



Co-management of Aboriginal Resources

By Tracy Campbell

Professional Associate, AINA



Co-management of Aboriginal Resources	2
Reserve Land, Treaty Territory, and Traditional Territory	7
Selected Readings	8

Source¹: <http://arcticcircle.uconn.edu/NatResources/comanagement.html>

¹ Published with permission from *Information North*, Vol 22, no.1 (March 1996), Arctic Institute of North America.

Co-management of Aboriginal Resources

Conflict related to natural resource management in development situations seems to be a common occurrence. This of course is not a new phenomenon; on the contrary, conflict has always been present in varying degrees since the beginning of resource exploitation in Canada. However, in today's context of finite natural resources, the intensity of that conflict appears to be rising exponentially, as more interests than ever before are competing for use of and access to both renewable and nonrenewable resources. One area of natural resource management and development seems to have an unusually high incidence of conflict-where natural resource management affects aboriginal communities.

There are several reasons for the presence of conflict when natural resource development, particularly forestry and oil and gas development, collide with First Nation peoples. First, relatively large-scale, hinterland resource projects take place in areas, usually northern, where there are small, isolated aboriginal communities.

Second, resource development is occurring in territories where where traditional hunting, trapping, fishing, and gathering activities still play a vital role in subsistence lifestyles practised by First Nations, especially in the North.

Third, and perhaps most important, the rights of First Nations to traditional territories and the natural resources therein are ill-defined by both the Canadian governments and the judiciary. The special rights of aboriginal people as guaranteed by treaty are not generally considered when resource development projects are proposed or resource management plans are prepared. Consequently, resources located on aboriginal traditional territory often become the focus for conflict between government, natural resource industries, and First Nation peoples.

In Canada, lands and related resources claimed by First Nations as aboriginal traditional or treaty territory are extensive. Ongoing disputes, whether they involve adequate reserve size, sacred areas, or the exercise of treaty rights, touch every Canadian province and territory. However, for First Nations to gain a measure of control over land outside reserve boundaries is extremely difficult. Though Section 35(1) of the Constitution Act, 1982 "recognized and affirmed" existing aboriginal rights, the manner in which and degree to which those rights extend has yet to be fully clarified by the courts or recognized by any level of government. Thus, the amount of land and related natural resources that should fall under aboriginal control is disputed by federal and provincial governments, resource industry representatives, and public interest groups alike. Further, the amount of land and resources which currently does fall under direct aboriginal control is insignificant. First Nation people claim the land and resources on treaty or traditional territory is theirs; government and industry maintain that aboriginal rights to land off-reserve translates into something significantly less.

Historically, First Nation peoples have been excluded from any meaningful input into how, where, when, or why resource development occurs on traditional territory. It has largely been left up to both the federal and provincial governments and resource industries to decide on specific parameters for development. This policy of exclusion has had significant negative economic and social impacts on aboriginal communities. Their lack of input into and control over what happens in the traditional territory around them is the most critical issue facing First Nation communities today.

The dispute over rights of access to and use of natural resources off-reserve (treaty or traditional territory) raises fundamental questions regarding the special relationship between First Nation people and the rest of Canada. It is no wonder that disputes arise; opinions concerning what First Nations are 'entitled' to are strongly held and expressed, on both sides of the issue. These disputes often result in comprehensive or specific land claims within the federal government framework or legal battles within the judiciary as means to resolve conflict. However, more and more frequently, disputes result in roadblocks, blockades, or other confrontational protests by First Nations against development on claimed aboriginal territory, as

some aboriginal people see the conflict resolution mechanisms as either too slow or essentially ineffective.

The reasons for supporting aboriginal participation in the management and development of surrounding land and resources are compelling. Its justification can be strongly linked to the fundamental importance of maintaining the social validity of aboriginal communities so inextricably and historically tied to the land. For many aboriginal communities, subsistence practices such as hunting, fishing, and trapping on traditional territories relate more to issues of culture, lifestyle, and identity than to questions of economy, although economic considerations cannot be minimized. Reserve economies are fragile and inadequate, unable to support aboriginal populations. In fact, reserves as they were originally designed were never meant to support reserve communities independently; they were an interim measure taken by the federal government for the purpose of assimilation of the aboriginal population into the nonaboriginal mainstream (Price, 1991). That anticipated assimilation did not occur. In today's context, benefit from inclusion into the natural resource economies surrounding reserves would go a long way toward restoring the economic sustainability of aboriginal communities.

First Nations have never had a strong voice in influencing what goes on around their communities. Fortunately, however, the process by which natural resource activity is carried out on both treaty and traditional territory is changing, albeit slowly. In the last decade, both the relationship between government and industry and the manner of carrying out resource extraction have become somewhat less exclusive. The public participation movement, arising from increased public concerns about environmental integrity and the sustainability of resource development, has affected this process by demanding that others with different opinions regarding resource development have input into the decision-making.

First Nations are similarly insisting on a more inclusive approach to natural resource use and development on traditional and treaty lands. This is especially apparent in British Columbia, where aboriginal land claims and natural resource development have increasingly become inseparable issues. However, the reasons aboriginal people have taken this stance have more to do with control than with environmental protection, although these two factors go hand in hand. That is to say, aboriginal people are demanding more control in decision-making when development affects traditional territory. The extent to which First Nations are in fact included in the development dialogue is a matter which has yet to be determined.

Several institutionalized mechanisms are available to First Nations for resolving disputes involving land and resources, which include both formalized land claims and litigation. However, land claims are extremely slow to reach negotiation, settlement, or implementation phases, and litigation is both lengthy and costly.

Meanwhile, development continues unabated on aboriginal territory. This situation makes for explosive conditions on many reserves in Canada, as impatient and often militant leaders demand change. Consequently, a new arrangement which attempts to mitigate resource development conflict involving disputed territory has been gaining popularity among many of those involved in resource management, including First Nation people. This new approach is known under several names, such as co-management, joint management, or joint stewardship.

Co-management has been described by some as an inclusionary, consensus-based approach to resource use and development. Co-management has also been described as the sharing of decision-making power with nontraditional actors in the process of resource management. Nontraditional actors would include those other than either state managers or industry, such as local resource users, environmental groups, or aboriginal people. One important element of co-management is that it stresses negotiation rather than litigation as a means to resolve conflict. Co-management has also been used to describe the process of combining western scientific knowledge and traditional environmental knowledge for the purpose of improving resource management.

Unfortunately, there is not, as yet, a clear and precise definition of co-management. Co-management has been used to describe agreements involving both renewable and nonrenewable resources; for both aboriginal and nonaboriginal conflict situations; for both

single resource and multi-resource scenarios; for both single jurisdiction and multijurisdiction situations; on both provincial and territorial lands. Similarly co-management has been used to describe arrangements ranging from public participation initiatives, to land claim settlements and self-government initiatives. What co-management has evoked from many parties affected by resource management is an extremely positive response: co-management has become the buzzword in the field of natural resource management.

Although gaining in popularity among several different fields, co-management has not had a long history. In fact, there is no comanagement effort which goes substantially beyond a decade. What has resulted thus far is a proliferation of co-management agreements without corresponding research into the field, as the number of authors who have published on co-management is indeed small. Although research on co-management is still quite new, the principles of co-management as nonconfrontational, inclusionary, and consensus-based have been hailed by the academic community, industry leaders, government representatives, and First Nations alike as a viable means by which resource conflicts on aboriginal territory may be resolved. What has yet to emerge is a comprehensive examination of what co-management changes within the realm of natural resource management and development. Conversely, what has also yet to emerge is a comprehensive examination of what co-management does not change.

Co-management's increased popularity is not surprising: the theory behind it is indeed attractive. Also, co-management arrangements established within land claim settlements in the northern territories appear to be working extremely well. However, the co-management agreements that are being offered within a provincial context do not offer the same set of circumstances as comanagement in the territories. The history and context of comanagement within the northern settlement agreements is a far cry from the realities of provincial jurisdictions over natural resources experienced in the provinces. A danger arises when the blanket term "co-management" is used to describe any and all alternative dispute resolution models used for natural resource management.

It is important to note where co-management theory and practice got their impressive start. Co-management first appeared in the literature in the early 1980s, as a means to describe several initiatives involving migratory wildlife and fisheries management. These initiatives tended to be somewhat informal and advisory in nature, most often involving aboriginal people. Institutionalized co-management agreements have, up until this time, been used in the context of settled land claim agreements involving aboriginal people in Quebec and in the northern territories. However, the experience of co-management in Quebec was extremely limited and highly criticized. It is the political and legal circumstances in the northern territories that allowed co-management to get its successful start.

One such claim is the Inuvialuit Final Agreement (IFA) signed in 1984, the first "comprehensive" settlement in the territories. The terms of the IFA included a lump-sum compensation payment, the equivalent of full title to lands in and around the six Western Arctic communities of Inuvik, Aklavik, Tuktoyaktuk, Paulatuk, Sachs Harbour and Holman (Category I lands: 11 000 sq. km), and shared or joint management of resources on additional territory (Category II lands: 78 000 sq. km) (Dickerson, 1992:103). Boards and committees established under the IFA to administer Category I and II lands and resources are unique in Canada. They include the Fisheries Joint Management Committee, the Wildlife Management Advisory Council (NWT), the Wildlife Management Council (North Slope), the Environmental Impact Screening Committee, and the Environmental Impact Review Board. Joint management on these boards and committees is accomplished through a 50% Inuvialuit representation. Consensus-based, they employ nonadversarial methods of negotiation, and enjoy a reputation of being successful from both state and industry perspectives. In addition, each community developed its own conservation and management plans that are consistent with the regional plan developed in 1988.

Levels of aboriginal participation in co-management agreements.

Adapted from Berkes (1994: 19).

Co-management operating within Northern Land Claim Agreements	7 Partnership, Community Control	Partnership of equals; joint decision-making institutionalized; delegated to community where feasible.
	6 Management Boards	Community is given the opportunity to participate in developing and implementing management plans.
	5 Advisory Committees	Partnership in decision-making starts; joint action on common objectives.
	4 Communication	Start of two-way information exchange; local concerns begin to enter management plans.
	3 Co-operation	Community starts to have input into management (i.e., use of local knowledge, research assistants).
Co-management operating within provincial setting	2 Consultation	Start of face-to-face contact; community input heard but not necessarily heeded.
	1 Informing	Community is informed about decisions already made.

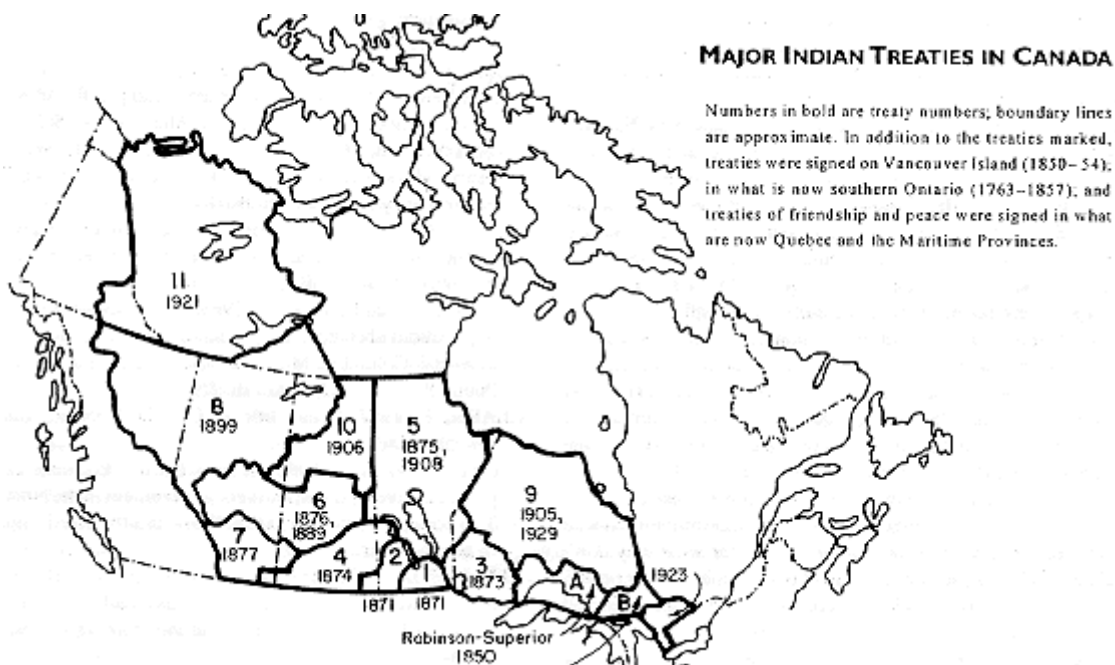
Co-management within the terms of IFA works extremely well. It is likely that other comprehensive land claim settlements in the North, such as the Council of Yukon Indians Agreement (1990), the Gwich'in Agreement (1992), the Sahtu/Dene/Metis Agreement (1993), or the Nunavut Agreement (1993), will also feature successful co-management committees that bring First Nations as equal partners in decision-making into the process of natural resource management and development.

In the co-management of the northern settlement agreements, territorial governments, industry representatives, and First Nations in the territories know exactly who has rights to what. Co-management works in these circumstances precisely because settled land claims clarify who has rights and access to land and resources surrounding aboriginal communities. First Nations in the territories have a legally defined place at the negotiating table to develop, implement, and institutionalize co-management structures, which in turn, gives them a clear voice in the process of resource management and development. In the provinces, these circumstances simply do not exist. Rights to off-reserve land and resources are not clearly defined. Many First Nation peoples believe that treaty rights guarantee a continued right of access to traditional territory for hunting, trapping, fishing and gathering. Others do not agree.

The guarantee of hunting, trapping, fishing, and gathering rights protected by treaty can be seen as trapped within a vicious circle of government policy. Provincial governments view treaty matters as a federal responsibility, while the federal government sees jurisdiction over natural resources, either as a result of the Natural Resources Transfer Agreement, 1930 or through the Terms of the Union, as a provincial responsibility. First Nation people have concerns about exercising their treaty rights on provincially regulated Crown land when treaty rights are a federal matter. Further, it is extremely difficult to exercise federal treaty rights on provincial Crown land when neither government level has any desire to step over the carefully delineated lines of constitutional jurisdiction. Thus, when the provincially managed boreal forest is being cut down, drilled on, and dug up, treaty rights are seen as a federal matter. And development continues.

With the successful reputation that co-management enjoys in the North, it is no wonder that its principles and theories have recently been used in the attempt to include First Nations in resource management within the provinces. In fact, comanagement terminology is currently being used by both provincial governments and resource industries to describe arrangements that include First Nations in the decision-making process in any capacity. However, the co-management being offered First Nations in the provinces is not the same as the comanagement agreements which have been operating successfully in the northern territories for the past ten years.

Perhaps because of the broad interpretation of co-management initiatives appearing within the literature, Berkes et al. (1991) and Berkes (1994) developed a "continuum of co-management" to describe the range of ways in which co-management was being used (Table 1). These degrees of co-management show just how broad a range the terminology can be used for. Level I describes how decisions by state managers have been made in the past; Level 7 describes a situation much like a settled land claim, where power over a jurisdiction is shared equally with the state. Unfortunately, most of the co-management agreements in the provinces operate at the lowest levels of authority transfer described by Berkes.

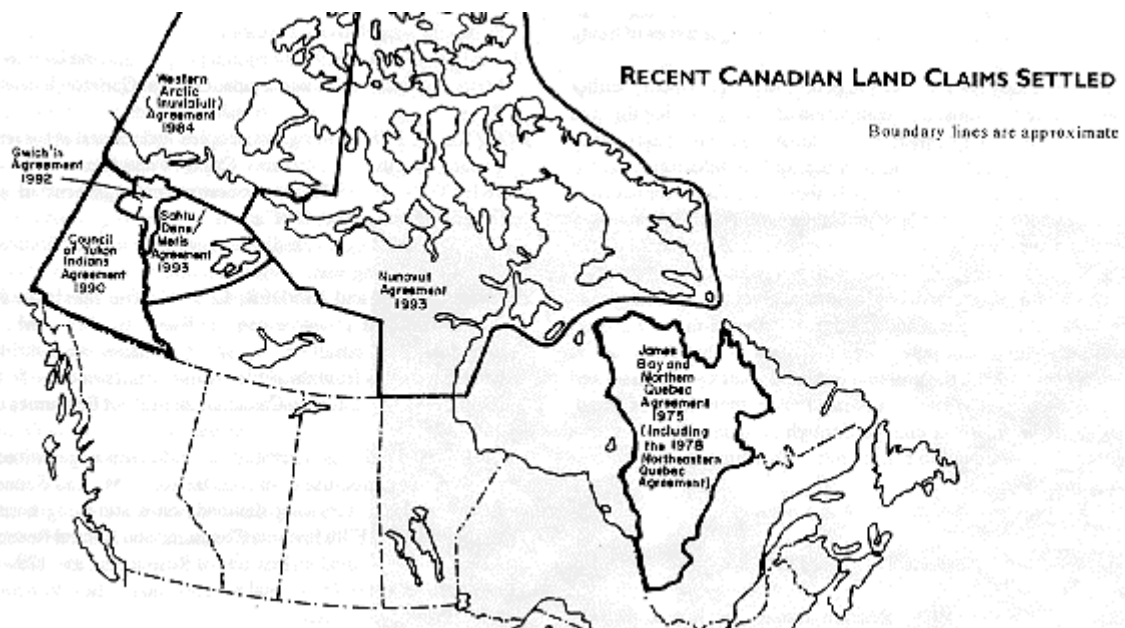


Among other fundamentals, co-management implies that each participant at the negotiating table has equal rights of participation. That is, each participant brings to the process an enforceable position, ideally established in law and policy, which can then be formally institutionalized in the co-management process. This situation, which has developed in the northern territories because of settled land claims, is not possible under the present circumstances within the provinces. In fact, unless a drastic change occurs within the relationship aboriginal people currently have with the provincial and federal governments, co-management is simply an empty promise.

An examination of various agreements described as comanagement in the provinces proves fascinating. Negotiated between either a First Nation and a provincial government or a First Nation and a resource company, these agreements show that aboriginal input is indeed being courted. They feature terms such as inclusionary, consensus decision-making, partnership, and joint stewardship, terms that are utilized in co-management agreements operating under settled comprehensive land claim agreements in the territories

At first glance, these agreements appear to be a major breakthrough, insofar as they imply 'equal' partnerships between industry, government, and First Nations. These initiatives are indeed a step forward from the position resource management used to operate from, but closer examination shows that they differ substantially from the co-management practised in the

context of settled land claims. Indeed, even among the agreements that Berkes would consider to be at the lowest level of power transfer, there are wide variations.



Many factors affect the type of agreement which may result. For example, the strength of the relationship a First Nation community establishes with the provincial ministry involved affects the negotiations, which in turn affect the terms of the agreement. The political strength of the First Nation community, the willingness of the resource company to open a dialogue and the impetus for negotiations to develop in the first place (i.e., the presence of an immediate conflict situation) also have an influence on the type of agreement considered.

The co-management agreements now appearing on the provincial natural resource scene should be looked at for what they don't include, such as a substantial transfer of decision-making power, or even a share of royalties for resources harvested from traditional territories. There may be a danger for First Nations in pursuing this type of co-management in preference to formalized land claims or even litigation, because it takes the focus away from some fundamental questions regarding the relationship between First Nations and the rest of Canada. Such agreements may offer limited economic development strategies or job creation in 'partnership' with resource companies, but fail to raise the larger issues of treaty rights and self-government.

Unfortunately for First Nation people in the provinces, neither land claim settlements, nor recognition of aboriginal title through the courts, nor implementation of the spirit and intent of the treaties will happen anytime in the near future. In fact, intolerance on the part of the Canadian public towards aboriginal claims for land and resources within the provinces seems to be growing. Co-management as it stands now may be the only practical road left open to First Nations to begin dialogues with government and industry. There is a danger in using co-management terminology and theory without a significant transfer of decision-making power. Without a significant power transfer, such as that described in Berkes et al. (1991), the problem of land disputes will remain and First Nations will remain frustrated over their lack of input. Further, if promises of change through co-management are not delivered to First Nation communities, this frustration will most likely increase.

Reserve Land, Treaty Territory, and Traditional Territory

Three different classifications of land associated with First Nation peoples are relevant to this discussion. Each presents different circumstances for both natural resource management and development, as well as for the level of control that aboriginal people currently experience over natural resources.

Of the three types of land, reserve land is perhaps the most recognizable, and possibly least contentious to define. Canadians are generally aware of 'Indian reserves' around their town or city. Even though there are reserves in each province, it must be emphasized that reserves were not created uniformly; reserve size differs greatly from province to province. In addition, each area reserve carries with it a separate origin, history, and legal parameters in terms of the provincial and aboriginal interests.

Even so, a broad definition can be made regarding the creation of reserves, and that is, reserves were created by Crown grant; to religious communities and missions, by federal purchase of private lands, by executive action setting apart public lands, and by treaty and modern agreement. Reserve land in Canada represents approximately 0.48% of the total land mass of the provinces, providing for an estimated 2.4% to 4.8% of the total Canadian population. This statistic can be compared to Australia, where reserve land totals 10.28% for an aboriginal population totalling 1.2% of the country's population (Bartlett, 1989:476).

A common misperception is that the interest retained by First Nation people on reserve land is a fee simple interest. This is simply not true. The aboriginal interest is subject to any restrictions or reservations granted to others, such as provincial Governments and Private landowners. or to leases granted on behalf of the provincial government Also, the interest retained by aboriginal people has been described in legal terms as an 'usufructuary right' only, dependent upon the 'good will of the sovereign.' Additional restrictions upon the right retained by First Nations on reserve are further articulated by the Indian Act. It is evident that until recently, activity on reserve land was strictly administered by federal and, to a certain extent, provincial governments.

Mineral rights on reserve land are also held in trust by the Crown. 'The extent to which Indians own or are entitled to the benefits of minerals located in reserve land is subject to the extent to which the provinces retain an interest therein and the degree of recognition accorded Indian mineral rights by the Indian Act' (Bartlett, 1990:536). In other words, rights to land or resources are not secured by the fact that they are located on reserve land, although this situation is slowly changing.

Treaty territory (off-reserve) may be defined as the land resulting from the practice of treating with Indians for surrender of title to their traditional lands. Treaty land covers a vast area of Canada's total land mass, including the prairie provinces and northeast British Columbia. These areas are subject to the numbered treaties (Nos. 1 - 8 and No. 10) that were signed between 1871 and 1908. The numbered treaties were entered into as the pressures of settlement and resource development demanded. Treaty land may include both the land surrounding reserves that are subject to the terms of signed treaties (off-reserve land), and the reserves themselves. According to many First Nation leaders, treaty land under the terms of most treaties, was created for the purpose of maintaining and guaranteeing a traditional subsistence lifestyle, which includes the activities of hunting, trapping, fishing, and gathering. Modern-day land claim settlement agreements, such as the James Bay and Northern Quebec Agreement, 1975, may also be termed a modern-day treaty.

Traditional territory (off reserve) refers to the land which surrounds a First Nation community that was and still may be used by the First Nation community to practise a subsistence way of life—that is, land where hunting, trapping, fishing, and gathering activities were historically practised, and that still may be used by the community for cultural and livelihood purposes. Each community travelled and lived in its own traditional territory, delineated most often on a self-regulated basis. Sometimes boundaries of traditional territories of neighbouring communities overlapped one another, historically these disputes were most often settled peacefully. Traditional land may or may not be subject to terms of a signed treaty.

Selected Readings

BARTLETT, R.H. 1989. Reserve Lands. In: Morse, B., ed. *Aboriginal peoples and the law: Indian, Metis and Inuit rights in Canada*. Ottawa: Carleton University Press. 467-578.

- 1990. Indian reserves and aboriginal lands in Canada: A homeland. Saskatoon: University of Saskatchewan Native Law Centre.
- BERKES, F. 1994. Co-management: Bridging the two solitudes. *Northern Perspectives* 22(2-3): 18 -20. Ottawa: Canadian Arctic Resources Committee.
- BERKES, F., GEORGE, P., and PRESTON, R.J. 1991. Co-management: The evolution in theory and practice of the joint administration of living resources. *Alternatives* 18(2): 12 - 18.
- CASSIDY, F., ed. 1991. *Reaching just settlements: Landclaims in British Columbia*. Montreal: The Institute for Research on Public Policy and Oolichan Books. .1992. *Aboriginal title in British Columbia: Delgamuukw v. The Queen*. Montreal: The Institute for Research on Public Policy and Oolichan Books.
- CASSIDY, F., and DALE, N. 1988. *After Native claims? The implications of comprehensive claims settlements for resources in British Columbia*. Montreal: The Institute for Research on Public Policy and Oolichan Books.
- CLARK, B. 1987. *Indian title in Canada*. Toronto: Carswell Company Ltd.
- DICKERSON, M.O. 1992. *Whose North? Political change, political development, and self-government in the Northwest Territories*. Vancouver: UBC Press and the Arctic Institute of North America.
- ELIAS, P.D. 1991. *Development of aboriginal people's communities*. Toronto: Captus Press and the Centre for Aboriginal Management Education and Training, University of Lethbridge.
- ISAAC, T. 1995. *Aboriginal law: Cases, materials and commentary*. Saskatoon: Purich Publishing.
- MCNEIL, K. 1983. *Indian hunting, trapping and fishing rights in the prairie provinces of Canada*. Regina: University of Saskatchewan Native Law Centre.
- MORSE, B.W., ed. 1989. *Aboriginal peoples and the law: Indian, Metis and Inuit rights in Canada*. Ottawa: Carleton University Press.
- NOTZKE, C. 1994. *Aboriginal peoples and natural resources in Canada*. North York, Ontario: Captus Press Inc.
- PINKERTON, E. 1989. *Co-operative management of local fisheries*. Vancouver: UBC Press.
- PRICE, R. 1991. *Legacy: Indian treaty relationships*. Edmonton: Plains Publishing Inc.
- ROBINSON, M., and BINDER, L. 1992. *The Inuvialuit Final Agreement and resource-use conflicts*. In: Ross, M., and Saunders, J.O., eds. 1992. *Growing demands on a shrinking heritage. Essays from the Fifth Institute Conference on Natural Resources Law*. Calgary: Canadian Institute of Resources Law. 155- 175.
- STUART, B. 1992. *The potential of land claim negotiations for resolving resource-use conflicts*. In: Ross, M., and Saunders, J.O., eds. 1992. *Growing demands on a shrinking heritage. Essays from the Fifth Institute Conference on Natural Resources Law*. Calgary: Canadian Institute of Resources Law. 129 - 154.
- TENNANT, P. 1990. *Aboriginal peoples and politics*. Vancouver: UBC Press.