

Backgrounder – Crown Share Adjustment Payments

The “Crown share” was established with the 1980 National Energy Program (NEP), which gave the federal government the right to acquire an ownership interest (a “Crown share”) in privately-owned oil and gas projects taking place on Canada lands, including those offshore from Nova Scotia. In a 1982 predecessor agreement to the 1986 Canada-Nova Scotia Offshore Petroleum Resources Accord (1986 Accord), Nova Scotia acquired the right to obtain a portion of the federal Crown share.

While the Crown share was abolished with the dismantling of the NEP in the mid-80s, Canada agreed under the 1986 Accord to compensate the province for the loss of the profits that Nova Scotia could have earned through the 1982 provision.

In essence, once specific conditions have been met, Nova Scotia would be entitled to receive payment from Canada equal to 75% of the notional profits that the province would have earned in an offshore project, had it been able to acquire a Crown share interest.

While conditions are set out in the 1986 Accord and its implementing legislation, the technical regulations necessary to determine the entitlement for, and the amount of, payments were never put in place.

On October 10, 2007, Prime Minister Harper and Premier MacDonald announced the appointment of a joint, independent panel to make recommendations concerning the calculation of the value of federal Crown Share Adjustment Payment (CSAP) obligations, with a view to facilitating the development of an approach agreeable to both governments.

The Panel was made up of three members: Dr. Brian Lee Crowley, serving as the federal appointee, Dara L. Gordon, Q.C., Nova Scotia’s appointee to the Panel, and former Chief Justice of the Nova Scotia Supreme Court Lorne O. Clarke, Q.C., who was selected by the other two panellists to act as Panel Chair.

The Panel received written and oral submissions from both governments, and delivered its report on July 4, 2008. After reviewing the Panel’s Report, the Governments of Canada and Nova Scotia agreed to move forward on the basis of the Chair’s recommendations.

The recommendations include advice on the appropriate calculation of the threshold tests, the determination of Nova Scotia’s eligibility for Crown Share Adjustment Payments for particular projects, and the appropriate costs to be considered when calculating what Nova Scotia’s notional profits would be.