

# PIPELINE

## Labour Relations and Human Rights For Megaprojects in the North

by A. J. (Denny) Deneumoustier

As megaprojects in Canada become increasingly subject to public scrutiny, especially from a socio-economic standpoint, labour relations and human rights become central issues with respect to training and employment practices in each undertaking.

Oil and gas pipelines, which cross provincial and territorial boundaries, are considered to be federally-supervised projects and include the Alaska Highway gas pipeline and the recently approved Norman Wells oil pipeline. Yet federal legislation in matters of labour relations and human rights does not automatically apply. The owner company is bound by federal laws; Foothills Pipe Lines (Yukon) Ltd. and its subsidiaries, for example, must comply with the terms and conditions set by the Northern Pipeline Agency, which include provisions for employment opportunities for Indians, Metis, non-status Indians and women.

At the same time, the activities of the construction industry, made up of contractors and unions, are subject to provincial/territorial jurisdiction in matters of human rights and labour relations. Since the federal government lacks authority in these areas, as they apply to contractors and unions, the effectiveness of the relevant terms and conditions to be followed by the owner company for the construction phase of an otherwise federal project may be reduced as a result. Therefore it may be necessary to develop new concepts and strategies to ensure that the socio-economic goals of projects, such as the Alaska Highway and Norman wells pipelines, become more than "pipe dreams."

While all provinces and territories have legislation which prohibits overt discriminatory employment practices on such grounds as race or sex, they do not all provide means of redress of more subtle barriers in the system which may discriminate against the hiring and promotion of certain groups. Job descriptions may include stipulations of physical characteristics such as height and weight, academic qualifications or previous experience that can be irrelevant to the particular job at hand.

Saskatchewan is the only province that addresses this problem of systemic discrimination through legislation. By law the government is empowered to impose an affirmative action program on any employer or union operating within the

province who is not seen as providing fair employment opportunities to members of minority or disadvantaged groups. As a result of this legislation members of disadvantaged groups, primarily native people and women, have begun to make employment inroads into the heavily unionized construction industry in Saskatchewan.

To appreciate the problem the Saskatchewan legislation attempts to correct, the "closed shop" nature of the unions that operate in the construction industry must be understood. Construction workers are generally unemployed as often as they are employed. This on-again, off-again situation would have a disastrous impact on the financial position of construction unions if those unions were not permitted to continue to collect dues from members during occasional periods

of unemployment. As the existence of the union depends on its capacity to meet its fixed expenses, such as staff salaries and office rental, the collection of dues must continue unabated.

The continued operation of unions and, therefore, collective bargaining would not otherwise be possible in the construction industry if, after becoming certified as the bargaining agent for workers in the industry, the union ceases to receive operating funds on the first occasion that a contractor's work was completed and the workers laid off. The situation is peculiar to construction unions because of the seasonal or occasional nature of the industry they serve. Such union rules not only protect the continued existence of the union, but also provide contractual assurance to the unem-

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Labourers apply heat to completed weld at Quill Creek test facility, northwest of Whitehorse.

# News In Brief

**Foothills Pipe Lines (Alta.) Ltd. has awarded two contracts to Marine Pipeline Construction of Canada Limited of Calgary to build the remaining 206.8 km (128.5 mi.) of the Eastern Leg of the Alaska Highway gas pipeline in Alberta. The work consists of a 144.4-km (89.7-mi.) stretch between Hicklon Lake and Gem, and 62.4 km (38.8 mi.) between Jenner and the South Saskatchewan River.**

Construction of the 1 067-mm (42-n.) diameter system is scheduled to begin March 22 and conclude by mid-August to meet the September 1982 target date for the first delivery of Canadian gas to the United States through the new facilities. Estimated at a cost in Canada of \$621,244,900, the Eastern Leg is designed with the capacity to deliver 25.48 million m<sup>3</sup> (900 MMcf) of gas a day to U.S. midwestern markets.

Last year, a total of 428.2 km (265.6 mi.) of the Eastern Leg was built in Alberta east from James River Junction and through the southwestern corner of Saskatchewan to the Canada-U.S. border near Monchy, Saskatchewan. There the line joins the 1 821-km (1,132-mi.) J.S. Eastern Leg under construction by Northern Border Pipeline Company. Work on the U.S. line is expected to be resumed on March 15.

**Part of the proposed corridor of the Alaska Highway gas pipeline in northern British Columbia is included in a land claim filed on February 18 with the Federal Department of Indian Affairs and Northern Development (DIAND) by the Kaska Dena Indians from the communities of Lower Post, Fireside, Good Hope Lake, Muncho Lake and Fort Ware. The Northern Pipeline Act protects any existing claims native people had to land on which the pipeline will be situated.**

The 830 Kaska people are claiming a tract of land which stretches south from the Yukon border to the Finlay Mountain Range and from Dease Lake east to where the Liard River swings northward to join the Mackenzie River. Other proposed resource development projects affected by the claim are a lead-zinc mine at Fort Ware and B.C. Hydro's Liard River power project. Spokesmen for the Kaska Dena have stated they are determined to have the land claim recognized and settled before any of these projects go ahead.



**Sen. H. A. (Bud) Olson**, Minister of State for Economic Development and Minister responsible for the Northern Pipeline Agency, is to be a guest speaker at the annual general meeting of the Pipeline Constructors Association of Canada on April 15 in Vancouver.

**The Federal Provincial Territorial Consultative Council (FPTCC)** holds its first quarterly meeting for 1982 on March 23 in Calgary, Alberta. Composed of senior officials from the Northern Pipeline Agency and the Governments of British Columbia, Alberta, Saskatchewan and Yukon, the FPTCC was established under the *Northern Pipeline Act* to ensure collaboration and consultation on intergovernmental matters relating to the Alaska Highway Gas Pipeline Project.

**Alberta landowners have filed notices of application for appeal** in the Federal Court of Canada in Ottawa against an order issued on January 14, 1982, by William A. Scotland, Designated Officer of the Northern Pipeline Agency. A total of 33 orders was issued that authorized Foothills Pipe Lines (Alta.) Ltd. to take additional lands for use as permanent right-of-way and permanent and temporary working space along the mainline of the Alaska Highway gas pipeline in the vicinity of Rocky Mountain House in central Alberta.

The landowners filed the notices for appeal on the grounds that the Designated Officer acted beyond his jurisdiction in granting Foothills (Alta.) leave to

take land belonging to the landowners as temporary working space. One notice also stated the company was subject to terms and conditions which the landowners had not had the opportunity to review. The matters covered by the terms and conditions were considered by the Designated Officer in his reasons for issuing the orders.

Mr. Scotland's decision was based on a hearing held in Rocky Mountain House on November 5, 1981, to consider the company's applications for additional lands along the first 57 km (35 mi.) of the mainline of the pipeline, extending north from James River Junction.

**The Northern British Columbia Advisory Council** has opened an office in Fort Nelson to receive comments from local citizens regarding construction of the Alaska Highway gas pipeline through northern B.C. Located in the Landmark Plaza, the office is staffed by Ms. Dolores Brown, who will undertake various research projects for the Council. The office is open between 11:00 a.m. and 1:00 p.m. weekdays.

At its March 6 meeting, the Council elected Jack Hannam of Dawson Creek, B.C. as Vice-Chairman, following the resignation of George Miller of Lower Post. Mr. Hannam also serves as Chairman of the Board of the Peace River-Liard Regional District.

**Bending tests on insulated steel line pipe** were conducted in February by Northwest Alaskan Pipeline Company, builders of the Alaskan section of the Alaska Highway gas pipeline, at the facility of CRC Pipeline Equipment (Canada) Ltd. in Edmonton, Alberta. The purpose of the tests was to determine to what degree 1 219-mm (48-in.) diameter pipe covered with polyurethane insulation can be bent in the field, using a standard bending machine, without buckling the steel or damaging the insulation system. Initial observations indicated that bends between zero and five degrees were achieved smoothly while those exceeding five degrees caused the pipe metal to buckle.

**Between mid-February and the end of March**, Foothills Pipe Lines (Yukon) Ltd. will have drilled approximately 60 holes to obtain additional soil  
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# Financing — Crux of Pipeline Delays say Commissioner Sharp

The challenge of financing has always been at the heart of the difficulties and delays dogging construction of the Alaska Highway gas pipeline, says the Hon. Mitchell Sharp, Commissioner of the Northern Pipeline Agency.

Addressing the annual luncheon meeting of the Canadian Association of Oilwell Drilling Contractors on February 26, in Calgary, Mr. Sharp outlined the inherent problems confronting the project which have pushed back the scheduled completion date of the mainline system from January 1983 to 1986-87.

The Commissioner recalled that from the outset everyone concerned, including the United States government regulatory authorities and project sponsors, knew the task of raising the immense amount of private debt and equity capital required to finance the pipeline would not be easy.

"With the benefit of hindsight, however, it is apparent that some of the original conceptions of the pipeline sponsors and some of the restrictions proposed by the Administration and adopted by Congress, while well-intentioned, were unrealistic to the point that they made successful financing of the project virtually impossible — particularly given the substantial increase in projected costs as a result of the impact of soaring inflation and interest charges," Mr. Sharp told his audience of 280.

The project sponsors in Alaska, for example, assumed that the debt capital for construction of the system through that state could be obtained solely on the basis of "project financing," with the assets of the pipeline itself pledged as collateral against such borrowing, the Commissioner explained. "That assumption proved three years later to be unacceptable to the financial market."

While the major petroleum producers at Prudhoe Bay were encouraged under the U.S. *Alaska Natural Gas Pipeline Act* to provide financial support as direct lenders or debt guarantors, continued Mr. Sharp, they were also prohibited from any equity interest in the pipeline in Alaska or in the management of its planning and construction — "a restriction that served as an almost insuperable barrier to their financial participation."

To complicate the situation, the U.S. legislation called for the separation of financing for the gas conditioning plant at Prudhoe Bay from the cost of the pipeline and made its construction and operation the sole responsibility of the gas producers, Mr. Sharp added. The implications of this separate treatment are important, he noted, in light of the controversy over the possibility of billing consumers before Alaskan gas flows, following completion of any one of the three segments — the Canadian pipeline, the Alaskan pipeline and the Prudhoe

Bay conditioning plant.

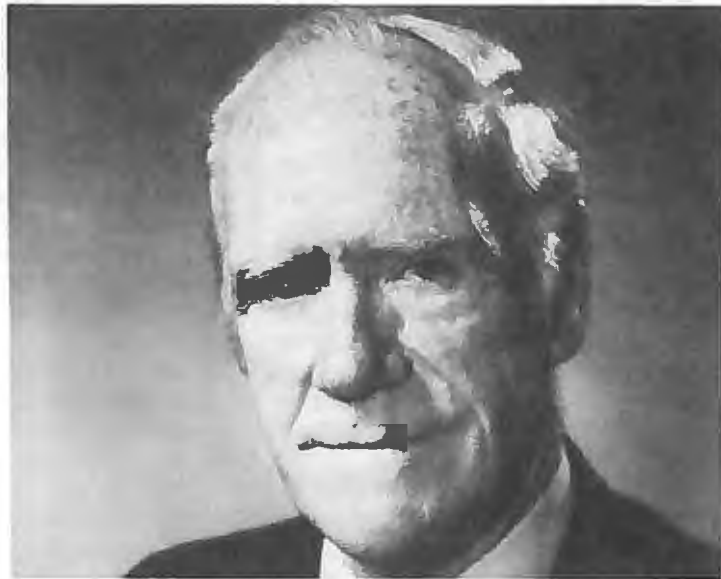
What the critics fail to appreciate, emphasized Mr. Sharp, is the original provision which requires consumers to begin meeting pipeline costs once the entire system was ready for operation even if gas were not yet flowing. "Such a contingency could indeed have arisen in the event of a failure of the producers to deliver gas or in the event that the gas conditioning plant was not yet operational."

Even this proviso fails to consider the stipulation first laid down by the Canadian sponsor, Foothills Pipe Lines (Yukon) Ltd., and agreed to by the National Energy Board, permitting a full return on invested equity upon completion of the Canadian section, Mr. Sharp remarked.

## *Changes in U.S. pipeline legislation recognized as necessary*

Although it has taken some time to come to grips with the realities surrounding the issues, he continued, those involved have realized that certain basic changes in the pipeline legislation were required. "It was this recognition that paved the way for negotiations between the project sponsors in Alaska and the gas producers on their joint participation in the planning, financing and construction of the Alaskan system, including the conditioning plant."

The Commissioner pointed out that the most fundamental consideration "is



The Hon. Mitchell Sharp, Commissioner

the extreme importance to the national interest of the United States and the interest of U.S. consumers to gain access to the 26 trillion cubic feet of gas reserves already established at Prudhoe Bay, which represent some 13 percent of all proven U.S. gas supplies." Although the Alaskan gas may be initially high priced, most people agree that over the longer term it will be one of the most competitive fuels available to the U.S. from either domestic or foreign sources he said.

Mr. Sharp reminded his audience of the 1977 Canada-United States agreement committing both countries to undertake the pipeline project. This was reinforced by assurances from the Carter Administration and Congress that the entire project would be completed expeditiously, which led the Canadian government in July 1980 to approve first-stage construction of the Western and Eastern Legs of the system for the initial transport of surplus Alberta gas to American markets.

By next fall, approximately one-third of the total pipeline will have been completed, noted Mr. Sharp, and this fact had an important bearing on U.S. determination to do everything within reason to facilitate construction of the remaining sections. The Commissioner also said he sensed a growing conviction within the U.S. Administration and Congress "that neither should attempt to substitute its judgment on the economic and financial feasibility of the Alaska pipeline project."

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## Financing — Crux of Pipeline Delays says Commissioner Sharp

ka Highway Gas Pipeline Project for the judgment of the marketplace; after all is said and done, this is where the ultimate test must be made in any case."

To overcome the inherent problems facing the project, continued Mr. Sharp, the Reagan Administration last October put forward a series of waivers or amendments to existing legislation, which were passed by Congress in December. It was generally agreed that the producers be permitted to participate in the ownership and management of the Alaskan segment and that the conditioning plant be an integral part of the overall system, he said.

However, the amendment with respect to advance billing of consumers was highly controversial, observed the Commissioner. This amendment is no more than a modification of the original provision, allowing the sponsors to begin reclaiming at least debt and operating costs from consumers once the whole pipeline was completed even if gas were not yet flowing, he remarked.

### *Chances remote of advance billing consumers — no go-ahead for northern sections until authorities satisfied with financing, design and schedules*

"While the sponsors and their financial advisors considered that this extension of the original safeguard provided in the legislation was critical to the raising of the required capital funds, the chances of this contingency arising are remote," declared Mr. Sharp. The go-ahead for the northern segments will not be given, he continued, until the American and Canadian regulatory authorities are satisfied with financing arrangements, pipeline design and the construction schedule for the system in their respective countries. Furthermore, no costs can be passed on to U.S. consumers until the target date established by the U.S. Federal Energy Regulatory Commission (FERC) for the start-up of the entire pipeline, he stressed.

"Under all the circumstances, the risk that the U.S. consumer is being required to bear is very small. That the consumer should be expected to bear any risk of assuming costs for a pipeline until the system is completed and gas actually flowing is, admittedly, not in keeping with the usual practice in the industry. But the very fact that, even under the original legislation the prospective purchasers of Alaskan gas would

be required to assume some such risk, underlines the unique nature of this pipeline and the extraordinary challenge of privately financing it."

Contrary to suggestions made during the Congressional debate on the waiver package that consumers would bear all the risks, Mr. Sharp pointed out that in Alaska alone the pipeline sponsors and gas producers will be required to risk some \$7 billion U.S. or more in equity investment on which there can be no return until gas is flowing. All participants have a common desire to meet the official target completion date once it is determined, Mr. Sharp said.

"Being able to collect a tariff in advance of the flow of gas is a kind of insurance that the bankers have insisted upon, but it has no inherent attraction to the owners of the pipeline. It does not add to their earnings in the long run, nor to the price that will ultimately be paid by the consumer."

Although the project overcame a "formidable hurdle" with the approval of

the waivers, much remains to be done before mainline construction can proceed, Mr. Sharp said. Discussions are ongoing between sponsors and producers to decide on their respective roles concerning the equity and debt capital for the project and among these parties and the financial community, he explained.

The FERC must also make a number of major decisions on such issues as the final design cost estimate for the Alaskan segment as a basis for determining the rate of financial return on equity invested in the pipeline and the conditioning plant, Mr. Sharp continued. The FERC must be satisfied that the Alaskan gas is marketable, the project will benefit the economy and financing has been obtained, he added, while in Canada certain regulatory issues also remain to be resolved. "In particular, it will be necessary for Foothills to establish to the satisfaction of the Minister responsible for the Northern Pipeline Agency and the National Energy Board that financing has been obtained to cover the cost of second-stage construction of the Canadian segments," noted Mr. Sharp.

"Both in the United States and Canada, the financing challenge is compounded by something of a chicken-and-egg problem," the Commissioner remarked. The waivers require the FERC to set a target date for the start of operation of the entire pipeline system, he explained, prior to which no charges may be levied on consumers. "Since it is of vital significance, it would be extremely difficult for the project sponsors to obtain assured financing until this date has been established by the FERC. Conversely, it would be difficult for the U.S. regulatory agency to determine an operational target date until it has evidence before it on which to arrive at a judgment with respect to a date that was fair and reasonable to all parties concerned." Mr. Sharp expressed confidence that the project sponsors and U.S. regulatory authorities will resolve the issue expeditiously.

The most critical element in determining when construction of the pipeline system can reasonably be expected to be completed is the gas-conditioning plant at Prudhoe Bay, Mr. Sharp said. "In order to meet the present schedule for completion of the system by late 1986, it would be necessary for the project sponsors to begin placing firm orders for components of the plant by June of this year. Similarly, orders would have to be placed at an early date for the several special barges that will have to be built to transport those components to Prudhoe Bay during the short time access may be possible in the Beaufort Sea during the summers of 1982 to 1985."

### *Question now is 'when will the Alaska Highway gas pipeline be completed?'*

Mr. Sharp acknowledged the schedule required to meet a completion date of late 1986 is "extremely tight, and, realistically, it may be impossible to achieve." However, further delay at this point is not as critical as continued efforts by all parties concerned to press forward with the project in the national interest of both the United States and Canada, he concluded. "The fact is that the debate has now shifted from the question 'Will the Alaska Highway gas pipeline be built?' to the question, 'When will the Alaska Highway gas pipeline be completed?'"

# Pan-Alberta Seeks Additional Gas Exports to U.S.

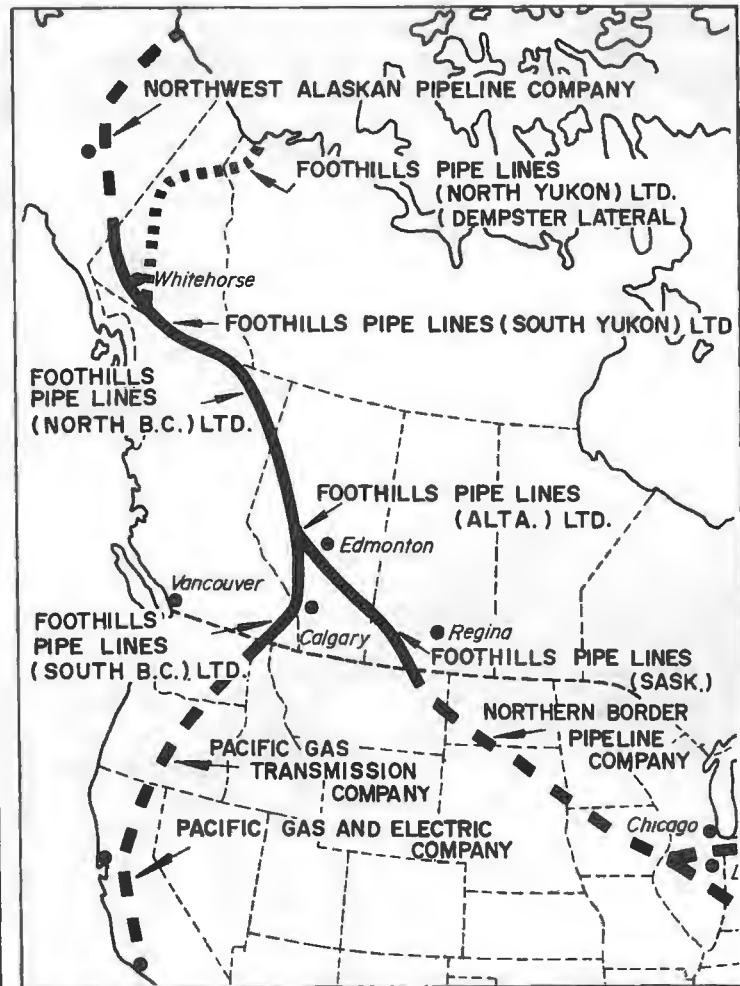
The National Energy Board (NEB) is considering applications for licences to export a total of 296.2 billion m<sup>3</sup> (10.5 trillion cu. ft.) of surplus Canadian natural gas to the United States between 1982 and 2002, at the Gas Export Omnibus Hearings which began on March 16 in Ottawa.

Included in these applications is an extension to the existing licences of Pan-Alberta Gas Ltd. to move gas to the United States through the southern segments of the Canadian portion of the Alaska Highway gas pipeline, known as the Western and Eastern legs. The company is currently authorized to ship a firm quantity of 63.6 billion m<sup>3</sup> (2.24 Tcf) to U.S. markets over the period from 1980-81 to 1987-88. In its new applications, Pan-Alberta seeks to export additional volumes of gas, 62.6 billion m<sup>3</sup> (2.21 Tcf) and 14.9 billion m<sup>3</sup> (0.5 Tcf) respectively through the Eastern and Western legs of the system between 1988 and 1995.

By that time the gas from Prudhoe Bay, Alaska, is expected to be flowing through the pipeline. If Pan-Alberta succeeds in obtaining permission to move the additional export volumes, the capability of the Western and Eastern Legs of the Alaska Highway gas pipeline to transport these volumes, along with Alaskan gas, may have to be examined.

The NEB's Gas Export Omnibus Hearings now under way consist of three phases. The first phase involves a review of existing export licences and a re-examination of procedures used to calculate surplus volumes of gas and the amount available for export; during the second phase, the individual applications for gas export will be considered; and during the third phase, the amount of surplus will be determined.

The NEB plans to issue a decision on the questions at issue in the phase I hearing following its conclusion, with a final decision expected near the end of 1982 on the other outstanding issues involved in the remaining hearings.



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Geotechnical crew sets up drill to take core sample along the Alaska Highway near Marsh Lake in Yukon.

samples along the right-of-way of the Alaska Highway gas pipeline in Yukon, mainly in the areas from Kluane Lake to Whitehorse and from Marsh Lake to Teslin. The program is aimed at further determining the extent of permafrost and unfrozen ground along the pipeline route and the potential for frost heave and thaw settlement.

On March 1, the company also began a geotechnical investigation of Kluane Lake — the largest proposed lake crossing by the pipeline at a width of six km (four mi.). The purpose of the investigation is to study the stability and potential for giving way, or slumping, of the side slopes and lake bottom under seismic conditions. This is done using an electrically-driven "cone penetrometer," a steel shaft which is inserted into the lake bottom to measure the physical resistance of the soil in both lateral and vertical directions.

This winter's geotechnical programs, scheduled for completion by April 1, are part of the ongoing research required to be undertaken by Foothills (Yukon) to determine the final routing of the pipeline, its design and manner of construction.

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## Labour Relations and Human Rights for Megaprojects in the North

ployed members that they will have first claim to all jobs. Individual members are dispatched for available jobs in order of their standing on a hiring list, which ranks members on the basis of their length of unemployment, with the member who has been on lay-off the longest as first.

Collective agreements also permit an employer to select particular workers from the union's hiring list without regard to their ranking. However, the provision for selection by name is limited to a given percentage of the total work force to be assembled by the employer and the workers so selected must have worked for that employer on previous projects.

The fact that available jobs are always filled by union members during times of reduced activity by contractors leads to the repeated claim that construction unions operate as "closed shop" by denying new job aspirants the right to work. Although there are valid reasons why construction unions are reluctant to expand their membership, especially during slack economic periods, such a practice may prevent groups such as natives, northerners and women from seeking meaningful employment.

Affirmative action programs would appear to offer one solution to the problem. However, as mentioned before, Saskatchewan is the only province with legislation permitting the Human Rights Commission, on its own initiative or on application by any person, to order an affirmative action program to be undertaken by a union or employer. Such action does not have to await a complaint and there are indications that this fact alone has caused employers and construction unions in Saskatchewan to initiate remedial training and recruitment programs for disadvantaged groups.

Therefore contractors and unions, employed on a federally-regulated pipeline in Saskatchewan, are subject to federally-imposed terms and conditions requiring an affirmative action program upon application by the federal agency overseeing the project to the Saskatchewan Human Rights Commission. The Commission would likely react at least as favourably to such a request from the federal government as it would to a request from any other source. However, no other province or territory has empowered its Human Rights Commission with similar legislative clout.

Affirmative action is allowed in Brit-

ish Columbia and became legal in Alberta last year when the *Individual Rights Protection Act* was amended to permit affirmative action with Cabinet approval. However, neither province can order an employer or union to implement such a program.

The two territorial governments do not officially recognize affirmative action. By enacting provisions in their respective fair employment practice ordinances, however, the territories could not only provide for affirmative action programs, but could also have the authority to order unions and employers to institute such programs when warranted.

Although Parliament has exclusive jurisdiction to pass laws dealing with Yukon and Northwest Territories, legislation has been enacted transferring power over property, civil rights and matters of a local and private nature to the local territorial governments. Accordingly, the territorial governments have the same legislative powers with regard to labour laws and human rights as do the provinces. However, the territories have not enacted specific labour relations legislation governing collective bargaining between employers and unions operating in the territories. The *Canada Labour Code* still applies in Yukon and Northwest Territories and the cost of administration is a federal responsibility.

Any union operating in Canada is recognized under the *Canada Labour Code*, whereas each province has its own labour legislation which recognizes only those unions with locals established within the province. Since no such legislation exists in the territories, southern-based locals of British Columbia and Alberta construction unions have been permitted to claim and enforce jurisdiction over all work performed by their employers in Yukon and Northwest Territories respectively. Local residents have had difficulty obtaining jobs because the southern-based union locals have negotiated exclusive dispatch rights for all work performed by their employers in the territories.

Vancouver-based locals have jurisdiction in Yukon, while Edmonton-based locals cover the Mackenzie Valley region of the Northwest Territories. One exception is the Vancouver Local 170 of the Welders Union, which has jurisdiction over Yukon and shares jurisdiction in the Mackenzie Valley with Edmonton

Local 488.

This situation is unique to the territories, although the Yukon Territorial Government has been studying the feasibility of union certification legislation. Everywhere else in Canada unions are required to maintain a local or provincial branch in order to be recognized as a bargaining agent. Where such legislation has been tested, in Newfoundland for example, a union local "lacking in provincial leadership and organization" was denied certification under the *Newfoundland Labour Relations Act*. The lack of a territorial ordinance governing labour relations tends to compound the already formidable barriers to gaining access to closed shop construction unions.

To ensure that those who are disadvantaged, by reason of race or sex, gain employment and training on federally-regulated projects, the federal government could conceivably invoke its declaratory powers under the Constitution. While Parliament could declare that the activity in which contractors and unions are engaged in the construction interprovincial pipelines would be subject to federal jurisdiction for the duration of the project, such action is unlikely under present federal policies.

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## Pipeline

The Northern Pipeline Agency was created by Parliament in April 1978 to oversee planning and construction of the Alaska Highway gas pipeline project in Canada. Inquiries or suggestions regarding *Pipeline* may be directed to:

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