with an opportunity to demonstrate in a significant way that it is committed to working with Newfoundland and Labrador in improving the province's place in Canada. This chapter begins with a general discussion of the need to ensure that all of the province's natural resources are developed and managed in a way that provides the greatest possible benefits to its people.

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The Regulation of Natural Resources

As discussed in Chapter 7, this province has faced some significant constitutional challenges in managing its natural resources (particular challenges facing the proper regulation of the fishery are discussed in Chapter 10). Overall, however, Newfoundland and Labrador has possessed extensive legislative powers under the Constitution of Canada to help ensure that provincial natural resources are developed and managed for the benefit of Newfoundlanders and Labradorians.

In 1982, provincial legislative powers with respect to non-renewable natural resources, forestry resources and electrical energy were strengthened by a constitutional amendment that added section 92A to the Constitution Act, 1867. Two key features of section 92A relate to provincial powers over the export of these resources and the raising of revenue. Under section 92A(2), the provinces are empowered to make laws in relation to the export of these resources to other parts of Canada, subject to the limitation that such laws cannot provide for discrimination in prices or supplies exported to another part of Canada. Before 1982, only the federal parliament could make laws in relation to the export of resources. Section 92A(4) provides the provinces with great flexibility in raising revenue from these resources. It authorizes taxation, by any mode or system, of these resources (in the case of electricity, the sites and facilities for



2. The purposes of this Accord are:

... (c) to recognize the right of Newfoundland and Labrador to be the principal beneficiary of the oil and gas resources off its shores, consistent with the requirement for a strong and united Canada.

excerpt from
The Atlantic Accord

The Regulation of Natural Resources, Atlantic Accord and Churchill River

generation) or their primary production. This is significant, as a tax on the production of a resource would be an indirect tax, which before this amendment was beyond the legislative power of the provinces. Furthermore, section 92A(4) makes it clear that taxation on the production from these resources is allowed even if the production is exported in whole or in part from the province. Taxation, however, cannot differentiate between production which is exported and that which is not.

During its public consultations, concerns were expressed to the Commission regarding the extent to which the province benefits, or does not benefit, from the development and management of its natural resources. Frustration was evident regarding the loss of the fishery, the lack of benefits from Churchill Falls and the unfolding loss or offset of oil royalties and taxes by reductions in equalization payments. The Commission, throughout this Report, has made recommendations regarding the management of natural resources. In Chapter 10, it made recommendations with respect to the fishery, and in this chapter it will deal specifically with the Atlantic Accord as it relates to offshore oil revenues and the development of the Lower Churchill.

Progress on these matters will help strengthen public confidence that the province's natural resources are being developed and managed in the best interests of the people. However, the provincial government must also demonstrate that it is constantly challenging itself to ensure the greatest possible returns. Periodically, it will be necessary for the provincial government to undertake a comprehensive and critical assessment of its approach to a natural resource. The provincial government's current study of electricity policy provides a valuable opportunity in this regard. In the view of the Commission, this study is critically important and should be given the utmost priority.

A key component of this review must be a careful consideration of the province's powers under the Constitution, including section 92A, to derive important and needed benefits from electricity generated from all developments on the Island and in Labrador. The benefits to be examined should include both effective access to electricity to encourage and attract new industrial developments, and reasonable taxation and royalty payments to help bolster the province's finances. The Commission appreciates that the power to legislate under the Constitution is only part of the equation. Careful consideration must also be given to costs, such as financial risks and potential impacts on the province's ability to attract future investment. Carefully conceived, such an analysis will influence not only the best actions to take on the regulation of this vital resource, but also the most advantageous timeline.

Offshore Petroleum and the Atlantic Accord

Overview

In 1985, the federal and provincial governments entered into an agreement providing for the joint management of offshore petroleum resources and the sharing of revenues. This agreement is known as the Atlantic Accord. Paragraph 2(c) of the Accord states that one of its purposes is “to recognize the right of Newfoundland and Labrador to be the *principal beneficiary* of the oil and gas resources off its shores, consistent with the requirement for a strong and united Canada.”

The Commission has reviewed the outlook for future oil revenues and the overall sharing of government revenues likely to result under the current arrangements. It is clear from this review that in 2003-04 Newfoundland and Labrador will probably receive the full net benefits of provincial revenues. Under the existing arrangements, however, this favourable revenue split will continue only for the very short term. As oil revenues begin to escalate to their full potential, the net share of revenues retained by the province will decline dramatically due to the workings of both the equalization formula and the Accord. Overall, the Commission has concluded that Newfoundland and Labrador will not be the principal beneficiary of oil revenues in the coming years. As a result, the spirit and intent of the Atlantic Accord will not be realized. Projections indicate that, over the life of the existing oil projects, the province will be the net beneficiary of only 20 to 25 per cent of total government revenues.

Unlike the failure of the fishery, which is a resource disaster that has already occurred, the oil situation represents an impending but avoidable failure in the relationship between the federal and provincial governments. Urgent joint action is required. This difficult situation has arisen because development circumstances have changed substantially from those anticipated when the Atlantic Accord was negotiated almost 20 years ago. The solution lies in an amendment to the Accord ensuring that the principal-beneficiary objective is met. While there are many important issues facing Newfoundland and Labrador over the next decade, none have more potential to help it move towards prosperity and self-reliance than changes to the Atlantic Accord.

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The Projected Revenue Shares

The Atlantic Accord states quite clearly that Newfoundland and Labrador should be the principal beneficiary of its offshore oil and gas resources. To meet this principal-beneficiary purpose, the Atlantic Accord allows the province to establish and collect revenues as if the petroleum resources were on provincial land. The federal and provincial governments of the time, however, recognized that the workings of the equalization program would frustrate the principal-beneficiary objective in the Atlantic Accord. Indeed, at the time, the workings of the equalization program would have resulted in a dollar-for-dollar loss of equalization payments. To address this concern, and based on assumptions as to the timing and magnitude of the resource revenues that would flow to the province, the two governments agreed to a system of equalization-offset payments.

In examining whether or not the principal-beneficiary purpose of the Atlantic Accord will be achieved, the Commission reviewed a set of multi-year projections for total government tax and royalty revenues. These were based on current expectations of production from the two operating fields, Hibernia and Terra Nova, and a third field, White Rose, currently under development. The Commission is aware that the economics of a fourth project, Hebron Ben Nevis, continues to be studied by the owners, and that areas such as the Flemish Pass and Laurentian Sub Basin hold promise for new discoveries. It is also conscious of the fact that there has not been a major discovery off the coast of Newfoundland and Labrador for more than 17 years. In the Commission's view, therefore, the most appropriate analysis is one based on the three existing developments.

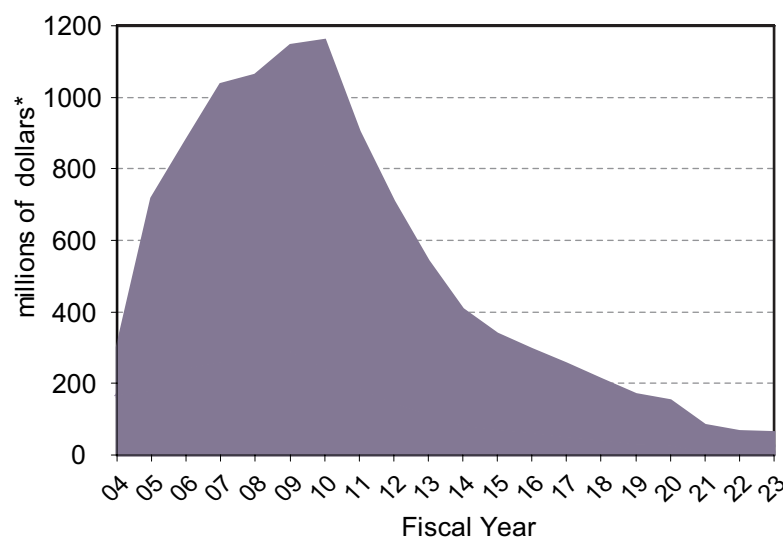
The revenue forecast is based on a long-term world oil price of US \$24 a barrel adjusted for inflation. These assumptions are the same as those used in Chapter 6, as are the underlying assumptions regarding the royalty regime and provincial corporate income tax. In order to assess the overall sharing of total government revenues, it is also necessary to include projections for the federal government's corporate income tax revenues. To do so, a judgement was made concerning the revenues that would actually be collected, given that federal corporate income tax payments are influenced by the overall level of profitability of the various companies and by allowances for exploration and development expenditures.¹

Figure 11.1 illustrates the projected profile of combined government revenues from offshore oil for the next several years – the expected lifespan of the three current projects. These projections include federal corporate income tax as well as provincial corporate income tax and royalties. The combined federal/provincial revenues are projected to rise rapidly, peaking at almost \$1.15 billion in 2010; they will then decline steeply.

Figure 11.1

Total Government Revenues from Offshore Oil

Combined Federal/Provincial Revenues



Source: Projections based on the existing projects (Hibernia, Terra Nova and White Rose). Data extracted from projections provided by the provincial Department of Finance.

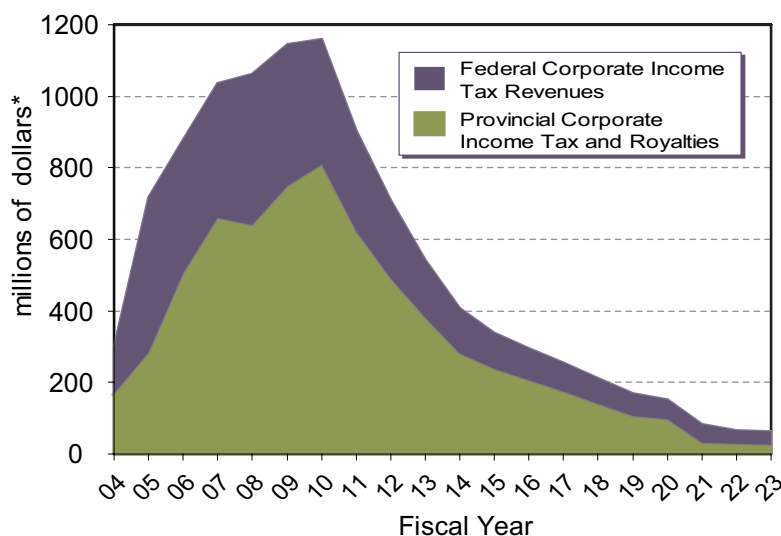
***Note:** Constant dollars adjusted for inflation.

The Commission has reviewed the manner in which the overall government revenue streams might ultimately be divided between the federal and provincial governments. In this regard, the first step is to review the composition of the oil revenue stream as it is derived from federal sources and provincial sources. This is illustrated in Figure 11.2.

Figure 11.2

Government Revenue Sources from Offshore Oil

Federal and Provincial Revenues



Source: Projections based on the existing projects (Hibernia, Terra Nova and White Rose).
Data extracted from projections provided by the provincial Department of Finance.

***Note:** Constant dollars adjusted for inflation.

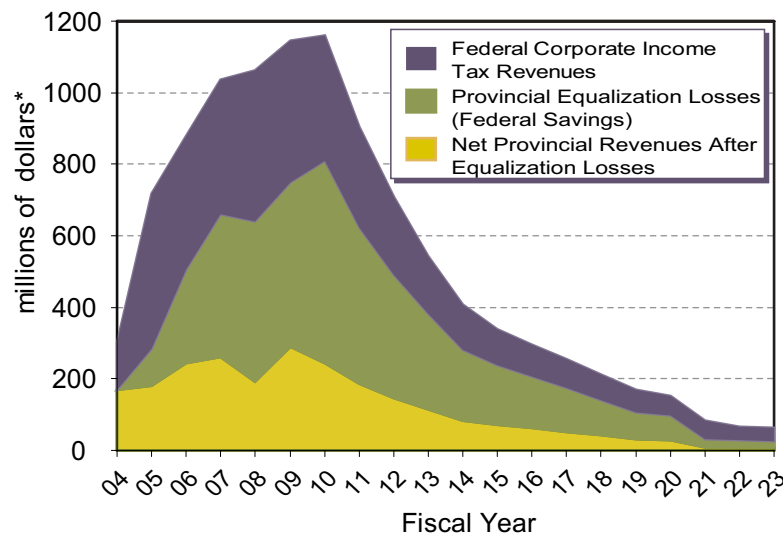
Figure 11.2 illustrates that a very significant component of the revenues will be derived from provincial corporate income tax and royalties.

The second step, and the most important analysis, relates to the assessment of the *net* share of the revenues which ultimately go to the benefit of the respective governments. The analysis, illustrated in Figure 11.3, assumes that the “generic solution” under the equalization program, which allows the province to retain 30 per cent of provincial oil revenues, will be preserved beyond 2004. In some years, such as in 2003-04, the various offset payments under the Atlantic Accord are more favourable to the province than the application of the generic solution. Until 2011, the provincial government may, in such cases, choose the formula which is most beneficial. After that, the options under the Atlantic Accord expire and the generic solution becomes the only option. Taking both the Atlantic Accord and the generic solution into account, the overall sharing of government revenues from federal and provincial sources is summarized in Figure 11.3.

Figure 11.3

Net Sharing of Government Revenues from Offshore Oil

Reflecting the Impact of Equalization
and the Atlantic Accord



Source: Projections based on the existing projects (Hibernia, Terra Nova and White Rose).
Data extracted from projections provided by the provincial Department of Finance.

***Note:** Constant dollars adjusted for inflation.

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This figure reveals a startling revenue split, particularly when viewed in the context of the magnitude of the revenues involved and the clear intent of the Accord. The distribution of revenues between the federal and provincial governments simply does not even come close to fulfilling the intent of Newfoundland and Labrador being the principal beneficiary from offshore oil revenues.

Figure 11.3 graphically illustrates a number of points:

- The first is that the province is currently receiving provincial taxes and royalties with minimal equalization losses – due to the important but short-term protections afforded by the Atlantic Accord. At the same time, the federal government is benefitting from its federal corporate income tax.
- The second is that, although oil revenues are projected to increase significantly in coming years, the province will receive little of that incremental revenue. This is due to the fact that the proportionate level of revenue protection afforded by the Atlantic Accord declines dramatically due to the workings of the various formulas. The equalization loss becomes increasingly more significant, thereby minimizing the net gains to the province.
- The third point is that the peak revenue years from these projects are quickly approaching, and are projected to last for a very short period between 2006 and 2012. Thereafter, the revenues are expected to decline sharply, producing the “revenue bump” evident in Figures 11.1 to 11.3.
- The fourth, and most important point, is that over the life of the existing projects, the net amount of revenue that the provincial government retains will pale in significance when compared with

the combined impact of the federal government's savings from reduced equalization payments and its federal corporate income tax.

Certainly there are short-term benefits to the province from the equalization offset provisions of the Atlantic Accord. However, over the life of the current projects, the federal government's net gain, inclusive of its savings in equalization, will amount to approximately 75 to 80 per cent of all government revenues. This leaves a net benefit to the province of just 20 to 25 per cent. For example, total government revenues from the three existing projects are projected to peak in 2010 at \$1.15 billion. Under the existing structure, after the impact of equalization, it is projected that the province would realize net revenue gains of only \$250 million in that year. This means that the Government of Canada, after taking into account its equalization savings, would be the net beneficiary of the remaining \$900 million.

It is recognized that these revenue projections, like any multi-year projections, are based on an array of assumptions. There will no doubt be a wide variety of views concerning the future trends of a number of the key variables. The Commission, however, would emphasize that the accuracy of the projections in each year is not as important as the overall trends, the relative orders of magnitude and the relationship between the net shares expected to be realized by each government. In that regard, the Commission believes the projections reasonably reflect the nature of the sharing relationship that can be expected to unfold.

Changed Circumstances

The enormous question which the Commission attempted to address is how such an inequitable sharing is possible given the clear statement of intent and purpose in the Atlantic Accord. When the Atlantic Accord was signed in 1985, there were great expectations that offshore oil would set Newfoundland and Labrador on a course of phenomenal economic growth. The period leading up to the signing was marked by impressive exploration success and high oil prices. Hibernia (1979), Terra Nova (1984) and White Rose (1984) were all discovered prior to the signing of the Atlantic Accord. There was, therefore, great optimism at the time that new oil would soon be discovered and developed, and that the revenues flowing to Newfoundland and Labrador from the Accord would place it on a rapid road to prosperity and self-reliance. Speaking in 1984, the then Minister of Energy, Mines and Resources, the Honourable Jean Chrétien, predicted that Newfoundland and Labrador might become a "have-province" within five years of first oil from Hibernia.²

Had those optimistic assumptions been realized, the equalization-offset payments could have protected the principal-beneficiary purpose. These assumptions clearly have not been realized. As a result, the revenue sharing arrangements and time frames reflected in the Accord will not achieve the overall purpose of making Newfoundland and Labrador the principal beneficiary. The Commission has concluded, therefore, that the Accord will not work in accordance with its original spirit and intent, and that there is every reason why it should be fixed. It confounds all logic for anyone to claim that, despite the federal government receiving a net benefit of 75 to 80 per cent of offshore revenues, Newfoundland and Labrador remains the principal beneficiary.

The Commission's conclusion is supported by a research paper prepared by the Honourable John Crosbie.³ In this paper Mr. Crosbie states: "Clearly Newfoundland [and Labrador] is not the primary or principal beneficiary of the offshore resources, nor of offshore revenues, but a minor beneficiary when compared to the federal government. The importance of this is that, unless the Atlantic Accord is honoured and implemented as to its original intent, Newfoundland [and Labrador] is unlikely ever to become a self-sufficient province within the Canadian federation." The Commission's concerns are also shared by the *Report of the Standing Senate Committee on National Finance, 2002*, which recommended that: "The [federal] government should undertake an evaluation of the equalization provisions of the Atlantic Accords to determine if they have met the intent for which they were designed."⁴

The position of the federal government, as expressed by the federal minister of Intergovernmental Affairs, is that the Government of Canada is fully respecting both the letter and intent of the Atlantic Accord, and that Newfoundland and Labrador will be the principal beneficiary of petroleum development off its shores. The federal government further claims that, as a result of the introduction of the generic solution to the equalization program in 1994, this province has received, and will continue to receive, “significantly greater benefits” than those envisaged at the time the Atlantic Accord was signed.⁵ The projections discussed in this Report, of course, take into account the Atlantic Accord as well as the generic solution. The Commission concludes that an 80-20 or 75-25 revenue split in favour of the federal government is totally inconsistent with Newfoundland and Labrador being the principal beneficiary of its offshore oil revenue.

Need for Revised Accord

The Commission is aware that the issues surrounding the Atlantic Accord are complicated. Indeed, it has a sense that there is not a complete understanding within the province of the significant challenge confronting the province in terms of future revenue losses. In many ways, the issues surrounding the Atlantic Accord resemble the Churchill Falls situation. In both cases agreements were made based on assumptions that did not materialize. In both cases unfolding, yet unforeseen, circumstances worked to the significant disadvantage of Newfoundland and Labrador and its place in Canada. Figure 11.3, therefore, depicts a situation which is totally unacceptable in a federation where fairness and equity should prevail.

Revenue-related amendments to the Atlantic Accord should reflect two basic principles. First, a far greater share of the provincial revenue from the offshore should be retained by this province to reflect the principal-beneficiary objective. This objective is not met by the generic solution or by the present provisions of the Atlantic Accord. Second, the province should continue to receive a proportionately greater net share of provincial oil revenues as long as it remains below the Canadian average for agreed-upon fiscal and economic measures. The Commission is recommending that the federal and provincial governments enter into immediate discussions to revise the Atlantic Accord to ensure that the principal-beneficiary objective is both honoured and achieved.

The Churchill River

Overview

Newfoundland and Labrador brought into Canada the tremendous hydroelectric potential of the Churchill River in Labrador. In the early 1970s, the Churchill Falls site was developed, yielding 5225 megawatts of power. Two significant hydroelectric sites remain undeveloped on the Lower Churchill River, at Gull Island and Muskrat Falls.

The inequitable outcome of the Churchill Falls development, together with successive failures to develop the other sites on the Churchill River, has profoundly affected Newfoundlanders’ and Labradorians’ perceptions of their place in Canada.⁶ Despite the passing of more than 30 years since power was first generated, the outcome of the Churchill Falls development covers Newfoundland and Labrador’s place in Canada with a long dark shadow.

Churchill Falls

The term of the Churchill Falls contract was initially 40 years, and debt financing was arranged successfully on that basis. After the financing was in place, however, there was an eleventh-hour demand by Hydro-Québec that extended the term of the contract to an unbelievable 65 years, with lower power

rates granted to Hydro-Québec for that final 25-year period. While the power contract arrangements were finalized in 1969, the effective date of the contract was July 1, 1976. Between the time the contract was signed and its effective date, the world went through an unprecedented energy shock, with an unexpected increase in energy prices caused by the oil crisis in the Middle East. As a result of this international energy crisis, the value of energy from Churchill Falls underwent a windfall increase estimated to be in the order of \$850 million a year.

The world events leading to this increase were not foreseen by the parties to the Churchill Falls contract (CF(L)Co. and Hydro-Québec) or by the owner of the resource (Newfoundland and Labrador). Hence, they were not provided for in the power contract and related arrangements. As a result, the huge annual windfall profits go almost entirely to Hydro-Québec. Hydro-Québec has benefitted from these annual profits for the last 27 years, and will continue to do so for the next 38 years, until 2041.

In its deliberations, the Commission heard the view, though much in minority, that Newfoundland and Labrador should put the Churchill Falls matter in the past. In a poll conducted for the Commission, however, 74 per cent of respondents refused to support this view.⁷ At the same time, it is the opinion of the Commission that the people of this province should be prepared to move forward in realizing the potential of the Gull Island site to help deal with its growing fiscal predicament and the building of a stronger economy, particularly in Labrador. That said, the development of Gull Island should proceed in an environmentally responsible manner and in a way that is respectful of Aboriginal rights and interests.

The federal government placed Hydro-Québec in a monopolistic position during the Churchill Falls negotiations of the 1960s by not enacting legislation that would have allowed for a power corridor through Québec. Without such federal legislation, negotiations on the Churchill Falls project took place in a situation in which virtually all of the power and energy had to be sold to Hydro-Québec. Consequently, it was in a position to dictate a low price, an insignificant recall of power for use in Newfoundland and Labrador and an unprecedented time frame (65 years) governing the power contract. The inaction of the federal government in the matter of allowing a power corridor through Québec was, and still remains, contentious, especially in view of the fact that the federal parliament has passed legislation to allow the construction of oil and gas pipelines across other provincial boundaries.

The federal government also played a direct role in facilitating the conclusion of the Churchill Falls deal. This was done through amendments to the Public Utilities Income Tax Transfer Act that effectively allowed the developer, CF(L)Co., to lower its sale price for Churchill Falls power, as had been demanded by Hydro-Québec. The federal government helped make the project viable and, therefore, was an essential partner in seeing the development proceed.

The inequities of Churchill Falls have been argued with great passion for more than three decades. Some argue that it was flawed national energy policy and the lack of a power corridor through Québec that denied Newfoundland and Labrador any opportunity to export its energy and capture the economic rent. Others call the deal a home-grown disaster, the fault of Premier Smallwood who championed the project and never asked for a power corridor nor insisted on a re-opener clause. Others argue that it is a simple case of “a contract is a contract.” Still others argue that the unintended outcome of the contract was so radically different from that envisaged at the time that simple decency demands its renegotiation.

In the view of the Commission, Churchill Falls is fundamentally about whether or not fairness and equity exist in the Canadian family. It is about the Government of Canada standing on the sidelines as an observer of a situation where, due to unforeseen circumstances, Québec currently reaps a windfall profit of approximately \$850 million a year from a hydroelectric resource located in, and owned by, Newfoundland and Labrador. The first question asked by Newfoundlanders and Labradorians was: “If the situation had been reversed in the late 1960s, would not the Government of Canada have intervened in the national interest and allowed a power corridor through Newfoundland and Labrador for the export

of Québec power?” The second question asked was: “Why, in the absence of the power corridor, has the federal government refused to facilitate a reasonable sharing of the windfall profits between the two provinces?” One can only imagine the favourable impact on the fiscal position of Newfoundland and Labrador had it shared in even 50 per cent of the Churchill Falls windfall profits since 1976. It would have already meant additional annual revenues in the order of \$425 million for 27 years, or an additional \$11 billion over that period with potential revenues of equally significant amounts until 2041.

Lower Churchill Development

The Churchill Falls dispute has been an ongoing obstacle to the development of hydroelectric potential on the Lower Churchill at Gull Island (2000 megawatts) and Muskrat Falls (800 megawatts). These two hydroelectric sites have remained undeveloped for the last three decades because Newfoundland and Labrador and Canada have failed to join forces to harness their potential for the good of all Canadians.

Nowhere is a new way of thinking and doing things required more than in the approach to the development of the Lower Churchill River. The provincial government needs revenues, the province needs energy for industrial purposes, Québec needs power and energy, as does Ontario, and Canada needs energy production which will attract Kyoto credits. Nevertheless, the potential of the Lower Churchill River remains undeveloped even though Gull Island is one of the lowest cost hydroelectric developments remaining in North America.

The early development of the \$4 billion Gull Island project would involve Newfoundland and Labrador accessing sufficient power for industrial use in Labrador, Québec purchasing power and energy for its own use, Québec wheeling power to customers in Ontario and the northeastern United States, and Canada coming to the table as a financial partner to ensure that Newfoundland and Labrador is able to earn an appropriate return as owner of the resource. The Commission strongly feels that equitable development on the Lower Churchill is long overdue. It presents a genuinely profound opportunity for the province and the federal government to demonstrate that they are committed to a renewal in their relationship.

In the fall of 2002, Newfoundland and Labrador and Québec were nearing the end of negotiations to develop the Gull Island project. While no deal was concluded, and little detailed information on the negotiations was provided, there were many concerns expressed by the public. In particular, one of the main concerns related to possible financing was that Hydro-Québec would be the financial backer of the project. The concern, at its most fundamental level, was that if Hydro-Québec would be both the major purchaser of power and the major lender for the project, Newfoundland and Labrador therefore would be negotiating from a position of significant weakness. Such a potential imbalance in negotiating power was offensive to many Newfoundlanders and Labradorians, particularly given the history and outcomes of the Churchill Falls development. In the view of the Commission, proceeding in this manner in the future would be a recipe for failure.

This situation can be overcome if the Government of Canada agrees to become a significant financial backer to the Gull Island project. This will allow contractual arrangements to be put in place so that Newfoundland and Labrador will earn appropriate returns as the owner of the resource. Without Canada's involvement, there will be only two practical choices for the province: (i) develop the Lower Churchill on Québec's terms, or (ii) let the water flow to the sea. It is time for Canada to come to the Lower Churchill table as a partner. Such a constructive role would demonstrate that the federal government takes seriously its constitutional commitment, as stated in section 36(1)(b) of the Constitution Act, 1982, to “furthering economic development to reduce disparity in opportunities.”

In the view of the Commission, issues related to the Churchill Falls development should not be directly linked with negotiations to develop the Gull Island site. However, in moving forward with the Gull Island development, the provincial government must ensure that it takes no action that could prejudice

its future ability to regulate the Churchill Falls resource more effectively for the benefit of the people of Newfoundland and Labrador.

Conclusions

In summary, the Commission is calling upon both the federal and provincial governments to work to ensure that this province's natural resources are developed for the long-term benefit of both Newfoundland and Labrador and Canada. In particular, the Commission recommends that:

- The provincial government works constantly to ensure the greatest possible returns from resource development. The province's current review of electricity policy provides a valuable opportunity in this regard. A key component of this review must be a careful consideration of the province's powers under the Constitution, including section 92A, to derive important and needed benefits from electricity generated from all developments on the Island and in Labrador.
- The federal and provincial governments enter into immediate discussions to revise the Atlantic Accord to ensure that the spirit and intent of the Accord – that Newfoundland and Labrador be the principal beneficiary – are honoured. The province must capture significantly greater net benefits than the present forecast of 20-25 cents on each dollar of government revenue generated from offshore oil.
- A new approach to the Churchill River be adopted that looks to the future rather than the past. The provincial government, in partnership with Québec and the federal government, should pursue an early and equitable development of the Lower Churchill at the Gull Island site. The role of the Government of Canada, as a financial backer to the project, would be entirely consistent with its constitutional commitment, as stated in section 36(1)(b) of the Constitution Act, 1982, to “furthering economic development to reduce disparity in opportunities.”

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“We would be foolish if we thought anyone but ourselves can chart the future for us... the new way of thinking about Newfoundland must start here at home.”

Excerpt from the Public Consultations

“It was a sad day when I packed my bags and left my home to look for something that should have been in my province in the first place – a future.”

Excerpt from the Public Consultations

