

Cover Art

The image that appears on the cover of this special issue suggests the variety of elements that exist in the relations of states and their smallest or remotest communities, or both.

The Maddison Chair in Northern Justice at Yukon College

The Maddison Chair in Northern Justice at Yukon College was created to honour the long service and significant contribution of Justice Harry Maddison, who sat on the Supreme Court of the Yukon Territory from 1969 to 1999. Each year, an eminent authority is chosen to present a public lecture to the Yukon Community.

The Northern Review is pleased to provide the text of the lecture given by Thomas Berger, delivered at Yukon College on 17 October 2001.

Northern Pipelines: Again

Thomas R. Berger, O.C., Q.C.

The Northern Review #23 (Summer 2001): 199-205.

I know you have invited me today to deliver the Maddison Chair Lecture because I was here a quarter of a century ago. Hank Maddison, for whom this chair is named, has been here a good deal longer than that; as a judge of the Supreme Court of Yukon, he has made a formidable contribution to the law of the Yukon and to the Territory he and his family have made their home.

What brought me here was the Mackenzie Valley Pipeline Inquiry. It was established by the Government of Canada in 1974 to consider the social, environmental and economic impact of a proposal by the Arctic Gas pipeline consortium to build a pipeline to carry natural gas from Prudhoe Bay across the Arctic coastal plain of Alaska and across the Yukon North Slope to the Mackenzie Delta; the pipeline would pick up natural gas from the Delta and then follow a route south along the Mackenzie Valley to Alberta, and then

to the metropolitan centres of North America. The proponents of the project represented at the time the largest aggregation of private capital ever assembled.

During the Inquiry, a second pipeline proposal was brought forward. This was the Foothills Pipeline proposal to carry Mackenzie Delta gas south along the Mackenzie Valley to Alberta.

From 1974 to 1976, I travelled throughout the region, holding hearings in virtually every community in the Mackenzie Valley and the Western Arctic. I also held hearings at Old Crow and Whitehorse in the Yukon. I stopped here in Whitehorse in 1975.

When I commenced the inquiry, we were in the midst of the energy crisis of the mid-1970s. The discussion of the pipeline proposals and of the future of the Mackenzie Valley and the Western Arctic took place against the backdrop of that crisis.

Under my terms of reference, I was not to limit my inquiry to the proposal to build a pipeline. The Government of Canada had made it clear that a pipeline would be a part of an energy corridor. You would need construction sites and winter roads and air fields and helicopter pads—all of the infrastructure of industrial advance—in order to build a pipeline across the Yukon North Slope and through the Mackenzie Delta and indeed, in many parts of the Mackenzie Valley.

There were land claims to be considered, the claims of the Dene and the Inuvialuit. There were environmental concerns, the most prominent then—as now—being the future of the Porcupine Caribou Herd.

I heard from three hundred expert witnesses who testified mainly at Yellowknife, but some of them at Whitehorse, and from about nine hundred people at the community hearings.

In 1977, I made my findings and recommendations. My report is entitled “Northern Frontier, Northern Homeland.” Even though twenty-four years have passed, the findings and recommendations still appear to be relevant.

I urged that there should be no pipeline and no energy corridor across the Yukon North Slope. This was to protect the calving grounds of the Porcupine Caribou herd. I found that the building of a gas pipeline and establishment of an energy corridor through the calving grounds of the herd, which extend along the Arctic coastal plain into Alaska, would lead to the loss of critical habitat.

The Arctic coastal plain straddles the Yukon/Alaska border. The herd winters in Canada, mainly in the Ogilvie Mountains, and migrates to the Arctic coastal plain in summer to calve. On the coastal plain, in summer the cows feed on lichens and cotton grass. The principal calving area is located in the so-called 1002 lands of the Arctic National Wildlife Refuge. The herd’s fall

migration to its wintering grounds has been likened to the migration of the wildebeest on the Serengeti Plain of Africa.

Since the greater part of the herd's wintering grounds is in Canada, and the greater part of the summer calving grounds is in the US, both countries would have to take measures to protect the herd. The Porcupine herd is one of the largest caribou populations in the world. Native people in a dozen villages in Canada and Alaska depended on the herd then, and they still do today.

I recommended that Canada should establish a wilderness park in the northern Yukon. The purpose was, of course, to protect the calving grounds and to protect as well lesser snow geese, polar bears and other species. The proposal I made was for a park that would encompass the whole of the Arctic coastal plain of the Yukon and extend beyond the Yukon North Slope to take in the Old Crow Flats, in fact, would include that part of the Yukon north of the Porcupine River and the Bell River. The park would be 3.6 million hectares in area, or 9 million acres. It would have been comparable in size to what was then known as the Arctic National Wildlife Refuge in Alaska, which is contiguous to the northern Yukon.

I urged, therefore, the establishment of a great international wilderness area that our two countries, and Alaska and the Yukon, together with the Native peoples on both sides of the border, could manage in perpetuity, subject, of course, to the right of the Native peoples to hunt and fish and trap as they had always done in the park area.

This meant that, if my recommendations were accepted, the Arctic Gas proposal could not proceed.

I made it clear, however, that if you wanted to bring gas from the Mackenzie Delta south, you could build a pipeline along the Mackenzie Valley, provided you took appropriate environmental safeguards.¹

I also recommended a whale sanctuary for belugas in Mackenzie Bay. No sanctuary has been established, but there hasn't been any significant oil and gas exploration and development, as far as I know, in Mackenzie Bay. So it is still a *de facto* sanctuary for the belugas who come to those warm waters every summer to calve.

I recommended that since the land claims of the Dene and the Inuvialuit had not been settled, there should be a ten-year moratorium on major pipeline construction in the Mackenzie Valley to allow their claims to be settled. I recommended postponement in order to enable Native people to be full partners in any major pipeline that was built. If that were to occur, their land claims had to be settled. At the time, many persons thought that a decade would be much longer than necessary, but it turns out that it has taken even longer than ten years to settle those claims. The settlement of the claims in the Mackenzie Valley and here in the Yukon will determine the relationship

between Native and non-Native people in this part of the world for a very long time to come.

Canada rejected the Arctic Gas proposal.

Today, twenty-four years later, there are two National Wilderness parks in the northern Yukon, the Ivvavik National Park extending from the international boundary to the Babbage River, and the Vuntut National Park extending south to the Old Crow Flats. Ivvavik was established under the Inuvialuit land claims agreement, Vuntut under the Old Crow land claims agreement. We have, as well, the Old Crow Special Management area which, together with the Vuntut National Park, encompasses the whole of Old Crow Flats. There is, as well, a special conservation area lying to the east; if you look at the map, you will see that, all together, the two national parks, the Special Management area and the special conservation area are roughly equivalent in size to the 3.6 million-hectare park that I propose twenty-four years ago.²

ANWR received wilderness designation in 1980 (it is now known as the Arctic National Wildlife Refuge); Ivvavik was established in 1984; Vuntut in 1985.

That's where I left this subject twenty-four years ago. History appears to repeat itself, because there is talk once again of an energy crisis now, and there are a number of proposals for building pipelines here in the North. There are still, I believe, some land claims that haven't been settled and, of course, as you who live here now know better than I do, there are still environmental concerns.

Present-day concerns include those I expressed in 1977; and new ones have arisen that take us well beyond the concerns of that time. There are the current implications of oil and gas development and pipeline construction. There is the whole issue of climate change, which had barely appeared on the radar screen twenty-four years ago. You are now as much concerned about ecological research as with species-specific research. And, to be sure, the rights of the traditional users of the land and the welfare of the communities are still before you.

I know that people in the Yukon and the Northwest Territories are concerned, if a pipeline is built, about which route is chosen, whether it is to be the Alaska Highway route or the Mackenzie Valley route. This is not a matter on which I have an opinion. I do know, however, that what the US does will have a real bearing on the choice.

But may I remind you that what the US does in ANWR is important in determining the future of the Yukon North Slope and the parks established there. The future of ANWR itself depends on decisions made in Washington, DC; it depends on what the people of Alaska and the government of Alaska want, and on what the Gwich'in and the Inupiat of Alaska want.

We have always sought to work closely with the Americans since the Porcupine herd, its habitat, and the Arctic wilderness can only thrive if we work together.

We should therefore watch closely what happens regarding decisions on oil and gas exploration in ANWR.

No one, as far as I know, has proposed a pipeline across the calving grounds of the herd. But the Bush administration is proposing to drill for oil and gas in ANWR, specifically in the 1002 lands³ along the Arctic coast, which contain the core calving area of the herd (as well as much of the critical feeding area for lesser snow geese).

The US Fish and Wildlife Service has described the area as “unique and irreplaceable.”

What the Americans do in ANWR *is* our business. The wintering grounds of the Porcupine Caribou Herd are in Canada; the calving grounds of the herd extend from Canada’s Arctic coastal plain well into ANWR and the 1002 lands, which contain the Caribou that are unaware of the significance of the international boundary. Canadians and Americans must therefore act as joint stewards of the wilderness habitat of the herd.

The Government of Canada has consistently opposed any drilling in the 1002 lands. As far back as 1987, Canada stated its position in responding to the US Department of the Interior’s “Arctic National Wildlife Refuge, Alaska Plain Resource Assessment,” as follows:

After careful analysis of the shared wildlife resources which will be affected and their importance for Canadians, together with the hydrocarbon potential and the identifiable risks, the Government of Canada has concluded that the advantages of development in the area are far outweighed by the risks.

Canada, in stating its potential, quoted the following passage from my report of ten years earlier:

There is a myth that terms and conditions that will protect the environment can be imposed no matter how large a project is proposed. There is a feeling that, with enough studies and reports, and once enough evidence is accumulated, somehow all will be well. It is an assumption that implies the choice we intend to make. It is an assumption that does not hold in the North

We should recognize that in the North, land use regulations, based on the concept of multiple use, will not always protect environmental values, and they will never fully protect wilderness values, and they will never fully protect wilderness values. Withdrawal of land from any industrial use will be necessary in some instances to preserve wilderness, wildlife species and critical habitat.

It is vital to the preservation of the values that informed the establishment of ANWR, Ivvavik and Vuntut that we continue to oppose President Bush's proposal to drill in ANWR.

In fact, the Bush proposal raises profound issues.

There will always be a short-term crisis that can be invoked to justify encroachment on the Arctic wilderness.

Do we want to encroach on it, step-by-step? Once drilling starts, it will be necessary to keep drilling. If no oil or gas is discovered, it will be said that we should drill farther into the wilderness. If oil is discovered then once the supply that is extractable from the 1002 lands is exhausted, it will be said that we should move farther into the wilderness, since more is bound to be located there.

This is why the decision that is made now—whether to protect ANWR or not—will determine its future, the future of the Porcupine Caribou Herd and the environmental values that Canadians and Americans sought to preserve when we established the protected areas on each side of the international boundary.

It is here that our commitment to environmental goals and international cooperation will be tested.

I should add that I was supposed to come here to speak on September 13. My flight to Whitehorse was cancelled as a result of the terrorist attacks on New York and Washington, DC, on September 11.

Our commitment to ending terrorism, our solidarity with the United States in achieving that goal, does not mean that we should be shutting down any discussion of our differences with them regarding the future of the continent we share.

In fact, we owe much to the Americans. In the 19th century, they invented the idea of the national park. In the 20th century they brought in the first laws for the protection of wilderness areas. They also were the first to call for an evaluation of the environmental impact of major projects.

In calling upon the United States to refrain from drilling in ANWR, we are simply reminding them of our joint commitment to the conservation of one of the earth's greatest natural resources.

Notes

1. I said that the alternative proposal by Foothills Pipelines to build a pipeline to bring Prudhoe Bay gas along the route of the Alaska Highway would not encounter any major environmentally related reasons for not proceeding. But that route would be subject to land claims.
2. It should be understood that there were many people who had for a long time been urging a wilderness park in that area. The late Dr. Andrew Thompson is

one who immediately comes to mind. Of course, the Inuvialuit and the Gwich'in had always urged that that area be protected. In fact, we have the Inuvialuit and the Vuntut Gwich'in to thank for the constitutional entrenchment of the two wilderness parks in their land claims settlements.

3. So-called because there were designated under Section 1002 of the Alaska National Interest Lands Conservation Act.

Remembering *Nelna*–Bessie John

NORMAN ALEXANDER EASTON

The Northern Review #23 (Summer 2001): 205-211.

She was the finest woman I have had the privilege to come to know.

Nelna–Bessie John. Her spirit passed from her body on the 3rd of June 2000 in order to walk her own trail to heaven, where she has joined her ancestors and animal friends in their eternal vigil over the happenings of this world she has left. And might return to—*Nelna* was Upper Tanana, so reincarnation remains a possibility. I know that she will certainly be visiting many of us here, in our dreams or on the voice of a bird or the whisper of the wind, giving advice and comfort from her heaven as she did so often in her life here in our world.



There are many things of importance I could speak about *Nelna*–Bessie John. I was very fortunate to be one of the many that she took into her life to teach something of the *Dineh* way—the way of her Great People. The land onto which she was born and into which she was tied was the area that on our maps we might call the Yukon-Alaska borderlands. But it is not the *Dineh* way to make lines that divide people and Bessie never recognized the borders of maps or States. Over the past decade Bessie worked hard, at times despite great frustrations, to share with me the wisdom of her experience and deep thought.

So it is with great humility that I have prepared these words, brothers and sisters, to speak to you of one who became my Grandmother. And while