

ICC ANCSA study starts

By Linda Lord-Jenkins

Tundra Times

An Inuit Circumpolar Conference commissioned judge will begin his two-year study into the effects of the Alaska Native Claims Settlement Act on Alaska Natives at the end of this month, according to the judge, Thomas A. Berger.

Berger, named to head the two-year study at the July triannual meeting of the ICC, made his first trip to Alaska on the study last week when he spoke briefly at a retreat sponsored by the Alaska Federation of Natives in Valdez.

The retreat was held with 35 representatives of the Native profit and non-profit Re-

gional Corporations to discuss recommendations and options to the effects of 1991 changes in ANCSA.

—Berger's trip was prompted by that gathering and accompanied the start-up of the two-year study.

Berger told the group that Alaska Natives "are pioneers in the settlement of Native claims. After your 1971 settlement the James Bay claims were filed in Canada. Greenland has achieved home rule and Norway is investigating Sami claims.

"You all have many things in common but most are all concerned about the land. The continuance of Native use and
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Berger says no one can change his study results

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occupation land is essential to your well being."

Berger said because the United States has been in the forefront of Native claims issues, it is natural that the after-effect of those claims should be studied.

The commission also has been asked to make recommendations in solutions to any problems that appear important. That direction was cause for some concern from AFN.

Sam Kito, AFN chairman and a Doyon board member, told Berger that he was concerned about what would happen if a conflict arose between Berger's recommendations and recommendations that AFN may arrive at on the 1991 issue.

"We are in the process of looking to our own future in trying to come to a decision on what to do and then to have someone from the outside study the same issues can enhance our efforts or detract from those efforts. If you draw a different conclusion from us it won't just sit there in a black box. Basically those issues (Berger will be studying) concern the same things that we are sitting here discussing."

Kito also objected to the manner in which the commission was formed and said he read of the formation in the newspaper. AFN was not consulted, said Kito.

Berger refused to be drawn into the politics of ICC versus AFN notification but said "My objective is to be consulting Native Alaskans at the hearings and at other and in other manners to see if there isn't a consensus among Native Alaskans."

Berger said his study will be one of going to the people most effected by the Act and listening to them and their feelings. He said he is not looking for the people who always testify at hearings but those who might not.

He also told the group that

his agreement with ICC means that his conclusions will stand, no matter who they may anger or upset. The agreement is similar to one Berger's had when he studied the Mackenzie Valley pipeline in Canada which threatened numerous Canadian aboriginal peoples. His recommendations resulted in that pipeline being diverted.

"I don't know what the conclusions will be until I hear the evidence. Whether they coincide with AFN is something that nobody can fortell so I can't make you any promises."

He said, however, that "My concern is not to pass judgement on the management of the (Regional) corporations. That is a matter for the shareholders to do in the regular corporate business."

Berger said he expects that the ICC will be able to obtain the full \$2.4 million budgeted for the study but was told that contributions from Alaska may not be as ready as anticipated.

Willie Hensley, a NANA board member, an ICC representative and nominee for ICC president told Berger that many of the Alaskan regional corporations which are being solicited for money to fund the study are not members of ICC and were not consulted by ICC before the study was commissioned. "And frankly some of them just don't have that kind of money to spend," said Hensley.

William "Spud" Williams of the Tanana Chiefs Conference advised Berger to include research into the effects of state, federal interest and the effects of their participation in the claims act.

After his meeting with the AFN representatives Berger said his reception was what he expected -- a "group of intelligent people asking the questions I'd expect them to ask."

One conference participant said he thinks Berger is un-



Canadian Judge Thomas Berger and Willie Hensley talk after Berger spoke at the recent Alaska Federation of Natives retreat on 1991 issues. Berger has begun his study of the after-effect of the Alaska Native Claims Settlement Act by attending the retreat.

aware of the monumental job he has undertaken and was skeptical of its completion.

Berger says he has heard criticism of this type before.

Berger was named to the British Columbia Supreme at age 38, the youngest person appointed to the court.

His career before the court included acting as defense attorney for two different Native groups defending aboriginal hunting and fishing rights. Both cases were upheld.

He has presided on three Royal Commissions since 1973 including one on Family and Children's Law. The Mackenzie Valley Pipeline Inquiry determined the social, environmental and economic impact of the proposed Arctic Gas pipeline to be built along a route from Prudhoe Bay across the Alaska North Slope and the Northern Yukon and Mackenzie Delta.

In that inquiry, he held hearings in more than 35 communities in the Western Arctic and Mackenzie Valley and took

testimony from 300 expert witnesses and hundreds of local witnesses.

His report recommended that no pipeline be built across the Arctic National Wildlife Range in Alaska or across the Northern Yukon. He recommended establishment of an international wilderness park on both sides of the Alaska/Canada boundary.

The Canadian government has largely accepted his recommendations and reject the pipeline through Canada.

Berger also has chaired an inquiry into Indian and Inuit health and recommended that Canada's Native people be placed in charge of the management of health care for Indians. The Canadian government adopted this recommendation.

Although on the judicial bench, Berger has stepped into national affairs in 1981 when he spoke out against deleting the guarantee of aboriginal rights from Canada's new constitution.

Berger said that aboriginal rights were written on the original Constitutional revisions but at the last minute aboriginal rights and equal rights for women were deleted in a political compromise.

Berger spoke in favor of including aboriginal rights along with many Native groups and their outcry resulted in the clause being returned to the constitution.

As for the upcoming study, he says he will go to selected communities and take testimony from anyone who wants to speak. "I'll stay as long as people want me to stay. This isn't the type of thing that can be done with an airplane motor running."

Beyond that he is conservative. "Let's talk again when we've done something."

The study commission is establishing an office in Anchorage and will hire several staff members.