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OFFICE OF THE COMMISSIONER
NORTHWEST TERRITORIES
CANADA

ALLOCATION OF AUTHORITY IN THE NORTHWEST TERRITORIES ACT

In compliance with the request of Council the Legal Adviser has prepared the attached summary of the powers under the N.W.T. Act as they are conferred on

- (i) Commissioner
- (ii) Territorial Council
- (iii) Governor General in Council
- (iv) The Minister
- (v) The Deputy Commissioner

The Department of Indian Affairs and Northern Development was also asked to interpret these authorities as they relate directly to the discussion in Council on January 16, 1969 on the Commissioner's recommendation for the sale of caribou meat.

Hereto follows a statement of fact outlining the powers as they relate to the above:

"The facts that gave rise to the request are straightforward. On July 4, 1968, as reported on pages 262 and 263 of the *Debates* of the 37th Session held in Yellowknife, the Council of the Northwest Territories adopted, with respect to the *Game Ordinance*, a motion to the effect that

section 16, subsection (3) be amended to read:

The holder of a General Hunting Licence may buy, sell or barter caribou meat to anyone within the Territories, and that the impact of this provision on the caribou take be closely scrutinized with a view to determining the feasibility of maintaining the provision.

Following correspondence with the Minister of Indian Affairs and Northern Development the Commissioner, in Recommendation to Council No. 6 of January 3, 1969, recommended "that the unrestricted sale of caribou meat by holders of General Hunting Licences not be permitted." This paper was strongly criticized. In particular, on January 16, 1969, Mr. Duncan Pryde, the member for Western Arctic, in the course of the debates during the 38th Session, First Session 1969, was, at page 281, reported as having said:

Now, if we pass a motion in this Council, as far as I am concerned that is a direct order, that is a directive to the Commissioner to have his administration draw up just what we ordered. We are not requesting the Commissioner, we are not requesting the administration: it is an order from this Council. We are the Government of these Territories and the laws which lie within our power to change can be changed by us.

The following questions arise:

1. Who administers the Government of the Northwest Territories?
2. Under whose instructions does this administration take place?
3. What are the legislative powers of the Commissioner in Council?
4. Who has legislative powers within the Northwest Territories?
5. What is the position of the Government of Canada with respect to Northwest Territories legislation?
6. What is the position of members of the public service of the Northwest Territories *vis-a-vis* council members?

The replies that follow have been kept as short as is compatible with their completeness. The writer is, of course, prepared to enlarge on any portion of this matter on request.

1. Who administers the Government of the Northwest Territories?

Section 4 of the *Northwest Territories Act* is explicit on this question. It provides as follows:

4. The Commissioner shall administer the Government of the Territories under instructions from time to time given by the Governor in Council or the Minister.

It is therefore incorrect to say that the Council members are the Government of the Northwest Territories.

2. Under whose instructions does this administration take place?

There are two persons only whose instructions the Commissioner is, by law, required to follow: the Governor in Council and the Minister of Indian Affairs and Northern Development.

The Northwest Territories have not what in constitutional parlance is called responsible government. In the Territories there exists no power to remove the Commissioner as chief executive officer by a vote of non-confidence. Conversely, an affirmation to the Minister by the Council of its utmost confidence, as for instance adopted on July 4, 1968, has no legal significance.

Possible change in the constitutional laws and usages of the Northwest Territories are, however, envisaged in the Report by the (Carrothers) Commission established by Order in Council 1965-1005 of June 3, 1965, at pages 159 and the following pages.

3. What are the legislative powers of the Commissioner in Council?

These powers are set out in several sections of the *Northwest Territories Act* and comprise, in section 13 thereof, expressly the power to

make ordinances for the Government of the Territories in relation to the following classes of subjects, namely....

(q) the preservation of game in the Territories....

Subsections 14 (2) and (3) of the *Northwest Territories Act* give the Commissioner in Council the power, with certain exceptions, to make ordinances for the Government of the Northwest Territories in relation to the preservation of game that are applicable to and in respect of Indians and Eskimos.

It therefore follows, subject however to the observations made under the fifth heading, that the Commissioner in Council has the power to make the law here in question relating to the buying, selling and bartering of caribou meat.

4. Who has legislative powers within the Northwest Territories?

The *Northwest Territories Act*, in sections 13, 14, 14A, 19D and 40, names as holder of the legislative powers in the Northwest Territories the Commissioner in Council which, according to Canadian usage, and as expressed in section 30 of the *Interpretation Ordinance*, means "the Commissioner, by and with the advice and consent of the Council of the ... Territories". From this it follows that this power is held by one person, namely the Commissioner. In addition, subsection 3 (3) of the *Northwest Territories Act* gives this power in his absence, or where the office of the Commissioner is vacant, to the Deputy Commissioner. The Commissioner, or Deputy Commissioner, acts in the exercise of his legislative powers on the advice and with the consent of the Council. Thus, he cannot impose legislation without this co-operation by the Council. Conversely, the Council, acting without the Commissioner, has no legislative or executive powers. Thus, the constitution is based on a close co-operation of Commissioner and Council but also, as will appear from the next heading, on the co-operation of the Commissioner with the Government of Canada.

5. What is the position of the Government of Canada with respect to the Northwest Territories legislation?

Certain ordinances, namely those authorizing the Commissioner to enter into an agreement with the Government of Canada under section 14A of the *Northwest Territories Act*, require implementation by an order of the Governor in Council.

Furthermore, by subsection 15(2) of the *Northwest Territories Act*, any ordinance, or any provision thereof may be disallowed by the Governor in Council at any time within two years after its passage.

This is the legal position, and it stands to reason that the Commissioner will avoid the making of ordinances where he might anticipate their disallowance or have reason to believe that he is not following the letter or spirit of instructions given by the Governor in Council or the Minister of Indian Affairs and Northern Development. The Commissioner, being not only an appointee of the Governor in Council and bound by his instructions and those of the Minister, but also the trustee of the well being of the people of

the Northwest Territories, will of course endeavour to preserve a harmonious relationship with them. Thus, he will listen to their wishes as expressed by their representatives or otherwise, and he will cause the necessary legislation to be prepared and implemented, as far as his duties towards the Governor in Council, the Minister and, of course, his own conscience permit. Conversely, the Council members, while enjoying the powers set out in the *Northwest Territories Act*, should, when tendering their advice to the Commissioner, do so within the framework of constitutional laws and usage, and in good faith respect the limitations imposed on their powers and those of the Commissioner. Commissioner and Council are expected to bear in mind that the Minister of Indian Affairs and Northern Development and his colleagues are responsible to Parliament for the proper administration of the Northwest Territories.

6. What is the position of members of the public service of the Northwest Territories vis-a-vis Council members?

The *Public Service Ordinance* provides as follows:

- 2A. The Commissioner has the management and direction of the public service.

From this it follows that a public servant reports, and is responsible, to the Commissioner only, notwithstanding the fact that the efficient performance of a public servant's duties may, from time to time, require consultation with members of the Council either during sessions or otherwise. If Council members wish to have instructions given to a member of the public service they should do so through the Commissioner."

POWERS UNDER THE NORTHWEST TERRITORIES ACT

I POWERS OF COMMISSIONER

- (a) Chief executive officer to administer the Government of the Northwest Territories under instructions given by the Governor in Council and the Minister;
- (b) may exercise the executive powers vested in the Lieutenant Governor or the Lieutenant Governor in Council of the Northwest Territories prior to 1905 as are applicable to the Government of the Territories as constituted today;

- (c) shall convene at least two sessions of Council per year;
- (d) may designate a place on recommendation of Council where a yearly session may be held other than the seat of government;
- (e) Commissioner may cast a deciding vote in Council;
- (f) transmit all ordinances made by the Commissioner in Council to the Governor in Council within 30 days of passage;
- (g) shall establish in the name of the Government of the Northwest Territories accounts in such banks as he designates for the deposit of public money and revenues;
- (h) recommend to the Council the appropriations;
- (i) lay before Council the Territorial Accounts for each fiscal year in such form as he directs which shall include:
 - (i) a report on the financial transactions of the previous fiscal year;
 - (ii) statements of the expenditures, revenues, assets and liabilities of the Territories certified by the Auditor General; and
 - (iii) other information as required by Ordinance or the Minister;
- (j) may make rules and regulations for the management, discipline and policy of prisons designated as such by the Council, and for the duties and conduct of persons employed therein;
- (k) may hold lands as Commissioner under the control of the Commissioner in Council;
- (l) control the manufacture and importation of intoxicants;
- (m) make arrangements with provinces for the admission to provincial institutions of mentally disordered persons and neglected children;
- (n) exercise such subordinate legislative powers as are delegated to him by Council.

II POWERS OF THE TERRITORIAL COUNCIL

- (a) May prescribe the qualifications of those entitled to vote at a Territorial election and those eligible for nomination for and to sit on Council.
- (b) may provide for payment of indemnities and expenses of Council members within the limits prescribed by the Act;
- (c) may make ordinances under section 13 of the Act in relation to the following classes of subjects:
 - (i) direct taxation;
 - (ii) establishment of the public service;
 - (iii) municipal institutions and school districts;
 - (iv) controverted elections;
 - (v) business licences;
 - (vi) incorporation of companies;
 - (vii) solemnization of marriage;
 - (viii) property and civil rights;
 - (ix) certain aspects of the administration of justice;
 - (x) alimony;
 - (xi) licences for scientists and explorers;
 - (xii) fur taxes;
 - (xiii) game matters subject to limitations in the Act;
 - (xiv) education;
 - (xv) roads;
 - (xvi) intoxicants;
 - (xvii) hospitals;
 - (xviii) agriculture;
 - (xix) expenditure of money;
 - (xx) imposition of fines and penalties;
 - (xxi) other matters designated by the Governor in Council;
- (d) may authorize the Commissioner to enter into agreements with Canada for the purposes of any Act that authorizes the Government of Canada to enter into agreements with the provinces;
- (e) monies appropriated pursuant to section 13 that are granted by Parliament to the Territories are subject to the specified purpose for which they were granted;
- (f) may by ordinance borrow, loan or invest monies;
- (g) designate places as prisons;
- (h) exercise control over certain lands vested in Her Majesty.

III POWERS OF THE GOVERNOR IN COUNCIL

- (a) May appoint the Commissioner and a member of the Council as Deputy Commissioner;
- (b) may give instructions to the Commissioner on the Government of the Territories;
- (c) may prescribe oaths of office of the Commissioner;
- (d) may prescribe the seat of Government of the Territories;
- (e) may appoint 5 of the 12 members of Council;
- (f) may dissolve the Council at any time and may cause a new Council to be elected and appointed;
- (g) may prescribe the oaths of office of the members of Council;
- (h) may designate matters other than those set out in section 13 of the Act in respect of which the Commissioner in Council may make ordinances;
- (i) must approve any agreement of the kind that the Government of Canada may enter into with the Provinces pursuant to an Act;
- (j) may disallow any ordinance within two years of passage;
- (k) must approve any ordinance authorizing the borrowing, lending or investing of monies under the authority of an ordinance;
- (l) may appoint the Judge and Deputy Judge of the Territorial Court;
- (m) may appoint the Police Magistrates and Deputy Police Magistrates with power to fix their remuneration and vest in a Police Magistrate civil jurisdiction as set out in section 34;
- (n) may appoint Justices of the Peace and authorize payments of remuneration and expenses;
- (o) may appoint the Clerk of the Court, Sheriff and such judicial and other officers as are necessary for the due administration of justice and fix their salaries;
- (p) may make regulations for the management, discipline and policies respecting places of confinement managed by the R.C.M.P.;

- (q) may make regulations respecting reindeer;
- (r) may make regulations respecting archeological sites.

IV POWERS OF THE MINISTER (IA&ND)

- (a) May give instructions to the Commissioner on the administration of the Government of the Territories;
- (b) may approve any arrangements made by the Commissioner with a Province in respect of admission of mentally disordered persons and neglected children to Provincial Institutions.

V POWERS OF THE DEPUTY COMMISSIONER

- (a) May exercise in the absence of the Commissioner or where the office of the Commissioner is vacant all the powers and functions conferred on the Commissioner by the Act.