

**Oil Export Tax Claim**

**Introduction**

**This briefing document reviews key themes and information pertaining to the potential claim of the Enoch Cree Nation (ECN) against the Government of Canada regarding the Oil Export Tax levied between 1973 and 1985. The analysis primarily draws from a preliminary report by GuildOne, focusing on ECN's historical oil production and the impact of Canada's oil pricing and export regulations during that era.**

**Background: Oil Price and Export Controls in Canada (1973-1985)**

* **In 1973, amidst rising global oil prices, Prime Minister Pierre Trudeau enacted policies to stabilize domestic oil prices for Canadian consumers. These included a price freeze and mechanisms to shield Canadian markets from higher US prices. (Source: https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=2018&context=scholarly\_works)**
* **The Oil Export Tax Act (1974) levied a tax on oil exported to the US, designed to offset the difference between the controlled domestic price and the higher world price. This revenue primarily subsidized oil imports for Eastern provinces.**
* **The National Energy Program (NEP) in 1980 further aimed to achieve “energy self-sufficiency” by 1990. (Source: https://www.upi.com/Archives/1981/10/30/The-controversial-Petroleum-Compensation-Charge-and-its-predecessors-netted/1280373266000/)**

**Impact on First Nations Oil Producers**

* **First Nations oil royalties were negatively impacted by the artificially low domestic prices and the export tax. This was despite First Nations oil production composing an estimated 2-3% of Alberta's total output.**
* **Notably, First Nations producers were excluded from:**
* **Federal tax repayment or abatement programs designed to offset the export tax burden.**
* **Policy discussions related to oil pricing and export regulations.**
* **The Department of Indian Affairs and Northern Development (DIAND) argued in 1974 that these policies were detrimental to First Nations economies and potentially violated the Indian Act, citing "indirect taxation." (Source: https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf)**

**Enoch Cree Nation: Potential Claim Periods & Basis**

* **October 1, 1973 – May 31, 1985: The entire period when the oil export tax was levied on First Nations oil production.**
* **October 1, 1973 – March 31, 1974: This period aligns with ECN's claim for $1 million in wrongfully charged export taxes, based on internal calculations. (Note: Source mentions conflicting years, assuming this timeframe based on context.)**
* **October 1, 1973 – March 31, 1974: The period during which 50% of collected export tax revenues were returned to producing provinces. This could be a basis for a simplified claim by ECN based on its share of provincial production.**

**Key Arguments for ECN's Claim**

* **Violation of the Indian Act: Applying price controls and the export tax to on-reserve oil production potentially constitutes "indirect taxation" of First Nations, contradicting the Indian Act. This argument aligns with DIAND's stance in 1974.**
* **Breach of Treaty Rights: The imposed regulations arguably infringed upon established treaty rights by hindering First Nations' ability to fully benefit from their resource development.**
* **Lack of Consultation & Fair Compensation: The exclusion of First Nations from policy discussions and their absence from any compensatory programs raises concerns about procedural fairness and equitable treatment.**

**Challenges & Considerations**

* **Statute of Limitations: Previous court cases (e.g., Samson Indian Band v. Canada) faced dismissal due to time limitations. ECN will need to carefully navigate this legal hurdle.**
* **Valuation Complexity: Fluctuations in the export tax rate, evolving regulations (especially after the NEP), and the need to determine appropriate export ratios (considering export restrictions) make accurately calculating the claim value complex.**
* **Potential Counterarguments: The government may argue that policy changes, such as lifting the royalty cap for on-reserve production after March 1974, mitigated the impact of the export tax.**

**Recommendations for Further Research & Claim Development**

* **Quantify Lost Revenue: A thorough analysis of ECN's historical oil production data is crucial to accurately calculate lost revenue due to price controls and the export tax.**
* **Investigate Natural Gas Claims: Explore potential claims related to regulated natural gas prices and export restrictions between 1975 and 1985.**
* **Review Buffalo v. Canada Documents: Thoroughly analyze documents from the Buffalo v. Canada case, especially those highlighting First Nations' perspectives on the export tax and potential remedies.**
* **Engage in Government-to-Government Dialogue: Initiate direct negotiations with the Canadian government to explore potential out-of-court settlements and address historical injustices related to oil revenue policies.**

**Conclusion**

**The ECN possesses compelling arguments for pursuing a claim against Canada regarding the Oil Export Tax. While challenges exist, diligently pursuing the recommendations outlined in this briefing document can strengthen ECN's position and potentially lead to redress for historical economic disadvantages.**