

21 Project Regulation and Review

The Nature of Regulation

The pipeline project will be an enormous engineering venture, and the environmental, social and economic impacts it will give rise to will be widespread. The necessity for a regulatory Agency to supervise the project in the national interest is inescapable, as is the necessity for such an Agency to serve the other, specifically the northern, interests that the project will inevitably affect. Such an Agency will be essential, even following a settlement of native claims and a restructuring of northern government.

It will be, of course, for the Government of Canada to decide on the form and jurisdiction of the regulatory authority. I have assumed that there will be a more or less unified regulatory Agency that brings together the multitude of widespread governmental responsibilities that exist at the national and regional levels. The questions whether such an Agency ought to be the National Energy Board, an existing government department (such as the Department of Indian Affairs and Northern Development), or a combination of these, and whether it should exercise jurisdiction not only in the Northwest Territories but in the provinces along the route of the pipeline are matters for the Government of Canada to determine.

Because a pipeline in the Mackenzie Valley has been postponed, it will be possible, in devising appropriate measures to regulate a Mackenzie Valley pipeline, to benefit from the experience gained in regulating construction of the Alcan pipeline. But whatever system of regulation is adopted for the Alcan pipeline, and whatever lessons are learned there, they will not necessarily lead to easy conclusions about the kind of regulatory Agency that ought to be established for a Mackenzie Valley pipeline. I say this because the social and cultural changes that occur in the Northwest Territories in the next ten years may be as great as they have been in the past ten years. The government is committed to a comprehensive settlement of native claims. The government also expects changes in the structure of government in the Northwest

Territories. So the institutional landscape is likely to be significantly altered in the next decade.

These factors, of course, make it difficult for this Inquiry to make specific recommendations now for the machinery of regulation that ought to be established if a pipeline is built in ten years' time. Yet in the course of the Inquiry, a number of considerations emerged that bear on the question of regulation of the pipeline project, whenever it occurs. There are certain principles that should govern the regulatory process, and those should be made plain. The importance of these principles is likely to persist no matter what changes occur in the North and its institutions.

Principles of Regulation

The principles that ought to be observed derive from the need to ensure that adequate recognition is given not only to environmental and technical matters, but also to questions that are of a social and economic nature. Frost heave, for example, may well present formidable engineering and environmental challenges; but no less formidable are the challenges presented by the social tensions that could result from pipeline construction. It is to these challenges that the Government of Canada must address itself in establishing an appropriate regulatory mechanism.

1. The regulatory mechanism should be defined, and it should be in operation and widely understood by all those concerned from the very beginning. By this, I do not mean that it should be in place at the start of construction or even pre-construction activity; I mean that it should be operational as soon as the project is approved in principle. On a project of this size, overall project review and design review (both of which I deal with below) are necessarily processes of discussion and negotiation between the pipeline Company, government, the local communities and various other interested groups. Certainly, the people who will be responsible for the regulation of the project should deal with the problems the project presents from the time they become apparent in preplanning through to the completion of the project. But more than this, all parties with interests that may be considerably affected by the

project must be in a position to develop their priorities and define their responses in an informal way, and at a stage before the exigencies of construction have foreclosed many options.

2. The problems that are to be addressed by the Agency, from the beginning to the end, should not be limited to problems of engineering and construction. Social, economic and environmental considerations should be addressed at an early stage and throughout, with the same intensity and concern as technical and engineering questions.

This is not to say that the regulatory Agency should have the exclusive responsibility for everything that happens in the region during the period of pipeline construction. There is a hierarchy of responsibilities and concerns that focus on the pipeline, and many social and environmental issues must, and can best, be dealt with by existing or emerging institutions. In particular, the communities along the route will have to cope with many social problems that the Agency cannot control. The in-migration of people looking for work, squatters, an increase in alcoholism, and local inflation are examples of the problems with which local authorities will have to deal. But within this hierarchy of governmental responsibilities there are matters, whether they are of a social, economic or environmental nature, that tend to be directly assignable to the project, or that occur along the right-of-way. It is these matters that are of interest to the Agency.

Certainly, terms and conditions applicable to lands used by the Company are of direct concern to the Agency. However, the ongoing responsibilities of federal departments and of territorial, regional and local governments must not be usurped by the Agency. A careful definition of responsibility will be necessary, but at the same time it must be understood that the Agency, in carrying out its mandate, may frequently have to transgress traditional boundaries of government departments.

The need to limit the authority of the regulatory Agency springs from several concerns. There is, for one thing, the importance of avoiding a bureaucracy that duplicates or complicates the normal operations of government. Then there is the relationship of such an Agency to the native claims process and, ultimately, to the institutions that will represent the native interest in the Northwest Territories. Furthermore, the Agency will be established to handle what amounts to an emergency situation — one that will come and, like the Agency, eventually go. If the Agency encroaches too severely on the jurisdiction and operations of government departments, their ability to carry out their functions both during and after the construction of the pipeline could be impaired.

Thus, for instance, the numbers of the Delta reindeer herd might decline for reasons that were indirectly related to pipeline construction, but that occurred well away from the right-of-way. In this case, lacking jurisdiction and specific terms and conditions that could be applied, all that the

Agency could do would be to help the appropriate authorities, such as the Canadian Wildlife Service and the Government of the Northwest Territories find solutions to the matter. If, however, activities of construction personnel, such as harassment or hunting, were the cause of the decline in the number of reindeer, then the Agency would be responsible to see that the activities ceased.

3. The regulatory process should involve all of those interests in the North that have concerns about the impact of the project, and their involvement should be understood in the broadest sense. However, the process must not be put into a position of dominance with respect to government departments and agencies in the region, or other regional institutions.

This implies that the regulatory authority will have to be accessible and responsive to all institutions and groups that have an interest in the pipeline — departments of government, communities, public interest groups, and, of course, native people. This will require the establishment of a comprehensive review process in which all interested parties can participate, and by means of which problems can be identified by those most likely to be able to devise solutions. I propose that an Impact Assessment Group be established for this purpose. I deal with this matter later in this chapter.

The Regulatory Agency

The schedule of construction activities for a Mackenzie Valley gas pipeline North of 60 will require a tremendous range of decisions and commitments to be made before any construction begins. Environmental and socio-economic constraints must be decided upon. The types of equipment, and sites for borrow pits, compressor stations and wharves must be investigated and approved. Designs, specifications and contract documents must be prepared. Employment and manpower schemes and impact funding must be developed. And most of these pre-construction activities carry serious implications for the project. The actual pipelaying on any one construction spread will be preceded by months of site preparation and construction activity required to build wharves, camps, road and airstrips. Simultaneously when installation of the pipe begins, large crews will be at work at many different locations along the Mackenzie Valley. Construction of compressor stations, once it begins, will continue throughout the year. Major river crossings will be installed in summer, while several other activities such as depositing fuel and supplies, are going on. In short, once construction starts, it will continue year-round throughout the project area for several years.

4. A single regulatory Agency should be established by legislation to implement all government actions that bear on the pipeline project and on the pipeline Company. The Agency must be equipped to deal with the engineering, technical,

environmental, social and economic matters from the early conceptual and design phases of the project to its completion.

5. The Agency should be established for this specific project only. It should therefore be limited to the duration of the construction phase. It should be clear from the outset that the Agency shall cease to exist as soon as the commissioning of the facilities is complete and the pipeline goes from the construction phase to the operating phase. Authority for ongoing regulation would then be transferred to normal governmental regulatory bodies.

If the Agency is to meet the challenge of controlling the pipeline project, it must do a number of things. First, it must prepare detailed regulatory specifications, well in advance of the pipeline Company's schedule and design submissions, so that the Company can comply with the Agency's regulations in all matters pertaining to the project. Second, it must conduct overall project reviews and final design reviews to ensure that the designs and plans of the Company are technically, environmentally and socio-economically acceptable. Third, it must put a team of trained inspectors in the field to ensure that the Company's pre-construction and construction activities conform with terms and conditions that have been laid down.

These are the principal functions of the Agency. But there is another function that is equally crucial to the effective regulation of the project. I refer to an impact monitoring, impact assessment and public information role, which I shall discuss below. At this point it is important only to emphasize that the Agency itself must structure its operations so that it is responsive to and acts quickly upon the information and advice (including recommendations for design changes or modifications to regulations) that it receives from the Impact Assessment Group.

THE SCOPE OF REGULATION

When we examine the need to control a large-scale undertaking such as a Mackenzie Valley pipeline, we tend to compartmentalize issues. Technical issues of a design and engineering nature are relatively clear cut: traditionally, they have been the focus of any process that has been set up to deal with project regulation. In recent years, we have come to recognize that there is a relationship between engineering and environmental issues; as a consequence, our regulatory processes have been expanded to consider both.

Social and economic issues have not been regarded in the same way, because, in the public and political mind, the connections between a particular project and what happens to people and communities have been less obvious, and the causes of social and economic changes have been more open to varieties of interpretations. Even such phenomena as increased employment and accelerated local business, which are among the more obvious and positive spin-offs of industrial projects, are still rarely under the influence of whatever mechanisms have been established to regulate a

project. Almost never are the negative spin-offs, such as loss of community leaders to industrial jobs, disruption and overcrowding of schools, and loss of tourism due to lack of accommodation, considered part of the regulatory function. In part, this may reflect social biases — engineering and environmental matters are viewed as being within the purview of the "experts" and beyond the realm of ordinary men. In part, also, it may reflect the fact that society already has at its disposal a range of governmental institutions dealing with social and economic matters. But this is not the case along much of the pipeline right-of-way in the Mackenzie Valley, where the ability to handle social and economic problems that will result directly from the pipeline is neither comprehensive nor far advanced. Along with such institutions as already exist, and those that emerge, the Agency should have a role with respect to socio-economic matters, although this should be an unobtrusive and carefully constrained role.

6. The Agency should be responsible for the monitoring and enforcement of terms and conditions concerning scientific, technical, engineering, environmental and socio-economic aspects of the project, as they relate specifically to day-to-day actions of the pipeline Company, its contractors and subcontractors. The Agency should not, however, be responsible for the enforcement of ongoing programs and policies of government relating to the management and control of environmental, social and economic matters in the North. It should not become a parallel government.

I recognize that the division of responsibility between the Agency and normal government departments will vary according to the issue and the nature of the government policies and programs. For example, the Geotechnical Review Panel that I discussed in the chapter on Geotechnical Considerations is obviously project-specific, and it will have to be appointed by the Agency. Short-term wildlife monitoring — monitoring relating directly to project activities — is also a function of the Agency but, as I said in the chapter on Wildlife, long-term monitoring and wildlife management is an ongoing responsibility of government and is clearly beyond the scope of the Agency. Control of aircraft activities related to the project is necessary, but if disturbance is to be effectively controlled, all aircraft flights will have to be regulated during critical wildlife periods. That is why I recommend that the Flight Control Group be associated with — rather than form part of — the Agency.

I have recommended that employment on the pipeline be handled through a manpower delivery system established by a group representative of federal and territorial departments with responsibilities in the field of employment. The manpower delivery system would exist for the duration of pipeline construction; it would obviously have very close connections with the Agency and with the government departments that normally look after employment. The

Agency should have the major responsibility for ensuring compliance with terms and conditions that apply once people are on the job, for example, conditions of work. The location of camps is another matter in which the Agency has an obvious interest. The Agency should have direct control with respect to the pipeline Company's accommodation. It should not be allowed to infringe on the jurisdiction of other government departments, such as the Northwest Territories Housing Corporation, but it should be in a position to provide advice that could prevent the Company's housing plans from aggravating local problems.

7. *Before the government grants a right-of-way permit for the pipeline, it should be in a position to ensure that it can respond effectively, through existing institutions, to immediate and long-term impacts that are not the direct and assigned responsibility of the Agency.*

ENFORCEMENT

Effective means of enforcement often form the backbone of regulation. The Agency will have to develop approaches that might be taken in situations where by accident, neglect or wilful acts, the Company, its contractors or any of its subcontractors violate the terms and conditions attached to the right-of-way, or any of the Acts, Regulations or Ordinances pertaining to the pipeline project.

On any construction project, inspection personnel have to develop effective means of ensuring compliance with technical specifications. This is a complicated and difficult task when special terms and conditions are introduced that deal with the natural and social environments — terms and conditions that the construction Company's officers, supervisors, foremen and employees may see as "getting in the way" of job "progress." On-site personnel who are faced with the daily problems of production quite naturally and understandably gauge success by the amount of pipe laid or the number of welds completed. With regard to the pipeline project, a system of incentives should, where possible, be incorporated into the compliance scheme so that there are real and perceived losses for those who violate or disregard terms and conditions. This must be done at the time initial contracts are let, if the Company is to have any effective control over its contractors and subcontractors.

Most inspectors have, in one form or another, the power to shut down a job on which terms and conditions are being violated, but that power is rarely used. Often, particularly on large, capital-intensive, tightly scheduled, and seasonally dependent projects, it causes more problems than it solves. To stop a project is an extreme measure that should be used in emergency situations only. That is why terms and conditions should be enforced at the planning stage.

8. *The Agency may call upon the Company at any time to furnish data concerning preconstruction, design, construction and commissioning activities related to the project.*

9. *The Agency shall inspect the activities of the Company on site and shall have access to the project at all times.*

10. *The Agency may require the Company at any time and without liability or expense to the Agency or the government, to make such modification of the pipeline system as it deems necessary to protect or maintain the integrity of the pipeline, the physical, living or human environment, and the public interest.*

11. *Where there is dispute regarding the possible impact of a proposed activity on the physical, living or human environment, the onus shall always be on the Company to prove to the satisfaction of the Agency that its proposed activity is not unacceptably detrimental.*

12. *The government and the Agency should develop non-compliance and penalty mechanisms that respond to accidents and wilful non-compliance. These mechanisms should mitigate the situation by immediately removing the cause and by initiating procedures that will remedy the damage done; assign to the Company immediate penalties for violation; and require the Company to have in its contracts with its contractors, suppliers and transportation companies clauses that will allow the penalties to be passed on to the violator. Penalties should be in proportion to the violation and they should escalate in severity with continued violations or with consistent non-compliance.*

The Company

It is not enough, in my opinion, merely to write technical, environmental and socio-economic stipulations into the terms of right-of-way agreements, land use permits, and water licences. If government and the Agency assume that their responsibility stops at prescribing such stipulations, they will have to rely on the Company to determine the degree to which there will be full compliance with the terms and conditions. The exigencies of pipeline construction in adverse conditions and within a compressed schedule make corrective measures difficult and expensive. Technical, environmental and socio-economic stipulations will, in my opinion, be implemented effectively only if they are viewed from the beginning as an integral part of pipeline construction and operation rather than as something imposed from outside.

To ensure that such stipulations become an integral part of the construction process, they must be consolidated and incorporated into all advance planning; and they must be written into all contract documents so that each contractor, subcontractor, and operator in the field knows in advance what is required of him and has the opportunity to plan to meet the stipulations and to cover their cost. Only if stipulations are written into contracts in express terms, and allowed for in the costs of the contracts, is there a reasonable chance that they will be complied with routinely and conscientiously. Even then, there will have to be competent

and effective inspection to take care of unanticipated situations and attempts to cut corners. In my view, the onus to ensure that terms and conditions apply to all aspects of the pipeline project, to all levels of contract and subcontract, and to collective agreements with unions, must rest with the Company. It is up to the Agency to ensure that the Company recognizes this responsibility, and carries it out. To do so, the Company must submit the details of its plans in sufficient time for the Agency to study them and give approval or request further information.

13. In all its contracts and agreements with contractors, subcontractors and unions, the Company shall legally bind them to the terms and conditions laid down with respect to the project. The Company shall be responsible for inspecting the work of all subcontractors to ensure that it conforms with the technical, environmental and socio-economic terms and conditions established by the Agency.

Traditionally, on any large-scale engineering project, there are Company managers, foremen and inspectors to ensure the adequacy, economics and progress of the work being done by the Company's staff and its contractors and suppliers. However, on the Mackenzie Valley pipeline project, the traditional structure must be revised to incorporate environmental and socio-economic personnel into management. There must be staff capable to supervise and inspect matters ranging from design preparation to routine activities.

14. The Company's environmental and socio-economic staff should be responsible to senior project management through the same resident manager to whom the engineering inspectors will be responsible. The resident manager must therefore understand and appreciate the environmental and socio-economic aspects of the project just as he must understand and appreciate its engineering and economic aspects. To do this, he will need the assistance of environmental and socio-economic specialists, both in the field and the office, just as he will need the assistance of engineers in the field and the office.

All three groups in the project management team – the engineering, the environmental and the socio-economic supervisory personnel – will have to work together to make responsible decisions regarding the consequences of their actions, if the project is to be completed in an acceptable way.

The Company's senior management must, therefore, accept the responsibility for environmental protection and for social and economic matters specified by the Agency to the same degree as it accepts the responsibility for safety and integrity of the pipeline. The Company must be made aware that penalties will be imposed if it should neglect its responsibility to enforce protection measures.

Review Processes

Once the design of a project as massive as the Mackenzie Valley pipeline has progressed beyond the preliminary or conceptual stage, a chain of events is set in motion that cannot be arrested. The major input on the part of northern governmental institutions and interest groups will, therefore, have to be channelled through a review process that takes place during the early design and engineering stages.

To avoid unnecessary delays and to minimize adverse impacts once construction has begun, there is a need for a methodical and sequential review process that covers all aspects of the project as it evolves from its conceptual stage through to final design. In many respects, the Inquiry and the hearings of the National Energy Board can be regarded as part of this process. Review, feedback and refinement of the project must continue right through the planning and construction stages.

15. The Agency and the Company should establish project review plans, procedures and schedules that will be binding throughout the project. Emphasis should be placed on a systematic and extended review of criteria and preliminary design concepts including the justification of construction modes, trade-off studies and risk and impact analyses. All of the Company's submissions for approval by the Agency should be planned and scheduled to ensure that they are reasonable in scope, and filed in reasonable time, insofar as the workload imposed on Agency is concerned.

16. The Company shall submit to the Agency for approval a schedule for project control, using a scheduling system acceptable to the Agency. This schedule shall govern all of the Company's activities. In addition to the basic construction schedule, it should include such things as schedules for regulatory reviews and approvals, for the issuing of construction plans and specifications, and for the issuing of major supply contracts. The schedule should also include construction contractors' schedules for logistics and activities. The schedule shall clearly show environmental and socio-economic constraints set forth in the applicable stipulations.

The submission shall include procedures for periodic updating of the schedule and for re-scheduling if disruptions occur during execution of the project.

Although the review process must be a coordinated and continuous activity, I think that two aspects – overall project review and detailed design review – assume prominence and shift in importance as the project evolves.

Overall Project Review

Overall project review, the first part of the review process, begins when the project is still in a conceptual form. The 1970 and 1972 Pipeline Guidelines, the evidence brought before this

Inquiry, and the hearings held on the project by the National Energy Board have already provided the perspective for a consideration of such matters as routing, scheduling, overall impact, feasibility and mitigative measures. It is at this stage that the project is most amenable to change and can best be influenced by the institutions of northern government and the various interest groups that will be affected. It is at this stage that the form of the venture becomes defined and the nature of the necessary controls becomes known.

However, the approval of a project and the granting of the necessary permits are only part of a systematic process that leads to effective implementation. The clearer the direction given to the pipeline Company from the outset, the easier it will be to make the project conform to the spirit as well as to the letter of the terms and conditions under which approval would be given.

To be effective, such direction must come during the formulative stages of the project, and must be informed by the interests of all parties directly affected. Furthermore, a regulatory structure must go beyond the interests that such a mechanism is normally designed to serve — it must serve the native interest as well. This new structure must be in operation to give direction to the pipeline Company long before the final design stage is reached.

PROJECT CODE AND GUIDELINES

Both the Agency and the Company have responsibilities to implement and control the project — responsibilities that are extensions of the conventional regulatory and project management functions of government and industry. The right-of-way permit will have several terms and conditions attached to it, many of which will be general principles to guide the Company. A great many of the recommendations I have made in this volume can be adopted for this purpose.

17. As one of its first tasks, the Agency should develop a project code and guidelines that provide direction to the Company on important engineering, technical, environmental, social and economic matters related to the pipeline project. The code and guidelines should be drafted and circulated to all interested parties for comment before they are adopted. Together with the stipulations in the certificate of public convenience and necessity and the right-of-way permit, the code and guidelines should provide the basis for project design and review.

18. The code and the guidelines and stipulations attached to permits for the project should be flexible enough to allow the Agency to require modifications whenever design, construction or on-site conditions indicate the need for such changes. There should, however, be specific limits to this authority. The Agency must, as a matter of regular procedure, publish information relating to all of its decisions.

It is important to distinguish between a code on the one hand and plans and specifications on the other. A code

outlines the performance that is expected; it comes before design and is enacted by regulatory bodies. Plans and specifications spell out the work to be undertaken; they are generally initiated by the Company as part of design, and submitted to the regulatory process for approval.

The basis for a code and guidelines has already been established. The 1970 and 1972 Pipeline Guidelines were a beginning; they were followed by the report of the Pipeline Application Assessment Group in 1974, the report, *Towards an Environmental Code*, of the Environment Protection Board, and *Recommended Environmental Standards for the Design and Construction of a Mackenzie Valley Gas Pipeline*, prepared in 1976 by the Environmental Protection Service of the Department of the Environment. The Inquiry itself sought to bring together all the engineering, technical, environmental, social and economic considerations as they were perceived by the participants in the Inquiry and by the people of the North. Volume One of my report highlighted the major issues. The report of the National Energy Board, *Reasons for Decision: Northern Pipelines*, looked at a variety of issues from a national perspective. And, in this volume, I have put forward a set of recommendations that I consider ought to form the basis of a code for use by the Agency and the Company. But the recommendations set out in this report do not provide the detailed code requirements that are necessary to ensure the desired degree of environmental, social and economic protection. They do not obviate the need for highly skilled judgment, and the need for close coordination between the many disciplines involved and the people of the region, throughout the planning, execution, and commissioning process.

In all of this, we must remember two facts: the native people will not cease to regard the North as their homeland; and most southern Canadians will continue to consider the North as a frontier, albeit a frontier to which they have a particular and national responsibility in the long as well as the short term. We must accept that the native interest is of a special character. It is different in kind, as well as in degree, from the interests of any other third party. This special character must be recognized both explicitly and implicitly in the design and function of the regulatory mechanisms, if the project is to be regulated properly, efficiently, and in accordance with the priorities for the North to which the government is committed.

OVERALL PLANS

The pipeline Company's conceptual plan, and the code and guidelines developed for the project, lead to broadly based decisions on the project. As these decisions are reached, the relationship between the project and the northern environmental and socio-economic milieu will acquire a sharper definition. This overall project review stage is critical because, as the project becomes more precisely defined, it becomes technically more difficult to make changes to it. The broad

problems must be satisfactorily addressed and resolved at this stage. Involvement by local people becomes crucial, for it is at this stage that priorities and criteria for monitoring, assessment and design review must be established.

Throughout this volume I have recommended that, before final design, the Company prepare overall plans that show in a general way the activity proposed and the relationship of that activity to other aspects of the project. I have suggested that these plans be prepared in cartographic form insofar as this is possible, so that they may be easily understood by the many disciplines involved in the design and review process and by the public at large.

19. *Before final design, the Company shall prepare for approval by the Agency overall plans such as those specified in Location, Construction Plan and Scheduling, Terrain Considerations, Water Withdrawals, Waste Management, Management of Fuels and Hazardous Substances, Pipe Testing, and Facilities Complexes and Equipment Operations, and as requested by the Agency.*

Design Review

The intent of design review is to ensure that the project complies with applicable statutes, codes, guidelines and other requirements established through the overall project review process. This must be done without causing undue delay to the Company during final design and construction of the pipeline. Design review is a function of the Agency operating within the parameters of the above requirements, and within the constraints imposed by the project. A great deal was learned about this process in Alaska in connection with the construction of the trans-Alaska pipeline. The experience gained on the Alaska Highway pipeline will, no doubt, lead to further refinement of project review mechanisms. There are, however, two points that have become evident over the course of the Inquiry that are important to consider in formulating a design review process.

20. *In order to exercise proper regulatory control and to ensure that plans for the project are sufficient in terms of all the engineering, technical, environmental and socio-economic requirements, the Agency must be the governing authority on all specific aspects of the project, not just those that are incorporated into the permanent facilities.*

The Company shall not start any construction activities until it has the written permission of the Agency. Such permission should authorize specific support activities and construction of defined segments of the pipeline system to begin. The Company shall submit applications for each of the construction activities according to an agreed schedule and the Agency shall have a predetermined time to review them.

The second point relates to ensuring that the Company contractors are clearly informed of specific technical, en-

vironmental and socio-economic requirements. If all contracts specify comprehensively the conditions and administrative solutions that will be imposed, the contractors, the Company and the Agency will be in a much better position to ensure compliance.

21. *Before inviting tenders for major supply and construction contracts, the Company shall submit to the Agency for approval the respective contracts and specifications, special conditions, plans and schedules. These should form an integral part of the supply and construction contracts. In particular, the contracts should include special conditions, such as the timing and procedures for the protection of the terrain and wildlife of the region, as well as procedures to ensure compliance with the socio-economic terms and conditions by which the Company is bound.*

Impact Assessment Group

I have concentrated throughout this chapter on some of the principles of the regulation that should guide the planning and building of a Mackenzie Valley pipeline. Important as these principles are, we must not lose sight of the balance and nature of interests involved. Perhaps this Inquiry itself has been an example of the need and value of a balance of all views. I discuss this in Appendix 1, *The Inquiry Process*, but it is appropriate to address some of these considerations here.

From the beginning, all interests – governmental, institutional and private – should have access to, and participate in the work of the Agency. The presence of these outside interests is essential because the Agency has, in some respects, a built-in conflict of interest. In the national interest, it will be responsible for getting the pipeline built quickly and economically. At the same time, it will be responsible for ensuring that engineering specifications, environmental standards and socio-economic requirements are observed. All parties that may be affected by the pipeline should, therefore, have access to the Agency. For instance, those responsible for fish and game management, those organs of local and regional government responsible for the social conditions in towns and settlements along the route, the territorial government, and and public interest groups, such as those concerned with environmental protection – all these groups should have access to the Agency at all levels.

As collective and cultural interests, the native groups in the North stand to lose much by the kind of massive intrusion that the project will represent. Their interests are of a distinct character, so the native groups must have a direct involvement in the Agency. This involvement is difficult to define now because, by the time the pipeline is built, native claims will have been settled and new structures of local and regional government will be in place. Nevertheless, there will

continue to be a special native interest in the impact of the pipeline – an interest extending beyond that represented by northern government and other institutions as they may exist ten years from now. Direct native involvement in the Agency will depend on the extent to which northern government and northern institutions are perceived a decade hence by native people as truly reflective of their interests.

All interests should have their standing formalized, and the procedures governing access to the operations and decisions of the Agency should be clearly established.

22. *An Impact Assessment Group should be established and should exist for the entire planning, preconstruction and construction period. This group should consist of representatives of local, regional and territorial governments, public interest groups, and native organizations.*

The Impact Assessment Group should exercise an ombudsman function in relation to the Agency. The group should have the right to question officials and employees of the Agency, and to examine the Agency's documents. Although they would not in any sense be an appellate tribunal, since they would have no power to reverse the Agency's actions, they should have the right to make their findings public.

The Impact Assessment Group should have the power to require review of designs. To assist the Agency in its revision of project or design matters, the Impact Assessment Group should make recommendations for changes pertaining to such design, or to the adequacy of regulatory instruments to enforce stipulations incorporated in those designs. The group would deal with the general impact and administration of the project, as well as specific problems of impact and specific complaints about the administration by the Agency.