

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

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EXPORT TAX

DATA & CLAIMS RESEARCH & ANALYSIS

JUNE 2024

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CLAIM DATA RESEARCH & ANALYSIS

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12 $oil_tax_t = (oil_t + cond_t) * tax_t$ 54

13 $interest_t = oil_tax_plus_interest_{t-1} * per_month_interest_rate_t$ 54

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PRELIMINARY ESTIMATE¹

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Claim	Period	Owing	Interest	TOTAL
EXPORT TAX	1973-1980	\$7.97M	\$509.4M	\$517.3M

7

Summary

8 Between 1974 and 1985, the Canadian Government intervened in the economics of
 9 the oil and gas industry through a series of policies intended to stabilize the price
 10 and availability of energy products for Canadians. This included fixing the price of
 11 national oil sales at a lower number than other jurisdictions and applying an export
 12 tax on cross-border oil sales.

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¹ Estimate to be refactored with BTF interest values to present. Current model uses BTF from 1973 – 2000, and CPP from 2001 to date.

1

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Background

3 Canada's *Oil Export Tax Act* (1974) was a product of price control mechanisms
4 enacted by the Federal Government to stabilize energy prices for Canadian
5 consumers in a rising global market. In September of 1973, Prime Minister Pierre
6 Trudeau announced two new policies: a temporary moratorium on oil price
7 increases, and the implementation of mechanisms to prevent higher prices in the
8 United States from affecting Canadian markets².



Osgoode Hall Law School of York University
Osgoode Digital Commons

Articles & Book Chapters

Faculty Scholarship

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

Source Publication:

Canadian-American Law Journal. Volume 1 (1982), p. 17-42.

9

10

² https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=2018&context=scholarly_works

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1 The Oil Export Act & the Consolidated Revenue Fund

2 Prior to the *Oil Export Tax Act*, oil prices in Canada were not directly regulated.

3 This legislation led to the creation of a two-tier pricing regime under which oil

4 exports at a price above the fixed domestic Canadian price were subject to a

5 withholding tax on exporters, with proceeds to be held in the Consolidated Revenue

6 Fund.

7 The Petroleum Administration Act

8 In June of 1975, the *Petroleum Administration Act* was passed and replaced the *Oil*

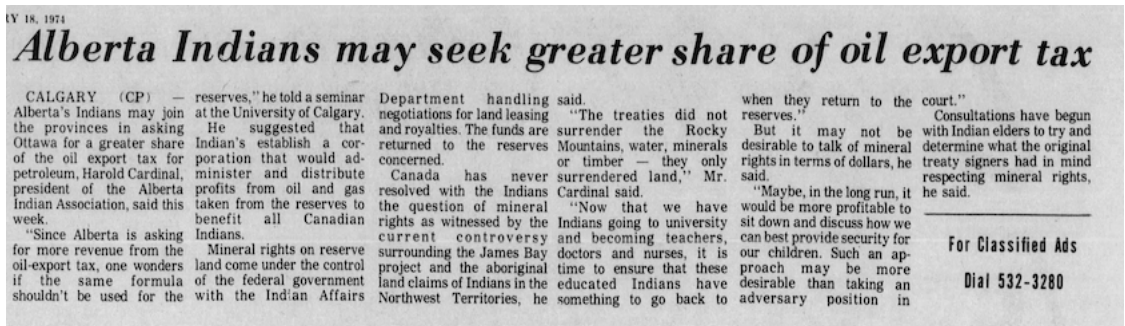
9 *Export Tax Act*. Under this new legislation, the oil export tax was renamed an “oil

10 export charge”, although it continued to be referred to as a tax by the public and

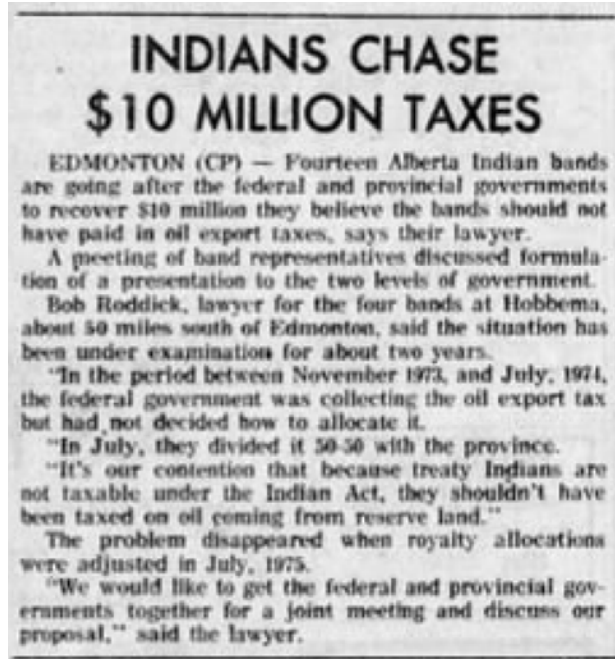
11 members of government.

12

13 THE DAILY HERALD TRIBUNE FRI JAN 18 1974



14



1

Import Compensation Fund

2

3 Most of the funds raised through the oil export tax were distributed through the

4 Import Compensation Fund to oil importers to mitigate the higher prices paid

5 relative to regulated domestic pricing. Some of the lost revenue to oil-producing

6 provinces was rebated through several tranches of tax rebates and a special fund.

7

CALGARY HERALD THU OCT 6 1977



8

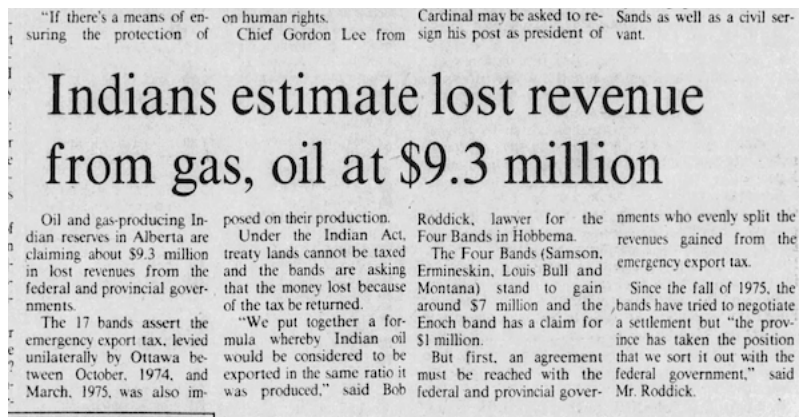
1 No Participation in Repayment Mechanisms for First Nations

2 Despite First Nations oil royalties being severely impacted by price fixing, oil
3 export taxes, export restrictions, and other energy security policies, bands did not
4 benefit from Federal tax repayment/abatement mechanisms nor were they enabled
5 to participate in policy discussions.

6 Violation of Indian Act

7 This inequitable treatment was disputed at the time by First Nations and agencies
8 like IOGC as a violation of the *Indian Act*. The Province of Alberta indicated that it
9 would advocate on their behalf to the Federal Government, however, Canada has
10 denied that it is required to mitigate the lost revenues, indirect taxation, and unfair
11 pricing and market access experienced by bands during this period.

12 EDMONTON JOURNAL THU SEP 29 1977



13

14 No Remedy Despite Numerous Approaches

15 From 1974, First Nations have made numerous approaches to the Provincial and
16 Federal governments, and several court cases have been attempted, but no known
17 settlement has been made on this issue to any First Nations claimant.

1

EDMONTON_JOURNAL_WED__FEB_28__1979



Enoch band Chief James Brule and Nick Taylor

Taylor raps Tories for '19th century attitude'

By JOHN FORSYTHE

Liberal leader Nick Taylor says native people are being treated as second-class citizens in Alberta.

Addressing the band council at the Enoch reserve west of Edmonton, Mr. Taylor said Tuesday Premier Lougheed "has a 19th century attitude that some people are closer to God than others."

He said Indians are discriminated against because they have no access to such provincial programs as provincial social services, low-interest housing loans and the \$500 per-capita plan for municipal debt reduction.

"If you're black, brown or white, you're entitled to all the social services and rights and privileges of Albertans," he said.

The Liberal leader said Alberta should

make all provincial programs available to Indians and "then go after the federal government itself for the bill (treaty Indians fall within federal jurisdiction)."

Mr. Taylor added the Lougheed government has in such cases followed "a policy of confrontation" with natives as in the Peigan Indian blockade of irrigation workers last year and in the dispute with Metis colonies over oil and natural gas rights.

Mr. Taylor also agreed to investigate a complaint from band councillor Ed Morin that the Enoch band is owed more than \$500,000 in oil tax rebates by the provincial government.

A federal Indian affairs official said later the 17 bands in Alberta with oil and gas wells have complained for years about the federal oil export tax imposed in 1973.

2

3 Research & Analysis

4 This report, and the integrated Enoch Oil Export Tax Assessment was developed

5 using secondary research, a survey of contemporaneous newspaper articles, and

6 artifacts from IOGC's Enoch repository, and artifacts and trial records from cases

7 including *Samson v. Canada* (1989) and *Ermineskin v. Canada* (1992).

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Sourced Data

Values for the regulated domestic oil price, oil export tax, and Federal oil export tax revenue were compiled from a range of sources, including StatsCan, newspaper announcements of export tax rates, Federal budget records, and policy and academic papers.

RED DEER ADVOCATE WED FEB 16 1977



1

Retroactive Application

2 The Act was passed in early January 1974 and retroactively applied to exports from
 3 October-December 1973. The amount of the tax was calculated on a month-to-
 4 month basis and announced at the beginning of each month, using the Chicago
 5 crude oil price as a benchmark³. In 1974, Syncrude was exempted from price
 6 controls and allowed to charge world prices for its synthetic crude⁴.

Fifty years of Alberta's oil sands

SEP 27, 2017  IAN HUSSEY



September 30, 2017 marks the 50th anniversary of the opening of the first large oil sands mine and processing plant in Fort McMurray. The facility was developed by Great Canadian Oil Sands, the precursor to Suncor Energy, which is one of Canada's largest producers of fossil fuels.

Over the past five decades, the northern Alberta oil sands deposits have gone from a relatively unknown source of heavy oil to a core part of North America's energy economy.

Here are five things that Albertans and Canadians should consider as we mark the 50th anniversary of large-scale oil sands extraction, and contemplate what it means to recognize Indigenous title and rights as Alberta transitions to a different kind of economy.

7

1. The development of the oil sands was made possible by huge government investments and low royalty and corporate tax rates

³ Pricing of Alberta's Oil (1976), Peter Tyerman

⁴ https://www.parklandinstitute.ca/fifty_years_of_albertas_oil_sands

The screenshot shows the Justice Laws Website interface. At the top, there are logos for the Government of Canada and the Canadian flag. The main header reads "Justice Laws Website" with a search bar on the right. A navigation menu below the header includes "Family Law", "Criminal Justice", "Funding", "Canada's System of Justice", and "Laws". The breadcrumb trail indicates the current page is "C.R.C., c. 335 - Table of Contents".

The main content area features a sidebar on the left with categories like "Constitutional Documents" and "Laws". The central content area displays the title "Oil Import Compensation Regulations No. 1, 1975 (C.R.C., c. 335)" and provides links for the full document in HTML, XML, and PDF formats. It also lists enabling acts and a table of contents with nine items: Short Title, Interpretation, Prescription of Crude Oil and Petroleum Products, Payment of Import Compensation, Eligible Importer, Compensation for Crude Oil, Compensation for Petroleum Products, Allowance for Change in Tanker Freight Costs, and Time of Payment of Compensation.

1

2

Oil Import Compensation Regulations

3

Also in 1975, the *Oil Import Compensation Regulations*⁵ came into force, which

4

compensated oil importers, primarily in Canada's eastern provinces, for the

5

difference between USA market prices and Canada's regulated domestic price.

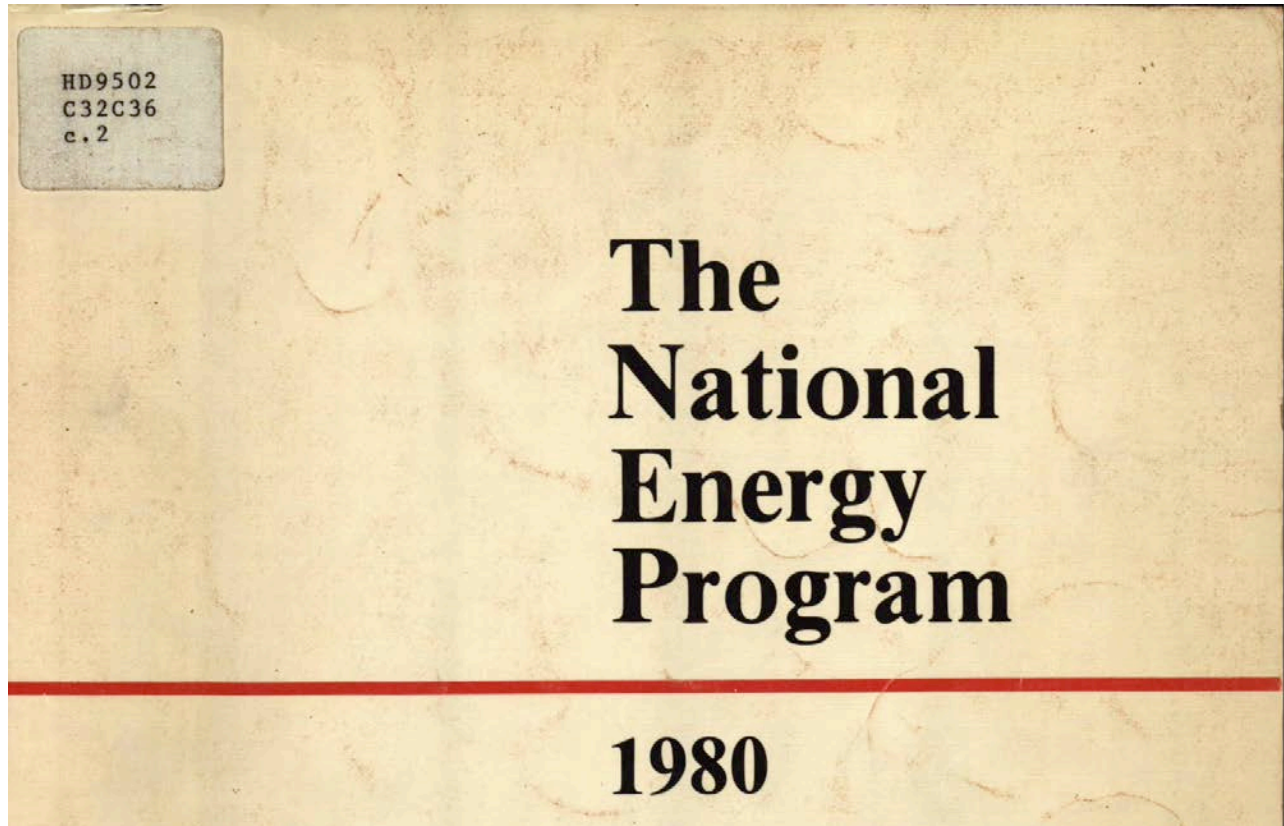
6

Revenue from oil export charges was allocated to the import compensation

7

program.

⁵ https://lois-laws.justice.gc.ca/eng/regulations/C.R.C.,_c._335/index.html



1

2

The National Energy Program

3 The National Energy Program⁶ (NEP) assumed policy control of Canada's energy
4 sector in October of 1980. Under the NEP, Canada continued to regulate the price
5 of oil and impose severe restrictions on exports to the USA, although it allowed for
6 steeper increases in Canadian domestic prices oil relative to world prices with the
7 intention of eventually equalizing prices.

8

Subsidization of Major Projects from Compensation Fund

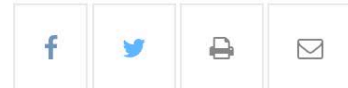
9 A key strategy of the NEP was the promotion of a "Made in Canada" energy sector,
10 with a focus on the heavy subsidization of synthetic oil producers such as Syncrude

⁶ https://publications.gc.ca/collections/collection_2016/rncan-nrcan/M23-12-80-4-eng.pdf

1 and Suncor, who despite not being oil importers, were paid significant amounts of
2 money from the Oil Import Compensation Fund.

UPI ARCHIVES OCT. 30, 1981

The controversial Petroleum Compensation Charge and its predecessors netted...



OTTAWA -- The controversial Petroleum Compensation Charge and its predecessors netted the federal government \$1.6 billion in 1981-82, enough to fuel a temporary \$705 million surplus in its revolving compensation fund.

Releasing its annual report Friday for the year ended March 31, the federal Petroleum Compensation Board which administers the tax said its revolving fund paid out \$899 million and earned \$1.6 billion to net a \$705 million surplus.

3

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 however, despite composing an estimated 2%-3% of Alberta's oil production, none
2 of the special fund or other payments flowed through to these communities.

3 Price Disparities

4 Additionally, all royalties from on-reserve production were calculated during this
5 period on the frozen Canadian price, despite that some of this production was sold
6 at a higher price in the United States. First Nations were also not represented at
7 any of the policy or regulatory discussions during this period.

8 First Nations Adversely Affected

9 In 1974, the Department of Indian Affairs and Northern Development (DIAND)
10 advocated that price fixing and the export tax adversely affected First Nations
11 economies and that Bands should have received higher royalties or a portion of the
12 export tax fund payments.

13 Legality Questioned Circa 1974

14 DIAND further took the position that the terms of the *Indian Act* were violated
15 through "indirect taxation" on producers that flowed through to Bands and that the
16 imposition of price fixing on First Nations production at all had questionable
17 legality.⁹

18 Potential Claim Periods

19 The oil export tax was applied from the period between 1973 and 1985, however,
20 there are also other models based on known rebates to producing provinces that

⁹ <https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf>

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 could be used as the basis for simplified claims reflecting ECN's share of the
2 provincial production for that period.

3 Known Rebates, Payments & Subsidies

4 A total of two known rebates and one payment from a special fund were made to
5 Alberta during Canada's oil price regulation with a value of \$384,525,000. Aside
6 from these events, all proceeds of the export tax were used as a subsidy to
7 compensate oil importers for the difference between US and domestic price.

8 A Partial Remediation?

9 During the regulated oil price era in Alberta, policy changes to First Nations
10 royalties after March 31, 1974, including the lifting of a royalty cap for on-reserve
11 production, may be seen as an abatement of some of the impact to First Nations by
12 the oil export tax. However, this was not explicitly defined as a compensatory
13 policy.

14 Early Compensation Advocacy

15 First Nations and their advocates in the 1970's and 1980's primarily advocated to
16 be compensated for a proportionate share of the rebate and special fund
17 disbursement to Alberta between October 1, 1973, and June 30, 1975. After 1980,
18 First Nations pursuing claims, primarily the Hobbema Bands, took a broader
19 approach of claiming the full value of all paid export taxes and the impact of
20 regulated pricing during the 1973-1985 period.

21

Potential Claim Periods

2

October 1, 1973-May 31, 1985

The full period during which First Nations paid oil export tax on reserve production to the Federal Government.

October 1, 1973 – March 31, 1974

The period during which ECN made statements in 1977 that it was owed \$1 million in wrongfully charged export taxes based on a model developed to estimate paid export taxes (the article referenced states the wrong start year – the above period is assumed to be correct)¹⁰

October 1, 1973-March 31, 1974

The period during which 50% of collected oil export tax revenues were returned to producing provinces under the *Oil Export Tax Provincial Payments Order* of March 1974. Alberta's share was fully invested as provincial equity in the development of Syncrude¹¹ and is estimated at \$65,000,000^{12 13}. The amount of export tax collected from First Nations production during this period is variously estimated at \$9,000,000¹⁴ or \$9,300,000¹⁵.

¹⁰ Appendix 1: Edmonton Journal newspaper article, September 3 1977

¹¹ <https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf> p.11

¹² Appendix 2: Calgary Herald newspaper article, Feb 8 1975

¹³ https://docs.assembly.ab.ca/LADDAR_files/docs/hansards/han/legislature_18/session_2/19760514_1000_01_han.pdf p.9

¹⁴ Letter, January 15, 1975: P.B. Lesaux, Assistant Deputy Minister, Department of Indian and Eskimo Affairs

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CLAIM DATA RESEARCH & ANALYSIS

May 14, 1976

ALBERTA HANSARD

1325

head: **GOVERNMENT MOTIONS**
(Committee of Supply)

[Dr. McCrimmon in the Chair]

MR. CHAIRMAN: The Committee of Supply will come to order.

Department of the Provincial Treasurer

MR. CHAIRMAN: There's one final item under Committee of Supply. It is resolved that a sum not exceeding \$65 million be granted to Her Majesty for the fiscal year ending March 31, 1977, for Alberta Syncrude Equity under the Treasury Department.

SOME HON. MEMBERS: Agreed.

MR. CLARK: Mr. Chairman, so we don't agree too quickly to this afterthought. As far as the budget is concerned, I think it shouldn't go without being noted that it was the feeling of most members that we had finished the budget consideration. Now we come back to the \$65 million equity for Syncrude. I'm sure the Treasurer would feel disappointed if we didn't ask him to explain what's involved in this \$65 million.

MR. LEITCH: I can't [indicate] the actual dollars. I would have to check. I do get the figures from time to time, but don't carry them in my head. Our equity interest is, of course, 10 per cent. On the plant, that would run to approximately \$200 million. I think we've paid something in the order of 20 per cent, but I would want to check that figure to be sure. We pay as the owners are called on to provide funds to pay the cost of construction of the facility.

As to whether we can expect it from year to year, that would be answered by the question of whether the Syncrude equity became part of an investment into the heritage savings trust fund. If that were so, presumably the funds would be paid out as required under the terms of the agreements between the various participants in Syncrude without the appropriation, because it would be investment. If it were not dealt with in that fashion and remained an asset of the provincial government, separate and apart from the heritage fund, I would contemplate our continuing to provide funds by resolution at budget time and a clause in the appropriation bill.

MR. CLARK: Mr. Chairman, the minister beat me to the next question. Pretty candidly, it was: is the government giving consideration to having our equity portion of Syncrude in the heritage savings fund? From what the minister says, I take it the answer is yes. Mr. Minister, at what stage are those considerations now?

1

2 **April 1, 1974 – June 30, 1975**

3 The period during which the Federal Government applied oil export tax revenues of
4 \$0.25 per barrel to a special fund which was rebated to Alberta. The full amount of
5 the Alberta rebate was \$145,000,000¹⁵. This rebate was paid out between 1976-
6 1982 and invested in energy, energy research, and transportation projects by the
7 province.

8 **November 1, 1980 – January 31, 1982**

¹⁵ Appendix 1

¹⁶ [https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781642/3890553/3934773/C06898%2D25 Appendix K_gid_297918 %2D_A7G4T1.pdf?nodeid=3934227&vernum=-2](https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781642/3890553/3934773/C06898%2D25%20Appendix%20K_gid_297918_%2D_A7G4T1.pdf?nodeid=3934227&vernum=-2) p.137

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 The period during which the Federal Government issued Alberta a rebate of 50% of
2 collected export tax totalling \$174,525,000¹⁷ under the new National Energy
3 Program.

4 Attempts at Recovery

5 First Nations began raising concerns about oil price regulation policies and
6 advocating for export tax exemption and/or repayment in 1974, resulting in
7 considerable support from DIAND, The Department of Indian and Eskimo Affairs,
8 the Alberta Indian Association, and various government representatives, who
9 appealed to both the Alberta and Federal government on behalf of resolving this
10 issue.

11 Hobbema Bands

12 The four Hobbema Bands appeared to lead the advocacy for repayment of export
13 taxes, with Hobbema lawyer Bob Roddick appearing in numerous newspaper articles
14 referencing between 14-17 participating Bands in the activities.

15 IOGC Documents, Contemporary Publications & Case Research

16 The IOGC document repository provided to Enoch, in addition to documents
17 submitted as part of the Samson/Buffalo cases highlighted in the next section and
18 newspaper reports, appear to show that the Province of Alberta was amenable to
19 repayment of some export tax if the Federal Government participated in the
20 repayment.

21 Federal Resistance

¹⁷ <https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf> p.26

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CLAIM DATA RESEARCH & ANALYSIS

1 However, Canada was less open to export tax repayment than Alberta. After the
2 implementation of the Oil Import Compensation Fund in 1975, the government was
3 under increasing pressure to mitigate the impact of higher USA prices on Canadian
4 importers and annual budget reports frequently showed a deficit between import tax
5 revenues and compensation payments, leading to the adoption of additional
6 revenue generating taxes like a motive fuels tax and a tax on natural gas
7 processors.

8 \The need to conserve export tax revenues for import compensation was cited by
9 John Turner, then Finance Minister, as one reason for not paying First Nations their
10 share of Alberta's 1974-1975 rebate in a letter in the IOGC archives¹⁸. The letter
11 was in response to a request to consider repaying First Nations made by then
12 Minister of Indian and Northern Affairs Jean Chrétien.

13

¹⁸ Letter, June 24, 1975, from Finance Minister John Turner to Minister of Indian and Northern Affairs Jean Cretien

1 Key Discussions & Recovery Attempts

2 A summary of discussions of the issue and attempts to recover lost revenues found
3 in the ECN document repository, obtained from IOGC, are included below.

4

5 **(Presumed 1975)**

6 An Alberta minister noted that the 50% in export tax returned to Alberta included
7 (unknown) million in tax on First Nations production and that it should have been
8 handled as a separate entity from other production.

9 **(February 1975):**

10 Hobbema lawyer Robert (Bob) Roddick sent P.B. Lesaux, Assistant Deputy Minister
11 of Indian and Eskimo Affairs, a letter indicating he had received correspondence
12 from the Alberta Treasurer indicating that the Province would take the Federal
13 Government's lead on the export tax issue.

14 **(February-April 1975)**

15 Lesaux worked with Bands and Minister of Indian and Northern Affairs Jean
16 Chrétien to offer solutions to the 1973-1974 export tax rebate issue to Minister of
17 Finance John Turner, including taking rebate payments as investments in First
18 Nations energy development.

19 **(May 1975)**

20 John Turner rejected multiple suggestions put forward by Lesaux and Chrétien to
21 address export tax inequities to First Nations, including participation in the federal
22 rebate programs, acknowledgement that Alberta's tax calculations should not have

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 included on-reserve production, or additional funding for First Nations energy
2 projects. The Federal Government maintained that its investment in Alberta energy
3 development had satisfied all obligations.

4 **(June 1975)**

5 Judd Buchanan was advised by Turner that the Federal Government would support
6 the Bands if Alberta agreed to participate in an export tax rebate.

7 **(July 1975)**

8 P.B. Lesaux advised Hobbema lawyer Roddick that Turner responded negatively to
9 the Bands' suggestions on the export tax issue and that the Federal Government
10 could not dictate how Provincial funds, already disbursed, were spent.

11 **(1975)**

12 A group of Alberta bands was advised by the province that it would distribute a
13 share of the 1974 rebate if the Federal Government acknowledged that First
14 Nations production should not have been subject to the tax.

15 **Notable Documents from Buffalo v. Canada.**

16 GuildOne has also undertaken a preliminary review of the substantial number of
17 documents submitted by the plaintiffs in *Buffalo v. Canada*. Notable documents
18 included in Exhibits D-1552 to D-1654 include:

19 **(April 1974)**

20 A letter from Minister Chrétien to Minister Turner requesting that Canada address
21 the First Nations export tax issue and advocating a return of funds from the 1973-
22 1974 period, which he estimated at \$11,000,000 at a 60% export ratio.

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS****1 (June 1977)**

2 A letter from the Minister of Indian Affairs and Northern Development to Prime
3 Minister Trudeau advocating against the repayment of export tax to First Nations,
4 and a subsequent letter sent to Bob Roddick from the office of the Prime Minister
5 denying support for the claim.

6 (1974+)

7 Various documentation of First Nations meetings on the export tax issue including
8 their consensus that 100% of all taxes collected should be repaid.

9 (1977)

10 A Memorandum to the Cabinet advocating the repayment of export tax to First
11 Nations for the initial 6-month period of the Export Tax Act, including the cost to
12 Canada (\$4,665,426.83), Alberta (4,661,777.08), and Saskatchewan (\$3,649.75).

13

14

1 Court Actions by Bands

2 The Samson and Ermineskin First Nations have made several attempts, beginning
3 in the 1980's, to have claims against Canada on the oil export tax/charge and
4 regulated pricing regime heard in Federal court. The four Hobbema Bands had
5 made significant progress in advocating for export tax repayment in the decade
6 prior.

7 According to a 1977 interview published in the Calgary Herald¹⁹ featuring Samson
8 Band Economic Development Officer Roy Louis, the Bands were collectively owed
9 \$9,000,000 in collected export tax from the 1973-1975 period and had been
10 informed by Alberta that they would be reimbursed 50% of these funds if the
11 Federal Government would agree to pay the other 50%. This reimbursement did not
12 occur, and Samson was the first Nation to file a Federal claim in 1989.

13 Samson Indian Band v. Canada (1989)

14 In 1989, the Samson First Nation filed a claim in Federal Court over Canada's
15 breach of fiduciary and trust duties and violation of the treaty obligations resulting
16 from the 1973-1985 regulated oil pricing and export tax policies. The claim was
17 dismissed on the basis of a six-year statute of limitations period after a summary
18 judgement brought by the Crown. In this action, the issues of the oil export tax and
19 the regulated pricing regime were heard separately in the proceedings. In 2026, the
20 Court of Appeal upheld the ruling with one justice dissenting.²⁰

¹⁹ Oil money fuels major housing program at Samson Reserve, Calgary Herald (Nov. 10, 1977)

²⁰ <https://www.blg.com/en/insights/2017/03/samson-indian-nation-v-canada-ermineskin-v-canada-file-nos-37280-and-37277-supreme-court-of-canada>

March 09, 2017

ARTICLE

Samson Indian Nation V. Canada; Ermineskin V. Canada, File Nos. 37280 and 37277, Supreme Court Of Canada (Moldaver, Côté and Rowe JJ.), 9 March 2017

Download the entire [Aboriginal Legal Issues e-Newsletter – March 9, 2017](#).

The Supreme Court of Canada dismissed a leave application filed by two Alberta First Nations in regards to a 2015 order of the Federal Court, upheld by the Federal Court of Appeal in September 2016, which had dismissed their actions on limitation grounds.

The underlying litigation concerns oil royalties between 1973 and 1985, and whether the plaintiffs are entitled to compensation due to the “made-in-Canada” oil price program established under the National Energy Program. The claim of the Samson Band was filed in September 1989, and the companion claim in *Ermineskin* was filed in May 1992. Canada applied for summary dismissal based on statutory and equitable limitation periods.

1

2

Chief John Ermineskin et al v. Canada (1992)

3 In 1992, the Ermineskin First Nation filed a claim in Federal Court asserting that

4 Canada’s regulated oil pricing regulations in effect between 1973 and 1985

5 constituted a breach of the Crown’s trust and fiduciary duties and infringed on

6 established treaty rights and obligations.

7 The Crown brought a motion to dismiss of the claim as being time-barred by a six-

8 year statutory limitation period and this was granted by the Federal Court and

9 upheld in the Court of Appeal in 2015²¹. Both Samson and Ermineskin were heard at10 the Supreme Court of Canada in 2016 and the case was dismissed in 2017²².

²¹ <https://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=37277&pedisable=true>

²² <https://www.blg.com/en/insights/2017/03/samson-indian-nation-v-canada-ermineskin-v-canada-file-nos-37280-and-37277-supreme-court-of-canada>

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Summary

37277

Chief John Ermineskin, et al. v. Her Majesty the Queen in Right of Canada, et al.
(Federal) (Civil) (By Leave)

Keywords

None.

Summary

Case summaries are prepared by the Office of the Registrar of the Supreme Court of Canada (Law Branch). Please note that summaries are not provided to the Judges of the Court. They are placed on the Court file and website for information purposes only.

Constitutional law — Aboriginal law — Treaty rights — Limitation of actions — First Nation suing Crown for infringement of treaty rights and breaches of fiduciary duties with respect to oil and gas royalties — Courts below granting Crown's motion for summary judgment and dismissing claim as being statute-barred — Provincial limitation periods incorporated by reference into federal law and applicable to treaty claims — Whether this Court ought to be taken as having ruled on the constitutional applicability or validity of limitation statutes in cases where no constitutional issue has been properly brought before the Court — Whether limitations statutes are subject to challenge under section 35 of the Constitution Act, 1982 — Whether the constitutional protection accorded to aboriginal treaty promises carries with it a constitutionally protected right to enforce the Crown's promise which is prima facie infringed by limitations statutes — What should be the approach to justification of a prima facie infringement in the context of a challenge to a limitations statute — When, if ever, it is appropriate to decide constitutional issues by way of summary judgement — Federal Courts Act, R.S.C. 1985, c. F-7, s. 39 — Indian Oil and Gas Act, R.S.C. 1985, c. I-7, s. 4 — Limitation of Actions Act, R.S.A. 1980, c. L-15, s. 4(1) — Constitution Act, 1982, s. 35

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ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 Buffalo et al v. Canada, Department of Indian Affairs (2005)

2 The oil export tax/regulated pricing regime issue was a component of the larger

3 Buffalo et al v. Canada case over First Nations self-governance and Crown

4 breaches of fiduciary duty towards royalty management involving multiple Hobbema

5 Bands. Chief Jerome Morin of ECN was named in the 2005 proceedings as an

6 Intervenor²³. The outcome of Buffalo v. Canada (2016), which is specific to export

7 tax/regulated pricing, appears to be constituted of the above two dismissals of the

8 issue due to being statute-barred²⁴.

Dockets: [A-325-15](#)
[A-326-15](#)

Citation: [2016 FCA 223](#)

CORAM: NADON J.A.
DAWSON J.A.
WEBB J.A.

Docket: [A-325-15](#)

BETWEEN:

CHIEF JOHN ERMINESKIN, LAWRENCE WILDCAT, GORDON LEE, ART LITTLECHILD, MAURICE WOLFE, CURTIS ERMINESKIN, GERRY ERMINESKIN, EARL ERMINESKIN, RICK WOLFE, KEN CUTARM, BRIAN LEE, LESTER FRAYN, THE ELECTED CHIEF AND COUNCILORS OF THE ERMINESKIN INDIAN BAND AND NATION SUING ON BEHALF OF ALL THE OTHER MEMBERS OF THE ERMINESKIN INDIAN BAND AND NATION

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, AND THE MINISTER OF FINANCE

Respondents

and

ATTORNEY GENERAL OF ALBERTA

Intervener

Docket: [A-326-15](#)

AND BETWEEN:

CHIEF VICTOR BUFFALO ACTING ON HIS OWN BEHALF AND ON BEHALF OF ALL THE OTHER MEMBERS OF THE SAMSON INDIAN NATION AND BAND, AND THE SAMSON INDIAN BAND AND NATION

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, AND THE MINISTER OF FINANCE

Respondents

9

²³ [https://specific-claims.bryan-schwartz.com/wp-content/uploads/docs/Bufalo%20v.%20Canada%2C%202005%20FC%201622%20\(CanLII\).pdf](https://specific-claims.bryan-schwartz.com/wp-content/uploads/docs/Bufalo%20v.%20Canada%2C%202005%20FC%201622%20(CanLII).pdf)

²⁴ <https://taxinterpretations.com/content/450698>

Date: 20051130

Docket: T-2022-89

Citation: 2005 FC 1622

2005 FC 1622 (CanLII)

BETWEEN:

**CHIEF VICTOR BUFFALO acting on his own behalf and on behalf
of all the other members of the Samson Indian Nation and Band,
and THE SAMSON INDIAN BAND AND NATION**

Plaintiffs

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER
OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT,
AND THE MINISTER OF FINANCE**

Defendants

and

**CHIEF JEROME MORIN acting on his own behalf as well as on behalf of all the
MEMBERS OF ENOCH’S BAND OF INDIANS AND THE RESIDENTS THEREOF ON
AND OF STONY PLAIN RESERVE NO. 135**

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2

No Record of Settlement Found for Enoch

3

The dismissal of the above cases due to the application of a 6-year statute of

4

limitations shows the challenges that First Nations experienced in pursuing the

5

export tax issue. No records have been found of any settlements or other

6

compensation paid over export tax claims.

7

Enoch Discussions on Record

8

In the case of Enoch, despite Band Council Chief Ed Morin participating in

9

discussions with a group of bands and their counsel and stating in a 1977

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 newspaper article that ECN was owed an estimated \$1 million in export tax for the
2 October 1973 - March 1974 period, a legal case was not attempted.

3 **Contemporary Enoch Actions**

4 In 1974 and for the next few decades, ECN was pursuing larger claims for the 1988
5 (Papaschase), 1902, and 1908 land surrenders, and launching another court case
6 over export tax payments may not have been achievable at that time.

7 **No Participation of First Nations in Repayment**

8 Lost revenue to oil-producing provinces was mitigated through various tax
9 repayments and special funds. Despite First Nations oil royalties being severely
10 impacted by price fixing and other energy security policies, bands did not benefit
11 from Federal tax repayment/abatement mechanisms nor were they enabled to
12 participate in policy discussions.

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Impacts of Price Fixing

During the period of oil price fixing between 1973-1985, First Nations royalties from on-reserve production were adversely impacted by lower prices and the export tax, however, despite composing 2% of Alberta's oil production, none of the special fund or other payments flowed through to these communities. Additionally, all royalties from on-reserve production were calculated during this period on the frozen Canadian price, despite that some of this production was sold at a higher price in the United States. First Nations were also not represented at any of the policy or regulatory discussions during this period.

Department of Indian Affairs and Northern Development Opinion

In 1974, the Department of Indian Affairs and Northern Development (DIAND) advocated that price fixing and the export tax adversely affected First Nations economies and that Bands should have received higher royalties or a portion of the export tax fund payments. DIAND further took the position that the terms of the *Indian Act* were violated through "indirect taxation" on producers that flowed through to Bands and that the imposition of price fixing on First Nations production at all had questionable legality.

1 Lost Revenue Estimations

2 The Federal Government had adjusted the allowable price for oil in special cases,
3 including for Syncrude. However, efforts to appeal to the government on behalf of
4 First Nations were repeatedly denied. A summary of discussions of the issue and
5 attempts to recover lost revenues in the research document repository are included
6 below.

7 **1974**

8 Export tax costs to First Nations by February 1974 were estimated at this point to
9 be \$4 million. For the period between October 1, 1973, and March 31, 1974, an
10 estimate of \$9 million on exported oil was given.

11 **1975**

12 An Alberta minister noted that the 50% in export tax returned to Alberta included
13 \$44 million or \$41 million in tax on First Nations production and that it should have
14 been handled as a separate entity from other production.

15 **1975**

16 The Minister of Finance rejected multiple suggestions to address export tax
17 inequities to First Nations, including participation in the federal rebate programs,
18 acknowledgement that Alberta's tax calculations should not have included on-
19 reserve production, or additional funding for First Nations energy projects. The
20 Federal Government maintained that its investment in Alberta energy development
21 had satisfied all obligations.

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 **1975**

2 Jean Chrétien was reportedly in favor of returning a share of the export tax rebate
3 to First Nations. A group of Alberta bands was advised by the province that it would
4 distribute a share of the 1974 rebate if the Federal Government acknowledged that
5 First Nations production should not have been subject to the tax.

6 **Key Events Timeline**

7 **October 1, 1973**

8 Date that export tax was first applied to Alberta oil

9 **January 1974-April 1974**

10 Price of oil first frozen

11 **March 1974**

12 Special fund developed that took the equivalent of \$.25 per bbl from export tax.

13 Alberta was paid \$144,000,000 in total under this agreement

14 **October 1, 1973-January 31, 1974**

15 Period during which all export tax earnings were returned to provinces as 50%
16 dollars, 50% project investment

17 **February 1974**

18 Syncrude production exempted from the oil price freeze and later, Esso and set a
19 world price, roughly twice Canada's domestic price

20 **June 1975**

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 The *Petroleum Administration Act* was passed and enforced retroactively to April 1,
2 1974 and continued the export tax under a “tariff charge”

3 April, 1978

4 The Petroleum Administration Act was amended to allow some domestic production
5 to be considered “imported” and eligible for compensation given to oil importers
6 that made up for the delta between Canadian costs and US costs. Syncrude was
7 given this designation while First Nations were not. A new levy was applied to
8 domestic and foreign oil processed or consumed in Canada to pay for the
9 compensation.

10 November 1, 1980-January 31, 1982

11 Period during which the Federal Government paid Alberta 50% of collected export
12 tax. The amount was \$174,525,000

**THE VALUATION OF OIL AND NATURAL GAS AND THE BASIS FOR THE
CALCULATION OF ECONOMIC RENT (ROYALTIES) FOR PRODUCTION FROM
INDIAN RESERVES¹**

I. INTRODUCTION

The beneficial title to “lands reserved for Indians” in Canada has always been an anomaly under the common law or, more properly, an anomaly recognized by the common law. What the common law would label as the “surface rights” portion of this title has been the subject of extensive litigation over the decades. Whether the right to minerals is included in the beneficial, *sui generis* interest of aboriginal peoples within this title is a further complicating issue. Unfortunately the courts have rarely touched upon this latter issue.

13

1 References:

2 <https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf>

3 Enoch Oil Export Tax Claim Valuation

4 Energy tax policy and Enoch claims research has produced this overview of the
5 period between October 1, 1973, and May 31, 1985, during which the Canadian
6 Government imposed a regulated price on domestic oil and an export tax on
7 shipments to the United States that was applied to First Nations production in
8 contravention of the Indian Act. Additionally, the price of natural gas was regulated
9 for a period in the late 1970's-1980's and this may be another source of First
10 Nations claims.

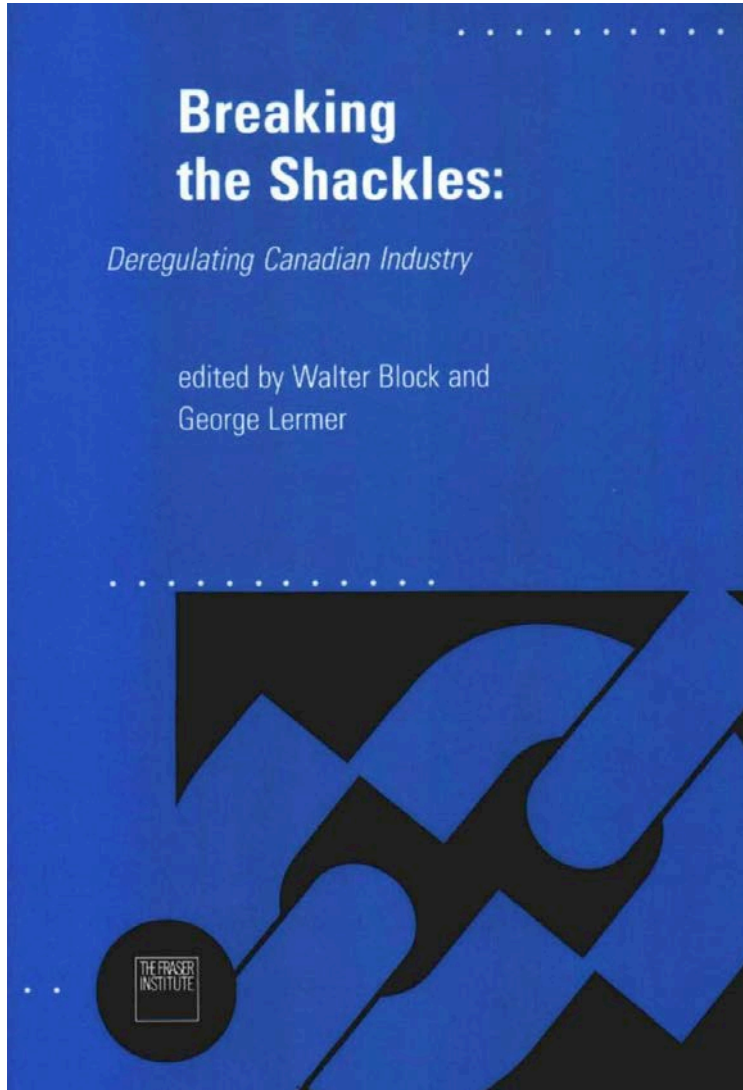
11 Pricing Considerations

12 The export tax was roughly equivalent to the difference between the Federally
13 established price of Canadian domestic oil and the Chicago Terminal price. The
14 export tax amount was updated on an irregular schedule and reports of changes to
15 the tax and regulated price of oil are not available for all years, especially towards
16 the late 1970's and early 1980's.

17 Regulations Driving Calculation Complexity

18 Additionally, regulations adopted in 1984 that created a difference in the allowable
19 market price for new (post-1981 discovery) and old (pre-1981 discovery) oil

1 production add complexity to calculations for the final year of the export tax
2 period²⁵.




3
4 **Oil Revenue Extrapolation from Published Sources**
5 Some claims estimates will need to be extrapolated from Federal oil export tax
6 revenues published in annual budget announcements or referenced by other
7 sources. In the absence of band records, assumptions may need to be made about

²⁵ <https://www.fraserinstitute.org/sites/default/files/BreakingtheShackles.pdf> p.217

1 the amount of Enoch production that would have been subject to the export tax.
2 Most of Canada's oil exports to the United States came from Alberta. This varied
3 from a million barrels a day in 1974/1975 to government export restrictions lowering
4 allowable exports to just over 500 million barrels a day in 1976²⁶.

Canada to Cut Oil to U.S.; Full Halt Advanced to '81

 Share full article



By Robert Trumbull Special to The New York Times

Nov. 21, 1975

5

A Question of Qualification

6

7 Should First Nations have been subjected to any regulated oil pricing regimes and
8 whether Canada contravened its obligation to fully develop their resources for their
9 benefit are key considerations, This would assume that all production could be sold
10 at a higher US or world price, such as through the exemptions that applied to
11 production from Syncrude²⁷.

²⁶ <https://www.nytimes.com/1975/11/21/archives/canada-to-cut-oil-to-us-full-halt-advanced-to-81-canada-to-cut-oil.html>

²⁷ https://en.wikipedia.org/wiki/National_Energy_Program

National Energy Program

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From Wikipedia, the free encyclopedia

The **National Energy Program** (French: *Programme énergétique national*, **NEP**) was an energy policy of the [Canadian federal government](#) from 1980 to 1985. The [economically nationalist](#) policy sought to secure Canadian energy independence, though was strongly opposed by the private sector and the oil-producing [Western Canadian](#) provinces, most notably [Alberta](#).

Created under the [Liberal](#) government of [Prime Minister Pierre Trudeau](#) on October 28, 1980, following the two oil crises of the 1970s, the NEP had three main objectives: increase ownership of the oil industry by Canadians; price energy fairly for Canadian consumers; and provide Canadian energy self-sufficiency. The NEP was also designed to promote lower prices through price controls; promote exploration for oil in Canada; promote [alternative energy](#) sources; and increase federal government revenues from oil sales through a variety of taxes and revenue-sharing with the oil-producing Western Canadian provinces.

1

2

Available Factors & Data

3 All direct export tax amounts are provided where currently available. Sources for
4 the amounts of export tax, tax collections, and rebates/fund payments are included
5 as footnotes or, in the case of news articles from the period, footnoted and
6 attached as appendices. All export tax values given are for light and medium crude
7 oil.

8

Potential Claim Periods

9 The oil export tax was applied from the period between 1973, and 1985, however,
10 there are also other models based on known rebates to producing provinces that
11 could be used as the basis for simplified claims reflecting ECN's share of the
12 provincial production for that period.

13

1

Known Rebate Events

2 A total of two known rebates and one payment from a special fund were made to
3 Alberta during Canada's oil price regulation with a value of \$384,525,000. Aside
4 from these events, all proceeds of the export tax were used as a subsidy to
5 compensate oil importers for the difference between the cross-border and domestic
6 Canadian price.

7

Potential Constraints

8 Making claims against rebates may limit some arguments that other policy changes
9 compensated for the decline in oil production royalty revenue. During the regulated
10 oil price era in Alberta, policy changes to First Nations royalties after March 31,
11 1974, including the lifting of a royalty cap for on-reserve production, may be seen
12 as an abatement of some of the impact to First Nations by the oil export tax.

13

1

Key Periods

2 **October 1, 1973-May 31, 1985**

3 The full period during which First Nations paid oil export tax on reserve production
4 to the Federal Government.

5 **October 1, 1973 – March 31, 1974**

6 The period during which ECN made a claim in 1977 for \$1 million in wrongfully
7 charged export taxes based on a model developed to estimate paid export taxes
8 (the article referenced states the wrong years – the above period is assumed to be
9 correct)²⁸

10 **October 1, 1973-March 31, 1974**

11 The period during which 50% of collected oil export tax revenues were returned to
12 producing provinces. Alberta's share was fully invested as provincial equity in the
13 development of Syncrude²⁹ and is estimated at \$65,000,000³⁰³¹. The amount of
14 export tax collected from First Nations production during this period is variously
15 estimated at \$9,000,000³² or \$9,300,000³³.

²⁸ Appendix 1: Edmonton Journal newspaper article, September 3 1977

²⁹ <https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf> p.11

³⁰ Appendix 2: Calgary Herald newspaper article, Feb 8 1975

³¹ https://docs.assembly.ab.ca/LADDAR_files/docs/hansards/han/legislature_18/session_2/19760514_1000_01_han.pdf p.9

³² Letter, January 15, 1975: P.B. Lesaux, Assistant Deputy Minister, Department of Indian and Eskimo Affairs

³³ Appendix 1

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 April 1, 1974 – June 30, 1975

2 The period during which the Federal Government applied oil export tax revenues of
3 \$0.25 per barrel to a special fund which was rebated to Alberta. The full amount of
4 the Alberta rebate was \$145,000,000³⁴. This rebate was paid out between 1976-
5 1982 and invested in energy, energy research, and transportation projects by the
6 province.

7 November 1, 1980 – January 31, 1982

8 The period during which the Federal Government issued Alberta a rebate of 50% of
9 collected export tax totalling \$174,525,000³⁵ under the new National Energy
10 Program.

11

³⁴ [https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781642/3890553/3934773/C06898%2D25 Appendix K gid 297918 %2D A7G4T1.pdf?nodeid=3934227&vernum=-2](https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781642/3890553/3934773/C06898%2D25%20Appendix%20K%20gid%20297918%20A7G4T1.pdf?nodeid=3934227&vernum=-2) p.137

³⁵ <https://raeandcompany.com/wp-content/uploads/2014/04/valuationOfOil.pdf> p.26

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

	<p>minimum price structure and, as the marketing arrangements had been overtaken by market forces, Canada withdrew all minimum price directives in early 1975. The U.S. vigorously pursued its inquiry in the post-1915 period because, among other reasons, a U.S. company had been caught in a deal of its own making whereby it had undertaken to supply uranium at early-1970s prices whereas uranium was not available at those prices when the time came for delivery (see October 1977 note).</p>
<p>Foothills (Yukon) gas pipeline application</p>	<p>In September, Foothills (Yukon) Pipe Lines Ltd. applied to the NEB to build a gas pipeline, 42-inch diameter, from the Alaska/Yukon border through the Yukon to connect with Westcoast Transmission Company facilities in B.C. and Alberta Gas Trunk Line Ltd. in Alberta to transport Prudhoe Bay gas south to the U.S. border. While maintaining its Maple Leaf application (see March 1975 note), it ceased work on that alternative.</p>
<p>Canada - Saskatchewan heavy oil agreement</p>	<p>On October 4, the "Canada/Saskatchewan Cooperative Agreement for a Program of Enhanced Recovery of Heavy Oil in Saskatchewan" was signed. This was a \$16.2 million shared-cost program to develop new methods of recovering heavy oils from Lloydminster and similar fields in the province. Under the Agreement, proposals were to be sought from industry for testing new methods of oil extraction. The Agreement was administered by a federal-provincial committee. A company would carry out work, which would subsequently be evaluated by the two governments, and any new technology would be made available to other producers.</p>
<p>Speech from the Throne - northern exploration, renewable energy</p>	<p>The Speech from the Throne on October 12, marking the opening of the Second Session of the Thirtieth Parliament, included the following references to energy: "There is a growing awareness among Canadians of the need for more careful conservation of vital energy resources such as petroleum and natural gas. The Government will place further emphasis on research and development of renewable energy sources and on means of improving the efficiency with which energy is used in Canada, particularly the thermal efficiency of residential and commercial buildings. To ensure responsible development of our indigenous resources, the Government intends to introduce measures to regulate exploration and development on federal lands."</p>
<p>"The Way Ahead: A Framework for Discussion" re energy policy directions</p>	<p>In October, the federal government released a working paper entitled "The Way Ahead: A Framework for Discussion" which outlined the economic and social directions the government planned to take after the program of direct controls of incomes and prices, instituted in October 1975, was discontinued in 1978. This policy paper, in commenting on the importance of economic growth in future planning, noted that "the investment requirements foreseen for energy in the 1980s may be only one component of a severely stretched economy. Among the policy directions offering the potential to ease the adjustment problems of the 1980s and to assure that the growth process results in an improved quality of life would be a greater emphasis on energy conservation programs which are a least-cost, least-risk direction for Canadian energy policies and a critical contributor to the reduction of inflationary pressures. In this same regard, the capital intensity and large scale of existing energy supply alternatives strongly suggest that urgent attention be given to less capital intensive, more decentralized, renewable energy alternatives."</p>
<p>Alberta/Canada energy research fund agreement</p>	<p>In a letter of October 28 to the Premier of Alberta, the Prime Minister outlined proposals for the disposition of money available under the "special fund" which resulted from the March 1974 oil pricing agreement. In his reply of November 18, the Premier accepted the federal proposals and this exchange of letters became the basis for the disposition of the \$145 million in the fund, with \$96 million being allocated to energy and energy related research projected in Alberta and \$48 million for transportation projects in that provinces The fund had accumulated on the basis of 25 cents per barrel of Alberta crude oil produced between April 1, 1974 and June 30, 1975. It was agreed that the funds to be allocated to energy projects would be administered by an Alberta-federal 'committee of senior officials. Transfer of federal funds commenced in fiscal 1976-77 and amounted to \$4 million. Subsequently, \$10 million was transferred in each of 1977-78 and 1978-</p>

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ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 Full Tax Period Calculations

2 **October 1, 1973 – March 31, 1974**3 *Regulation: Oil Export Tax Act*4 *October 1, 1973-Dec 1, 1973 \$.40/bbl*5 *December 1973 \$1.90/bbl*6 *October 1, 1973 - March 31, 1974 \$287,000,000 in oil export tax collected 36*7 *January 1974 \$2.20/bbl*8 *February 1-March 31, 1974 \$6.40/bbl***Section H: Government Finance****Richard M. Bird, University of Toronto**

The data contained in this section for the most part relate only to the revenues, expenditures and debt of the federal, provincial and municipal governments proper. The first part of the chapter contains information on the finances of the federal government from Confederation to 1975. The second part contains information on the finances of all governments for various years since 1933 to 1975. The final part of the chapter contains miscellaneous data relating to various aspects of governmental finance.

Most of the data for years before 1960 are identical to that contained in the original *Historical Statistics of Canada*. In order to establish conformity with more recent data, however, some revisions have been made to the earlier data, especially those for the 1950s. Where appropriate, such changes are noted in the detailed table notes that follow. In order to discuss adequately the very substantial changes that have taken place in governmental financial arrangements in Canada since 1960, it has been necessary to omit some of the material relevant to earlier years contained in the original edition. Readers who require more details on some aspects of the data from earlier years are therefore urged to consult the earlier volume.

The principal source used for the most recent data has been the collection of publications on government finance described as the Financial Management series of Statistics Canada. In addition, however, owing in part to the major revision which took place in this series in 1970, it has proved necessary to do a good deal of special work in order to present the series found in this section. Most of the necessary work was done at the Department of Finance and in Statistics Canada. These organizations were also responsible for most of the detailed notes to the tables in this section.

The principal published sources for the information included in this section are various official documents, particularly, for the most recent years, the various series produced by Statistics Canada's Public Finance Division, including *Federal Government Finance*, (Catalogue 68-211), *Provincial Government Finance*, (Catalogue 68-207), *Local Government Finance*, (Catalogue 68-204), and *Consolidated Government Finance*, (Catalogue 68-202). For earlier years various other publications of Statistics Canada, the public accounts of the federal and provincial governments, and the

9

10

11 **April 1, 1974 – October 28, 1980**12 *Regulation: Petroleum Administration Act*13 *April 1, 1974 \$4.00/bbl³⁷*

³⁶ <https://www150.statcan.gc.ca/n1/en/pub/11-516-x/pdf/5500098-eng.pdf?st=oRIA2ivY>

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1	June 1, 1974	\$5.20/bbl ³⁸
2	April 1 1974 - March 31,1975	\$1.669 billion in federal oil export tax collected ³⁹
3	March 1, 1975:	\$5.50/bbl ⁴⁰
4	June 1, 1975:	\$4.70/bbl ⁴¹
5	April 1, 1975- March 31, 1976	\$1.063 billion in federal oil export tax revenues ⁴²
6	April 1, 1976 - March 31, 1977:	no known federal revenues
7	February 1, 1977	\$4.40/bbl ⁴³
8	April 1, 1977 – March 31, 1981	no known federal revenues
9	April 1, 1978- March 31, 1979:	\$328,000,000 in fed. oil export tax revenues ⁴⁴
10		
11	July 1, 1978	\$4.10/bbl ⁴⁵
12	April 1, 1979 – March 31, 1980	\$735,000,000 in fed. export tax revenues ⁴⁶
13	July 1, 1979	\$13.00/bbl
14	November 1, 1979	\$16.00/bbl

³⁷ Appendix 3: Article, Edmonton Journal, May 16 1974

³⁸ Ibid.

³⁹ <https://www150.statcan.gc.ca/n1/pub/11-516-x/sectionh/4057752-eng.htm>

⁴⁰ <https://www.nytimes.com/1975/02/06/archives/canada-increases-levy-on-crude-oil-lifts-export-charge-by-30c-to.html>

⁴¹ Appendix 4 : Article, Saskatoon Star-Phoenix, April 18 1975

⁴² https://publications.gc.ca/collections/collection_2016/fin/F1-23-1976-eng.pdf p.54

⁴³ Appendix 5 : Article, The Sault Star, January 13 1977

⁴⁴ https://publications.gc.ca/collections/collection_2016/fin/F1-23-1-1979-eng.pdf p.25

⁴⁵ Appendix: Article, The Montreal Gazette, July 25 1978

⁴⁶ Ibid.

CANADA INCREASES LEVY ON CRUDE OIL



By Robert Trumbull Special to The New York Times

Feb. 6, 1975

1

Public Accounts Presentation Detailed Statement of Transactions

	Fiscal Year Ending March 31st				
	1972	1973	1974	1975	1976*
	(\$ Millions)				
I. Budgetary Transactions					
A. Revenues					
Tax Revenues					
Personal Income Tax	(7,227)	(8,378)	(9,226)	(11,710)	(12,703)
Deductions at Source	5,760	6,840	7,404	9,606	10,187
Other Collections	1,467	1,538	1,822	2,104	2,516
Corporate Income Tax	2,396	2,920	3,710	4,836	5,748
Non-Resident Tax	288	292	324	427	481
Sales Tax	2,653	3,052	3,590	3,866	3,441
Oil Export Tax/Charge	—	—	287	1,669	1,063
Gasoline Tax	—	—	—	—	399
Other Excise Taxes	388	400	408	414	429
Excise Duties	607	638	686	748	811
Customs Import Duties	989	1,182	1,384	1,809	1,886
Other Tax Revenues	132	61	14	7	11
Total Tax Revenues	14,680	16,923	19,629	25,486	26,972
Non-Tax Revenues					
Return on Investments					
Central Mortgage & Housing Corporation	321	367	400	447	521
Farm Credit Corporation	72	77	79	87	108
Exchange Fund	194	203	220	269	252
Bank of Canada	265	301	373	481	583
Other	281	317	417	547	636
	1,133	1,265	1,489	1,831	2,100
Postal Revenues	404	470	480	486	437
Other	127	163	265	264	302
Total Non-Tax Revenues	1,664	1,898	2,234	2,581	2,839
Total Revenues	16,344	18,821	21,863	28,067	29,811

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Table 2
Government of Canada
Fiscal Position
Public Accounts Budgetary Revenues

	1978-79	1979-80 ⁽¹⁾	1980-81 ⁽¹⁾	1981-82 ⁽¹⁾	1982-83 ⁽¹⁾	1983-84 ⁽¹⁾
	(\$ millions)					
Personal income tax	14,048	16,455	17,805	19,705	22,045	24,890
Corporation income tax	6,262	7,740	8,920	10,620	12,210	13,830
Non-resident tax	568	655	740	800	895	985
Customs duties	2,747	3,205	3,395	3,680	3,990	4,285
Sales tax	4,729	4,405	4,805	5,525	6,355	7,180
Oil export charge	328	735	630	435	305	210
New energy tax	0	0	415	1,640	2,650	3,630
Gasoline excise tax	516	935	2,945	2,895	2,870	2,855
Other excise duties and taxes	1,453	1,580	1,805	1,890	1,975	2,065
Total tax revenues	30,651	35,710	41,460	47,190	53,295	59,930
Non-tax revenues	4,564	5,010	5,375	5,850	6,420	6,710
Total budgetary revenues	35,215	40,720	46,835	53,040	59,715	66,640

2

3 **October 28, 1980 – June 1, 1985**

4 *Regulation: Energy Administration Act*

5 April 1, 1980 – March 31, 1981 \$630,000,000 in fed. export tax revenues⁴⁷

6 April 1, 1981- March 31, 1982 \$435,000,000 in fed. export tax revenues⁴⁸

7 April 1, 1982 - March 31, 1983 \$305,000,000 in fed. export tax revenues⁴⁹

8 April 1, 1983 - March 31, 1984 \$210,000,000 in fed. export tax revenues⁵⁰

9 **Export Factor**

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 The export factor applied for the purposes of the assessment is 20% and the claims
2 period described in the calculations is limited to before 1980. The export factor is
3 an assumption that will require further data for a more accurate estimate. There
4 was a wide range of variation during the claims period in exports due to Federal
5 government policies restricting allowable exports of conventional oil to preserve the
6 commodity for Canadian consumers and reduce the burden of subsidizing oil
7 imports for Eastern provinces through the Compensation Fund.

8 Prior to the regulated pricing era, correspondence from the Samson court document
9 repository indicates that Alberta exported 60% of its light and medium oil, which
10 dropped to 40% in 1974.

11 Heavy oil and light and medium crude were addressed separately in regulated
12 pricing, export tax, and export restrictions. Research, primarily notifications of
13 export restrictions published in Canadian and US newspapers, was used to
14 establish the bbls/day of light and medium crude allowed from the period between
15 October 1973 and December 1979, with some periods absent from the records.

16 These values were weighed against Alberta's share of national production and total
17 Alberta production of the same commodity. From 1980 onwards, essentially no light
18 and medium crude exports were allowed, and export tax revenues during this latter
19 period were derived from heavy oil.

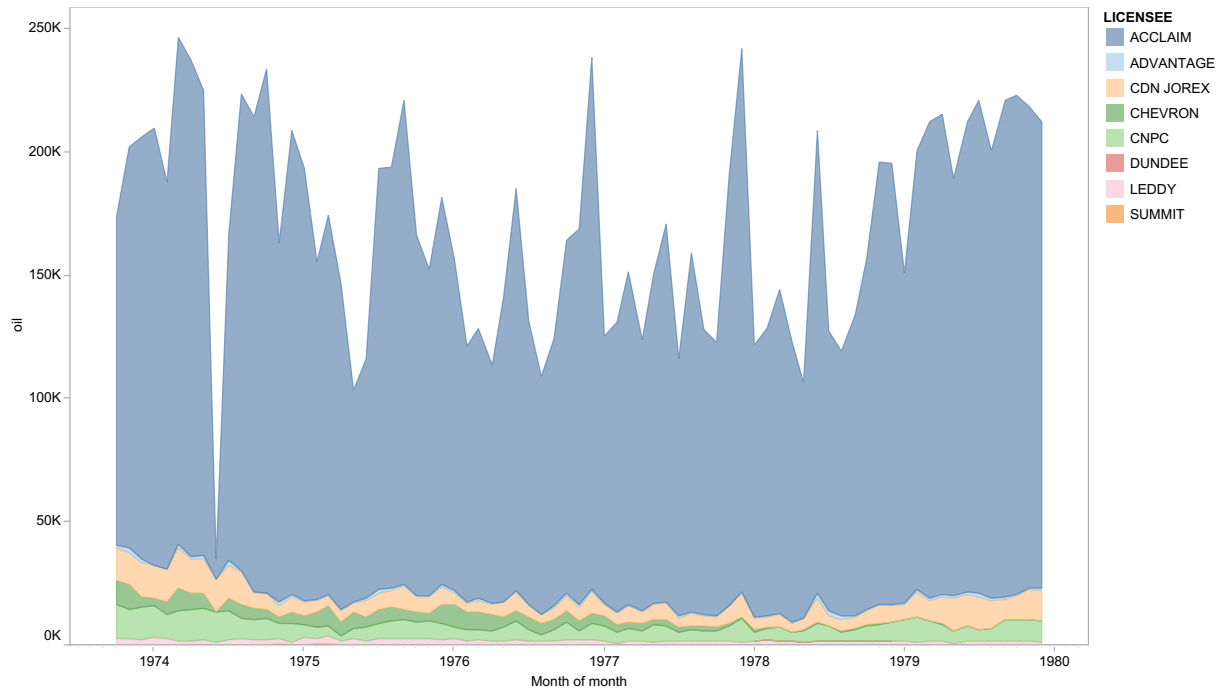
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ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1

EXPORT TAX ERA OIL PRODUCTION BY LICENSEE BBL



2

3

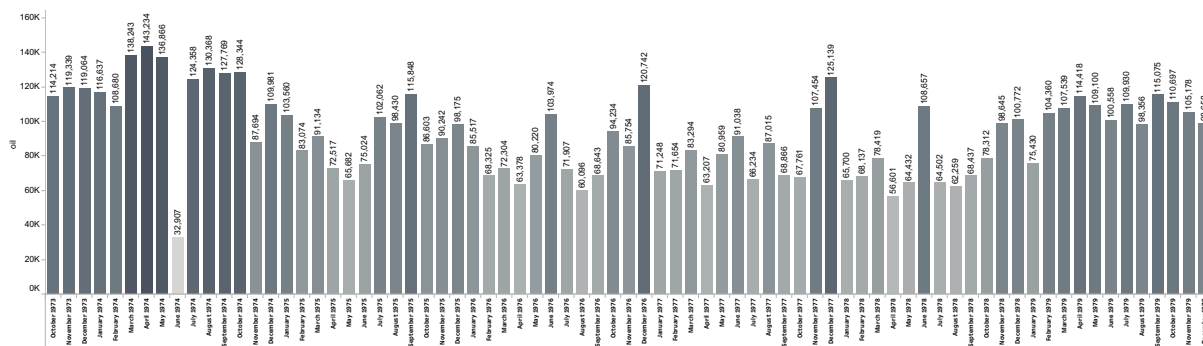
EXPORT TAX OIL PRODUCTION BY ORIGINAL LICENSEE BBL

ACCLAIM	MAGA ENERGY LTD.	CRUDE-OIL	5,990,897
	OBSIDIAN ENERGY LTD.	OIL	288,367
CDN JOREX	MAGA ENERGY LTD.	CRUDE-OIL	661,547
CHEVRON	CHEVRON CANADA LIMITED	CRUDE-OIL	328,429
CNPC	MAGA ENERGY LTD.	CRUDE-OIL	590,285
Grand Total			7,859,526

4

5

ENOCH OIL PRODUCTION EXPORT TAX ERA



6

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8

EXPORT TAX OIL PRODUCTION BY MONTH & ORIGINAL LICENSEE (1) BBL

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

LICENSEE

	ACCLAIM	ADVANTAGE	CDN JOREX	CHEVRON	CNPC	DUNDEE	LEDDY	SUMMIT
Month of month								
October 1973	133,039	1,391	13,135	9,692	13,937		2,417	
November 1973	163,012	1,754	12,845	10,197	11,966		2,421	
December 1973	171,392	1,660	13,348	4,406	12,986		2,281	
January 1974	177,120	0	13,441	3,123	12,959		2,861	0
February 1974	156,829	0	13,452	5,124	9,677		2,439	0
March 1974	205,719	1,234	16,331	9,079	12,431		1,620	0
April 1974	201,047	1,263	13,647	6,702	12,913		1,447	0
May 1974	189,105	1,465	13,473	6,532	12,676		1,947	0
June 1974	8,349	97	12,989	257	12,255		958	0
July 1974	132,462	1,869	13,381	5,213	11,821		1,877	0
August 1974	193,435	853	13,198	5,617	8,256		2,333	0
September 1974	192,637	526	6,450	4,614	8,042		1,972	0
October 1974	212,719	386	6,503	3,504	8,455		2,249	0
November 1974	146,017	1,305	4,981	2,536	6,036		2,080	411
December 1974	187,828	1,259	6,025	4,803	7,691		906	0
January 1975	175,308	906	5,416	3,765	4,693		3,269	0
February 1975	136,970	648	4,643	6,307	4,643		1,756	545
March 1975	153,541	558	4,369	7,913	4,478		2,883	482
April 1975	132,675	533	4,097	6,102	1,705		1,651	0
May 1975	85,483	536	3,967	6,425	4,287		2,370	0
June 1975	96,908	1,141	6,481	4,172	5,973		1,330	0
July 1975	171,040	1,476	6,483	5,664	6,005		2,748	0
August 1975	170,731	1,160	6,336	5,776	7,104		2,625	0
September 1975	196,235	546	9,610	4,155	7,818		2,583	0
October 1975	146,263	796	6,093	4,141	6,378		2,742	0
November 1975	132,451	742	6,564	3,136	7,187		2,426	0
December 1975	157,064	829	7,449	7,535	6,777		2,005	0
January 1976	134,545	977	4,678	8,896	4,890		2,435	
February 1976	103,766	576	3,705	7,048	4,670		1,491	
March 1976	109,747	718	4,618	7,129	4,319		1,897	
April 1976	96,699	507	3,919	6,632	4,046		1,786	
May 1976	123,612	355	6,020	4,092	5,771		1,401	
June 1976	162,715	633	7,943	3,872	7,968		1,815	
July 1976	114,844	413	4,612	5,368	4,262		1,727	
August 1976	96,651	0	3,768	4,681	2,211		1,703	
September 1976	108,517	1,097	4,518	4,123	4,572		1,678	
October 1976	143,131	1,036	6,449	4,226	7,327		2,017	
November 1976	152,268	771	5,547	4,303	3,729		1,891	
December 1976	215,915	565	8,684	4,343	6,736		1,943	

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ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 EXPORT TAX OIL PRODUCTION BY MONTH & ORIGINAL LICENSEE (2) **BBL**

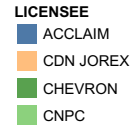
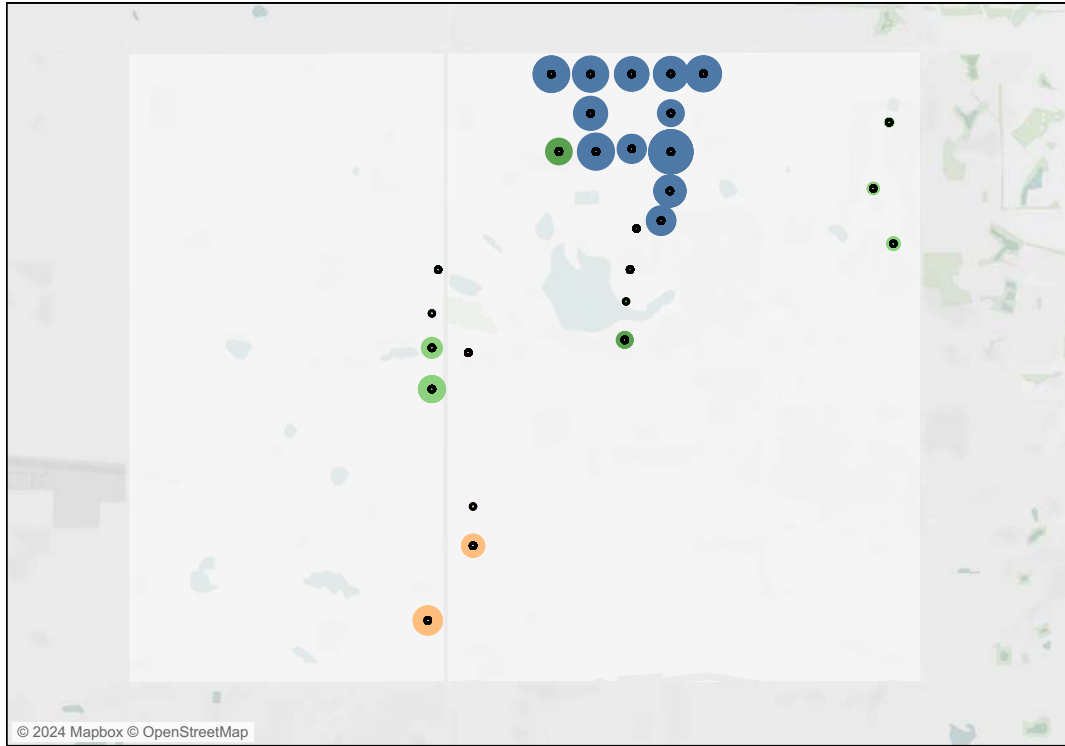
	ACCLAIM	ADVANTAGE	CDN JOREX	CHEVRON	CNPC	DUNDEE	LEDDY	SUMMIT
2	January 1977	108,233	882	4,372	4,013	6,146		1,638
	February 1977	117,305	448	4,972	3,039	4,581		365
	March 1977	135,017	606	6,268	2,654	5,348		1,434
	April 1977	109,987	556	4,353	3,050	4,095		1,602
	May 1977	133,349	413	6,159	2,257	6,914		1,241
	June 1977	153,011	720	6,873	2,495	5,778		1,727
	July 1977	104,445	638	3,716	2,059	3,606		1,571
	August 1977	145,551	487	5,226	1,722	4,314		1,611
	September 1977	115,850	562	4,133	1,580	4,422		1,419
	October 1977	111,006	765	4,082	1,455	4,208		1,409
	November 1977	174,863	429	6,788	1,033	6,487		1,309
	December 1977	220,283	346	9,719	994	9,309		1,179
	January 1978	110,353	314	4,622	807	3,812	0	1,543
	February 1978	116,944	343	4,027	569	4,821	0	1,824
	March 1978	131,211	497	4,996	440	5,119	0	1,788
	April 1978	113,521	555	3,776	0	3,412	0	1,570
	May 1978	95,477	139	4,786	377	4,691	0	886
	June 1978	187,809	1,759	9,955	273	7,484	0	1,393
	July 1978	113,322	2,076	3,999	156	6,133	0	1,397
	August 1978	107,712	1,295	4,533	461	3,884	0	1,475
	September 1978	121,943	497	4,577	390	4,920	0	1,457
	October 1978	141,709	677	5,666	403	6,072	0	1,715
	November 1978	179,617	0	7,332	517	6,793	117	1,435
	December 1978	178,663	411	6,964	44	7,523	0	1,473
	January 1979	134,192	526	5,847	0	8,977		1,425
	February 1979	177,910	1,261	10,344	0	10,047		1,021
	March 1979	193,520	1,052	7,928	204	8,291		1,322
	April 1979	194,737	1,059	11,018	290	6,883		1,328
	May 1979	169,056	1,241	13,094	0	5,188		595
	June 1979	191,138	1,076	12,705	0	5,973		1,547
	July 1979	199,640	1,508	13,396	0	4,686		1,580
	August 1979	181,246	1,248	10,923	0	5,368		1,508
	September 1979	201,564	1,108	8,248	0	8,394		1,668
	October 1979	202,431	587	9,429	0	9,047		1,402
	November 1979	195,513	406	12,091	0	9,039		1,326
3	December 1979	189,462	541	12,727	0	8,266		1,223

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1

EXPORT TAX PRODUCING OIL WELLS BY ORIGINAL LICENSEE

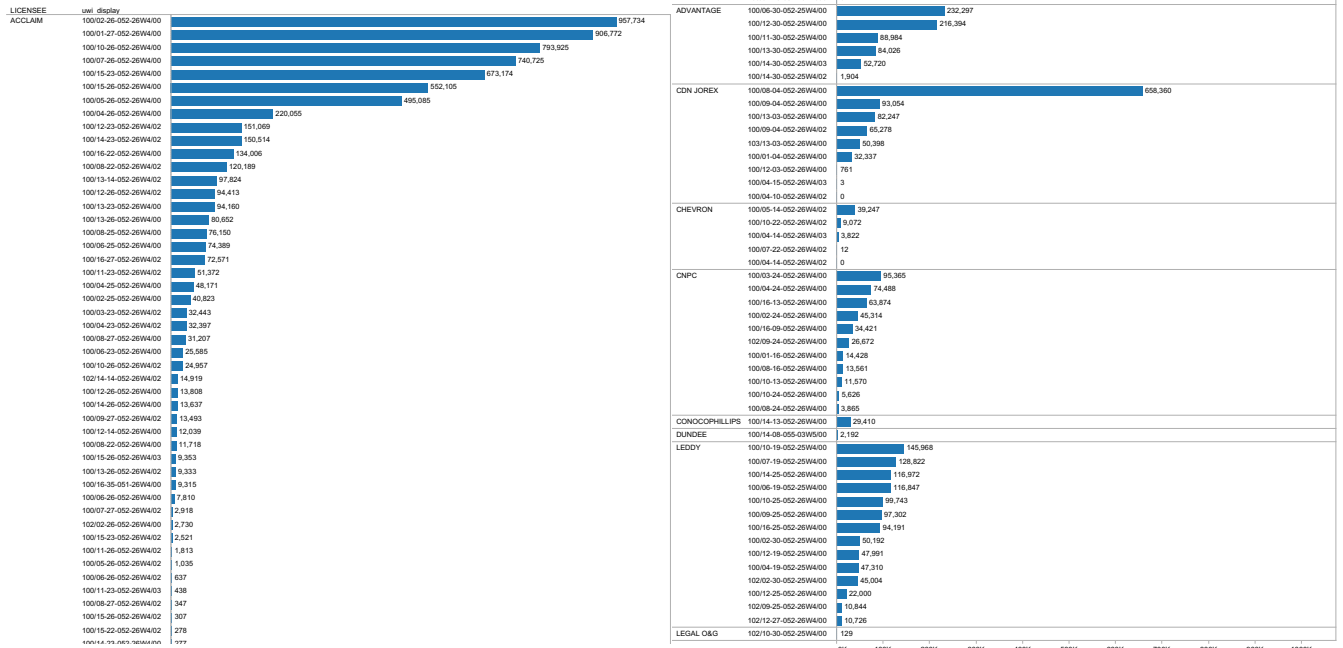


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EXPORT TAX PRODUCING OIL WELLS BY UWI



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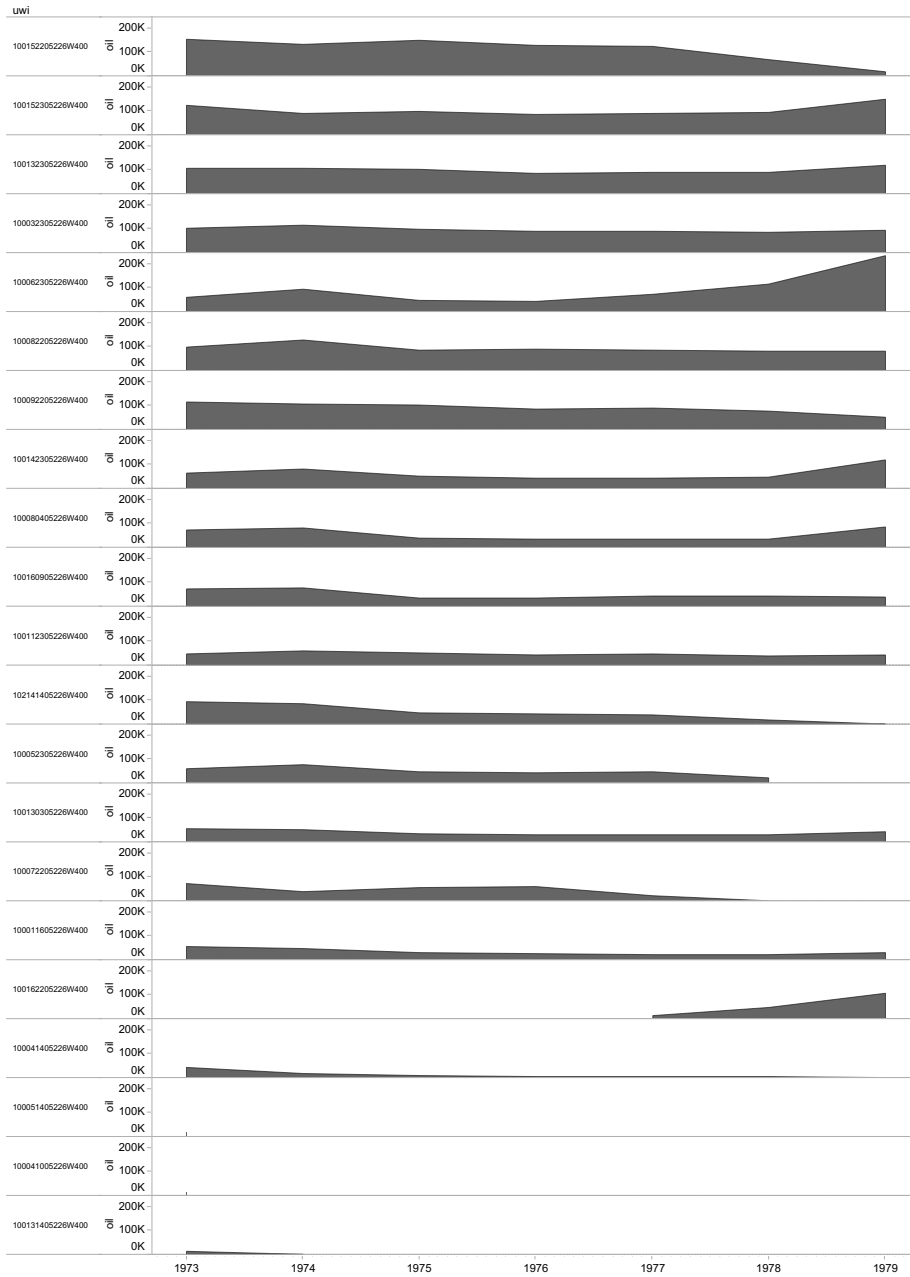
6

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1

EXPORT TAX TOP OIL WELLS BY PRODUCTION PROFILE



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ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1

OIL BY PROVINCE ANALYSIS EXPORT TAX PERIOD



OIL by PROVINCE and by YEAR.

- Total OIL is 2.63 billion across all four PROVINCES.
- The OIL of 2.63 billion was driven by AB with 2.2 billion (84%), SK with 329.4 million (13%) and BC with 79 million (3.01%).
- The OIL of 2.2 billion from AB was driven by 1974 with 497.8 million (23%), 1975 with 425.6 million (19%) and 1976 with 385.7 million (18%).
- The minimum value is 22 million (MB) and the maximum is 2.2 billion (AB), a difference of 2.17 billion, averaging 656.5 million.
- AB (2.2 billion) is more than seven times bigger than the average across the four PROVINCES, and it is almost seven times bigger than the next PROVINCE, SK (329.4 million).
- The average OIL per PROVINCE is 656.5 million and the median is 204.2 million.

OIL by YEAR and by PROVINCE.

- Each of the four PROVINCES decreased from 1973 to 1979, with BC falling the most (67%) and MB falling the least (62%) over that time frame.
- Of the four series, the strongest relationship was between AB and MB, which had a strong positive correlation, suggesting that as one (AB) increases, so does the other (MB), or vice versa.

For AB:

- Average OIL was 313.7m across all seven YEARS.
- AB was higher than SK over the entire series, higher by 266.6m on average.

For SK:

- Average OIL was 47.1m across all seven YEARS.
- OIL fell by 63% over the course of the series and ended on a disappointing note, decreasing significantly in the final two YEARS.

2

3

OIL BY PROVINCE EXPORT TAX PERIOD

province_st..	Year of prod_date									
	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
AB	800,456,481	875,630,108	941,211,004	969,381,350	938,974,747	997,563,444	1,098,181,918	1,092,301,886	278,298,607	7,991,999,547
BC	52,079,647	59,884,757	62,440,443	64,966,180	63,881,093	72,116,075	78,983,599	96,267,679	26,628,303	577,247,776
MB	3,366,533	4,637,298	4,991,258	5,164,731	5,181,054	4,919,736	4,836,027	4,548,616	1,142,579	38,787,832
SK	56,095,766	70,675,395	81,360,202	88,023,001	90,460,935	94,852,799	105,456,603	110,791,900	29,213,570	726,930,172
Grand Total	911,998,427	1,010,827,559	1,090,002,907	1,127,535,262	1,098,497,829	1,169,452,054	1,287,458,148	1,303,910,081	335,283,059	9,334,965,327

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ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1

EXPORT TAX CALCULATION MODEL



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EXPORT TAX CALCULATION FORMULA

5

$$oil_tax_t = (oil_t + cond_t) * tax_t$$

6

$$interest_t = oil_tax_plus_interest_{t-1} * per_month_interest_rate_t$$

7

$$oil_tax_plus_interest_t = oil_tax_interest_{t-1} + oil_tax_t + interest_t$$

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS



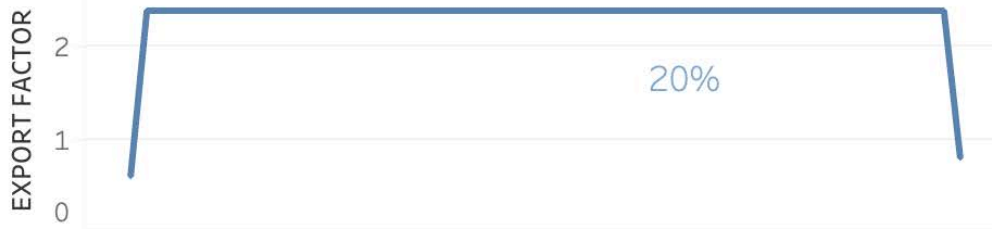
CONDENSATE

15.5K
BOE



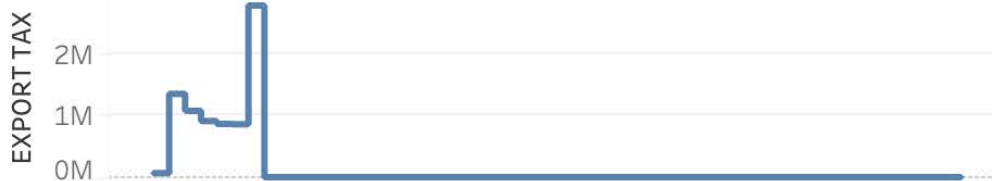
OIL VOLUMES

15.49M
BBL



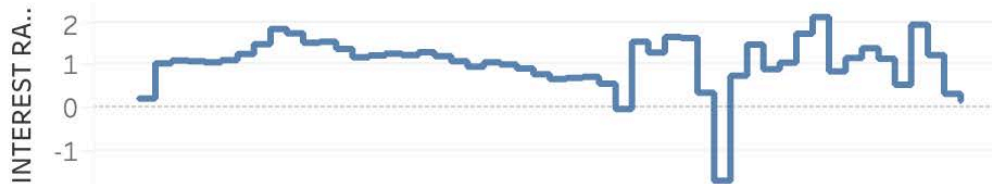
EXPORT VOLUMES

3.10M
BBL



TOTAL EXPORT TAX

\$7.97M



TOTAL INTEREST

\$509.35M

1
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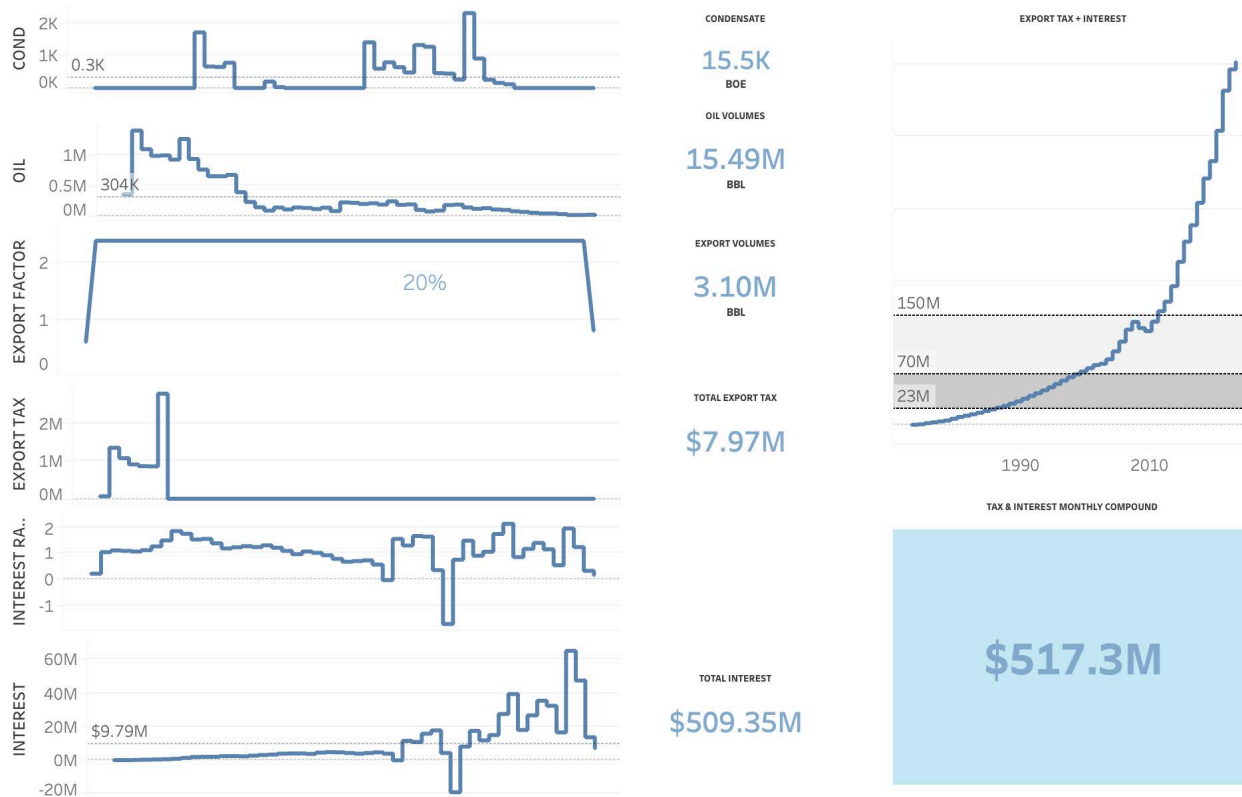
Scope of Tax:

4 References have been found in correspondence from filed documentation in *Buffalo*
 5 *v. Canada* that suggest that the oil export tax also applied to liquid condensates.
 6 US State Department correspondence from 1975 also indicates that barrels of non-

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 gas liquid condensates were subject to the export tax at the same rate as light and
2 medium crude oil⁵¹. Further analysis is needed to determine the potential value of
3 including condensates in the export tax calculations.



4
5

Recommendations

6 Further work is required to fully establish the value and scope of Enoch claims that
7 may be pursued for export tax against Canada. The potential claims period covers
8 multiple regulatory regimes, fluctuating levels of regulated pricing and export taxes,
9 and numerous temporary export controls that reduces allowable exports to the
10 United States.

11

Future Research Areas

⁵¹ <https://archive.org/details/State-Dept-cable-1975-139435/mode/2up>

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 In its assessment, GuildOne has identified several areas for further research and
2 claims development that may also require obtaining additional information and
3 documents from government agencies. Recommendations for further claims
4 development are found below.

5 Natural Gas

6 A key component of First Nations claims for oil export tax repayment is the legality
7 of Canada applying price controls to on-reserve production, as argued in *Samson v.*
8 *Canada*. However, market controls were not limited to oil.

9 Domestic Market Regulation

10 Between 1975-1985, Alberta and Canada agreed to regulate the pricing of inter-
11 provincial natural gas shipments to ensure lower prices, and Canada imposed
12 restrictions on exporting gas to what were, at times, higher-value US markets. If
13 First Nations were damaged by regulated pricing and export controls on oil
14 production (excluding the export tax) then a claim for lost revenue and its benefits
15 may be possible for similar regulations imposed on natural gas⁵².

16

⁵² <https://publications.gc.ca/collections/Collection/NE23-53-1996E.pdf>

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

Message Text

UNCLASSIFIED

PAGE 01 OTTAWA 02563 101900Z

14

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-03 H-02

INR-07 L-03 NSAE-00 NSC-05 PA-02 PRS-01 SP-02 SS-15

USIA-15 FEA-01 ERDA-07 AID-05 CEA-01 CIEP-02 COME-00

FPC-01 INT-05 OMB-01 SAM-01 OES-05 STR-04 TRSE-00

FRB-01 /109 W

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R 101815Z JUL 75

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 6913

UNCLAS OTTAWA 2563

E.O. 11652: N/A

TAGS: ENRG, EFIN, CA

SUBJECT: REDUCTION IN CRUDE OIL EXPORT TAX

1. FOLLOWING ARTICLE BY JEFF CARRUTHERS APPEARED IN JULY 10 ISSUE OF TORONTO GLOBE AND MAIL UNDER HEADLINE "OTTAWA CUTS OIL EXPORT CHARGE":

BEGIN QUOTE

THE FEDERAL GOVERNMENT WILL REDUCE THE CRUDE OIL EXPORT CHARGE BY \$1.50 A BARREL STARTING IN AUGUST, TO REFLECT THE RECENT INCREASE OF \$1.50 A BARREL IN THE DOMESTIC PRICE OF OIL AT THE PRODUCER LEVEL.

THE CHARGE WILL BE \$3.20 A BARREL FOR LIGHT OILS AND LIQUID CONDENSATES AND \$2.70 A BARREL FOR LLOYDMINISTER-TYPE HEAVY OILS SOLD TO THE UNITED STATES.

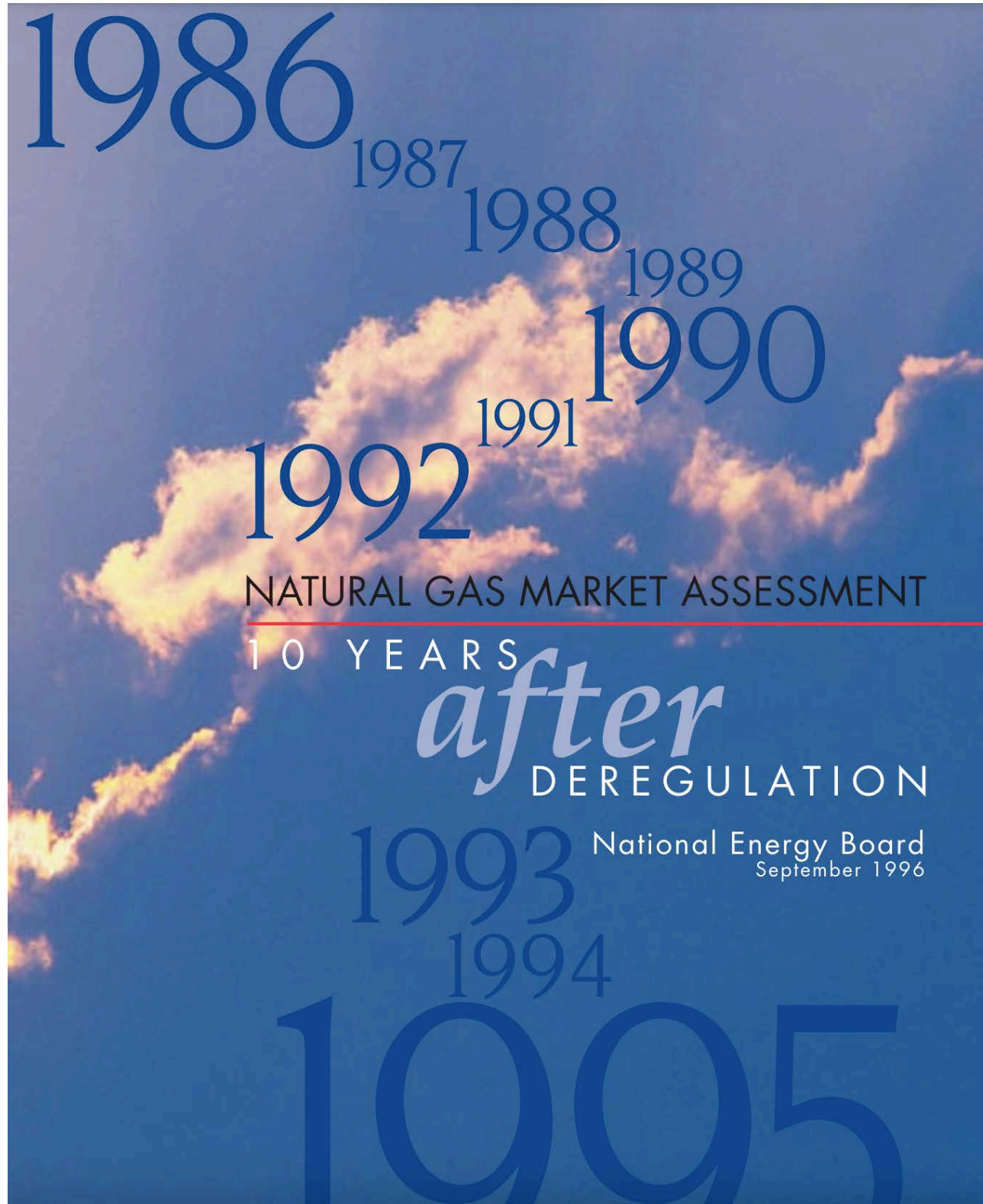
THE CURRENT CHARGES ARE \$4.70 AND \$4.20 A BARREL RESPECTIVELY BUT EXPORTERS CAN CLAIM A REBATE OF \$1.50 A BARREL FROM THE NATIONAL ENERGY BOARD FOR ALL CRUDE OIL EXPORTS IN THE EXPORT

UNCLASSIFIED

PAGE 02 OTTAWA 02563 101900Z

PIPELINE SYSTEM ON OR AFTER JULY 1, THE DATE THE NEW DOMESTIC

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006



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Export Ratios

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 Data on the proportion of Alberta oil exported to the United States is challenging to
2 access. Correspondence in the *Buffalo v. Canada* document repository indicates
3 that Alberta exported 60% of its oil production in 1973, falling to 40% in 1974/1975
4 due to the market impact of the oil export tax.

5 Export Restrictions

6 Additionally, Canada imposed a range of export restrictions that both limited the
7 barrels per day that could be subject to an export tax, and damaged relationships
8 between Canadian industry and oil purchasers in the United States.

9 Export Prohibitions

10 By the 1980's, most light and medium crude oil was barred from export markets and
11 exports consisted mainly of heavy oil that Canada lacked the refining capacity to
12 process. Since First Nations producers of conventional oil were actively prevented
13 from accessing export markets (and thus the application of export taxes), questions
14 exist about how to determine export ratios.

15 Valuation

16 Changing oil export tax rates and regulations, especially after the formation of the
17 National Energy Program in 1980, add complexity to calculating the value of the oil
18 export tax paid by ECN. In 1984, two-tiered pricing removed regulated pricing from
19 oil developed after 1981, while older production was limited to 75% of the world
20 price. This change impacts approximately the last year and a half of the claim
21 period.

22

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

1 Buffalo v. Canada Review

2 GuildOne has conducted an initial review of the substantial documents submitted by

3 the plaintiffs in this case on the export tax issue, which are much more robust than

4 the documents that were available from IOGC and recommends a comprehensive

5 review that may help inform issues such as valuations, scope of tax, and export

6 ratios.

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