

Newfoundland and Labrador Federation of Labour

in consultation with Prof. Travis William Fast of the University of Laval



**Submission to the Hebron Public Review Commission
Economic Benefits**

“Getting our fair share”

December 7, 2011

The Newfoundland and Labrador Federation of Labour (NLFL) represents 25 affiliated unions, 500 union locals and 65,000 working women and men in every sector of our economy, including the offshore oil industry.

For 75 years, we have worked to advance the rights of working people, including in the areas of occupational, health and safety, retirement security, women's equality, and worker rights.

The Federation also advocates for improved public services (such as education), as well as public policy and laws that support our principles of social and economic justice – including the overall wellbeing and welfare of all citizens.

Our Federation is pleased to make this submission regarding the benefits of the Hebron development. In doing so, we would like to acknowledge the assistance and expertise of Prof. Travis William Fast of the University of Laval.

For the first time in our history, since joining the Canadian Federation, we are now a “have” province. For the first time in our history, we are now looking ahead to opportunities to not only sustain our province and the wellbeing of our people, but opportunities to grow and prosper in ways we have yet to conceive of.

Yet as we contemplate the world of possibilities before us, our language and our actions often demonstrate that we are still using traditional lenses to define our real potential. For example, our focus on ensuring our major projects include prerequisite clauses with respect to providing employment and business opportunities to local Newfoundlanders and Labradorians are necessary and essential, but we must take this a step further.

It is the position of the Newfoundland and Labrador Federation of Labour that we must “rethink” our definition of benefits in our new environment to avoid lost opportunities which may limit our capacity to secure a prosperous and sustainable social and economic future.

Our Federation of Labour is pleased to make a submission to the Hebron Public Review Commission (HPRC). The development of the offshore oil and gas sector has been a remarkable achievement for Newfoundland and Labrador and Canada.

The Atlantic Accord was signed in 1985 - over 26 years ago. This was a significant milestone for our province that delivered a message of hope

and new potential for our future. The core principles of the Accord are sound and have since been incorporated into all major project developments. One of the central aims of the *Accord*, as outlined in Section 2(d), is to

... ensure that the pace and manner of development optimize the social and economic benefits to Canada as a whole and to Newfoundland and Labrador in particular; (emphasis added).

A quarter of a century later, it is now time to challenge our thinking and our interpretation of social and economic benefits.

The challenge is now how we ensure (labour, business and government working together) that we progressively interpret and apply the terms of the existing agreements.

Thus, our objective in making this submission to the HPRC is to encourage that the maximum practicable economic and social benefits from a project the size of Hebron flow to the citizens of this province as mandated under the terms of the Accord.

It is worth mentioning that Hebron represents the most recent of our major project development agreements. The project was announced on August 20, 2008 - 23 years after the Accord and projects like Hibernia and White Rose. At the time, then Premier, Danny Williams, was quoted as saying that:

Hebron is a breakthrough agreement for the province and this is a day that all Newfoundlanders and Labradorians can take pride in and celebrate...The signing of this agreement reflects a bold new era of partnership between government and our industry partners. We have real and meaningful ownership of our resources in the form of an equity stake in this project and a new super royalty regime. We have achieved significant commitments for local benefits for fabrication and engineering, and are now embarking on a major industrial project that will fill our fabrication yards and employ thousands of Newfoundlanders and Labradorians. This marks our emergence as a full participant on the global energy stage and we are pleased to join with our industry co-venturers [sic] in the commencement of this project.¹

Although milestones were indeed achieved with the *Hebron Agreement* with respect to previous agreements it is worth noting that in jurisdictions

like Denmark and Norway the governments' after-the-cost take is 60 and 75 percent respectively. Even with the improved terms negotiated into the Hebron agreement the best the Governments of Canada and Newfoundland and Labrador will receive is around 35% of the after-cost take.² It should also be pointed out, for context, that the government of Norway, in virtue of its 67% ownership of Statoil, has a higher direct equity stake (9.7%) in the Hebron project than the government of Newfoundland and Labrador does in virtue of NALCOR's 4.9% equity stake.³ So while it is true that the *Hebron Agreement* is better than that achieved for the Hibernia project - when systematic comparisons are made with other national jurisdictions the fiscal regime negotiated for Hebron is still not where we need to be.

It is rather more of a positive step in the direction of improving royalty regimes. Certainly Norway is the one model to follow and our Federation expects that the creation of NALCOR as a public energy corporation will play a significant role in how we improve upon royalty regimes in future. As you know, NALCOR has been tasked with exercising "appropriate control over the development of our resources to ensure they are managed and used in the best interest of the people of Newfoundland and Labrador. We will assume an ownership interest in the development of our energy resources where it fits our strategic long-term objectives."⁴

However, in the terms of reference of the HPRC it is specifically stated that the fiscal regime does not fall under its purview. Therefore, given the terms of reference and thus the commission's inability to alter or make recommendations with respect to the current fiscal regime it is our opinion that it is necessary to ensure that a maximum possible commitment is undertaken by the proponents in the *Hebron Benefits Plan* (HBP) to:

1. Maximize the direct economic benefits in terms of local employment and contracting.
2. Maximize medium to long term benefits of the Hebron project by instituting a technology transfer and training regime to ensure that the local and domestic oil and gas sector expand their capacity and technical capabilities.
3. Ensure that the direct and indirect benefits are spread out in the most diverse practicable manner both in terms of geography and in terms of gender and ethnic equity.

4. Establish an advisory committee between the proponents, the government, the supply and service contractors, the building trades unions and the NLFL on all matters with respect to industrial relations and human resource management.
5. Minimize the negative externalities generated by the project; e.g., with respect to inflation generated by such large projects in the cost of living most notably housing. In other words ensuring the social benefits from the project are actual benefits.
6. Establish, where practicable, maximum performance targets and minimum thresholds with respect to the specific objectives outlined in an amended Benefits Plan.
7. Promote to the greatest possible degree the transparent, accurate and timely (annual) public dissemination of information as it relates to specific objectives outlined in the *Benefits Plan*.

It is our contention that although this amounts to an ambitious agenda we can in fact achieve these measures in the context of the existing *Hebron Agreement* without the need to necessarily alter the legal language of the agreement. For example, in the HBP under section 3.3.4 it is noted that:

Human resources planning for the Project will continue to be developed and refined over the life of the Project, currently estimated to be more than 30 years. Given this long duration, and the fact that the Project is in the early stages of development, this Plan does not provide a description of all of the human resources initiatives that will be used.

The HBP is therefore suitably abstract enough to allow for creative innovation in finding ways to maximize the economic and social benefits flowing from the Hebron project. Additionally, the specific clauses and definitions in the *Agreement* and the HBP referencing employment benefits, research and development and education and training leave plenty of latitude to create new opportunities and to maximize benefits in the future.⁵

In 1985 this province was on the precipice of a devastating economic depression that followed us well into the late 1990's and early years of this past decade. At the start of this period, young people (<20 years old) represented almost 36% of our population. Our core working age

population (20 to 64 year olds) represented about 56 % of the population. Weak economic conditions (including the closure of most of the Newfoundland and Labrador fishing industry) led to a mass out-migration from the province, especially among young workers and their families, as well as unprecedented levels of local unemployment. In this environment, the concept of negotiating major project agreements that include core employment benefits for our people was critical.

Today, our environment is very different. We have been witnessing some of the benefits of economic prosperity - for example employment levels have risen to record level highs. We have also witnessed the emergence of other socio-economic impacts, such as growing income inequalities that have plagued other prosperous jurisdictions for some time. Currently levels of unemployment still indicate that requirements for core employment benefits are essential in major project Agreements - but the emergence of these other unintended consequences of economic development suggest that we need to rethink and redefine our interpretation of "benefits".

If this alone is not argument enough, we should strategically reflect on broader forces - particularly the demographic trends - that are, and will continue to impact most developed economies. Since 1986 our population has declined by 11.2%. In this number we have seen a 67% reduction in our youth population (<20 years) while our senior population (65+) has grown by 50.3% to now represent 15.8% of our population compared to just 8.7% in 1985. Looking ahead - these trends will continue.

The Hebron agreement cites a 30-year benefit regime for its operations here in the province. Looking ahead to just 2025 (14 years away) we will see further structural shifts in our population that pose significant socio-economic implications. By 2025, seniors will represent about 25% of our population and youth (less than 20) just 20%. Within our core working age population of 20 to 64 year olds, the vast majority of workers will be over the age of 45 years old (53%) compared to just 28% in 1986.

This past July, the Provincial Government released Outlook 2020 that provided a forecast of 70,000 job openings over the next decade. We know the forecast was outdated soon after its release in context of other mining developments and potential projects that have since come to the fore - thereby increasing job demands for the future.

We do not have to be economists to consider the socio-economic implications for our society including major project developers like the Hebron proponents.

These trends hold implications including but not limited to potential labour or skills shortages, increasing tax burdens for working age people to support an increasingly dependent population of seniors, escalating health care costs etc.

We cannot avoid or fully-stop these demographic trends - but we do have the power to implement measures that can significantly help mitigate the impacts - and our Federation contends that we can in fact achieve some of these measures in context of the existing Hebron Agreement given the commitment to human resource planning for the 30 years of the project.

Maximise direct economic benefits

Whereas the oil and gas sector directly contribute around 40% to total provincial GDP, the sector directly contributes approximately 4% of provincial employment.⁶

What this means is that it is imperative that every single possibility of local employment be exploited with respect to contracting employment. While the *Benefits Plan* does hold this out as one of its broad goals it sets a very low threshold for employment commitments. The commission's own outside expert acknowledges that Hebron will generate less provincial capital spending and in the case of local employment significantly less so.

Indeed, with Hibernia 66% of the project's employment occurred in the province whereas in the case of Hebron it has been estimated that the employment share will be around 40%.⁷

In their written submission to the commission, the Newfoundland & Labrador Oil & Gas Industries Association (NOIA) has already made a significant contribution to analysing the ways and means through which the percentage of capital spending, contracting and employment in Newfoundland and Labrador can be increased. We also share NOIA's concern that the language as written in the Benefits Plan is too general (except on the lowest of thresholds) as to hold the proponents meaningfully accountable.

As we are generally friendly to NOIA's submission to the HPRC we would also want to add that existing commitments on the part of the proponents to local supply and service providers (or future increases) also include the proviso of minimum provincial employment targets to ensure that provincially-based supply and service enterprises do not merely function as "pass through entities."⁸

Maximisation of medium and long term social and economic benefits

Demanding the expansion of local capital expenditure, the maximum contracting of supply and service providers, and the maximum level of employment requires that full thought be given to a robust technology transfer and training regime.

Outside of some modest proposals for enhancing local skills and knowledge the Benefits Plan is short on specifics. For example, most of the R&D expenditure is in the form of a grant of one million dollars to the higher education sector. While this is in no doubt very welcome by the post secondary sector we are want to query if the sum and the target are sufficient.

In our view technology transfer and skills development are more important than technological innovation at this stage in the province's capacities and capabilities.

In line with NOIA's submission we think funds are equally well spent ensuring the highest percent of local supply and service contracting along side serious investment in human capital.

In short the HBP lacks a coordinated approach to expanding both the skills base and the capacity base of the local economy. At the very least resources from this project must be deployed to ensure that there is a net positive expansion in the skills and capacity base of the province for the future needs of this project and projects to come.

As such we would like to see a serious commitment on the part of the proponents to a training, skills and social development fund which would be accessible to existing workers in the industry; those that require retraining or upskilling; those new to the labour force and to be invested in the early years thus truly enhancing the social benefits of the project.

To that end we would like the proponents to commit to establishing a two hundred and 50 million dollar (250,000,000 \$CDN) skills, training and social development fund.

While this may seem like an onerous amount it will represent only 1.25% of the total value of the Hebron project and it is a one off expense that will self-fund going forward. We should also like to note that both government and industry have demonstrated serious concern over pending labour shortages. The government's own publication *Outlook 2020* is projecting a 70,000 job openings over the next decade and all in the context of demographic headwinds.⁹ Clearly the proponents must aid in the attraction, retention and retraining of the provincial labour force.

The endowment fund should be structured as follows:

- 30% is to be designated to the university sector: in particular but not limited to the engineering and the related applied sciences which service the sector. For example, funding might be used to enhance those sectors that study the impacts of the oil and gas sector on the environment or society.
- 40% is to be designated to retraining and apprenticeship programs which are relevant to the skill profile (existing and future) of the oil and gas sector.
- 30% will be invested in early learning and child care.

With these funding supports in place it will ensure that the local labour supply and existing human capital stock has the capacity to absorb the demands being placed on it in the future.¹⁰

The endowment fund should minimally be managed as follows:

- The establishment joint management committee.
- A Board of Governors drawn from the government, the university and college sector, the trades unions, the NLFL, NOIA, the proponents, and representatives from the community (NGOs).

Such a structure will ensure that the flows of funds generated from the endowment fund are focussed on human capital formation where it is most needed. We have included the early years for obvious reasons. The

multitude of international evidence confirms the need to invest in early childhood education and the benefits to the economy and to industry when this is undertaken.

Sharing the benefits

As already mentioned, although the oil sector accounts for significant proportion of provincial GDP it accounts for little direct and indirect employment. Given these facts it behoves the HPRC to make sure the economic benefits are as regionally and socially dispersed as practicable. The submission by the Provincial Advisory Council on the Status of Women (PACSW) to the HPRC has already noted some of the limitations to the existing HPB with respect to ensuring gender equity. We would, however, also like to stress the fact that the same arguments holds true in terms of ethnic and regional representation. Rural Newfoundland and Labrador is often the site of resource extraction but only a minor beneficiary.

This reality can only be overcome if the content of the HBP both upgrades rural capacities by making a concerted effort to target training, education and funding initiatives for those services at these communities.

We would note that the existing HBP explicitly eschews responsibility for ensuring secondary processing takes place in the province. To our mind this is not appropriately forward looking. The oil and gas industry is a close cousin to the petro-chemical industry. Indeed the corporate web sites of the proponents list an impressive range of secondary processing activities that they have as going concerns in their daily operations.

As such we think it only suitable that proponents draw up a firm list of what secondary processing facilities can be located in Newfoundland and Labrador and in which of our regionally marginalized communities it logistically makes sense to locate those facilities.

By undertaking such a commitment the proponent will also further the objective of maximising the direct economic benefits for the duration of the project; maximising the medium and long term benefits and playing a considerable role in the modernization of our regional economies. All of which are objectives to which the proponents have abstractly pledged themselves to do in the HBP.

Industrial relations and human resource management (IR/HRM)

Establish an advisory committee between the proponents, the government, the supply and service contractors, the building trades unions and the NLFL on all matters with respect to IR / HRM. The broad objective of this committee is to aid in the development, dissemination and monitoring of standards which meet and exceed best practices with respect to health and safety, remuneration, skills development and education, and labour retention and attraction.

Minimizing negative externalities

Projects of this size generate a series of socio-economic and environmental externalities both positive and negative. In general we would like to see the proponents develop a robust program for monitoring and reducing the negative externalities generated by the Hebron project.

The most obvious negative externalities concern the physical environment. We note that the proponents have endeavoured to take measures to minimize their impact on the natural environment in the HBP. We would however encourage the proponents to exceed best practices and minimum statutory environmental regulations in the course of their actions and those undertaken on behalf of those contracted by the proponents whether they are located in the province, country of Canada or internationally.

To be clear it is our expectation that the proponents seek to exceed best practices and the minimum statutory regulations that apply in the province and Canada. We also think the proponents need to commit to the same as far as health safety regulations and industrial relations legislation for all internationally sourced goods and services.

In projects such as this there are negative socio economic externalities generated. As the sector makes a positive contribution to both the general level of average annual salaries from both the direct salaries it pays and those generated indirectly it thus increases income inequality.

While we are cognizant of the fact that the income tax and transfer regime (fiscal policy) is the germane mechanism for addressing such concerns we think the proponents nonetheless have a role to play in mitigating the effects of income inequality.

Specifically it is our view that the proponents should invest 50 million dollars over the next ten years on low/fixed income and cooperative housing

projects in regions with low vacancy rates such as St. John's. We would see the proponents working in collaboration with the NL Housing Corporation, and community social housing organizations with an aim of creating affordable housing.

Establishing maximum performance targets and minimum thresholds

The HBP is long on abstract albeit laudable commitments yet quite short on specific detail. To that end we would like the proponents to establish maximum performance targets along side minimally acceptable thresholds with respect to the objectives outlined in this document and those already committed to in the existing HBP. Without specific targets and thresholds it is not possible to hold the proponents publicly accountable.

Public accountability and transparency

The proponents must promote to the greatest possible degree the transparent, accurate and timely (annual) public dissemination of information as it relates to specific objectives outlined *inter alia* and the HBP. To that end, a Hebron Public Accountability Forum (HPAF) needs to be established in which all the relevant line departments of the government of Newfoundland and Labrador in conjunction with the proponents undertake annual reports and public hearings with respect to the progresses on meeting the maximum targets and minimum thresholds described *inter alia* and the HBP.

Summary and conclusion

One of the specifically stated goals of the Government of Newfoundland and Labrador is to ensure that specific policies undertaken which contribute to the long term socio-economic development of the province contribute to the rational development of the province's long term socio-economic goals. In particular in the *Energy Plan*, under the heading of "Sustainable Economic Development" one of three major objectives of the government is to:

...[D]evelop our energy resources to help meet our social and economic responsibilities. We will reinvest the value we receive from our energy sector to secure our prosperity today and for future generations. We will ensure energy developments

capitalize on our competitive advantages: our people, our industrial infrastructure, our geographic location and our political stability.

To that end our submission makes a series of recommendations which we think will ensure that the proponents are making their own contribution to the goals of the province's leaders and its people.

We would further note that although the Hebron Agreement is an improvement over previous offshore oil agreements, it is, however, marginally worse in terms of capital spending and local employment. The recommendations contained within this document seek to improve on these short comings.

And while it is true that the proposed Training, Skills, and Social Development Endowment Fund and the Affordable Housing Initiative will represent significant contributions on the part of the proponents they will in sum amount to 1.5% of the total value of the Hebron Project. When this is compared to what the proponents would be paying if they were to undertake such a project in Denmark or Norway, given their fiscal regimes; the additional responsibilities recommended in this document are indeed not very onerous.

It is our hope, and in line with the thinking of Adam Smith, that the proponents' and the commission will receive these recommendations within the spirit of enlightened self interest.¹¹

APPENDIX A: Details in the Atlantic Accord and HBP

“Research and Development” means any scientific research and experimental development recognized under the Income Tax Act (Canada), or the Income Tax Act (Canada) regulations and that is:

- (1) research and development activity in the Province;
- (2) increased research and development capacity in the Province;
- (3) Education and Training, and, in respect of research and development referenced in (1) and (2) above, includes the systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is:

- (a) basic research,
- (b) applied research, or
- (c) experimental development, including, in respect of such systematic investigation or search:
- (d) work undertaken with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing or psychological research, where the work is commensurate with needs, and directly in support, of work described in (a), (b) and (c) of this definition that is undertaken in the Province.

In addition to the elements included in the above definition, research and development may extend beyond science and technology to include research in such areas as fiscal regimes, business models and socioeconomic and environmental matters where the Board permits such inclusion. In addition to other elements included in this definition, research and development may include local investments in new and evolving technologies in the Province where the Board permits such inclusion.

(Emphasis added)

5.9 Research and Development.

(A) The Proponents shall invest one hundred twenty million dollars (\$120,000,000) in Research and Development during the life of the Hebron Project.

(B) The expenditure of such one hundred twenty million dollars (\$120,000,000) investment in the Province shall be determined and

administered by the Proponents in consultation with the Province.
 This commitment includes a one million dollar (\$1,000,000) contribution to the College of the North Atlantic and Memorial University of Newfoundland and Labrador to enhance skills training prior to Project Sanction.

(C) Research and Development expenditures made by the Proponents from the Effective Date to the date of Project Sanction but prior to the construction phase of the Hebron Project shall be considered by the Province as having been made during the Hebron Project construction phase.

(D) The Proponents shall seek Board approval of its plan to invest a fixed amount of one hundred twenty million dollars (\$120,000,000) in Research and Development during the life of the Hebron Project, and the Province shall advise the Board of its full support for such Research and Development plan as described in (A), (B) and (C) above as the entire amount of the Proponents' Research and Development obligations in respect of the Hebron Project.

5.11 Gender Equity and Diversity Program.

...The objectives of this program will be to:

- (1) address employment equity for the Hebron Project, including full access to employment opportunities for and employment of qualified women and Disadvantaged Groups in the Hebron Project, with an emphasis on continuous improvement;
- (2) implement proactive programs and practices that contribute to the creation of an inclusive work environment and corporate culture; and
- (3) promote accountability and responsibility for diversity.

(C) The Gender Equity and Diversity Program shall include the following plans:

- (1) a women's employment plan and business access strategy (the "WEP") in which the Operator will establish quantifiable objectives and goals. The Operator agrees that it will initially set such goals by taking into consideration the availability of women in particular occupational categories as identified by Statistics Canada in its Employment Equity Data Report. The WEP will institute ongoing programs and processes to facilitate employment and participation for women in all phases of the Hebron Project, and at all facilities, sites and offices in the Province where work Hebron Benefits Agreement performed by the Operator and main contractors relating to the Hebron Project is taking place; and

(2) a diversity plan and business access strategy for Disadvantaged Groups (the “Diversity Plan”) in which the Operator will establish quantifiable objectives and goals. The Diversity Plan will institute ongoing programs and processes to facilitate employment and participation for Disadvantaged Groups in all phases of the Hebron Project, and at all facilities, sites and offices in the Province where work performed by the Operator and main contractors relating to the Hebron Project is taking place.

(E) The Diversity Plan will include the following provisions:

(2) the Operator will create training and recruitment programs for Disadvantaged Groups in consultation with training and educational institutions in the Province;

(Emphasis added)

End Notes

¹ Executive Council, Natural Resources “Hebron Agreement Signals New Era in Province’s History,” *News Releases Government of Newfoundland and Labrador* (August 20, 2008).

<http://www.releases.gov.nl.ca/releases/2008/exec/0820n04.htm>

² For information on Norway’s fiscal regime see:

<http://www.arcticgas.gov/norway%E2%80%99s-different-approach-to-oil-and-gas-development>.

For a comparative look at offshore regimes in other national jurisdictions see:

Alberta Energy, PriceWaterhouseCoopers, “Alberta’s Royalty System –Jurisdictional Comparison,” (2009), p. 43.

http://www.energy.alberta.ca/Org/pdfs/Royalty_Jurisdiction.pdf

³ <http://www.hebronproject.com/>

<http://www.statoil.com/en/About/Worldwide/canada/OilSands/Pages/StatoilInCanada.aspx>

⁴ Government of Newfoundland and Labrador, “Focussing Our Energy: Newfoundland and Labrador Energy Plan,” (2007). p.3

<http://www.nr.gov.nl.ca/energyplan/energyreport.pdf>

⁵ See Appendix A.

⁶ Fast, Travis “Towards a Plan for Prosperity in Newfoundland and Labrador: Distribution, Diversification & Socio-Economic Development”, (2011) discussion paper delivered to the *NLFL Issue(s) Based Convention*, November 7th & 8th, p. 7.

⁷ Locke, Wade “Assessing the Economic Impact of the Hebron Offshore Oil Project,” (Nov. 1, 2011), pp. 26-27.

⁸ Normally a pass through entity describes a corporate entity specifically designed for tax purposes. Here the term is being used in a slightly oblique manner. The basic idea is to make sure that local supply and service providers do not merely act as contractors to out of province (or out of country) supply and service providers. If they did, not only would they add a layer of unnecessary cost to the project but there would be little demonstrative benefit to broader community.

⁹ Department of Human Resources, Labour and Employment, “Newfoundland and Labrador Labour Market: Outlook 2020,” (2011).

<http://www.hrle.gov.nl.ca/hrle/publications/LMOutlook2020.pdf>

¹⁰ One of the things which are well understood in development economics is that the skill base has to in some reasonable sense match the demands being placed on it. In absence of a plan to increase the skill base and competency level of the domestic sector good money will simply be spent driving up supply prices but not necessarily quality. In this limited sense, supply does come before demand.

¹¹ See: *The Theory of Moral Sentiments* (1759) in Part IV, Ch. 1.