

Royal Commission on Renewing and Strengthening Our Place in Canada

Power Politics and Questions of Political Will: A History of Hydroelectric Development in Labrador's Churchill River Basin, 1949-2002

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The views expressed herein are solely those of the author and do not necessarily reflect those of the Royal Commission on Renewing and Strengthening Our Place in Canada

Abstract

This report studies the history of attempts to develop Labrador's hydroelectricity from 1949 to 2002, analyses the information, and draws three main lessons from that history. Firstly, Newfoundland has not been able to match Hydro-Quebec's direct and indirect influence in the energy markets. Secondly, the Quebec utility, when directly suited to its immediate needs, has proven sensitive to Newfoundland's demands for redress of the 1969 Churchill Falls contract. Thirdly, there has been a substratum shift in the North American energy markets, which has created new opportunities.

The report then gives a detailed assessment of federal passive and active participation in issues related to hydroelectric development in Labrador. It concludes by making specific recommendations arguing that more effort has to go into capitalising upon the new opportunities in the North American energy markets.

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Section I: Introduction and Overview

Based upon a combination of documentary research and conversations with individuals[1], there appears to be three major lessons to be learned from Newfoundland and Labrador's attempts to develop the hydroelectric potential of the Churchill River Basin from 1949 to 2002.[2] The research project will review the major developments that led to the infamous 1969 contract and subsequent attempts to "undo" the contract and reach agreement on developing other hydroelectric sites in Labrador. The paper will begin with a synopsis of Labrador's developed and undeveloped hydroelectric potential. It will then give an historical account of the ebb and flow of negotiations related to the development of the Churchill River Basin from the Premiership of Joseph R. Smallwood to that of Brian Tobin.[3] This will be followed in the conclusion by detailing the three lessons alluded to above. There will also be a detailed assessment of the role played, in both an active and a passive sense, by the federal government in the attempted development of the Churchill River Basin. The paper will conclude with some recommendations that the Royal Commission may wish to suggest to the governments.

Churchill Falls produces approximately 5,200 megawatts (MW) of hydroelectric energy and is the largest single source of energy in Labrador. However, the total hydroelectric potential is in the range of 15,200 MW of power. In addition to the Upper Churchill River site, there are 22 additional hydroelectric sites in Labrador with a combined potential to produce approximately 6,574 MW of electricity. The two largest sites are located on the Lower Churchill River at Gull Island and Muskrat Falls. Together, these two sites have the potential to produce approximately 3,088 MW of power.[4] To those totals must be added the potential of five interprovincial rivers whose headwaters are in Labrador but which run through Quebec's North Shore on their way to the St. Lawrence River. These rivers: St. Paul, St. Augustine, Little Mecatina, Natashquan and Romaine Rivers) have a combined potential to produce approximately 3,430 MW of power.[5] In the past, Quebec has expressed an interest in developing some or all of those rivers but they are unable to do so without an agreement with the Government of Newfoundland and Labrador related to the headwaters and flooding.[6]

Labrador's vast hydroelectric potential was often viewed in the province as a potential Eldorado – a possible panacea for its economic ills and a means to finally achieve the long cherished dream of a diversified economy away from traditional dependence on the cod fishery. To this end, a contract was signed in 1969 between Hydro-Quebec and the Churchill Falls (Labrador) Corporation (CFL Co.) - a subsidiary of the British Newfoundland Company (BRINCO) - to begin hydroelectric development in the Churchill River Basin.[7] The Quebec and Newfoundland and Labrador governments were not direct signatories, but both had to pass enabling legislation to allow the contract to be concluded.[8] The 1969 contract has subsequently generated much controversy and ill-feeling between the two provinces. Before discussing the events and politics which led to the contract, it is necessary to highlight some of the most controversial aspects of the Churchill Falls Contract.

The first of the controversial articles provided that the courts of Quebec, not Newfoundland and Labrador, would hear disputes related to the contract. The Supreme Court of Canada was to act as the final court of appeal. As discussed below, this would prove to have grave consequences for Newfoundland and Labrador's attempts to find judicial redress for the 1969 contract. Second, Hydro-Quebec insisted that an automatic 25 year extension be included in the

40-year contract, during which time it would get to purchase power at a reduced price. In lieu of an escalation clause, the contract stipulated that there was to be a reduction in the price paid by Hydro-Quebec for Churchill Falls power. Hydro-Quebec's initial price of approximately 3.0 mills (3/1000^{ths} of a Canadian dollar) per kilowatt-hour (kwh) was to be periodically reduced until 2016 when it would reach a base price of 2.0 mills (2/1000^{ths} of a Canadian dollar). It was to remain at that price until the termination of the contract in 2041.[9]

The lack of an escalation clause and the decreasing pricing arrangement meant that by 1996, Hydro-Quebec was averaging $600 million in gross revenues per annum for the previous 20 years. Over the same period, Newfoundland and Labrador averaged $23 million per year. In statistical terms, Hydro-Quebec reaped 96 per cent of the benefits from Churchill Falls, while the owner of the resource received a scant 4 per cent.[10] In addition, throughout the 1970s and 1980s the province of Newfoundland and Labrador had to spend nearly $700 million on alternative energy sources to compensate for not being able to access Churchill Falls power.[11]

Pricing arrangements also had the potential to cause further controversy. As will be discussed below, having to sell the power at less-than-market prices that did not keep up with basic inflation threatened CFL Co.'s long-term financial viability. The contract stipulated that if the plant operators, CFL Co., became insolvent, Hydro-Quebec could have assumed full control of the entire Churchill Falls operation.[12] This would have left the owner of the resource, the province of Newfoundland and Labrador, with no control over the operation of the power plant. As a result, it would not receive any further financial benefits from the sale of its power in the North American energy markets. As will be discussed, it would take until 1998 for CFL Co.'s financial position to be finally solidified.

1926-1969: An Abbreviated Story of the 1969 Churchill Falls Contract

The road to the 1969 contract actually began in the early years of the twentieth century. Former Premier Joseph R. Smallwood first seriously entertained the idea of developing the Churchill River in 1926. At the time, Newfoundland and Labrador was preparing its case for the British Judicial Committee of the Privy Council claiming ownership of Labrador.[13] During the pre-Confederation debates at the Newfoundland National Convention from 1946 to 1948, it was evident that the economic development of Labrador, including its hydro resources, remained of paramount importance to Smallwood. He led a delegation to Ottawa to discuss possible terms of union between the two countries and claimed that the most important aspect of the Canadian offer was in the form of 'Clause 22. This entailed a promise to conduct a comprehensive economic survey of the potential of both the island and mainland portions of what would be the new province. According to Smallwood, Newfoundland and Labrador on its own could not afford such a lavish survey.[14]

Concerted efforts directed towards the development of Labrador's vast hydroelectric potential began in 1952 . That year Smallwood, after failing to find sufficient interest in North America, went to Great Britain to attempt to find backers to develop the Churchill River Basin. Meetings with such influential British personalities as Prime Minister Winston Churchill and the powerful Rothschilds banking family led in 1953 to the formal creation of BRINCO.[15] Five years later, BRINCO created CFL Co. for the purpose of developing the massive Churchill Falls project.To help finance the project and the company, Hydro-Quebec initially bought a 17 per cent share in CFL Co.[16] The 1958 CFL Co. Agreement granted the corporation exclusive rights to develop Labrador's hydroelectric potential. In 1961 it was further granted a 99-year water lease to use all the usable waters in the Upper Churchill River Basin. As will be discussed below, the lease stipulated that Newfoundland and Labrador was to be granted preferential access to power, providing such actions were feasible and economic to complete.[17]

By 1961, after BRINCO and CFL Co. were fully established, finding an adequate market for the enormous energy produced by the Churchill River was of paramount importance. The neighbouring province of Quebec had access to the largest population cluster in North America – the industrial heartland of Canada in Southern Ontario and the Eastern Seaboard of the United States, with its industrialization and major centres like New York City. It was here that Newfoundland and Labrador's perpetual geographic predicament became evident. The mainland section of the province, Labrador, is bound by the cold North Atlantic on the east and is flanked by Quebec on its western border. As Smallwood was to discover, the only efficient way to get the electricity to market was through Quebec's territory.[18]

Traditional rivalries between the neighbouring provinces related to ownership of the Labrador interior became a significant side-issue. The two provinces had a long and arduous fight over the matter dating back to the nineteenth century. In 1927 the highest court in the British Empire, the Judicial Committee of the Privy Council, defined the present-day boundary when it decided that ownership of the Labrador peninsula belonged to Newfoundland.[19] Quebec's Premier of the day, Alexandre Taschereau, said that Quebecers could take consolation from the fact that Newfoundland and Labrador could not have developed Labrador's hydroelectric

potential without the direct involvement of Quebec.[20] His sentiments presaged the notion of the 'revenge of geography' expounded by Quebec journalist Paul Sauriol. In 1968, Sauriol stated his opinion that, "In spite of the Privy Council decision, these falls [Churchill Falls] [were] so much a part of Quebec territory that it [was] impossible to exploit them without this power being used by Quebec."[21]

As this report will show, Quebec negotiators were skillfully able to utilise the 'revenge of geography' to extract the onerous terms of the 1969 Churchill Falls contract and to prevent the province from reaching deals with external groups to develop the rest of the potential of the Churchill River Basin. As will be discussed in numerous places, the Quebec negotiators were aided by successive federal governments that both actively and passively failed to enact legislative measures which would have granted Newfoundland and Labrador unfettered access to the North American energy markets. Federal officials often provided Newfoundland and Labrador with other forms of assistance, but their measures consistently stopped short of providing critical access to markets. Former provincial and federal cabinet minister John Crosbie has stated that the intractable problem for Newfoundland and Labrador in negotiating with Quebec was that "Canada lacked any sensible or equitable national policy with respect to the development of hydro power energy and its transmission."[22] The lack of access meant that the province had to negotiate at a severely disadvantaged position and it also meant that other forms of federal assistance proved to be ineffectual, impractical and often academic.[23]

Throughout the 1960s, BRINCO and Hydro-Quebec had long and arduous negotiating sessions which usually ended without a final deal being concluded.[24] During the decade, BRINCO and the Newfoundland and Labrador government sought options to improve their negotiating position and gain access to the North American markets. One such possibility to emerge in 1962 was Prime Minister John G. Diefenbaker's idea of establishing a National Power Grid. The idea was to link the various sources of electrical-energy in the country with areas, such as the industrial heartland of Southern Ontario, which consumed large amounts of energy. Diefenbaker established a Committee on Long Distance Transmission to discuss the feasibility of such a project.[25]

From the outset, the Government of Quebec was opposed to establishing the National Power Grid. The position of the Quebec government was that electrical transmission was within the realm of the provinces and the federal government did not have any part to play. With its vast hydroelectric resources and its geographic position, Quebec was integral to the success of any national program. Without Quebec's participation, it would only be possible to establish regional interconnections.[26] It would take five years for the feasibility assessment of the National Power Grid to be completed.

Meanwhile in 1964, Premier Smallwood was being pressured by Rene Levesque to nationalize BRINCO in order to enable the Governments of Newfoundland and Labrador and Quebec to jointly develop the project. Smallwood refused such an option, due in part, to loyalty to BRINCO shareholders (including himself and Winston Churchill) and to fears about what such a move would do to Newfoundland's international business reputation.[27] Nationalisation was proposed as a means for Hydro-Quebec to buy the electricity at a cheaper mill rate to save the utility upwards of $32.2 million annually. BRINCO, as a private corporation, was required to make profits sufficient to pay after-tax dividends; a nationalized corporation would not have to account for that expense.[28] Former provincial and federal cabinet minister, John Crosbie stated that when Smallwood rejected Levesque's nationalisation offer, "a golden opportunity

disappeared".[29] The argument being that had the project been jointly developed, the subsequent profits would have also been shared equitably.

In lieu of nationalisation, Smallwood explored other options to thwart Quebec's 'revenge of geography'. One such idea explored in 1964 was the so-called Anglo-Saxon Route. This involved running power lines through Newfoundland and Labrador and the Maritimes in order to bypass Quebec territory. Unfortunately for Newfoundland and Labrador and BRINCO, it was concluded that the $941,000,000 project would raise the price of electricity in the U.S. market to the extent that it would no longer be sold at a competitive rate.[30]

In the summer of 1965, the previous question of nationalisation of BRINCO was solved for Levesque by the federal government. Despite Smallwood's refusal to nationalize BRINCO, a cheaper mill rate was secured for Hydro-Quebec when the Public Utilities Income Act was changed. There was a 50 per cent to 95 per cent increase in the transfer to the provinces of taxes collected from utility companies. Newfoundland and Labrador passed the additional savings on to BRINCO which consequently allowed the Corporation to sell electricity to Hydro-Quebec at a reduced price.[31]

This federal action did not improve Newfoundland's disadvantaged bargaining position. In 1966, a frustrated Smallwood lashed out and threatened to bypass the Quebec government and appeal directly to Prime Minister Lester Pearson to declare the Churchill Falls project to be in the national interest. Smallwood drafted a letter for the Prime Minister formally requesting:

> the Government of Canada to invoke Paragraph (c) of Clause 10 of Section 92 of the British North America Act. If the Government of Canada would proceed forthwith to build a transmission line from Churchill Falls to a point where it would tie in with power grids in Eastern Canada it would ensure an immediate start on the construction of the Churchill Falls power project itself. In that case the power would be in production and available to consumers in Canada in 1971.[32]

This declaration would have enabled the federal government to transcend provincial jurisdiction.[33] Theoretically, this would have allowed for the construction of transmission lines through Quebec and directly to the markets in Canada and the New England states. However, based on available evidence, it does not appear that the request was ever formally presented.

Former BRINCO President, Henry Borden, claimed that he and associates convinced Smallwood to defer making the request until news of Quebec's response to a proposal was received. The positive response from Quebec in October 1966 made Smallwood's request irrelevant. Another explanation given by former Smallwood cabinet minister and long-time friend, Frederick Rowe, argued that fears of Quebec nationalist terrorism was enough to dissuade Smallwood from proceeding.[34]

Of the various explanations presented, the one most relevant to the potential role of the federal government was related by Newfoundland and Labrador lawyer, Cabot Martin, who had interviewed Smallwood. Martin was told the Premier met Pearson personally to discuss the option but was rejected before he could formally present the request. Smallwood stated:

> Mr. Pearson said, 'Joe, I know why you are here and if you ask me I'll have to say yes, otherwise we would not really be a country. But I'm asking you not to ask me because we will not be able to keep the towers up.' Joey

> paused, then looked at me as if to ask 'What would you have done?' and said 'So I didn't ask him.'[35]

There are two major implications of the stories related above. The first is that Newfoundland's interest was set-aside in the name of national unity and due to fears of nationalist violence in Quebec. If this is so, subsequent ramifications of the eventual 1969 contract illustrate that the province has paid, and continues to pay, a phenomenal price for its contribution to national unity. The second implication is that the ultimate power to make the request still resided with Smallwood who appeared to have the option of pressing the issue further. It was Smallwood who decided to either wait for a Quebec response, and/or not ask Pearson due to fears of the consequences of his request to have the project declared in the national interest.

When Smallwood did not press the issue of establishing a power corridor through Quebec, the province failed to achieve a stronger bargaining position for BRINCO with Hydro-Quebec. Despite the difficulties inherent in negotiating at a disadvantaged position, a Letter of Intent was signed in October 1966 which allowed construction to begin at the Churchill Falls site.[36]

The signing of the 1966 Letter of Intent did not ensure the stability of either BRINCO or the Churchill Falls project. The final agreement would entail another two-and-a-half years of arduous negotiations. By the late 1960s it also became evident that access to the North American energy markets was not possible without Quebec dictating the terms under which it would transpire. A final blow came in 1967 when the committee examining the feasibility of establishing a National Power Grid concluded that there "was no doubt an improved network would assist in the marketing of Nelson [River hydro-electric project in Manitoba] and Churchill River power." Despite this, the benefits of the plan overall were perceived as marginal and a further study was deemed unwarranted.[37]

It was also clear in the final years of the 1960s that Quebec was anxious to develop the Churchill River Basin. Economists at the time were predicting that without the power development, Quebec would have to begin rationing electricity within the decade.[38] Despite Hydro-Quebec's apparent need for Churchill power, it was able to secure such favourable terms because BRINCO did not have the luxury of waiting. BRINCO was in dire financial straits and needed to conclude a deal quickly. As described in Phillip Smith's book *BRINCO*: *The Story of Churchill Falls,* the intervening years were difficult on the financial resources of BRINCO who continued to spend millions in the expectations of a final agreement. By 1968, BRINCO was experiencing serious cash flow problems and it became necessary to arrange a second mortgage on the Churchill Falls development. Unfortunately for Newfoundland and Labrador, neither the province nor BRINCO could afford to buy into the second mortgage.[39]

With Quebec in a more secure financial position, it was able to afford contributing to the second mortgage and consequently increased its portion of CFL Co. to 34.2 per cent. Newfoundland and Labrador could not match the economic strength of Quebec and Smallwood agreed to the mortgage bonds plan.[40] By 1969, the bargaining capacity of BRINCO and Newfoundland and Labrador against Quebec was virtually non-existent. The stark choice was to either conclude an agreement on Hydro-Quebec's terms or walk away from the project. BRINCO was on the verge of bankruptcy and would have failed had the 1969 agreement not been signed.[41] Smallwood wanted the development and, based upon available evidence, did not at any point during the 17 years of negotiations order BRINCO to leave discussions.

Hydro-Quebec's negotiators could hardly be criticised for utilising its privileged position to achieve the best possible deal for their company and province. They recognised the tremendous negotiating advantage which geography and languid federal governments had accorded them, and used their advantageous negotiating position to the utmost. The consequences resulting from the inequitable negotiating positions is evident in the onerous terms of the eventual 1969 contract which was described at the beginning of this section.

Newfoundland and Labrador politicians and pundits have long bemoaned the contract and offered up various scapegoats, including Hydro-Quebec, the federal government and Premier Smallwood. However, in the end, responsibility for approval of the deal rested with the province's elected officials in the House of Assembly, all of whom voted in favour of the agreement.[42] In defence of the Members of the day, it must be remembered that it was the end of a 17-year struggle to begin work on the massive Upper Churchill project and it was four years from the 1973 energy crisis.[43] With the signing of the deal completed, the stage was set for decades of frustration and lamentation in Newfoundland and Labrador over the lost financial potential of Churchill Falls.

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1972-1979: A New Premier and A New Approach

The Churchill Falls Power Plant officially opened in mid-June 1972. Prime Minister Pierre Elliott Trudeau, Quebec Premier Robert Bourassa, Mr. William Mulholand (President and Chief Executive Officer of BRINCO and CFL Co.), and the new Newfoundland and Labrador Premier Frank Moores were all in attendance at the inaugural ceremonies.[44] Within the next two years, the energy crisis related to turmoil in the Middle-East oil-producing regions caused energy prices to surge and the inequities of the 1969 contract became obvious.

The story of the attempted development of the Lower Churchill River begins in September 1972 when BRINCO, using the Upper Churchill model, made a formal offer to the Moores' government to develop the Gull Island and Muskrat Island sites. The Moores' administration refused to accept the idea of being tied into a long-term contract with Hydro-Quebec. In 1974, after two years of failed negotiations, Moores decided to nationalise the CFL Co. portion of BRINCO.[45] Nationalisation was presented as a matter of principle; government needed control over resources in order to mould the province's future. At a cost of $160 million, nationalisation of BRINCO was an expensive exercise in political philosophy. The key argument underlying the move was that the public interest of the province could differ from the private interest of the company. However, Section 9(5) of the 1953 BRINCO legislation prevented the export of any power without the explicit consent of the government.[46]

A former Conservative member of the Moores' administration, the Honourable William Marshall, considered the initiative to have been a great mistake as it "compounded the mistake" of the 1969 power contract. While costing an enormous amount of money, it did not improve the province's bargaining position. Marshall stated that the only thing accomplished was provincial money being used to buy out private shareholders. Each year, the province continued to pay the interest on the money borrowed to finance the deal while the Lower Churchill remained undeveloped.[47] The measure failed because Newfoundland and Labrador's core problem of access to markets without terms being dictated by Quebec remained unchanged.

By the mid-1970s, negotiations had become increasingly complex due to inflationary pressures, the energy crisis and the overt inequities of the 1969 Churchill Falls Contract. In February 1975, after lengthy negotiations, the federal government committed to provide $425 million towards a $1.842 billion Gull Island project. While issues related to electrical transmission were not secured, the federal government was illustrating a strong willingness to provide financial assistance to Newfoundland and Labrador. However, by August 1975, inflationary pressures had forced the cost of the project up to approximately $2.318 billion. As a result, the Newfoundland and Labrador government had to order a complete re-examination of the project and associated costs.[48]

The federal government had not replied to revised plans by November 1975, and the Moores' administration was faced with a difficult conundrum. In order to stave off a predicted energy shortage that was forecast to develop within six years, a decision had to be made immediately concerning going ahead with Gull Island or investing in costly thermal alternatives. Beyond the environmental and financial considerations, MHA John Crosbie stated that the thermal

option would leave the island "permanently isolated" from its energy sources in Labrador. He added that it also lessened the possibility that the Gull Island site would ever be developed.[49] Without hydroelectric powerlines running to the island portion of the province or unfettered access to the North American energy markets, Hydro-Quebec would once again have been left in a position to dictate the terms of any contract. By May 1976, relations with Quebec soured and the Gull Island project returned to a state of suspension.[50]

The increasing demand for power, combined with the problems noted in the previous paragraph, led the Moores' administration to request 800 MW of power from CFL Co. The 1969 contract stipulated that CFL Co. was entitled to recall up to 300 MW of power with three years notice. CFL Co. had previously recalled 100 MW to be utilised in Labrador. The remaining 200 MW was insufficient to meet Newfoundland's growing needs. Consequently, the government asked for 600 MW in addition to the 200 MW. Newfoundland and Labrador insisted that it receive power at the same price as it was being made available to Hydro-Quebec in the 1969 contract. Hydro-Quebec did not refuse the request for power, but stipulated that the energy ought to have been sold "at a price that would cover its own replacement cost."[51]

On 6th August, 1976, Crosbie, in his capacity as Minister of Mines and Energy, formally petitioned CFL Co. to provide the province, beginning 1 October 1983, with 800 MW of power from the Upper Churchill. On 31 August, 1976, CFL Co. President and Chief Executive Officer, J.W. Beaver, responded that the company was unable to comply with the request.[52] CFL Co.'s refusal to comply with the request led to the first of a series of court cases related to Churchill Falls.

The crux of the court case, and the request, rested upon the 1961 CFL Co. Water Lease Agreement mentioned above. Section 2(e) of the Agreement stipulated that "the request of the government consumers of electricity in the province shall be given priority where it is 'feasible and economic' to do so." Critical to the case was the interpretation of the phrase 'feasible and economic'. CFL Co. argued that compliance with the request would render it unable to fulfill the terms of the 1969 contract with Hydro-Quebec and therefore it "would not be feasible and economic to provide 800 MW of electric power to the Government." In a similar fashion, Hydro-Quebec argued that the Newfoundland and Labrador government did not have the right to interfere with the contract between itself and CFL Co. Section 1.2 of the 1969 contract stated that it was to be governed by the Laws of Quebec.[53] The final verdict in the trial was not delivered until 1982 and will be discussed below.

Meanwhile, there were numerous other attempts and near-breakthroughs during Moores' premiership. In the late 1970s, Quebec Premier Rene Levesque made a special trip to St. John's to attempt to entice Moores into accepting a deal to start hydroelectric development on the Lower Churchill River. Levesque's proposal involved a trade-off; Quebec was willing to be generous, in terms of benefits, in exchange for Newfoundland and Labrador relinquishing any future rights to challenge the 1969 Churchill Falls Contract. Meetings appeared on the verge of success as the two Premiers were planning on making a joint announcement. There was, however, a rub. On this occasion Moores' Minister of Mines and Energy, Brian Peckford, was only informed of the Premier's plans just previous to the proposed announcement. Peckford emphatically rejected the idea of giving up in perpetuity any rights to seek redress of the infamous 1969 Contract. His emphatic objections were sufficient to thwart the proposed deal.[54]

On another occasion, Peckford was engaged in positive negotiations with his Quebec provincial counterpart Guy Joron. Peckford described Joron as being "extremely understanding of [Newfoundland's] situation". With the tacit permission of Premier Levesque, Joron had appeared willing to contemplate changes to the 1969 contract as long as it was part of a broader project to develop the Churchill River Basin. However, this idea of linking changes in the Upper Churchill contract to develop the sites on the Lower Churchill River brought strong opposition from Hydro-Quebec officials who thwarted the efforts of the Quebec Cabinet Minister.[55]

In 1978, there appeared to have been a substantial step taken towards the further hydroelectric development in Labrador when the Lower Churchill Development Corporation (LCDC) was established. It was owned 51 per cent by Newfoundland and Labrador Hydro and 49 per cent by Canada.[56] It's mandate was to develop the Gull Island and Muskrat Falls sites and supervise the construction of an accompanying transmission line. While Ottawa played a critical role in LCDC's creation, it still refused to deal directly with Newfoundland's core problem of access to the energy markets.

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1979-1982: Brian Peckford and the Unbridgeable Chasm

Replacing Frank Moores as Premier in 1979, the frustrations felt by Peckford during his time as Newfoundland's Minister of Mines and Energy intensified. A change in Premiers brought with it a change in the province's stance on negotiations with Quebec. Moores' approach was to demand package deals that linked further development of the Churchill River Basin to changes in the 1969 Churchill Falls contract.

In contrast, the Peckford approach was to treat the two issues of changes to the Upper Churchill Contract and development of the Lower Churchill River separately. Negotiations became predicated upon the initial resolution of two key issues: the price paid by Hydro-Quebec for Upper Churchill power and Newfoundland and Labrador's right to recall power from the Upper Churchill.[57] There would be no further hydroelectric development in Labrador until grievances concerning the Upper Churchill contract were settled.

Peckford's entrenched position was met with an equally obstinate Quebec position which refused to consider reopening the 1969 contract. The attitude of Quebec negotiators was that the 1969 contract was freely entered into and those who signed it were obligated to see the contract through to its completion. The concern expressed by Hydro-Quebec and Quebec leaders, such as Rene Levesque, was that opening an established contract to renegotiation would set a precarious precedent. It would not have sent a positive message to potential investors and the international business community for Hydro-Quebec to begin changing established contracts. As will be illustrated below, Quebec's attitude towards the sanctity of the contract found sympathy within the federal government. Federal officials, such as Energy Minister Marc Lalonde, also maintained that negotiation and linkage represented the only way forward in terms of further development of Labrador's hydroelectric potential.[58]

The irreconcilable positions came to a head in April 1980 when an exasperated Premier Peckford appealed directly to Prime Minister Trudeau to have the federal government:

> exercise its jurisdiction over the interprovincial transmission of hydro electricity... [and to] take steps to permit [Newfoundland and Labrador] to move electrical energy across Quebec in the same way, federal jurisdiction [had] been exercised to permit the free movement of oil and gas across provinces, including Quebec.[59]

However, Peckford's request did not lead to any immediate federal legislative action to ensure the province gained access to the North American energy markets.[60]

In the House of Commons, the Federal Minister responsible, Marc Lalonde, stated that the "most sensible, reasonable, intelligent, economical solution [was] the transmission of the Labrador power through the Hydro-Quebec network."[61] However, in pragmatic terms, such access would have to be negotiated as the federal government perceived a key infrastructural difference between oil and gas and electricity. Lalonde claimed that in the case of electricity there was no practical way to force extra capacity through Hydro-Quebec's infrastructure if the powerlines, or portions thereof, were at, or near, capacity. Similarly, the federal government could not 'reserve' capacity on existing or newly constructed lines.[62] In lieu of utilising

existing infrastructures, the federal government maintained that the only practical solution to Newfoundland's theoretical argument was to construct a separate 'dedicated line' to move its power through Quebec territory.[63]

In 1982, two years after Peckford's request, the federal government passed Bill C-108: amending the National Energy Board Act (no.3), which theoretically granted Newfoundland and Labrador the access it had been requesting. The legislation expanded powers of the National Energy Board (NEB) in order to potentially expropriate land for a separate power corridor.[64] Both Newfoundland's Minister responsible, William Marshall, and the federal Minister responsible, Marc Lalonde, realised that economic feasibility prevented the legislation from having any practical application for the province. Newfoundland and Labrador would be left to largely finance any initiative and would have to contend with environmental and other road blocks which the Quebec government could have erected to forestall construction of the dedicated line. Marshall said the legislation represented "a cynical act on the part of the Government of Canada."[65]

Frustrations within the Peckford administration continued to mount as action had still not been taken on the LCDC's July 1980 recommendation to begin on the Lower Churchill River sites, complete with a hydroelectric powerline to the island portion of the province.[66] While technically possible, economic feasibility considerations continued to demand wheeling rights through Quebec territory.[67] Costs associated with building a separate dedicated line would have made the project uneconomic to complete.

The federal government, for all its assistance, had not provided a means by which power from Churchill Falls would pass unfettered through Quebec territory. Failed negotiations with Quebec and insufficient actions on the part of the federal government meant that the LCDC faced critical "legal, legislative and/or political solutions" that were beyond its mandate. As a result, in 1982 the LCDC decided to curtail operations "until a more favourable climate for development [was] established."[68] The federal government had provided substantial financial and technical assistance but it did not provide practical political and/or legislative assistance to ensure Newfoundland and Labrador gained access to the North American energy markets.

The curtailing of LCDC operations in the early 1980s was especially unfortunate for Newfoundland and Labrador as negotiators were close to signing major contracts with the Power Authority of the State of New York (PASNY) and the State of New Hampshire. Hydro-Quebec attempted to dissuade PASNY officials from dealing with Newfoundland and Labrador's representatives as Quebec claimed the ability to be able to provide all of PASNY's energy requirements. Despite Hydro-Quebec's efforts, PASNY signed a letter of understanding with the province stating it would be interested in buying power from Labrador that was excess to Canadian needs.[69] Deals with PASNY and New Hampshire were, however, contingent upon getting Labrador power to the marketplace and, once again, the only economically feasible way to get the energy to market was through Quebec territory.

Premier Peckford once again wrote to Trudeau and stated that the PASNY letter had transformed "the transmission issue from what you [Trudeau] viewed as `hypothetical' to one of immediate practical importance to [Newfoundland and Labrador] and to our country." Trudeau's response was that the request raised many complex issues but the federal government was ready to act if Quebec was blocking Newfoundland's access to markets.[70] No immediate federal legislative action materialised and, as a result, the proposals from the New England markets became academic.

In 1982, the federal government continued to offer to play the role of mediator in negotiations between Quebec and Newfoundland and Labrador. Minister Lalonde continued to insist that the only practical solution to the perpetual impasse was negotiation; the other option would have entailed "more years of endless and possibly fruitless litigation between the two provinces." Lalonde further claimed that Levesque was willing to negotiate and compromise to some extent on the Upper Churchill, but not to directly reopen the contract. The idea, as previously mentioned, was to either develop side deals to augment returns to Newfoundland and Labrador or to propose a generous deal for the province on subsequent hydroelectric developments in Labrador to help compensate. Lalonde said that the juggernaut during the negotiations was Peckford's obstinate commitment to the settlement of old grievances related to the Upper Churchill before any discussion could ensue on new developments.[71]

Federal offers of mediation were soundly rejected by the Peckford administration. Minister Marshall called into question Ottawa's ability to be an impartial mediator and argued that the Trudeau administration had "done enough harm to [Newfoundland and Labrador] without [the government] voluntarily submitting to further punishment. If [Lalonde wanted] to help, give [Newfoundlanders and Labradorians] the same rights as all Canadians and stop attempting to force [the province] to negotiate with Quebec." He further added that, "if parties [could] not negotiate on equal footing, inequities [were] bound to result."[72]

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1982-1988: The Water Rights Revision Act and A New Hope

By 1982 the lack of progress in negotiations described above caused the Peckford administration to try another judicial tactic. This came in the form of the Water Rights Revision Act which attempted to reclaim water rights granted in CFL Co.'s 1961 Water Lease. The Newfoundland and Labrador government considered the lease to be "the cornerstone of [the] development. Without it nothing could have been done."[73] Peckford denied the act was intended to harm Quebec interest, to recapture 5,200 MW of power or to reclaim $600 million in lost revenues. Instead it was presented as an action taken by a province without any apparent alternatives left open to it through either negotiations or direct federal action. Peckford further pledged that the legislation would not come into force until the Supreme Court of Canada ruled on its validity.[74] The crucial question to be answered by the courts was whether the legislation was within the constitutional powers of the province to enact; if so, it would be considered permissible and *intra vires*. Alternatively, if the courts claimed it was beyond the power of the province to enact, and thus considered *ultra vires*, it would become null and void.

The Newfoundland and Labrador Court of Appeal decided that the legislation was *intra vires* of the Province of Newfoundland and Labrador.[75] There remained a substantial hurdle to overcome and that was the Supreme Court of Canada which would ultimately determine the constitutional validity of the proposed legislation. The province was supported in the Canadian Supreme Court case by the Attorney Generals of Manitoba, Saskatchewan and British Columbia who intervened to present arguments in favour of Newfoundland and Labrador.[76]

Newfoundland and Labrador suffered a major setback in September 1982, when the federal government decided to intervene in the case on the side of Quebec. Ottawa's stance was that the legislation had extraterritorial overtones which encroached upon "exclusive federal powers, in particular their powers to legislate trade and commerce and interprovincial works and undertakings."[77] Federal interference at a critical juncture outraged Newfoundland's politicians as they feared that such action was likely to sway the Supreme Court to rule in Quebec's favour.[78] It would take until May 1984 for the Canadian Supreme Court to finish it deliberations.

In the same year, 1982, the Canadian Constitution was repatriated from Great Britain. It contained an amendment meant to appease concerns from Western Canada concerning control over the energy industry revenues that could be directed to economic development. When this amendment, Section 92A, was being negotiated, a team of lawyers from Newfoundland and Labrador successfully agitated for the inclusion of electric energy in its provisions. As a result, Section 92A (1) granted the provinces the right to make laws related to "development, conservation and management of sites and facilities in the province for the generation and production of electrical energy." It further granted provinces the right to pass laws related to raising money by any mode, including taxation, from facilities and sites within a province for the generation of electricity.[79]

Political scientist William Moull has argued that while the amendment was Western Canadian in origin, Newfoundland and Labrador may have found "powers conferred by Section 92A... helpful in its continuing dispute with Quebec over the export... of Churchill Falls

power."[80] However, based upon documentary research and interviews with various individuals, it does not appear that there has been exhaustive measures taken by successive Newfoundland and Labrador governments to capitalise upon the powers granted by Section 92A.[81] As will be discussed below, Premier Clyde Wells through the Electrical Power Control Act attempted to lay the groundwork by which the province could have used the new provisions, but no firm actions have been taken.

The judicial action associated with the Water Rights Revision Act garnered the attention of Quebec politicians and Hydro-Quebec officials. Concern on the part of Quebec led in February 1984 to an extraordinary Letter of Intent being signed by Vic Young, Chairman of Newfoundland and Labrador Hydro (NL Hydro) and Jean Bernier, Secrétaire Général Hydro-Quebec. For the first and only time, Hydro-Quebec made a formal signed declaration stating, in the preamble "the necessity of a fair and equitable return to Newfoundland as the owner of the Churchill Falls resource." This concession was elaborated upon in Section 2.1 which stated:

> Bearing in mind the need to reach a compromise approach to a more equitable return to Newfoundland as the owner of the hydraulic resources of the Upper Churchill, the parties agree to devise a formula whereby Newfoundland would receive a fair and equitable return for the electricity produced. Taking into account the need to adapt to terms of existing arrangements to the new reality which has arisen since the original arrangements were entered into.[82]

Section 2.2 stated that Hydro-Quebec would agree to "additional recapture by Newfoundland... at energy prices no less favourable than those paid by Hydro-Quebec." There was also an agreement to review the renewal clause of the 1969 contract - the 25 year extension, and to ensure the financial viability of CFL Co.[83]

In return, Hydro-Quebec wanted recognition of the crucial role it played in terms of assumed risk relating to the Upper Churchill project. It also sought an end to all judicial and obstructionist actions taken by Newfoundland and Labrador in federal court and at National Energy Board hearings relating to the export of energy by Hydro-Quebec. As well, the Quebec negotiators wanted the Water Rights Reversion Act revoked. Once the issues noted above were settled, the parties agreed to negotiate further development of hydroelectric resources on the Lower Churchill River and the rivers flowing to Quebec's Lower North Shore. It was hoped that an agreement would have been concluded by 30 March, 1984. Due to its sensitive nature and major concessions, there was a secrecy clause which prevented the agreement from being made public.[84]

Those efforts were followed in May 1984 with a telex from Rene Levesque to Peckford stating that Quebec was willing to consider significant changes to the Upper Churchill contract. Newfoundland's Minister Marshall wrote to his Quebec counterpart, Yves Duhaime, seeking clarification of what Levesque's telex meant in concrete terms.[85]

Quebec's offer was worth approximately one billion dollars to Newfoundland and Labrador. Duhaime described the deal as reasonable, substantial and one which merited considerable attention. The benefits to Newfoundland and Labrador included: an increase in revenues from the Upper Churchill project from $50 million to approximately $100 million, giving the province an additional 500MW of power over the 300 MW it was already entitled to, and guaranteeing the long-term economic viability of CFL Co. through an approximate

$130 million investment from Hydro-Quebec. In exchange Hydro-Quebec wanted the rights to purchase power from sites to be developed on the Lower Churchill River.[86]

In less than 72 hours the Newfoundland and Labrador government dismissed the offer as nothing more than a token gesture. Duhaime said that the quick rejection of Quebec's offer was at the same time both regrettable and upsetting.[87] Newfoundland and Labrador officials broke down Quebec's aggregated figures and argued that Quebec's offer consisted of an additional $2.5 million per year from the lease and access to 380 to 500 MW of power. The Newfoundland and Labrador government was prepared to accept a 50:50 split. In contrast to the $2.5 million per year, the Newfoundland and Labrador government sought upwards of $400 million in annual revenues. Similarly, the additional power was insufficient to construct a transmission line to the island, and the government thought the province was entitled to approximately 2,400 MW of energy. The Quebec proposal also lacked any mention of a 25 year reduction in the original contract.[88] With Newfoundland's rejection of Quebec's apparent final offer, further hydro development in Labrador remained stalled and both sides eagerly awaited the Supreme Court decision.

After several delays, the Supreme Court of Canada rendered its decision on 3 May, 1984. The Court allowed extraneous evidence, such as governmental publications and speeches by public figures, to disagree with the Newfoundland and Labrador Court of Appeal and its supporters. The federal court ruled that the "pith and substance" of the Act was *ultra vires* and that the proposed statute was "colourable legislation aimed at the 1969 Power Contract."[89]

Constitutional expert Peter Hogg explains that the issue of "colourability" was used by the courts to refer to governmental legislation which on the surface was clearly within the jurisdictional realm of a government to enact. Such legislation when brought into effect, however, was designed to accomplish goals that were external to the legislation itself and outside the actual ability of a government to legislate. The Water Rights Reversion Act was clearly within the constitutional powers of the province to enact. Nonetheless, the federal court deduced that the statute was, in reality, meant to prevent the sale of CFL Co. electricity to Hydro-Quebec at below-market-prices. As the 1969 power contract was adjudicated in the courts of Quebec, it was beyond the ability of Newfoundland and Labrador to effect through 'legitimate' legislative means.[90]

The Canadian Supreme Court decision reflected the position taken by Hydro-Quebec and the federal government that the Act constituted interference with the existing contract between two provinces.[91] Newfoundland and Labrador, in attempting to find judicial redress, suffered another serious loss and the idea of colourable legislation would have further consequences during Clyde Wells' Premiership.

However in 1984, there emerged a new reason for optimism with Brian Mulroney and a reinvigorated Progressive Conservative Party. The latter years of the Trudeau administration were characterised by severe intergovernmental disputes and antagonistic federal-provincial relations. When Mulroney was elected Prime Minister, there was a hope in Newfoundland and Labrador that he could facilitate a solution to the longstanding dispute over the Upper Churchill Falls contract which could lead to the development of other hydroelectric sites in Labrador.

Expectations were created, in part, due to Mulroney's pre-Prime Ministerial rhetoric. Published in 1983, Mulroney's personal and political manifesto, *Where I Stand*, stated that the 1969 contract could not "remain unchanged for its duration." He went on to claim that while the duly signed contract was legitimate in a "strictly legal" sense, it was not morally

supportable in terms of convention and it showed an obvious "inequality and absence of fair play." The above statements were followed by a line which must have heartened a beleaguered Peckford administration and its supporters. Mulroney emphatically stated, "Simple decency and the most elementary spirit of justice demand its immediate renegotiation."[92] Similarly in December 1984, newspapers reported that Mulroney was eager to resolve the Churchill Falls issue and that he "promised to tell the Quebec government that the 65 year fixed price deal 'no longer corresponded to justice'." It was further reported that he wanted to convene a meeting between the two provinces in January of 1985.[93]

Once in office, Mulroney's pre-election sentiments about simple decency on this topic were not evident. His administration failed to take any measures to ensure Newfoundland and Labrador gained unrestricted access to the North American energy markets through Quebec territory. Mulroney Cabinet Minister John Crosbie has stated that there was no practical action which the Prime Minister could have taken. He said the history of the Conservative Party in Canada demonstrated the critical importance of a federal party protecting its electoral base in Quebec in order to retain majority governments. Newfoundland and Labrador's requests for action had perpetually asked the federal government to take action which could have aggravated voters in Quebec, especially the nationalists. According to Crosbie, a national government could not retain a majority national government if it alienated a large bloc of critical voters in Quebec to appease a smaller group of voters in Newfoundland and Labrador.[94]

By 1988, negotiations continued to be stalled and with no foreseeable hopes of progress the Peckford administration launched one final judicial action. The Canadian Supreme Court was asked to make a ruling on an appeal concerning the 1982 decision of the Newfoundland and Labrador Court regarding the recall of 800 MW of power from the Upper Churchill. The Supreme Court of Canada agreed that it would not be economic or feasible for CFL Co. to comply with the request and the decision was upheld. Peckford conceded that it was the last significant legal challenge that the province could have attempted.[95]

While Quebec remained ready to negotiate, Peckford continued to stress the need for federal intervention. In contrast, federal Minister of Energy, Marcel Masse, continued to echo the mantra that the Churchill Falls issue was an interprovincial dispute and the federal government did not plan to get involved. Despite Masse's opinions, Peckford continued with the perpetual refrain that there was "a responsibility legally and constitutionally upon the Government of Canada to allow for hydro power to flow in the same way as they [allowed] for oil and gas to flow from Alberta to Quebec."[96] All the while, the vast potential of the undeveloped sites in the Churchill River Basin, and elsewhere in Labrador, continued to flow unharnessed to the sea.

It appears that as the 1980s progressed, the Peckford government developed a sense of fatigue surrounding the politics of development of the Churchill River Basin. In its 1980 special report *Managing All Our Resources*, the Peckford administration commented that while undeveloped hydroelectric resources in Labrador were a key resource, it continued "to present some of the most difficult challenges to Government from constitutional, intergovernmental, financial and planning perspectives."[97] As the eighties progressed, the shift in focus continued.

The provincial and federal governments became increasingly focussed upon the emerging oil and gas sector as the key to the future prosperity of the province. This new focus was also evident in the terms of reference for the 1985 *Royal Commission on Employment and Unemployment*, chaired by Dr. Doug House. The terms lacked any mention of hydroelectric

potential in Labrador. Meanwhile in Ottawa, oil and gas came to be considered part of bigger issues than the decades-long dispute with Quebec over Churchill Falls.[98]

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1989-1994: The Liberals Back in Power and New Possibilities

The 16-year Conservative reign in Newfoundland and Labrador ended in 1989 with the election of Liberal Premier Clyde Wells. While there was a change in regime, the Wells' administration did not have any more success than previous administrations in terms of securing a deal to develop any of the remaining hydroelectric sites in Labrador.

There was a substantial opportunity for progress early in Wells' mandate. Hydro-Quebec had been experiencing substantial difficulties as a series of power outages between 1987 and 1989 harmed the utility's reputation and it was asked by the Quebec government in March 1990 to prepare a five-year improvement plan.[99] The difficulties were a part of the motivation behind Hydro-Quebec in November 1989 taking the rare move of initiating negotiations related to the Churchill River Basin. After a series of over 30 meetings, a draft agreement was created in November 1991 and presented to cabinet on 12 December, 1991.

Newfoundland and Labrador was offered access to, and eventual ownership of, a substantial block of power. In addition the deal would have created approximately 24,000 jobs and would have been worth approximately $14 billion in revenues and assets.[100] In return, Hydro-Quebec would have had access to a significant amount of power which it could use while it planned its own future supplies. A critical issue, as well, was that it would have received protection from any action taken by Newfoundland and Labrador in relation to the final 25 years of the 1969 contract.[101]

While the deal would have provided a major economic boost to both provinces, there remained outstanding issues that needed to be resolved. For Quebec, it would have created the perception that the negotiators had acquiesced to Newfoundland and Labrador's long-standing demands to reopen the Upper Churchill contract. Meanwhile for Newfoundland and Labrador, the Wells' administration would have had to contend with the perception that Hydro-Quebec had been granted additional protection for the final 25 years of the 1969 contract.[102] It was this final point which the Newfoundland and Labrador negotiating team considered the major outstanding issue that needed to be addressed. Rather than accepting the offer, the negotiating team suggested making a counter proposal to Hydro-Quebec mentioning the outstanding issues.[103]

There is much controversy concerning why the negotiations did not end with a formal agreement on further hydroelectric development in Labrador. In 1994, the opposition Conservatives accused the Wells' government of having "walked away" from the $14 billion -24,000 job proposal. Such accusations were denied by the Minister responsible, Rex Gibbons, who said that the two sides were "very close to a deal" and Newfoundland and Labrador did reply to Quebec's offer in December, 1991. Newfoundland and Labrador, in line with the recommended response from the Newfoundland Labrador Hydro negotiating team, wanted "clarification of a few significant points".[104]

By 1992, the Hydro-Quebec problems mentioned above between 1987-1989 had faded into the background and the sense of urgency subsided.[105] The Wells' government did not get a response back until March 1992 when Quebec officials said that due to changed

economic circumstances they wished to "lay it aside" until a later date; a date which never materialised.[106]

There was another development in 1992, which would subsequently have a profound effect on Hydro-Quebec and the North American energy markets. That year, deregulation gripped the American electric industry as the Federal Energy Regulatory Commission (FERC) enacted the Energy Policy Act, "FERC Order 888." The new legislation stipulated that in order to sell into the American marketplace, companies – especially monopolistic entities like Hydro-Quebec – would have to engage in "fair market practices" to get a licensee to sell their energy. In order to sell into the American market, utilities had to provide reciprocal rights and allow their infrastructures to be used by competitors.[107] While designed specifically for utilities within the United States, the extraterritorial implications meant that Hydro-Quebec could no longer block Newfoundland and Labrador's access to the larger energy markets.[108]

However, the Wells' administration did not capitalise on the new opportunities presented by the deregulating markets. Instead, the Premier devised different means of attempting to deal with Labrador power issues. His approach was two-pronged: privatising Newfoundland and Labrador Hydro and enacting the Electrical Power Control Act (EPCA). With a private company in control of hydroelectric operations, the government would have appeared to have been regulating an industry rather than being directly involved in interfering with established contracts. The government would have been the regulator, not the owner/operator. Wells' plans, however, were dependant upon secrecy and he asked his caucus members to refrain from talking publicly about the proposals. He knew that, as discussed above, the earlier attempt by the Peckford administration to pass the Water Rights Revision Act ultimately failed due to statements made external to the actual government legislation.[109]

Wells' plans were thwarted by a determined opposition to the idea of privatisation from the general public.[110] But in 1994, he was successful in implementing the EPCA which theoretically enabled the government to use increased regulating control and access provisions granted in the above-mentioned 1982 constitutional amendment Section 92A. Part II of the EPCA granted the Public Utilities Board (PUB) broad powers to allocate and to re-allocate all power produced within the province, whether produced by a public or private company. It further stipulated that the PUB had the ability to require an electrical producer to make its production infrastructures available on terms dictated by the PUB, including rates, duration and amounts of energy. Furthermore, EPCA Section 10 relieved a supplier from any liability for failure to supply power in previous contracts due to compliance with a PUB order.[111] However, the full implications of EPCA have not been fully explored nor utilised as a tool in dealing with issues related to hydroelectric development in Labrador.[112] As well, the EPCA did not lead to any further progress on hydroelectric development in Labrador.

While Labrador power now had unimpeded access to international markets, domestic access to the Canadian market remains impeded. Since the mid-1990s, a potential solution to the aberrant domestic situation has presented itself in the form of the Agreement on Internal Trade (AIT). The voluntary, non-legally binding agreement was enacted on 1 July, 1995 with the intent to reduce or eliminate interprovincial trade barriers.[113] Of specific interest to this report is the yet-to-be negotiated Chapter 12, dealing with the energy sector. Electrical energy transmission through adjacent provinces is at the centre of the missing Energy Chapter. Other energy sectors, such as oil and gas, operated "close to internal free trade" conditions and it was

hoped by negotiators that electric energy would have been treated the same through wheeling rights provisions.[114]

In the early stages, negotiators from Newfoundland and Labrador insisted upon full wheeling rights for electrical energy for interprovincial transmission. This notion was opposed by provinces such as Quebec and Ontario which thought the transmission of electricity across provinces was best left to the provincial utilities. However, the extraterritorial implications of the deregulated American energy markets are driving changes in Canada's domestic energy markets, As a result, Quebec is in favour of Chapter 12 as it will improve Hydro-Quebec's reputation within the American energy market.[115] Currently, final agreement on the Energy Chapter is being upheld – not by a preventative Quebec – but by Newfoundland and Labrador itself, along with Nova Scotia.[116]

Negotiators from the dissenting provinces perceive that the Energy Chapter places the local preference aspects of the Atlantic Accord(s) in jeopardy. The Accord(s), took years to negotiate between the provinces and the federal government and were designed to establish the ground rules for oil and natural gas development and revenue sharing in Atlantic Canada. Nova Scotia and Newfoundland and Labrador view the local preference provisions of the Accord(s) to be integral to the future economic development of the region. The provinces are not willing to sacrifice local preference sections for access to energy markets.[117] However, in terms of the marketing of Labrador's hydroelectric energy, it does exist as another possible way forward.

Political scientists Bruce Doern and Mark MacDonald have remarked that based on current trends, it appears that "internal free trade for electricity in Canada would become a made-in-the-U.S.A policy."[118] It is therefore important to examine the evolving regulatory market changes in the United States to get an indication of how the Canadian marketplace is likely to evolve. It would be a mistake to view FERC Order 888 as the final word on regulatory reform in the American energy markets. Order 888 was described in the FERC's 1998 *Annual Report* as being "merely the beginning of electric utility restructuring."[119]

Despite numerous changes in North American energy markets and innovative approaches to regulating the electricity industry within the province, Premier Wells' administration did not achieve any success in furthering hydroelectric development in Labrador.

The stagnant situation remained until Wells stepped down and was replaced by a former Member of Parliament, Brian Tobin.

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1996-1998: Brian Tobin and the Deregulating Energy Markets

In 1996, Tobin emerged on the provincial scene with a new attitude and approach to the development of the hydroelectric potential in Labrador. He used a nation-wide public relations campaign to try and bring pressure to bear on Hydro-Quebec to discuss changes in the 1969 Contract. This campaign led to media reports that Tobin threatened to "pull the plug" on Churchill Falls and deny Hydro-Quebec a key source for electricity exports.[120] A crucial part of the campaign was his releasing of the above-mentioned February 1984 "Statement of Intent" signed by Vic Young and Jean Bernier.[121] Tobin had opportune timing in launching the campaign as changes in the deregulated American energy markets had made Hydro-Quebec increasingly conscious of its reputation.

In March 1998, the fundamental changes in the international energy markets, discussed above, led to side-agreements between Newfoundland and Labrador and Quebec concerning the Upper Churchill and proposals to further develop hydroelectric sites in Labrador.[122] Hydro-Quebec agreed to a number of side-deals to augment revenues to the province from the Upper Churchill. Hydro-Quebec agreed to spend $23 million per year to buy an additional 130 MW of power from the province for resale in the North American markets. As well, it agreed to a winter availability contract, to run from November 1998 until the conclusion of the 1969 contract in 2041, to pay $34 million per year for guaranteed peak power supplies during the winter months. The deals have ensured CFL Co.'s financial stability into the future.[123]

The agreements, however, were not dependent upon the successful conclusion of separate proposals to develop other hydroelectric sites in Labrador. Separately, plans were made to develop the Lower Churchill River Basin and for partially diverting the Saint- Jean and Romaine Rivers in order to construct an additional 1,000 MW generation station at Churchill Falls. The deal would have provided a floor price for electricity but no ceiling and would have paid Hydro-Quebec a 2.8% commission for the marketing of Newfoundland and Labrador's hydroelectric energy in the North American markets.[124] The last provision would have left the province in the unusual situation of having a neighbouring province market its resources on its behalf. As will be discussed in the conclusion, such an arrangement would have failed to safeguard the best interests of the province.

There were also plans to build a 2,200 MW generating station at Gull Island and to conduct a $20 million feasibility study of developing the Muskrat Falls site on the Lower Churchill River. The proposal would have entailed investments of approximately $12 billion, provided 6,200 jobs by the height of construction in 2004 and provided a direct line to the island portion of the province. In the end, plans for the subsequent development of the Churchill River Basin were abandoned when the two sides could not agree on marketing and pricing arrangements.[125] However, the negotiations did not lead to any final agreement on subsequent hydroelectric development in Labrador.

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1999-2002: The Continuing Evolution of the Energy Markets

In December 1999, the FERC passed Order 2000 which introduced the stipulation that "all transmission users should receive access under rates, terms and conditions comparable to those the transmitting utility applies to itself to serve its own customers."[126] The measure is meant to ensure that energy remains at a competitive price in the final marketplace despite having to be transmitted through one or more jurisdictions.[127]

Once again, FERC measures govern the transmission and sale of electricity within the United States, but this strongly affects Canadian utilities attempting to sell into American markets. FERC Commissioner, the Honourable William L. Massey stated at an energy conference in Halifax in June, 1999 that "Canadian and Mexican involvement in [regional transmission organizations] formation is welcome and critically necessary. A vibrant North American bulk power market requires that regional institutions include all market participants."[128]

Further evidence of Canadian implications from American actions is evident in a Northeast Power Coordinating Council (NPCC) initiative to establish a common North American market for electrical energy trade through the creation of a Northeastern Regional Transmission Organization (NERTO). While aware of national sovereignty issues, the proposed NERTO has as its ultimate goal: "to create a seamless... trading area by harmonizing NERTO and Canadian markets." Furthermore, by November 2002, agreements had successfully been concluded between the NPCC and Ontario and New Brunswick with deals with Nova Scotia and Quebec expected in the near future.[129]

FERC Commissioner Linda K. Breathitt highlighted the importance of direct participation during an address to the Canadian Electricity Association in March 2001. She stated that, "expansion of the electricity trade in the North American bulk power market will require that regional institutions... include all market participants so that everyone will enjoy direct access to market information and the benefits of regional coordination."[130] A lesson to be learned here is that if the Province of Newfoundland and Labrador desires to sell in this marketplace, and thereby capitalise upon an emerging lucrative market, it has to be an active participant in negotiations and in the shaping of NERTO. This can only be accomplished through direct participation and representation.

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Past and Present: Summary and Lessons to be Learned

The penultimate section of this report will draw together, based upon the evidence presented above, three key lessons that emerge from Newfoundland and Labrador's attempts to develop the hydroelectric resources of the Churchill River Basin since Confederation with Canada in 1949.

The first lesson which emerges from the above discussion is that Hydro-Quebec has in the past maintained a privileged position within the province of Quebec, and has successfully been able to use its close connections with the Quebec government to have its interests protected at the national level.[131] Similarly, shrewd tactics with regards to gaining NEB export licenses, in conjunction with an exceptional reputation and position within American energy markets have, until recently, prevented Newfoundland and Labrador from fully capitalising on the opportunities available in the lucrative energy markets in the United States.[132] Quebec's influence has limited federal action to the realms of financial and technical assistance while Ottawa has failed to implement practical legislation to ensure Newfoundland and Labrador gained full access to the North American energy markets. The federal government has not, nor is it likely to, use its constitutional powers in such a way that would jeopardise Quebec's most powerful and influential corporation, Hydro-Quebec.[133] In pragmatic electoral terms, a federal government cannot afford to alienate a majority of Quebec voters and expect to establish, or maintain, a majority government.[134]

The above conclusion does not mean that Hydro-Quebec is oblivious to the demands and arguments from Newfoundland and Labrador.

A second key lesson to be learned is that, when it directly suited its immediate needs, Hydro-Quebec has proven sensitive to Newfoundland and Labrador's demands for redress of the 1969 Churchill Falls contract. This was evident in Rene Levesque's proposal to Frank Moores in which he wanted Newfoundland and Labrador to "sign-off" on the Upper Churchill. As mentioned above, the proposal was thwarted by Brian Peckford's opposition to the idea. Also, it was evident again while the Water Rights Revision Act was in the courts when Vic Young and Jean Bernier signed a "Statement of Intent" that included major concessions to the province by Hydro-Quebec. Once the Supreme Court of Canada rendered its decision against Newfoundland and Labrador, negotiations slipped into abeyance.

As previously discussed, the $14 billion offer to the Wells' government came at a time when the Quebec utility was experiencing some difficulties. More recently, a responsive Hydro-Quebec was evident in the midst of Premier Tobin's cross-country public relations campaign that appeared to be gaining strength. It was also a time when the utility was eager to prove its commitment to open market philosophy to ensure their advantageous position within the lucrative American energy markets. Subsequent negotiations led to side agreements that augmented revenues from Churchill Falls.

In each of the above situations Hydro-Quebec, when necessary to either further corporate goals or to deflect negative public and business attention, has shown a willingness to discuss Newfoundland and Labrador's grievances related to Churchill Falls. Hydro-Quebec cannot be faulted for keeping the interest of their company and province paramount in any dealings with

Newfoundland and Labrador. The utility is a vastly successful corporation with an exceptional international reputation in the hydroelectric field. Specialised engineering, technical and financial knowledge and wherewithal has enabled the company to achieve its success. It was also these factors which enabled the development of the Churchill Falls project in the 1960s. Hydro-Quebec's negotiators have consistently realised the tremendous negotiating advantage which geography had provided them and they used that advantage to the utmost. One would assume that were the situations reversed, Newfoundland and Labrador negotiators would have been similarly strong in their bargaining tactics.

A third critical lesson to be learned is that there has been a substratum shift in the North American energy markets. The current FERC program to rid the electrical markets of fettered access has helped level the negotiating table between Newfoundland and Labrador and Quebec. While this only applies to sales into a foreign market, it is a substantial improvement for the bargaining position of the province vis-a-vis Quebec. However, in order to ensure that the province fully capitalises upon the new opportunities presented by the granting of those rights, it is essential that Newfoundland and Labrador have its own representatives in the American energy markets through organisations such as the Northeast Power Coordination Council (NPCC).[135]

The NPCC's Treasurer & Director of Strategic Planning, Jennifer Budd, could not recollect any attempts by Newfoundland and Labrador to establish representatives in their crucial organisation. Ms. Budd added that the "NPCC is an open and inclusive organization and welcomes new members."[136] Former Premier Brian Peckford has stated that his administration had once considered establishing representatives, but it was a moot point without first having wheeling rights to get the electricity to market.[137] Since the mid-1990s, however, the situation has fundamentally changed. It is now critical for the province to establish direct representatives in the American markets through membership in the NPCC. As previously mentioned, Hydro-Quebec officials have been stalwart defenders of Quebec interests and therefore paying a commission to them to sell Labrador power ensures that the ultimate interests of Newfoundland and Labrador will be, at best, incidently represented.

To summarise, from 1949 until recent times Newfoundland and Labrador has faced restricted access to the North American energy markets due to the obstinate objections of Quebec to having electric energy moved through its territory without dictating the terms of sale. That was the key problem faced by Premier Joseph Smallwood and BRINCO during their 17 year struggle, from 1952-1969, to secure a deal to develop the Churchill Falls site. BRINCO needed a power corridor. Federal constitutional action was needed to force Quebec to grant access to the larger markets through its territory. When this did not happen the remaining options were limited. Smallwood's subsequent rejection of Rene Levesque's offer to jointly develop the project by removing BRINCO from the picture, led to a crisis in 1969 which enabled Hydro-Quebec to secure the onerous terms of the 1969 Churchill Falls contract. The options which remained were to allow development to proceed according to Quebec terms or to leave the Falls undeveloped and, most likely, have let BRINCO fail. Smallwood, and the entire House of Assembly, chose the former option.

The initial 1969 contract in and of itself remains a serious problem for the province, but there are signs that it may be possible to, at a minimum, receive a substantially better rate of return on the project than the province has traditionally received. In addition, longstanding

problems associated with having to send power through Quebec territory seem to be in the process of being resolved, albeit due to American extraterritoriality.

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Questions Political Will and the Federal Government

Since the 1960s, Newfoundland and Labrador has been unable to convince the federal government to enact practical legislation to ensure the province could move its hydroelectric resources to the lucrative Canadian and American markets. The federal government has aided development in Labrador by enacting such measures as the 1966 change in the Utilities Act which allowed energy to be sold to Hydro-Quebec at a cheaper mill rate. As well, the federal government was instrumental in creating the Lower Churchill Development Corporation. Other federal actions, such as passing Bill C-108 granting the NEB expropriation rights to build a dedicated electricity line through Quebec, while useful in theory, had no practical application for the province. BRINCO had needed a power corridor in the 1960s as no power lines from Churchill Falls yet existed. Advances in technology and the upgrading of power lines in the subsequent decades have made a separate dedicated corridor no longer an economically feasible option. What is now required are wheeling rights, either through spare capacity within existing lines, or by running parallel lines on existing power-line infrastructures.[138]

The technical and economic possibilities of hydroelectric development in Labrador have never been a critically contentious issue. For example, in recent years the potential development of the Lower Churchill has become viewed as an important mechanism which Canada could use to help meet commitments it made at the Kyoto Environmental Conference in 1997. Government sources claimed that development of the Lower Churchill project would "provide clean, stable power and account for up to 15 per cent of Canada's Kyoto commitment to reduce greenhouse gas." A joint press release by Newfoundland and Labrador Hydro/ Hydro-Quebec emphatically, and prematurely, stated:

> In agreeing with the Kyoto protocol, Canada accepted the target of reducing its emissions to an average of 6 per cent below 1990 levels by the 2008-2012 time frame. The contemplated projects will significantly reduce greenhouse gas emissions and will make a substantial contribution towards meeting this target.[139]

However, economic feasibility and environmental desirability, no matter how strong, are not guarantees of development. In the subsequent decades since 1969, successive federal governments have continued to exhibit a non-interventionist attitude and, as one of the consequences, the Lower Churchill was not developed. A key difference related to hydroelectricity in Labrador is the attitude of Newfoundland and Labrador governments since Premier Smallwood: they now insist that no development is better than a bad development.

Subsequent electrical development of the Churchill River Basin has been prevented by numerous failures of political will. From the time negotiations first began with Quebec, successive federal governments refused to intervene under the guise that it was not the federal government's role to involve itself in interprovincial disputes. Given Newfoundland and Labrador's geographic position in relation to an uncooperative Quebec, federal non-involvement was tantamount to capitulation to Quebec's interest. If pragmatic political considerations and

Canadian unity issues largely dictated federal actions and omissions, then Newfoundland and Labrador has paid an inordinate price for the maintenance of national unity.

Meanwhile, successive Newfoundland and Labrador governments have not had the political will to accept the various offers of redress from Hydro-Quebec in relation to the 1969 Churchill Falls contract. It has lacked the political will to agree to subsequent hydroelectric developments in Labrador. Consequently, Newfoundland and Labrador has not been able to achieve fair and equitable benefits from Churchill Falls nor has it been able to reap the benefits which further hydroelectric development in Labrador would entail. The result has been decades of frustrations and ill-will being expressed towards the neighboring province, Quebec.

Recommendations

Changes that originated in the 1990s American energy markets have fundamentally altered the politics of energy in both the United States and Canada. The question which now remains is if the provincial government has the political will and competence to maximize the emerging opportunities which have overcome traditional problems with Quebec's "revenge of geography." To that end, the Royal Commission should consider making four key suggestions to the provincial government.

Firstly, it is critical for Newfoundland and Labrador to establish direct representatives in the American energy markets by joining the Northeastern Power Coordinating Council. Deals are already either in place or nearly negotiated with other eastern Canadian provinces who are also active in the energy sector. It is of further importance given the fact that regulatory changes in the American energy markets are having a profound trickle-up effect within Canadian energy policy development.

Secondly, the Royal Commission might wish to suggest that the government conduct a comprehensive analysis of all past, present, and likely future, constitutional and political avenues available to produce a negotiating situation conducive to finding redress for the 1969 Churchill Falls Contract and for the further development of Labrador's hydroelectric resources.

For example, the full potential implications of the 1982 constitutional amendment Section 92A, and the 1994 EPCA, may not have been fully exploited by the province. Such a report would also have to be cognisant of existing tools and organisations, such as Bill C-108, and the Lower Churchill Development Corporation to see if they could be better utilised than in the past and assess their continued relevance.

Thirdly, as evidenced by Hydro-Quebec's willingness in 1998 to sign side-deals to increase revenues for Newfoundland and Labrador from Churchill Falls, the province needs to recognise the renewed strength of its bargaining position and devise negotiation strategies designed to fully capitalise upon the new North American energy realities. To do this the provincial government and Newfoundland and Labrador Hydro ought to conduct a comprehensive review of the specific implications of changes in North American energy markets and the implications for further hydroelectric development in Labrador. This would be supplemental to the March 2002 report *Electricity Policy Review*.[140] It would have to include a thorough assessment of the province's position on the missing Energy Chapter within the Agreement on Internal Trade.

Finally, when and if the above suggestions are completed, the Royal Commission may want to suggest that the Newfoundland and Labrador government, approach the federal government to insist on financial help with the costs of two hydroelectric lines. It remains important for the province to be joined to its hydroelectric resources in Labrador. Therefore, the provincial government should approach the federal government about financing the costs of a powerline from Labrador to the island portion of the province.

When and if Newfoundland and Labrador establishes contracts for sales into the North American energy markets, it may need federal assistance. If there is a lack of spare capacity in existing Hydro-Quebec lines, parallel powerlines may be needed on existing Hydro-Quebec infrastructures. Over the past few decades, Newfoundland and Labrador representatives have made similar requests but to no avail. The counter-argument used was the issue of costs which

the province would have been expected to cover on its own to run such lines. There are, however, historical precedents which the province could use to support its request. For example, in 1966 Prime Minister Lester B. Pearson's government announced $300 million in spending to assist Manitoba with the Nelson River hydro project. The federal government planned to "construct, finance and own the high voltage transmission lines required to move the Nelson River power, and when the markets developed, to the international and interprovincial boundaries." This was done to insure that the power site was developed, despite being in a province where the provincial market was too small for the province to develop on its own.[141]

A constant theme throughout the history of hydroelectric development in Labrador is that Newfoundland and Labrador has faced numerous political, technical and economic obstacles in attempting to develop the hydroelectric potential of the Churchill River Basin. However, a further theme is that the Newfoundland and Labrador government has consistently borne ultimate responsibility for decisions to either proceed, or not to proceed, with hydroelectric development.

Given the implications of evolving North American energy markets, future historians will most likely view the current period as a golden-moment. The province, for the first time, has the opportunity to negotiate hydroelectric developments in Labrador at a level negotiating table during a time of increasing demands for energy in lucrative markets.[142] Future judgements will rest upon the current and near-future actions of the province's politicians and bureaucrats. Ultimately, it will be their decisiveness or their reluctance to act which will decide if the current opportunities are capitalised upon or squandered.

Endnotes

1. I have spoken with some individuals who have asked not to be mentioned, and some of their ideas, supported by other external evidence, have been interwoven into this report.

2 The name Churchill River, Falls and Basin did not appear until 1965 when the Hamilton River, Falls and Basin were renamed to honour British Prime Minister W.S. Churchill. However, for the sake of clarity, this essay will refer to Churchill River, Falls and Basin throughout.

3. For practical reasons it would not be feasible to assess current actions by Premier Roger Grimes.

4. An email listed the following sites and the estimated power capacity Megawatts. Gull Island 2,264 MW, Muskrat Falls 824 MW, Lobstick 160 MW, Pinware 77 MW, St. Lewis 68 MW, Alexis 98 MW, Paradise 89 MW, Eagle 661 MW, Minipi 647 MW, Naskaupi 290 MW, Kanairuktok 394 MW, Fig 204 MW, Kogaluk 58 MW, Mistastin 81 MW, Notakwanon (Lower) 84 MW, Notakwanon (Upper) 94 MW, Ugjoktok (Lower) 94 MW, Ugjoktok (Upper) 43 MW, Harp Lake 51 MW, Kanairiktok 153 MW, Kingurutik 31 MW, and Big 109 MW. The total given is for a potential of 6,574 MW of hydroelectric energy.

   The chart giving the above information had the following advisory: "1) The potential of these sites have not all been brought to the same level of engineering feasibility, as a result, the capacity values presented are approximate and may change significantly after additional study."

   Hubert Budgell (Newfoundland and Labrador Hydro), "Email to Jason Churchill," 28 November, 2002.

5. An email listed the following sites and their estimated power capacity in Megawatts: St. Paul 149-250 MW, St. Augustine 127-250 MW, Little Mecatina 186-1040 MW, Natashquan 56-563 MW and Romaine 1,330 MW. The listing came with two notes. The first stating: "Ranges in capacity potential for specific rivers result from development alternatives which propose alternative diversion schemes and hydro plant locations." The second notes was the same as stated above related to preliminary engineering work and further studies could change the numbers given.

   Budgell "Email to Churchill," 28 November, 2002.

6. Due to limited space the issue of the interprovincial rivers cannot be discussed in this paper. However, the following two examples illustrate Quebec's interest. In 1964 Quebec Premier Jean Lesage, unsuccessfully, insisted that adjustments in the Labrador border be part of a package deal to develop Churchill Falls. To gain control over the watershed areas of the five interprovincial rivers he offered an approximate reciprocity in the exchange of lands of 17,600 km^2. Quebec would gain watershed control and Newfoundland and Labrador would gain territory in the Ungava Peninsula.

   Similarly in 1976 Quebec's Minister of Natural Resources, Jean Cournoyer, unsuccessfully suggested a change in the Labrador border in return for Quebec making available 800 MW

of power. He later suggested that in exchange Newfoundland and Labrador sell the massive watershed areas to Quebec. While sovereignty would remain with Newfoundland and Labrador, Quebec would be able to develop the rivers that emptied into the St. Lawrence. Mr. Cournyer was informed by Newfoundland and Labrador's Minister, John Crosbie, that the Moores' administration was "not prepared to sell one square inch" of Newfoundland and Labrador's territory.

J.R. Smallwood, "Telegraph to Honourable Jean Lesage," 3 April 1964, (Smallwood Papers CNS MUN 316.082 Quebec Government 1949-1971,) p.2.

J. R. Smallwood to Assembly, "Newfoundland and Labrador Hansard", (Unpublished: Newfoundland and Labrador Legislative Library (hereafter referred to as NLLL,)), 3 April, 1964, p.8.

John C. Crosbie to Assembly, *Newfoundland and Labrador Hansard*, 29 April, 1976, pp.6146-6148.

7. John Crosbie has noted that the Government of Newfoundland and Labrador was not a direct signatory to the 1969 contract but government permission was required before the contract could have been executed. As well, the Newfoundland and Labrador legislature facilitated the implementation of the contract by passing in May 1969 Trust Deed legislation totalling $500 million US and $50 million Cdn.

   John C. Crosbie, "Churchill Falls Power, The Past, The Present And Future Development: Notes for a Speech Delivered to the Newfoundland and Labrador Construction Association at St. John's, Newfoundland and Labrador, on Friday, 31 January 2003," (for further information on the speech, contact bjestican@pattersonpalmer.ca), p.7.

8. For an excellent account of the legalities of the Churchill Falls Contract and the role of the provincial government please see:

   Jules Brière, "The Power Contract: The Legal Aspects," *Forces*, (Volumes 57-58, 1981-1982), p.98-100.

9. Quebec Hydro-Electric Commission and Churchill Falls (Labrador) Corporation, "Power Contract Between Quebec Hydro-Electric Commission and Churchill Falls (Labrador) Corporation Limited, May 12, 1969," (CFLCo Papers NAC MG 28 III 73 Vol.11 File 4 Quebec Hydro,) p.2, pp.6-9. (Hereafter referred to as "Power Contract, May 1969").

10. Government of Newfoundland and Labrador, "Background on Churchill Falls," (Churchill Falls Media Briefing October 9, 1996,) p.3.

11. In 1981, the head of Newfoundland and Labrador Hydro, Victor Young detailed the amount of money spent on the island to supply growing demands. Between 1976 and 1981, Hydro had to spend $315 million in capital cost to compensate for not being able to access the Churchill Power. Additionally, with the island's dependence on oil, Young expected an additional $55 million to be spent on oil in 1981 alone. He further predicted that to ensure a secure supply of energy from 1984-1986 an additional $300 million would have to be spent.

Victor Young, "Outline of Remarks to the MUN Extension", (CFL Co. Background File: NLLL) pp.9-10.

12. Philip Smith, *BRINCO: The Story of Churchill Falls*, (Toronto: McCelland and Stewart Limited, 1975,) p.286.

13. Joseph R. Smallwood, *I Chose Canada, the Memoirs of the Honourable Joseph R. "Joey" Smallwood*, (Toronto: Macmillan of Canada,1973,) p.444.

14. Smallwood thought that this provision was of far more importance than the family allowance, old age pension, social security and governmental subsidies provisions in the Canadian offer.

    Joseph R. Smallwood, "Speech to National Convention, 1 December, 1947," in James K. Hillier and Michael F. Harrington (editors), *The Newfoundland National Convention 1926-1948 - Volume 1: Debates*, (Montreal: McGill-Queen's University Press, 1995,) p.904.

15. Government of Newfoundland and Labrador, (GNL) "An Act to Authorize the Lieutenant-Governor in Council to Enter Into An Agreement with British Newfoundland Corporation Limited and N.M. Rothschild & Sons", National Archives of Canada, (NAC), CFL Co. Papers MG28 III 73 Vol.35, (20 May 1953).

16. Seventy-two per cent of CFL Co. was owned by BRINCO, while the rest of the shares were divided up between the Newfoundland Department of Resources and Rio Algoma Mines. To help finance the endeavour, BRINCO sold General Mortgage Bonds to Hydro-Quebec to increase the later's share of the company to 34 per cent, leaving BRINCO with 57 per cent of the shares, and Newfoundland with nine per cent.

    The Newfoundland and Labrador proportion appeared to be small, but one must account for the fact that Newfoundland and Labrador was to get eight per cent of BRINCO's profits. Indirectly, therefore, the province would benefit beyond its paltry nine per cent of shares.

    D.J. McParland, "BRINCO and the Churchill Falls Development" an Address to the Canadian Club of Toronto January 23, 1967",(CFL Co. Papers, NAC, MG 28 III 73 Vol.1), p.1.

    BRINCO, "BRINCO in Newfoundland A Summary", NAC, CFL Co. Papers: MG 28 III 73 Vol.36, p.1.

17. Mr Justice J. Goodridge, "Decision of the Supreme Court of Newfoundland Trial Division 1976, No. 812," (Volume I,) p.6, pp.8-10.

18. John Crosbie has recently emphatically raised this point in a January 2003 speech in which he stated "the pivotal position of Quebec if there was to be any successful development... was obvious from the beginning."

    Crosbie, "Churchill Falls Power, The Past, The Present And Future," p.4.

19. The strength of Newfoundland and Labrador's convictions regarding Labrador were reflected by former Minister of Energy, John Crosbie who in 1976 assured the Newfoundland and Labrador Legislature, "that the Government of Newfoundland [had] no intention of any

adjustment in the boundary supposing that we all [starved] to death. Suppose we lost the lights in the whole Province, we would not agree to [have given] anything up in connection with the Newfoundland and Labrador boundary."

John Crosbie to Assembly, *Newfoundland Hansard*, (29 April 1976,) p.6149.

20. N.A. "Labrador Decision, A Fruitless Victory For Newfoundland?" *Toronto Star* 14 June 1927,"Press Clippings" (CFL Co. Background File, NLLL).

21. Paul Sauriol, "Comment From Quebec Labrador Border" *Peterborough Examiner,* 7 June 1968, "Press Clippings" (CFL Co. Background File, NLLL).

22. Crosbie, "Churchill Falls Power, The Past, The Present And Future," p.8.

23. Former Newfoundland and Labrador Energy Minister, Mr. William Marshall once stated "if parties [could] not negotiate on equal footing, inequities [were] bound to result."

William Marshall, "Telex to Marc Lalonde, 4 June 1982, (CFL Co. Background File, NLLL,) p.5.

24. Due to limitations of space, some of the detail relating to political activities pre-1972 have been shortened. For a more complete account of the politics and context of the 1969 contract please consult the following:

Philip Smith, *BRINCO: The Story of Churchill Falls*, (Toronto: McCelland and Stewart Limited, 1975).

Jason L. Churchill, "Pragmatic Federalism: The politics Behind the 1969 Churchill Falls Contract," *Newfoundland Studies*, (Vol. 15, no. 2, Fall 1999) pp. 215-246.

25. John G. Diefenbaker, *House of Commons Hansard*, (hereafter *Commons Hansard*) 25 January, 1962, p.174.

John G. Diefenbaker, "Notes for Opening Remarks by the Rt. Hon. John G. Diefenbaker, Prime Minister at the Federal-Provincial Conference on Long-Distance Power Transmission [LDPT]", 19 March, 1962. Smallwood Papers, CNS MUN Coll-075 File 3.23.043 Long-Distance Power Transmission (LDPT) 1962-1964, p.2.

Arnold Peters, *Commons Hansard*, 31 January 1962, p.419.

H.M. Horner, *Commons Hansard*, 31 January 1962, p.421.

26. H.B. Rosenberg, "Minutes of Meeting of Committee on [LDPT] 28 October 1964" (Smallwood Papers, CNS MUN Coll-075, File 3.23.043 LDPT 1962-1964), p.2.

27. Smallwood, *I Chose Canada*, pp.460-461.

28. Philip Mathias, *Forced Growth: Five Studies of Government in the Development of Canada*, (Toronto: James Lewis & Samuel Publishers, 1971), p.63.

29. Interview, Jason Churchill with John C. Crosbie, 8 January, 2003.

Crosbie, "Churchill Falls Power, The Past, The Present And Future," p.6.

30. Preece,Cardew & Rider, "Hamilton Transmission via Newfoundland, December 1964," (CFL Co. Papers NAC MG28 III 73 Vol.46, File 400.201 Preece, Cardew & Rider, The Government of Newfoundland and Labrador, December 1964), pp.1-3

Acres Canadian Bechtel of Hamilton River, "Review of Preece, Cardew & Rider Report of December 1964 to the Government of Newfoundland Entitled 'Hamilton River Transmission Via Newfoundland' For British Newfoundland Corporation Limited: Review of Pertinent Considerations on Alternates for the Development of Hamilton Falls Power" 20 January, 1965. (CFL Co. Papers: NAC MG 28 III 73 Vol.46 File 400.201 Preece, Cardew and Rider Meetings June 1964-August, 1965), p.1, p.3 and pp.11-12.

31. Mathias, *Forced Growth*, p.63.

André Bolduc, "Churchill Falls the Dream...and the Reality", *Forces*, (March 1982,) p.40.

32. Joseph Smallwood, "Letter to Lester B. Pearson 29 September, 1966," (Smallwood Papers, CNS MUN Coll-075 File 3.10.016 Canada Prime Minister's Office 1966-67), pp.2-3.

33. The section had been used approximately 470 times in regards to various projects such as local railways, dams, tunnels, telegraphs, mines, oil refineries and telephones. However, the federal government has tended to hesitate in using its declaratory powers and it was last used in 1961, five years before Smallwood prepared his letter requesting its use for the Churchill Falls project.

In his memoirs, Smallwood comments, "Not for a moment did I suppose that the designation of the project as national would be a solution of itself. The threat might, however, be more effectual than the reality."

Peter W. Hogg, *Constitutional Law of Canada Second Edition*, (Toronto: The Carswell Company Limited, 1985,) p.92, pp.485-486, and pp.491-493.

Smallwood, *I Chose Canada*, p.467.

34 Henry Borden, "Reflections" (Unpublished manuscript, NAC Borden Papers MG 30 A8 Vol.4), p.166.

Frederick W. Rowe, *The Smallwood Era*, (Toronto: McGraw-Hill Ryerson Limited, 1985), p.32.

35 Cabot Martin, "Footnote to History: The Truth Behind the Churchill Falls Deal", *The Globe and Mail*, 23 November 1996, p.D2.

36 The agreement provided that Hydro-Quebec would buy virtually all the power from Churchill Falls that was in excess of the needs of Newfoundland and Labrador. It was later supplanted by the 1969 contract.

Langevin Coté, *Heritage of Power The Churchill Falls Development From Concept to Reality*, (St. John's: Churchill Falls (Labrador) Corporation Limited, 1972), p.43.

37 Lionel Chevrier, *Commons Hansard*, 25 January, 1962, p.189.

H.B. Rosenberg, "Minutes of Meeting of Committee on" 28 October, 1964. Smallwood Papers, CNS MUN Coll-075, File 3.23.043 LDPT 1962-1964, p.2.

Gordon F. Pushie, "Letter to Hon. Robert H. Winters" 9 August, 1965. Smallwood Papers, CNS MUN Coll-075, File 3.23.044 LDPT 1965-68, p.1.

Federal-Provincial Working Committee, "Report to the Federal and Provincial Ministerial Committee on Long Distance Transmission: Regional and National Electric Transmission Systems for Canada - Stage II Assessment", 14 July, 1967. (Smallwood Papers, CNS MUN Coll-075, 3.23.044 LD PT 1965-68), p.9.

38 Harold Horwood, *Joey*, (Toronto: Stoddart Publishing Co. Limited, 1989), p.197.

39 Smith, *BRINCO,* pp.284-296.

40 Smith, *BRINCO,* p.292.

41 Crosbie, "Churchill Falls Power, The Past, The Present And Future," p. 12.

42 During a 1989 debate on an opposition-proposed resolution on Churchill Falls, Premier Clyde Wells said that the 1969 deal was passed "with the unanimous approval of [the] legislature... everybody thumped his desk in approval."

Clyde Wells to Assembly, *Newfoundland Hansard*, (14 June, 1989), p.605.

F. Alfred and D. Pike, "Report of Clerk Assistant to the House of Assembly," *Newfoundland Hansard*, (8 May, 1968), pp.137-138.

T. A. Hickman to Assembly, *Newfoundland Hansard*, (8 May, 1968,) pp.194-196.

N. Noel, (Chairman of the Committee of the Whole) to Assembly, *Newfoundland Hansard*, (8 May, 1968), pp.197-198.

Mr. Speaker to Assembly, *Newfoundland Hansard*, (8 May, 1968,) pp.198-199.

F. Alfred and D. Pike, "Report of Clerk Assistant to the House of Assembly," *Newfoundland Hansard*, (9 May, 1968), pp. 143-144.

Brière, "The Power Contract," p.98.

43 Former Smallwood Cabinet Minister John Crosbie, and others, have argued that it was also partially the result of the non-professional manner in which Smallwood ran the government. There were few feasibility studies into the project and its implications and Smallwood himself provided the only briefings to Cabinet concerning negotiations between BRINCO and Hydro-Quebec.

Interview Churchill-Crosbie, 8 January, 2003.

44 Smith, *BRINCO*, pp.358-360.

45 Frank Moores to Assembly, *Newfoundland Hansard*, (21 March 1974), p.2200, pp.2203-2204.

46 Government of Newfoundland and Labrador, "An Act to Authorize," p.16.

[47] Interview Jason Churchill with William Marshall, 13 August, 1997.

[48] John C. Crosbie, "Ministerial Statement by the Honourable John C. Crosbie Minister of Mines and Energy, 28 November, 1975," (CFL Co. Background File, NLLL), pp.8-11, p.27.

John C. Crosbie, "Speech in House of Assembly, 28 November, 1975," *Newfoundland Hansard*, (CFL Co. Background File, NLLL), p.395.

[49] Crosbie, "Ministerial Statement," pp.42-43.

[50] Frank Moores, "Transcript of Statement, 20 May, 1976," (CFL Co. Background File, NLLL), pp.1-12.

[51] Quebec Hydro-CFL Co., "Power Contract" 12 May 1969, p.15.

Joseph Bourbeau, "Clarifying the Issue of Churchill Falls", 30 September, 1982, (CFL Co. Background File, NLLL), p.2.

[52.] John Crosbie, "Transmittal Letter 6 August, 1976", in Mr Justice J. Goodridge, "Decision of the Supreme Court of Newfoundland Trial Division 1976, No. 812," (Volume II, Appendix "B" 6 July 1982), p.384.

[53]. Goodridge, "Decision", p.23, p.42.

Quebec Hydro-CFL Co., "Power Contract" 12 May 1969, p.6.

[54] Interview Jason Churchill with Brian Peckford, 3 December, 2002.

Interview Jason Churchill with Vic Young, 18 December, 2002.

[55.] Interview Jason Churchill with Brian Peckford, 3 December, 2002.

[56.] Lower Churchill Development Corporation Limited, (LCDC)*Annual Report 1979*, p.4

LCDC, *Presentation to the Shareholders of Lower Churchill Development Corporation Limited Project Recommendation Executive Summary*, (June 1980), p.3.

[57]. Frank Moores to Assembly, *Newfoundland Hansard*, (12 June 1978), p.9751.

Former Minister of Mines and Energy, Leo Barry, stated that the government had, "premised all [their] negotiations with the province of Quebec on resolution of the Upper Churchill situation."

Leo Barry to Assembly, *Newfoundland Hansard*, (16 April 1980), p.2163.

Negotiator and Cabinet Minister, William Marshall, stated the government was not willing to "trade-off" future benefits to accommodate past grievances."

Interview, Churchill with Marshall, 13 August 1997.

[58] Interview, Jason Churchill with Marc Lalonde, 24 December, 2002.

[59] Brian Peckford, "Letter to Pierre E. Trudeau, 16 April, 1980," (CFL Co. Background File, "Correspondence", NLLL), p.2

[60] Interview Jason Churchill with William Marshall, 5 December, 2002.

[61] Marc Lalonde, *Commons Hansard*, (27 April 1982), p.16659.

[62] In subsequent years when Newfoundland and Labrador representatives proposed running parallel power lines on existing towers the counter argument used was the issue of costs which the province would have expected to cover to run such lines. The federal attitude was in stark contrast to the efforts of Lester B. Pearson's government in the 1960s. In February 1966, Pearson announced $300 million in spending to assist Manitoba with the Nelson river hydro project. The federal government planned to "construct, finance and own the high voltage transmission lines required to move the Nelson river power, and when the markets developed, to the international and interprovincial boundaries." This was done to insure that the power site was developed, despite being in a province where the provincial market was too small for the province to develop on its own.

Interview, Churchill- Lalonde, 24 December, 2002.

Interview Jason Churchill with Chuck Furey, 10 January, 2003.

Lester B. Pearson, *Commons Hansard*, 15 February, 1966 p.1222.

[63] Interview, Churchill- Lalonde, 24 December, 2002.

[64] The impetus for the Bill was not federal in origin, but rather came from a Calgary-based power company, Transalta Utilities, which was attempting to sell energy to the United States. Lalonde explained to his Quebec counterpart, Yves Duhaime, that the Bill was designed to grant the NEB similar powers with regards to electricity as it did for oil and natural gas. Lalonde then added that "the latter powers [had] proven to be of immense economic value to the citizens of Quebec for decades, guaranteeing access to Alberta's resources without interference from other jurisdictions."

Marc Lalonde, "Letter to Yves Duhaime, 10 June 1982," *House of Commons Sessional Papers*: 321-7/25, 24 November 1980, p.1.

[65] Despite its limited utility, Marshall wanted Bill C-108 passed in order to provide some future Minister of Energy with another potential legislative lever to use to protect or promote Newfoundland's interests.

William Marshall to Assembly *Newfoundland Hansard*, 23 March 1984, p.844.

Interview, Churchill- Lalonde, 24 December, 2002.

Interview Churchill -Marshall, 13 August, 1997.

[66] Department of Mines and Energy, "Press Release, 3 July, 1980," (CFL Co. Background File, NLLL), p.1.

The recommendation was based upon an initial $14.9 million feasibility study which found that the potential of the combined sites of Gull Island and Muskrat Falls to be at 2,300 MW of power. This was the equivalent of 75,000 barrels of oil per day in perpetuity.

LCDC, *Presentation*, p.1.

LCDC, *Annual Report 1979*, p.1.

67. Wheeling rights is defined by the National Energy Board as follows: "The transmission of power belonging to one utility through the circuits of another utility for delivery either to a third party or back to the originating system."

National Energy Board, *The Regulation of Electricity Exports: Report of Inquiry By a Panel of the National Energy Board Following a Hearing in November and December, 1986*, (June 1987), p.xiii.

68 LCDC, *Annual Report 1981*, p.6.

LCDC, *Presentation*, pp.14-16.

LCDC, *Annual Report 1982*, p.2.

69 Gerry Korbai, "Department of Mines and Energy Press Release", 19 March 1981, CFL Co. Background File, NLLL, p.1.

Interview Churchill-Peckford, 3 December, 2002.

Brian Peckford, "Letter to Pierre Trudeau, 24 September, 1980," (CFL Co. Background File, "Correspondence", NLLL), p.2.

70 Peckford to Trudeau, 24 September 1980, p.2.

Pierre Trudeau, "Letter to Peckford, 20 October 1980," *House of Commons Sessional Papers* 321-7/25, pp.1-2.

71 Marc Lalonde, "Letter to William Marshall, 10 June 1982," *House of Commons Sessional Papers*: 321-7/25, 24 November 1980, pp.1-2.

The Peckford administration exhibited a similar obstinate attitude while negotiating with Ottawa over the development of vast oil reserves off the province's east coast.

Interview, Churchill-Lalonde, 24 December, 2002.

72 Marshall to Lalonde, 14 June 1982, pp.5-6.

73 Peckford, "Statement on the Energy Priority of Newfoundland and Labrador," 21 November 1980, (CFL Co. Background File, NLLL), p.4.

74 Peckford, "Statement on the Energy Priority", p.4, pp.17-18 and p.13.

75 Arthur S. Mifflin, Herbert B. Morgan and James R. Gushue, "Decision of the Supreme Court of Newfoundland Court of Appeal 1981 No. 36." (5 March 1982), NLLL, p.i.

Mr. Justice McIntyre, "Supreme Court of Canada Decision Re. Upper Churchill Water Rights Reversion Act", (3 May, 1984), NLLL, p.1.

76 McIntyre, "Supreme Court of Canada Decision," p.2, p.6.

77 N.A. "Newfoundland and the Courts Part II: The Water Rights Reversion Act Case", *This Week*, 22 November 1982, p.17.

78 N.A. "Churchill Falls Issue Like Ping-Pong Game", *Charlottetown Patriot*, 23 September 1982, (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

N.A. "Ottawa to Back Quebec in Labrador Power Dispute", *Montreal Gazette,* 22 September 1982, (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

Brian Peckford, "Telex to Mark MacGuigan, 23 September 1982," (CFL Co Background File, NLLL), p.1.

N.A. "Newfoundland and the Courts", p.17.

Leo Barry, "Interprovincial Electrical Energy Transfers: The Constitutional Background," *Journal of Business Administration*, (Vol.12-Number 2, Spring 1981), p.214.

79 Interview, Jason Churchill with Edward Hearn, 8 January, 2003.

Quoted in Isabel B. Anderson, "Section 92A, Policy and Economic Development," in James N. McCrorie and Martha L. MacDonald, *The Constitutional Future of the Prairie and Atlantic Regions of Canada*, (Regina: Canadian Plains Research Center, 1992,) pp.80-81. Original citation: Canada, Department of Justice, *A Consolidation of the Constitution Acts, 1867-1982*, (Ottawa: Supply and Services, 1986,) p.33.

80. William D Moull, "The Legal Effect of the Resource Amendment - What's New in Section 92A?," in J. Peter Meekinson, Roy J. Romanow and William D. Moull, *Origins and Meaning of Section 92A: The 1982 Constitutional Amendment on Resources*, (Montreal: The Institute for Research on Public Policy, 1985,) p.33, p.47.

81 Interview Churchill-Young, 18 December, 2002.

Interview Churchill-Hearn, 8 January, 2003.

Interview Churchill- Furey, 10 January, 2003.

82 Vic Young and Jean Bernier, "Statement of Intent Regarding Churchill Falls Negotiations," (CFL Co. Background File, NLLL), pp.1-2.

83 Young and Bernier, "Statement of Intent Regarding Churchill Falls Negotiations," pp.1-2.

84 The existence of the agreement was not revealed until Brian Tobin decided to bring it into the public realm during his public relations campaign related to Churchill Falls in 1998.

Young and Bernier, "Statement of Intent Regarding Churchill Falls Negotiations," p.1, p.4, and p.5.

85 William Marshall, "Statement on the Negotiations Between Quebec and Newfoundland on the Upper Churchill, 18 May, 1984," (CFL Co. Sales of Power Background File, NLLL), p.2.

86 Yves L. Duhaime, "Notes Pour L'Allocution Du Ministre Yves L. Duhaime Devant La Chambre de Commerce de Montreal, 14 Juin, 1984," (CFL Co. Background File, NLLL), p.12.

N.A. "Quebec Minister Open to Talks on the Churchill Falls Proposal," *Globe and Mail*, (15 June, 1984), (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

N.A. "Quebec Urges Newfoundland to Return to Bargaining Table," *Ottawa Citizen*, (15 June, 1984), (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

87 Duhaime, "Notes Pour L'Allocution," pp.11-13.

88 Marshall, "Statement on the Negotiations", pp.6-6, pp.11-12.

89 McIntyre, "Decision", p.4, pp.50-51.

90 Hogg, *Constitutional Law of Canada Second Edition*, p.322.

91 The final decision stated The Upper Churchill Water Rights Reversion Act [was] colourable legislation aimed at the Power Contract..... The pith and substance of the Act [was] to interfere with the right of Hydro-Quebec under the Power Contract [1969] to receive an agreed amount of power at an agreed price. This right to the delivery in Quebec of Churchill Falls power [was] situated outside the Province of Newfoundland and [was] beyond the territorial competence of the Newfoundland Legislature.

McIntyre, "Decision", p.4.

92 Brian Mulroney, *Where I Stand*, (Toronto: Mcclelland and Stewart, 1983), pp.68-69.

93 N.A. "Churchill Falls Power Dispute: Mulroney Offers to Take a Hand," *The Weekend Evening Telegram*, (8 December, 1984), p.1.

N.A. "PM Offers Aid in Hydro Dispute," *Halifax Chronicle Herald*, (8 December, 1984), (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

N.A. "Mulroney Backing Pleases Marshall," *Calgary Herald*, (11 December, 1984), (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

N.A. "L'achat d'Electricité Produite aux Chutes Churchill Mulroney Entend Régler le Différend," *Sherbrooke La Tribune*, (8 December, 1984), (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

94 Crosbie went on to state that it went beyond the notion that Quebec had more federal seats, and included the entire history of French-English relations in the country and the threat of separation.

Interview, Churchill-Crosbie, 8 January, 2003.

95. N.A. "Supreme Court Rejects Newfoundland claim to Bigger Hydro Share", *Winnipeg Free Press*, 10 June, 1988, (Press Clippings, CFL Co. Sales of Power Background File, NLLL)

96 N.A. "Supreme Court Rejects Newfoundland claim to Bigger Hydro Share," (Press Clippings, CFL Co. Sales of Power Background File, NLLL).

97 Government of Newfoundland and Labrador, *Managing All Our Resources: A Development Plan for Newfoundland and Labrador, 1980-1985*, (St. John's: Government of Newfoundland and Labrador, 1980,) p.76.

[98] The Peckford administration was drawn to the oil and gas sector as it represented a "fresh start" in that there were no pre-existing long-terms contractual obligations. With other resources such as mining, forestry and hydroelectric energy, long-term contracts limited the government's manoeuverability in terms of economic development. Dr. House also commented that the sense of fatigue related to Churchill Falls was evident throughout the province. During their rounds of public consultations concerning the economic future of the province, the topic rarely came up. When it did, the attitudes expressed tended to reflect the fatalistic idea that the 1969 Contract was a bad deal but nothing could be done about it and the province was "stuck with it" until its termination in 2041.

Doug House, *Building on Our Strengths : Report of the Royal Commission on Employment and Unemployment*, (St. John's : Royal Commission on Employment and Unemployment, 1986,) pp.461-464.

Interview, Churchill-Crosbie, 8 January, 2003.

Interview Jason Churchill with Doug House, 29 November, 2002.

[99] Sandra D. Salinas and Raul Rincon, "Hydro Quebec Total Quality Management Program," viewed 8 December, 2002 at: http://www.baclass.panam.edu/courses/intb4365/Fall96/HYDROf96.html,

[100]Specifically, the proposal called for a 30 year contract that would initially grant Hydro Quebec access to 2,400 MW of power but this amount would decline over time such that by the end of the contract in 2031, Newfoundland and Labrador would have had 3,200 MW available to either use, to export, or some combination thereof. Newfoundland and Labrador would also have provided energy security well into the twenty-first century and access to 800 MW of power at 3 mills/KWH. This would have granted the province competitive energy rates in terms of the Canadian average and the province would have secured a $12 billion asset which would have generated income and employment into the subsequent century. The deal also included an escalation clause and stipulated that Hydro-Quebec would pay approximately between 73-74 mills for the energy. Additionally, the project would involve the Lower Churchill Development Corporation and the province served to receive upwards of $14 billion through its 51per cent share in the company. This amount could have been increased if the province decided to buy out Ottawa's 49 per cent share. The deal was projected to be of far greater value than the Hibernia Project. In terms of personal income benefits it was expected, by 2001 to have yielded $2.7 billion in terms of personal income benefits as opposed to $2.1 billion for Hibernia and $710 million in gross government revenue as opposed to $610 million for Hibernia.

Newfoundland and Labrador Hydro, "Churchill River Project Review: Presentation to Cabinet, 12 December, 1991, (CFL Co Background File, NLLL), pp.12-15, p.21.

[101]It was estimated that Quebec needed about 600 MW per year and the deal would have secured demand for four years.

Newfoundland and Labrador Hydro, "Churchill River Project Review," p.20.

[102] Newfoundland and Labrador Hydro, "Churchill River Project Review," pp.20-21.

[103] There were also some lesser points including: the technical input into the project by Hydro-Quebec, the price to be paid for power, and some clarification of language used in some sections.

Newfoundland and Labrador Hydro, "Churchill River Project Review," p.7, p.22.

[104] Interview, Jason Churchill with Rex Gibbons, 3 December, 2002.

[105] Salinas and Rincon, "Hydro Quebec Total Quality Management Program."

[106] Interview, Churchill-Gibbons, 3 December, 1991.

[107] In addition, Order 889 insisted that utilities use the Open Access Same Time Information Systems (OASIS) to provide information via the Internet concerning availability of spare capacity on transmission lines.

Federal Energy Regulatory Commission, (FERC) *1996 Annual Report,* viewed 12 December, 2002 at: http://www.ferc.gov/About/mission/anual96.htm, p.3.

[108] FERC predicted that the new regulations would "have far-reaching effects," in "requiring public utilities that own, control, or operate transmission lines to file nondiscriminatory open access tariffs that offer others the same transmission services they provide to themselves."

FERC, *1996 Annual Report*, p.3-5.

[109] Clyde Wells, "The Electrical Power Control Act and The Privatization of Hydro Act," (St. John's: Government of Newfoundland and Labrador, 1993), pp.3-4.

[110] Bonnie Belec and Jean Edwards Stacey, "Hydro Poll Shows Most Against Deal," *The Evening Telegram*, (30 March 1994), (Press Clippings, CFL Co. Sales of Power Background File, NLLL)

[111] The technical, legal and constitutional implications of the application of the EPCA is beyond the author's area of knowledge and therefore cannot be properly addressed, other than by way of introduction to the legislation.

Government of Newfoundland and Labrador, "Chapter E-5.1: An Act to Regulate the Electrical Power Resources of Newfoundland and Labrador, (Assented to June 9, 1994)," viewed 8 March, 2003 at http://www.gov.nf.ca/hoa/sr.

[112] Changes were subsequently made to the EPCA to exempt future hydro projects in Labrador from its provisions.

Government of Newfoundland and Labrador, "Newfoundland Regulation 92/00:

Labrador Hydro Project Exemption Order under the *Electrical Power Control Act, 1994* and the *Public Utilities Act,* (O.C. 2000-206 & O.C. 2000-207) (Filed 14 December, 2000),

viewed 13 February, 2003, at: http://www.gov.nf.ca/hoa/regulations/rc000092.htm.

[113] Included in the general principles and rules of the AIT are stipulations for: "establishing equal treatment for all Canadian persons, goods, services and investments; prohibiting measures that restrict movement of persons, goods, services or investments across provincial or territorial boundaries;" and for ensuring that government policies "do not create obstacles to trade."

Internal Trade Secretariat, *The Agreement on Internal Trade: Annual Report, April, 1996 to March, 1997*, (Manitoba: Internal Trade Secretariat,1998,) p.7.

Mark R. MacDonald, "The Agreement on Internal Trade: Trade-Offs for Economic Union and Federalism," in Hermen Bakvis and Grace Skogstad (editors), *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, (Don Mills: Oxford University Press, 2002,) p.140.

[114] G. Bruce Doern and Mark MacDonald, *Free Trade Federalism: Negotiating the Canadian Agreement on Internal Trade*, (Toronto: University of Toronto Press,1999,) pp.131-132.

Interview Jason Churchill with Frederick Allen, 6 December, 2002.

Interview Jason Churchill with Luigi Di Marzo, 6 December, 2002.

Internal Trade Secretariat, *The Agreement on Internal Trade*, p.9.

[115] Doern and MacDonald, *Free Trade Federalism*, p.132.

[116] It seems likely that provisions for energy could mirror the provisions in Chapter 13 on Communications which prohibit "government established or designated monopolies providing communication services or telecommunication facilities from using their monopoly position to engage in anti-competitive conduct in other markets."

Internal Trade Secretariat, *The Agreement on Internal Trade*, p.20.

[117] If Newfoundland and Labrador did decide to embrace Chapter 12, there are no guarantees that Nova Scotia would follow-suit. As the AIT is predicated upon consensus, the status of the Energy Chapter is likely to remain in limbo.

Shawn McCarthy, "Ministers Reach Deal to Liberalize Energy Trade", *The Globe and Mail*, (16 July, 1998).

Shawn McCarthy, "Provinces Close to Energy Trade Deal: Nfld., N.S. Demands Are Last Hurdle", *The Globe and Mail*, (15 June, 1998).

[118] Doern and MacDonald, *Free Trade Federalism*, p.132.

[119] FERC, *1998 Annual Report*, viewed 14 January, 2003 at: http://www.ferc.gov/About/mission/anual98.pdf, p.15.

Order 888 used the notion of "reciprocal rights" to demand that a company selling into the U.S. market would allow its infrastructure to be used by other companies wanting to access the market. Domestically, the notion of reciprocal rights would only have little, if any, application for the province as Newfoundland and Labrador does not border any markets and therefore cannot provide reciprocal access. The size of the Newfoundland and

Labrador energy-market is minuscule in comparison to the Canadian and American energy markets.

FERC, *1996 Annual Report*, p.4.

120 — "Tobin Threatens to Switch Off Churchill Falls Project," *The Record*, (25 September, 1996), p.7.

Edward Greenspon and Barrie McKenna, "Tobin Warns He Will Pull Churchill Plug," *The Globe and Mail*, (21 September, 1996), p.A1, p.A3.

121 Brian Tobin, "Why Churchill Falls must be Renegotiated," *Canadian Speeches*, December 1996 vol. 10, no. 8), p10-14.

Government of Newfoundland and Labrador, "Churchill Falls Media Briefing, 9 October, 1996.

122 Brian Tobin, "New Opportunity and Challenge in the Deregulated Energy Market: Power from the Lower Churchill River in Labrador, 3 June, 1997," viewed 14 January, 2003 at: http://www.gov.nf.ca/exec/speeches/newport.htm.

Wayne Skene, *Delusions of Power: Vanity, Folly and the Uncertain Future of Canada's Hydro Giants*, (Vancouver: Douglas & McIntyre, 1997,) p.16.

Rheal Seguin, "Secret talks on Churchill Falls: Deregulation of U.S. Electricity Market Draws Quebec, Newfoundland Into Negotiations," *Globe and Mail*, (5 June, 1997), p.A1, p.A6.

123 Tobin seemed to have accomplished a combination of the previously discussed approaches of the Moores and Peckford administrations. The above-mentioned side-deals dealt separately with the Upper and Lower Churchill River projects, but were presented as being part of a larger energy development package arrangement.

Susan Flanagan, "Churchill Falls Power Proposal," *Atlantic Business Magazine*, (March 1998), p.34.

124 Government of Newfoundland and Labrador, "Newfoundland and Labrador Hydro to Negotiate Churchill River Developments, 9 March, 1998," viewed 12 January, 2003 at: http://www.gov.nf.ca/releases/1998/exec/0309n02.htm#Market.

125 Government of Newfoundland and Labrador, "Newfoundland and Labrador Hydro".

Crosbie, "Churchill Falls Power, The Past, The Present And Future," p.35.

126 Since May 1999, the FERC has been working to establish Regional Transmission Organisations (RTOs) to ensure smoother operation of the energy grid and energy marketing systems. The RTOs are predicated upon a principle of commonality which could be quite useful for Newfoundland and Labrador, if applied domestically.

FERC, "Docket No. RM99-2-000:Order No. 2000: Regional Transmission Organizations, 20 December, 1999," viewed 14 January, 2003 at http://www.ferc.gov/news/rules/pages/RM99-2A.pdf, p.2, p.511.

[127] For further explanations please see the FERC section below on "Pancaked Rates".

FERC, "Docket No. RM99-2-000:Order No. 2000," p.513.

[128] William L. Massey, "Regulatory Principles and Trends in U.S. Energy Markets, 24 June, 1999," viewed on 14 January, 2003 at: http://www.ferc.gov/news/speeches/commissionersstaff/mass6-24.pdf, p.5.

FERC, "Docket No. RM99-2-000:Order No. 2000," p.593-598.

[129] FERC, "Docket No. RT02-3-000: Motion to intervene of the Northeast Power Coordinating Council re ISO New England, Inc et al under RT02-3, 8 November, 2002," viewed at: http://ferris.ferc.gov/idmws/Doc_Info.asp, p.2, p.6.

[130] Linda K. Breathitt, "Remarks of Commissioner Linda K. Breathitt Federal Energy Regulatory Commission to the Canadian Electricity Association Third Annual Washington Forum, 27 March, 2001," viewed on 14 January, 2003 at:

http://www.ferc.gov/news/speeches/commissionersstaff/breath3-27.PDF, p.9.

[131] Until recently the power and influence of Hydro-Quebec in the American markets also hindered attempts by the province to gain access to the lucrative energy marketplace. Organisations such as the Power Authority of the State of New York (PASNY), have provided substantial, but limited, assistance to Newfoundland and Labrador in attempting to gain wheeling rights necessary to get electrical energy to the markets. PASNY has signed letters of intent and has expressed a strong interest in purchasing Lower Churchill power. However, PASNY would not go so far as to take actions that could potentially jeopardise or antagonise an essential supplier of energy for New York State, Hydro-Quebec.

Interview Churchill- Young, 18 December, 2002.

[132] Representatives from the province have also failed to gain any leverage from the National Energy Board. As discussed earlier, changes to the NEB Act in the form of Bill C-108 which, theoretically, enabled the NEB to expropriate land for a dedicated power corridor through Quebec territory, was not acted upon due to pragmatic economic and practical limitations. The province has subsequently, to no avail, attempted to get extra power for Newfoundland and Labrador by opposing Hydro-Quebec's requests for export permits to sell into the American markets. Hydro-Quebec's NEB applications have been opposed by Newfoundland and Labrador by claims that the energy was needed within Canada, specifically in the island portion of the province. The objections have been to no avail due to the short time of the contracts requested by Hydro-Quebec and due to a lack of infrastructure to get power to the island portion of the province.

In 1988, for example, the NEB approved a Hydro-Quebec export permit to send energy to New England for the period from September 1990 to August 2004. The NEB resoundingly defeated NLH's arguments. The NEB's considered its role to be ensuring that "all interconnected Canadian utilities" had access to power at competitive rates. This caused problems for the island portion of the province which had remained isolated from the mainland power grids. The NEB decision specifically stated:

The Board notes that there is no interconnection in place between Labrador and the Island, nor is one to be constructed ... The evidence also indicated that such an interconnection would not be economically feasible if Hydro-Quebec energy was available to the Island only during the period of the proposed export...

National Energy Board, "Reasons for Decision In the Matter of an Application Under the National Energy Board Act of Hydro-Quebec For Exports to the New England Utilities," (EH-3-87, February, 1988), pp.31-33, p.40.

Interview, Churchill-Young, 18 December, 2002.

133 Former Minister of Mines and Energy, and current Provincial Supreme Court Justice, Leo Barry has argued that political considerations are at play at the Canadian Supreme Court level. Barry claimed that judicial decisions often reflected the "judge's view of the nature of Canadian Federalism and the effect that a decision one way or the other [would] have upon the operations of the federation."

Barry, "Interprovincial Electrical Energy Transfers", p.237.

134 Former Federal Cabinet Minister John. C. Crosbie has said that it goes beyond the simplistic idea that Quebec has far more federal seats that Newfoundland and Labrador and is intricately intertwined with the entire history of French-English relations in Canada and the threat of Quebec separation. There tends to be bigger issues at play that go beyond interprovincial politics.

Interview Churchill-Crosbie, 8 December, 2002.

135 The NPCC was formed in 1965 and has as its purpose to promote the reliable and efficient operation of the interconnected bulk power systems in Northeastern North America through the establishment of criteria, coordination of system planning, design and operations, and assessment and enforcement of compliance with such criteria. In the development of reliability criteria, NPCC, to the extent possible, facilitates attainment of fair, effective and efficient competitive electric markets.

At the moment Newfoundland and Labrador is left outside this influential group which is made up of the six New England States, New York State, Ontario, Quebec and the Maritime Provinces. The combined population of the area covered by the organisation is estimated to be 54 million people.

Northeast Power Coordination Council, "About NPCC," viewed on 4 February, 2003 at http://www.npcc.org/about_npcc.asp.

Northeast Power Coordination Council, "Membership Agreement," viewed on 14 February, 2003 at: http://www.npcc.org/PublicFiles/AboutNPCC/Membership_Agreement.pdf.

136 Email, "Jennifer Budd to Jason Churchill, 30 December, 2002".

137 Interview Churchill-Peckford, 3 December, 2002.

138 Interview, Churchill-Young, 18 December, 2002.

[139] Newfoundland and Labrador Hydro/ Hydro-Quebec, "Framework For Churchill River Hydro Developments," (Press Release March 1998), p.1.

[140] While the speculative Project Neptune is of interest and could be of great eventual benefit to the province, it is not the totality of opportunities in the emerging North American energy Markets.

Energy Branch, Department of Mines and Energy, *An Electricity Policy for the 21st Century Options & Opportunities*, St. John's: Government of Newfoundland and Labrador, 2002, viewed 13 Febuary, 2003 at http://www.gov.nf.ca/mines&en/energy/policyreview/ep.pdf.

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[141] Interview, Churchill- Lalonde, 24 December, 2002.

Interview Jason Churchill with Chuck Furey, 10 January, 2003.

Lester B. Pearson, *Commons Hansard*, 15 February, 1966 p.1222.

[142] For example in January, 2003 it was reported that Governor George Pataki of New York State had pledged to increase his state's share of electricity generated from renewable resources from 17 to 25 per cent.

David Chandler, "Bush Defied Over Greenhouse Gas Cuts," *New Scientist*, (25 January, 2003), pp.4-5.

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