

LEGISLATIVE ASSEMBLY OF THE  
NORTHWEST TERRITORIES  
7<sup>TH</sup> COUNCIL, 46<sup>TH</sup> SESSION

TABLED DOCUMENT NO. 2-46

TABLED ON JANUARY 10, 1972



Tabled Document 2-46  
January 1972

Tabled on Jan 10, 1972

MOTION #34-35

PAPER ON PROVINCIAL-TYPE RESPONSIBILITIES PERFORMED  
IN THE NORTHWEST TERRITORIES

A Research Paper  
Prepared by A.R. Zariwny  
for Mr. E.M.R. Cotterill,  
Secretary to the Executive Committee,  
Government of the Northwest Territories

## ABSTRACT

The purpose of this paper is to outline and examine the provincial-type responsibilities being performed in the Northwest Territories:

- (a) by the Federal Government;
- (b) by the Territorial Government;
- (c) by the Territorial Government on behalf of the Federal Government,
  - (1) provincial-type responsibilities, and
  - (2) federal-type responsibilities; and
- (d) where areas of responsibilities overlap.

Rather than beginning at the outset with the specific subject matter noted above, the author has chosen to approach the study by considering the original guidelines which determine the operation of the Canadian governmental system. The Canadian federal system and specifically the British North America Act, 1867 has, and will continue to play an integral part in the political development of the Northwest Territories. Thus, the first two chapters deal briefly with Canada's federal system of government and the status of the Northwest Territories within this system.

## TABLE OF CONTENTS

	Page
CHAPTER I.....	1
CHAPTER II.....	10
Determining the Status.....	10
The Northwest Territories Act.....	14
Department of Indian Affairs and Northern Development.....	16
CHAPTER III.....	20
Provincial Powers.....	22
Provincial-Type Responsibilities Carried Out by the Federal Government Directly.....	25
(1) The Amendment of the Northwest Territories Act.....	25
(2) Direct Taxation Within the Territories.....	26
(3) The Borrowing of Money.....	26
(4) Attorney General and Law Enforcement..	29
(a) Attorney General.....	29
(b) Law Enforcement.....	30
(5) Natural Resources.....	32
(6) Health Services.....	44
(7) Agriculture and Immigration.....	45
(8) Others.....	48
(a) Changing the Seat of Government..	48
(b) Incorporation of a Telephone Company.....	49
Provincial-Type Responsibilities Carried Out by the Federal Government (Indirectly by Commissioner).....	51

	Page
(1) Ordinances.....	53
(2) The Northwest Territories Act.....	54
CHAPTER IV.....	58
Provincial-Type Responsibilities Performed by the Territorial Government.....	59
Direct Taxation.....	59
Property and Civil Rights.....	62
Section 8 of the Northwest Territories Act....	66
Transfer of Administrative Responsibilities...	69
CHAPTER V.....	72
Provincial-Type of Responsibilities Performed by the Territorial Government on Behalf of the Federal Government.....	72
(1) Related to Indian and Eskimo Affairs.....	72
(a) Education.....	76
(b) Housing.....	80
(c) Welfare.....	83
(2) Construction and Maintenance of Roads.....	89
(a) Initial Access Road.....	90
(b) Permanent Access Road.....	90
(c) Resource Development Roads.....	90
(d) Area Development Road.....	90
(e) Trunk Highways.....	91
(f) Secondary Trunk Roads.....	91
(g) Airport Roads.....	91

	Page
Federal-Type of Responsibilities Performed by the Territorial Government on Behalf of the Federal Government.....	96
(1) Airstrips.....	96
(2) Territorial Small Business Loan Fund..	97
(3) Eskimo Loan Fund.....	98
(4) Others.....	99
CHAPTER VI.....	101
Joint Aspects, Shared Cost Programmes.....	101
(1) Disadvantages.....	104
(2) Advantages.....	106
(3) Social Development.....	107
(4) Health.....	110
(5) Education.....	111
(6) Housing.....	113
(7) Roads.....	115
(8) Others.....	116
Concurrent Area of Responsibilities.....	118
(1) Agriculture.....	118
Others.....	119
Conclusion.....	121

## CHAPTER I

K.C. Wheare defines the federal principle as "the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent."<sup>1</sup> Hence one of the essential requirements of the federative principle is that there be two orders of government. The fact that in Canada both levels of government operate on the same people is an illustration of the basic principle of federalism, i.e., the central and the provincial governments are co-ordinate. However, it is also necessary that each level of government be limited to its own sphere and, within that sphere, each should be independent of the other. This distinction necessitates that the field of public policy decision-making be divided between both units of government, neither of which can dictate the decisions of the other.

Because of three important exceptions to the above definition, various political scientists and lawyers have postulated that Canada's Constitution -- the British North America Act, 1867 -- is not federal in writ.<sup>2</sup>

---

<sup>1</sup> K.C. Wheare, Federal Government, third edition, Oxford University Press, for the Royal Institute of International Affairs, London, 1953, p. 11.

<sup>2</sup> Ibid., pp. 19-22.

These exceptions are:

(1) The Federal Government has the power to disallow any Act passed by a provincial legislature, whether the Act deals specifically with subjects falling within the exclusive jurisdiction of the province or otherwise.<sup>3</sup> The use of this power, which is legally unlimited, has not been confined to instances where provincial legislation was ultra vires. It has also been used to nullify legislation of which the federal Parliament did not approve.<sup>4</sup> As late as 1937 the disallowance power and the veto were used against legislation in the province of Alberta.\* The power of disallowance and veto are not dead, and though "the trend towards a narrower use of the power is likely to be sustained,... it is impossible to say that a different policy would not be adopted in special circumstances."<sup>5</sup>

(2) The federal Parliament appoints the Lieutenant-

---

<sup>3</sup> The British North America Act, 1867, section 90.

<sup>4</sup> D.V. Smiley (ed.), The Rowell/Sirois Report/Book I, McClelland and Stewart Ltd., Toronto, 1967, pp. 202-204.

\* Reference Re Alberta Statutes, in the Supreme Court of Canada [1938] S.C.R. 100, [1938] 2 D.L.R. 81; Bill No. 1, "An Act respecting Taxation of Banks", Bill No. 8, "An Act to Amend and Consolidate the Credit of Alberta Regulations Act", and Bill No. 9, "An Act to ensure the Publication of Accurate News and Information".

<sup>5</sup> Smiley, op. cit., p. 204.



3

Governor, the formal head of the province.<sup>6</sup> Upon the instructions of the Federal Government the Lieutenant-Governor can withhold his assent from provincial bills and reserve them for consideration by the Parliamentary executive. Although by law the Lieutenant-Governor appoints the ministers of the province, by convention the system of cabinet government prevails in both levels of government. Furthermore, as the Lieutenant-Governor must by convention appoint ministers to the provincial legislature from the party which commands the majority, it is the provincial legislature and the electorate that decide who will form the government. As a result the duties of the Lieutenant-Governor have become largely formal in nature.<sup>7</sup>

(3) The Dominion makes appointments to all important judicial posts in the provinces.<sup>8</sup> There is no evidence to suggest that this power is not used with discretion, and the courts are not filled

---

<sup>6</sup> The British North America Act, 1867, section 58, 59, 60.

<sup>7</sup> See J.T. Saywell, The Office of Lieutenant-Governor, University of Toronto Press, Toronto, 1957; R.M. Dawson, The Government of Canada, fourth edition, University of Toronto Press, Toronto, 1969, pp. 82, 84, 139, 432.

<sup>8</sup> The British North America Act, 1867, section 96, 100.

with appointees who are opposed to provincial powers.<sup>9</sup>

All three of the above powers are unitary in principle, and if they were employed as set out originally in the B.N.A. Act they would render the provincial governments subordinate to the federal Parliament and not co-ordinate with it. However, according to the Report of the Quebec Royal Commission of Inquiry on Constitutional Problems, 1956, though these three provisions constitute important exceptions\* to the federal principle, they are exceptions to a general rule and they do not in any way permit the central government to encroach on the powers exclusively allotted to the provinces.<sup>10</sup> Although these unitary principles do not help to make Canada's Constitution federal, in practice Canada has a federal govern-

---

<sup>9</sup> Dawson, op. cit., pp. 424-439.

\* Other evidence of the unitary principle in the British North America Act, 1867:

- (a) The residual power -- those powers not specifically allotted either to the provincial or federal governments -- rests with the federal Parliament (section 91).
- (b) In taxation the provinces are restricted to direct taxes (section 92, subsection 2) and in 1867 this field was originally empty.
- (c) The federal Parliament can declare any local work, "although wholly situate within the Province... to be for the general Advantage of Canada" and thus bring it under exclusive federal control (section 92, subsection 10(2)).

<sup>10</sup> Report of the Quebec Royal Commission of Inquiry on Constitutional Problems, 1956, Quebec, Vol. II, 1957, pp. 151-171.

ment in which each level of government is supreme within a defined and limited sphere. These spheres are defined, in the B.N.A. Act, by sections 91 to 95, which set out the main lines of the division of power. This division spells out the limits of what can be done by mutual agreement, and to what extent the provincial and the federal governments can be permitted to differ and work out their own problems.

The preamble of section 91 gives the federal Parliament the power to legislate "...for the Peace, Order and Good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislature of the Provinces." This is the residual power giving the federal Parliament the powers not specifically given to the provinces. Section 91 then proceeds to enumerate twenty-nine specific matters falling within the federal sphere. The enumeration contains such classes of subjects as defence, criminal law, naturalization and aliens, trade and commerce, fisheries, banking, currency and coinage, bills of exchange and legal tender, interest, weights and measures, bankruptcy and insolvency, patents and copyrights, postal service and certain other classes pertaining to the economy and its regulations. It is also here that the federal Parliament is given unlimited power of taxation.

Apart from section 91, section 132 gives the federal Parliament "...all power necessary or proper for performing

the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries." Finally, later amendments added to the list of matters which the federal Parliament could legislate. They include unemployment insurance,<sup>11</sup> old age pension,<sup>12</sup> and the right to make limited amendments to the Constitution on purely federal matters.<sup>13</sup>

The provinces received no broad or general grant of powers; rather, they were given the exclusive power in section 92 to make laws in relation to matters coming within sixteen enumerated classes of subjects. Since these will be dealt with extensively in Chapter III, only those of considerable importance are listed below. These classes include administration of justice, municipal institutions, amendment of provincial constitutions except for the office of Lieutenant-Governor, and most important of all, "Property and Civil Rights in the Provinces". The power of direct taxation was also given to the provinces, although it was thought at the time of the inception of the Constitution that this power would never be necessary because of the

---

<sup>11</sup> 1940, 3 & 4 Geo. VI, c. 22.

<sup>12</sup> 1951, 14 & 15 Geo. VI, c. 32.

<sup>13</sup> 1949, 13 Geo. VI, c. 81.

7

increasing revenue source from public lands. Finally, section 93 placed education under the exclusive control of the provinces, with specific provisions to protect the Roman Catholic and Protestant minorities.

By section 95, the federal Parliament and the provinces were given concurrent powers over agriculture and immigration, with federal legislation being dominant if conflict arose.

Thus one sees that the B.N.A. Act divides the powers between provincial and federal legislatures in such a way that the provinces have exclusive control over a list of enumerated subject matters and the federal Parliament has exclusive legislative control over the rest. Both legislatures of the two levels of government are distinct from each other; and neither has the power to alter the Constitution as far as the distribution of powers is concerned. However, there is usually one very important aspect to remember about a federalist country; that a clear-cut delineation of responsibilities between the two levels of government implies a financial independence of one level from the other. Appropriating to itself the power to spend moneys as it feels fit, the central government of a federal country can cause a shift in authority from the receiving to the granting jurisdiction, apart from the constitutional division of powers. Though "...there are no explicit provisions in the British North

America Act conferring upon Parliament the authority to appropriate moneys to be transferred to provinces...".<sup>14</sup> the Report of the Quebec Royal Commission of Inquiry on Constitutional Problems, 1956, attacked the federal Parliament for having such a spending power.<sup>15</sup> This action on the part of the Federal Government may have been prompted by interpreting section 91(1), which gives the federal Parliament the power to legislate in respect to "The Public Debt and Property", as being an unlimited federal spending power. Whatever the interpretation, and there are many interpretations,<sup>16</sup> one need only consider the Federal-Provincial Financial Arrangements<sup>17</sup> to see that with the possible exception of British Columbia, Alberta and Ontario, the provinces are to a very great extent financially dependent rather than independent of the federal Parliament. The dependency and section 92(16) which gives the provinces jurisdiction over "Generally all matters of a

---

<sup>14</sup> D.V. Smiley, Conditional Fronts and Canadian Federalism, Canadian Tax Foundation, Toronto, 1963, p. 18.

<sup>15</sup> Report of the Quebec Royal Commission, op. cit., p. 217.

<sup>16</sup> The Courts have never classified section 91(1), "The Public Debt and Property" clause as the Federal spending power. It can be argued that since there has been no challenge of the "power" in the Courts, then by convention it is a federal power. For more information see Federal-Provincial Grants and the Spending Power of Parliament, Queen's Printer, Ottawa, 1969.

<sup>17</sup> The National Finances, Canadian Tax Foundation, Toronto, 1970, pp. 139-150.

merely local or private nature in the Provinces", and section 92(13), "Property and Civil Rights in the Province" (both of which have proven to be in application very broad and indefinite) have given rise to most of the constitutional controversies which have arisen since the inception of the British North America Act, 1867.

Given such a federal system and the fact that the Northwest Territories is financially dependent on the federal Parliament, where does the Northwest Territories fit into the larger federal system? This question can be best answered by first establishing the status of the Northwest Territories; that is, is it colonial, semi-provincial, or quasi-provincial? After the above is accomplished an analysis of the provincial-type responsibilities performed in the Northwest Territories will be attempted.

## CHAPTER II

The purpose of this chapter is: (1) to establish the status of the Northwest Territories in relation to that of the provinces, (2) to determine what has influenced the conferring of the status, and (3) to discuss the implications the status has had on certain aspects of the Northwest Territories Act, and in particular the Department of Indian Affairs and Northern Development which has been instrumental in the economic and political development of the Northwest Territories. After accomplishing the above it will be possible to visualize in a proper perspective the provincial-type responsibilities performed in the Northwest Territories by the Federal Government and those carried out by the Northwest Territories Government.

### Determining the Status

The Report of the Advisory Commission on the Development of Government in the Northwest Territories, 1966, designated the status of "semi-provincial" to the Northwest Territories.<sup>1</sup> The designation was based on the distinction the Commission perceived between the constitution of the Northwest Territories and the constitution of the Yukon

---

<sup>1</sup> The Report of the Advisory Commission on the Development of Government in the Northwest Territories, 1966, Queen's Printer, Ottawa, 1966, p. 108.



Territory. The following major factors distinguished the Northwest Territories from being "quasi-provincial", the status that the Commission conferred on the Yukon Territory.

(1) The Yukon legislative branch is entirely elected, whereas the Council of the Northwest Territories had in 1964 four elected members and five appointed members.

(2) The seat of government in the Yukon is situated in Whitehorse, and that of the Northwest Territories was in Ottawa.

(3) The Yukon government has a public service of its own while the Northwest Territories, with the exception of those employed by the Liquor Board, did not.

(4) The administration of functions in the Yukon is performed according to departmental division, whereas in the Northwest Territories there were no such departments.

(5) The Commissioner of Yukon does not take part in council deliberations even though he sits in council. The Commissioner of the Northwest Territories did take part in council deliberations.

(6) The Yukon has a Consolidated Revenue Fund of its own, whereas the Northwest Territories funds were held in a separate reserve of the Consolidated Revenue Fund of Canada.

With the implementation of some of the Commission's recommendations, a majority of the above factors relegating the Northwest Territories to a "semi-provincial" status were removed. Specifically the effectualization of the

following recommendations by the Commission were instrumental in changing the status.

(1) The "capital of the Northwest Territories should be located within the Territories".

(2) The "administrative functions should be transferred to the territorial civil service on a specified schedule as soon as possible".

(3) By virtue of point (2) departments should be established to carry out the administrative functions.

(4) The number of elected councillors was to be increased and the appointed numbers decreased.

In addition to the above, there are other recommendations which were implemented (e.g., the lowering of the voting age to 19), and still others that were not (e.g., the formation of a Department of Justice);<sup>2</sup> however these are not as relevant to the discussion of status as the four mentioned above. Of the six factors that directed the Commission in their judgment, the only factors remaining are: (1) the composition of the legislative branch lacks a full commitment of elected officials (ten are elected and four are appointed), and (2) the Commissioner of the Northwest Territories takes part in council deliberations. Judging by the success of those recommendations that were implemented,

---

<sup>2</sup> Ibid., pp. 140-214.

it can be postulated that in time with the effectualization of more of the recommendations the two remaining factors will disappear. The present removal of a majority of the factors noted by the Commission has caused the Northwest Territories to shift away from the "semi-provincial" status.

In order to pinpoint the present status it is necessary to consider the extreme, i.e., what would be the political requirements of the Northwest Territories for provincial status.\* According to the Commission, full provincial status requires the federal government to relinquish its jurisdiction over the Northwest Territories for provincial purposes, and in the process to grant identical powers to the Territories as possessed by the provinces.<sup>3</sup> In addition, the introduction of party politics and the removal of the federal power of appointment, except as refers to the Lieutenant-Governor, would be conditions necessary for the attainment of provincial status. These conditions are presently absent, but the political development of the Territories is directed toward

---

\* The other extreme, if political development is viewed as a continuum, is what could be termed for the sake of better words, "colonial-status". The paper is primarily interested in the political requirements for provincehood, but those characteristics of colonial-status are indicated on Plate 1.

<sup>3</sup> The Report of the Advisory Commission on the Development of Government in the Northwest Territories, op. cit., Ibid., pp. 111-112. In particular those provincial responsibilities discussed in Chapter III of this paper.

achieving the goal these conditions presuppose.

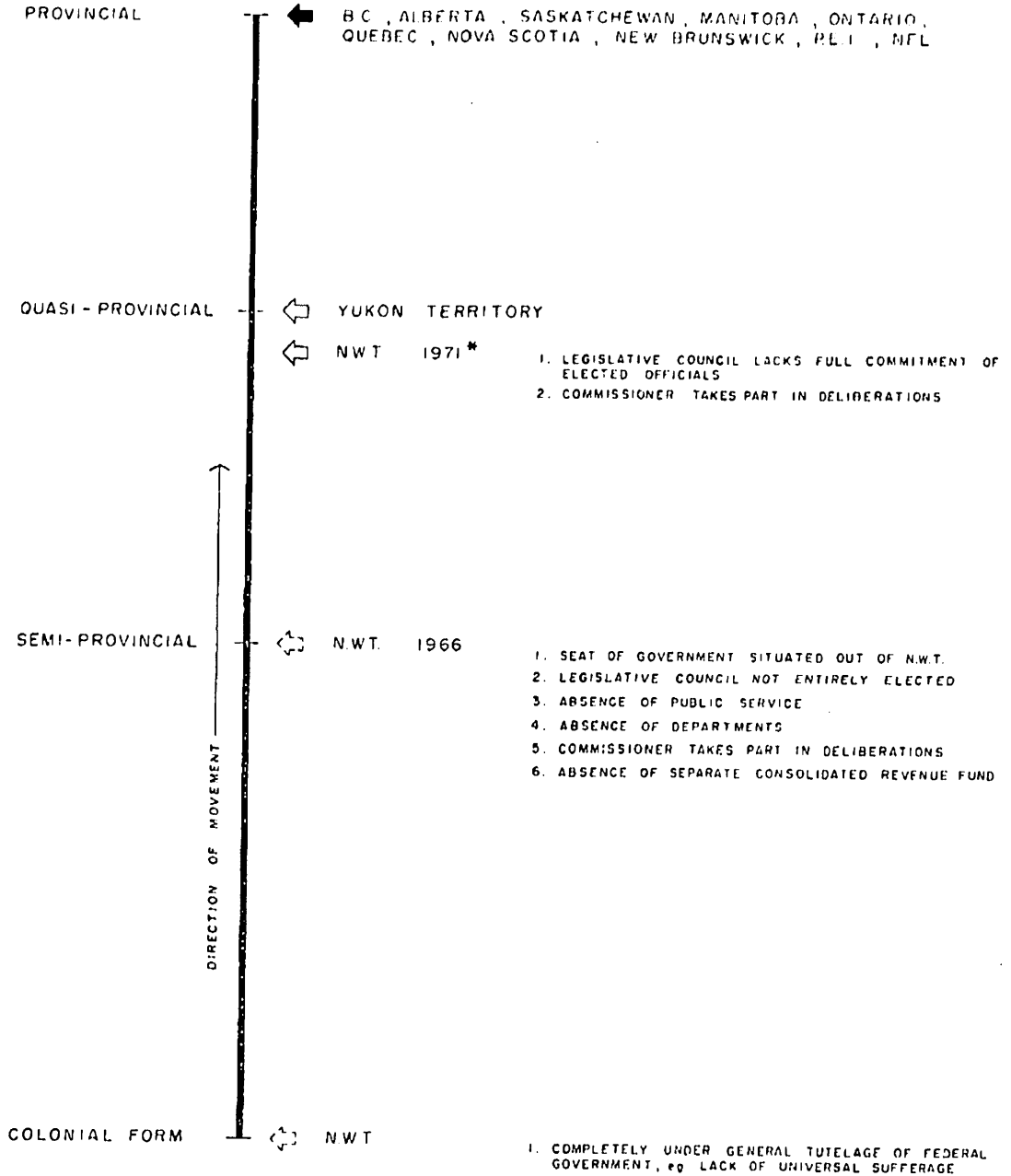
There is sufficient reason to state that the Northwest Territories in the past four years has moved closer to the "quasi-provincial" status of the Yukon Territory; in fact, it would not be presumptuous to say that the Northwest Territories is at the threshold level of that status. Granted the Northwest Territories still has a status subordinate to that of a province, but its political development reflects a gradual movement forward rather than remaining stationary (see Plate 1).

#### The Northwest Territories Act

The most recent amendments of the Northwest Territories Act can be directly attributed to the implementation of the Advisory Commission's recommendations. These amendments are listed below in point form, and are of significant importance. The majority of them refer to the Council and reflect the need to consult Council vis-a-vis the Commissioner in Council rather than having the Commissioner or the Governor in Council act on his own initiative.

- (1) The number of elected members in Council was increased to ten whereas the number of appointed members was decreased to four. Electoral districts are to be "named and described by the Commissioner in Council" (R.S., c. 331, s. 8, s.s. 2).
- (2) The Governor in Council can dissolve Council "after consultation with the Council where he deems such consultation to be practicable" (R.S., c. 331, s. 8, s.s. 2).

# STATUS SPECTRUM



\*THE GOVERNMENT OF THE N.W.T. IS A CREATION OF THE FEDERAL PARLIAMENT SUBJECT TO ITS WILL AND NOT SECURED IN THE PROVISIONS OF THE BNA ACT AS ARE THE PROVINCES.

- (3) The Governor in Council can reduce the number of appointed members "at such times and in such numbers as the Commissioner in Council may determine" (R.S., c. 331, s. 8, s.s. 2.1).
- (4) The Commissioner in Council can prescribe qualifications of electors and candidates (R.S., c. 221, s. 9).
- (5) The Commissioner in Council can prescribe sessional indemnities, and expenses of committee members out of the Northwest Territories Consolidated Revenue Fund (R.S., c. 331, s. 12).
- (6) The legislative powers of the Commissioner in Council were vastly increased in the matter of justice. Prior to the amendment the Commissioner in Council could make ordinances in relation only to the "constitution, organization and maintenance of territorial courts of civil jurisdiction and the procedure in such courts" excluding the appointment of any judicial officer except coroners "or the constitution, organization and maintenance of courts of criminal jurisdiction or procedure in criminal matters..." (R.S., c. 331, s. 13, s.s. i). The amendment substituted the following for the above "(i) the administration of justice in the Territories, including the constitution, maintenance and organization of territorial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts". \* In addition, public and reformatory prisons have been put under the legislative powers of the Commissioner in Council (R.S., c. 331, s. 13, s.s. (i), (j)).

The above amendments are significant because they reflect responsible political development, and with each such amendment the Territorial Government achieves a greater degree of political sophistication.

Department of Indian Affairs and Northern Development

The effectualization of the Advisory Commission's recommendations has not altered significantly the duties,

---

\* Emphasis my own.

powers and functions of the Minister of the D.I.A.N.D. as they are related to the Northwest Territories. The D.I.A.N.D. Act \* (previously the Department of Northern Affairs and National Resources Act) gives the Minister residual authority over matters under federal jurisdiction relating to the Northwest Territories. These include Indian and Eskimo affairs, resources and Territorial affairs,\*\* national parks, historical sites, and migratory birds (section 4). In addition to the above mentioned powers, the Minister is responsible for co-ordinating federal departments, branches and agencies in the Northwest Territories; "undertaking, promoting and recommending policies and programs for the further economic and political development of the Northwest Territories", and "fostering... knowledge of the Canadian North and... dealing with conditions related to its further development" (section 5). All of these powers give the Minister wide responsibilities in the Northwest Territories which to a certain extent minimize the effect of the implementation of the Advisory Commission's recommendations and detract from the concept of responsible government.

---

\* Much of the interest and authority of the Federal Government in the Northwest Territories is channeled through this Act.

\*\* The jurisdiction over Territorial affairs can be construed as an unlimited and indefinite power.

Prior to the implementation, the Department of Indian Affairs and Northern Development comprised the largest single federal personnel force in the Northwest Territories and "in certain areas... [the Department's activities were] ...analogous to the responsibilities of a provincial government".<sup>4</sup> To note a few examples from Table 1, the Department was responsible for the administration of education, social welfare, promotion of industrial development, and provision of engineering services for departmental use. It also acted as a liaison between the Territorial Government and municipal government; and generally administered provincial-type functions because of "a lack of a fully developed territorial administration".<sup>5</sup> That is, the Government of the Northwest Territories was dependent on the D.I.A.N.D. staff to operate a public service and to perform activities related to Territorial legislation (See Graph 1). However, with the implementation of the Advisory Commission's recommendations the responsibility for the administration of the above areas was passed onto the Territorial Government. But as will be seen in Chapter III, the Department of Indian Affairs and Northern Development and other federal departments still perform certain crucial provincial-type responsibilities in the Northwest Territories, hence still maintaining a strong foothold in the affairs of the Territorial Government.

---

<sup>4</sup> Ibid., p. 27.

<sup>5</sup> Ibid., p. 28.



TABLE I **PROVINCIAL-TYPE RESPONSIBILITIES CARRIED OUT IN THE N.W.T. BY THE FEDERAL GOVERNMENT PRIOR TO THE IMPLEMENTATION OF THE ADVISORY COMMISSION'S RECOMMENDATIONS\*** (SEE GRAPH I FOR GRAPHIC REPRESENTATION)

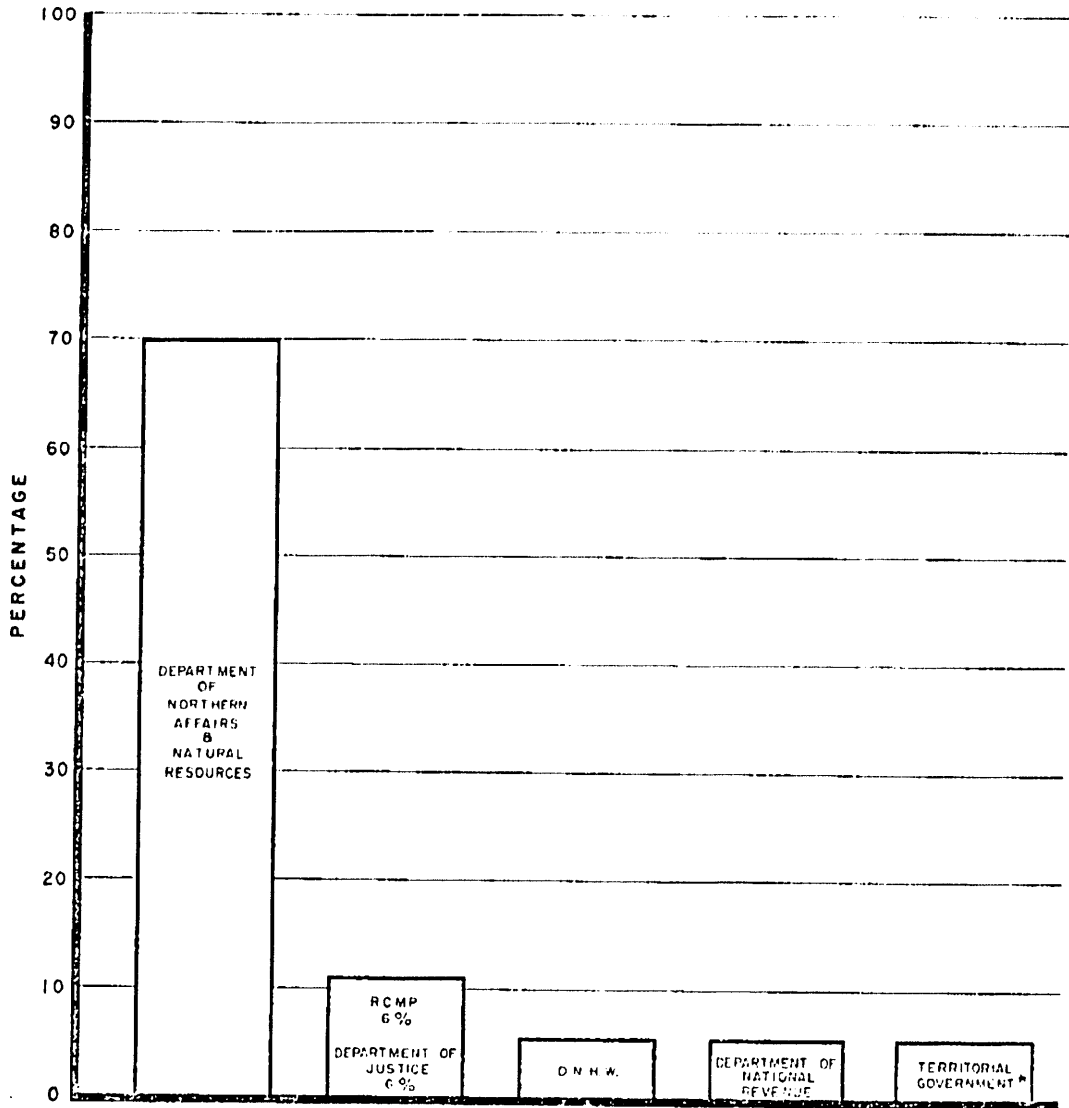
RESPONSIBILITY	FEDERAL DEPARTMENT OR AGENCY	PUBLIC SERVICE CORE	EXPENDITURE BY
TAXATION	DEPARTMENT OF NATIONAL REVENUE	FEDERAL EMPLOYEES	
EDUCATION (1) FEDERAL SCHOOLS (2) UNIVERSITY ASSISTANCE & SCHOLARSHIPS	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES**	FEDERAL EMPLOYEES	(1) FEDERAL GOVERNMENT (2) TERRITORIAL GOVERNMENT
ADMINISTRATION OF JUSTICE, ORGANIZATION & MAINTENANCE OF TERRITORIAL COURTS, OF CIVIL AND CRIMINAL JURISDICTION; DEPARTMENT OF JUDICIAL OFFICERS, JUSTICE OF THE PEACE, MAGISTRATES, JUVENILE COURT JUDGES	DEPARTMENT OF JUSTICE	FEDERAL EMPLOYEES	(1) REIMBURSEMENT BY TERRITORIAL GOVERNMENT
LAW ENFORCEMENT	ROYAL CANADIAN MOUNTED POLICE		(1) 40% COST BY TERRITORIAL GOVERNMENT
LAND, FOREST, FUR AND MINERAL RESOURCE MANAGEMENT	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	
GAME MANAGEMENT	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) TERRITORIAL GOVERNMENT
SOCIAL WELFARE, CATEGORICAL ALLOWANCES	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES, OTHERS DEPARTMENT OF CITIZENSHIP AND IMMIGRATION INDIANS	FEDERAL EMPLOYEES	(1) FEDERAL GOVERNMENT FOR ESKIMOS & INDIANS (2) TERRITORIAL GOVERNMENT FOR ALL OTHERS PLUS ALLOWANCES
PROMOTION OF INDUSTRIAL DEVELOPMENT	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) FEDERAL AND TERRITORIAL GOVERNMENTS
PROVISION OF ENGINEERING SERVICES	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) FEDERAL GOVERNMENT
LIAISON WITH TERRITORIAL GOVERNMENT AND LOCAL GOVERNMENTS	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) FEDERAL GOVERNMENT
MUNICIPAL AFFAIRS AND GRANTS TO SCHOOL DISTRICTS	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) TERRITORIAL GOVERNMENT
HOSPITAL INSURANCE SERVICES	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) TERRITORIAL GOVERNMENT (2) FEDERAL GOVERNMENT - SPECIAL GRANTS TO COVER COSTS FOR INDIANS & ESKIMOS
HEALTH	DEPARTMENT OF NATIONAL HEALTH AND WELFARE	FEDERAL EMPLOYEES	(1) FEDERAL GOVERNMENT FOR INDIANS & ESKIMOS AND TERRITORIAL GOV'T FOR OTHERS
ADMINISTRATION OF TERRITORIAL ORDINANCES	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	(1) FEDERAL GOVERNMENT
CONDITIONS OF EMPLOYMENT	DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES	FEDERAL EMPLOYEES	

\* FOR RECOMMENDATIONS SEE THE *REPORT OF THE ADVISORY COMMISSION ON THE DEVELOPMENT OF GOVERNMENT IN THE NORTHWEST TERRITORIES*, VOL. I, 1966 OTTAWA

\*\* PRESENTLY, DEPARTMENT OF INDIAL AFFAIRS AND NORTHERN DEVELOPMENT

GRAPH 1

# APPROXIMATE PERCENTAGE BREAKDOWN OF RESPONSIBILITIES CARRIED OUT IN THE NORTHWEST TERRITORIES



\* In NORTHWEST TERRITORIAL LIQUOR SYSTEM.

## CHAPTER III

As illustrated in Chapter I the distribution of functions between the federal and the provincial governments is an important constitutional process in a federalist society. The B.N.A. Act confers upon the federal and the provincial legislatures the exclusive power to make laws in relation to a particular class of subjects, and neither levels of government can override the other. However, there have been and still will be contentious issues arising from interpretation of the division of powers which the two levels will not agree upon.

Though judicial interpretation will not be examined in great detail, it should be noted that when there are two levels of government, neither having jurisdiction over the other, they must agree on the means of reaching common objectives. Any differences that arise can be solved by judicial interpretation or, more recently, by compromise. Judicial interpretation was generally intra vires the provinces,\* but the additional responsibilities thus acquired were not

---

\* For example, after World War I the federal Parliament through judicial interpretation suffered a decrease in what was considered federal jurisdiction. The provinces gained additional power to legislate on such things as intra-provincial regulation of production, trade, and marketing; wages; hours of labour; unemployment insurance; workmen's compensation; industrial disputes; trade unions; health; and insurance. See R.M. Dawson, The Government of Canada, fourth edition, University of Toronto Press, 1969.

matched by added sources of provincial revenue. As a result of the lack of funds and the exercise of the federal spending power, referred to earlier, two things were accomplished: (1) the provinces were provided with revenue vis-a-vis grants, and (2) the Federal Government established a "redistribution of the spheres of involvement of the two levels of government... without resort to the amending procedure or the courts of law".<sup>1</sup>

Such problems as experienced by the provinces and the federal government cannot presently develop in the Northwest Territories because according to the B.N.A. Act the government of the Northwest Territories is a creation of the federal Parliament, subject to its will and not secured in the provisions of the Act as are the provinces.<sup>2</sup> Thus, the Federal Government is supreme for it has the power to carry out in the Northwest Territories responsibilities that are exclusively under provincial jurisdiction and, if it so desires, to delegate any of these responsibilities to the Territorial Government. What then, specifically, are the responsibilities of the provinces, and which of these are carried out in the Northwest Territories by the Federal Government?

---

<sup>1</sup> D.V. Smiley, Conditional Grants and Canadian Federalism, op. cit., p. 25.

<sup>2</sup> The British North America Act, 34 Victoria, Chapter 28, an Act respecting the establishment of Provinces in the Dominion of Canada, June 29, 1871.

### Provincial Powers

The provinces of Canada have the power to legislate with respect to the following enumerated matters.

- (1) "The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
- (2) "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
- (3) "The borrowing of Money on the sole Credit of the Province.
- (4) "The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
- (5) "The Management and sale of the Public Lands belonging to the Province and the Timber and Wood thereon.
- (6) "The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
- (7) "The Establishment, Maintenance, and Management of Hospital, Asylum, Charities, and Eleemosynary Institutions in and for the Province other than Marine Hospitals.
- (8) "Municipal Institutions in the Province.
- (9) "Shop, Saloon, Tavern, Auctioneer, and Other Licenses in order to the raising of a Revenue for Provincial, Local, or municipal Purposes.
- (10) "Local Works and Undertakings other than such as are of the following classes: (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province: (b) Lines of Steam Ships between the Province and any British or Foreign Country; (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

- (11) "The Incorporation of Companies with Provincial Objects.
- (12) "The Solemnization of Marriage in the Province.
- (13) "Property and Civil Rights in the Province.
- (14) "The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
- (15) "The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
- (16) "Generally all Matters of a merely local or private Nature in the Province."<sup>3</sup>

In the separate section 93 education is firmly placed under the exclusive control of the provinces. The provinces can legislate in education "subject and according to the following Provisions:

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
- (2) All the Powers, Privileges, and Duties at the Union by Law confined and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
- (3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

---

<sup>3</sup> The B.N.A. Act, 1867, section 92.

- (4) In case any such Provincial Law as from time to time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section."

Section 95 allows both levels of government to legislate in relation to agriculture and immigration, but in areas of conflict of legislation federal law takes precedence. An amendment to the B.N.A. Act in 1951 added Section 94A which gives concurrent jurisdiction over old age pensions. The precedence of section 95 may be reversed because section 94A specifies that no law of the Federal Government "... shall affect the operation of any law present or future of a provincial legislature in relation to any such matter".

The intentions of the Fathers of Confederation at the inception of the B.N.A. Act was to propose a strong central government with such ample financial powers as unrestricted taxing powers and exclusive use of other important revenue sources. These powers were to enable the Dominion to finance activities of the Government which were during the late 1800's high expenditure public goods (e.g., defense). Those activities not national, and inexpensive the federal Parliament allotted to the provinces. However, most legislation in the present time "which is not of a type

actually contemplated and expressly provided for by the ..."<sup>4</sup> Fathers has involved activities which must be financed by the provinces. These include such service-providing activities as health, welfare, road-building, resource development, and education which are local in nature and highly expensive to maintain.

The Federal Government has exclusive control over a number of expense incurring provincial-type responsibilities in the Northwest Territories, though at a certain political cost to the Government of the Northwest Territories. It is these and other responsibilities and their implications that the paper discusses below.

#### Provincial-Type Responsibilities Carried Out by the Federal Government (Directly)

##### (1) The Amendment of the Northwest Territories Act

There is no provision in the constitution of the Northwest Territories allowing the Territorial Government to amend its own constitution. The changing of certain sections, or any amendments so desired lies within the power of the federal Parliament rather than in the exclusive control of the Northwest Territories Council. The federal Parliament has the power to do with the Northwest Territories Act what the provincial governments can do with their own constitutions. The absence of such a Territorial power

---

<sup>4</sup> D.V. Smiley (ed.), The Rowell/Sirois Report/Book I, op. cit., p. 192.



implies that the Federal Government can define the powers, immunities and privileges of the Northwest Territories, a power which the provinces have.<sup>5</sup>

(2) Direct Taxation Within the Territories

According to the Northwest Territories Act, section 13, subsection (a) the Northwest Territories has the legislative power to make ordinances in relation to direct taxation. The 1962-67 federal-provincial fiscal arrangements provided for the payment of federal funds to make up the difference between the revenue and expenditure of the Northwest Territories, and the payment of an amount sufficient to amortize their dead weight indebtedness. In return the Northwest Territories agreed to refrain from imposing personal and corporate income taxes and succession duties. This arrangement was extended to March 31, 1969,<sup>6</sup> and exists in the present time.

(3) The Borrowing of Money

Section 24(1) of the Northwest Territories Act gives the Commissioner in Council the legislative power of making ordinances "for the borrowing of money... on behalf of the

---

<sup>5</sup> Fielding v. Thomas [1896] A.C. 600.

<sup>6</sup> Report on the Northwest Territories, 1967, Inter-departmental Committee on Federal-Territorial Financial Relations, Ottawa, 1967, pp. 37-48.

Territories", as section 92, subsection 3 of the B.N.A. Act gives an identical power to the provinces. However, section 24(2) of the Northwest Territories Act states that "no money shall be borrowed... without the approval of the Governor in Council", thus effectively binding the Territorial borrowing power to federal authority. The provincial power to borrow is not restricted by the Governor in Council; the power is exclusively provincial.

There are three possible reasons for the restriction of the Territorial borrowing powers. An argument can be made that the Territories have no basic need to borrow money (or for that matter to impose a surtax), since the Federal Government is the major supplier of funds to the Northwest Territories. For example, the 1970-71 estimates of the Department of Indian Affairs and Northern Development called for a grant of \$15.7 million for the planning of constitutional development and transfer of certain services indicated in Chapter IV from the Federal to the Territorial Government. In addition, the estimate contained contributions and loans to the Northwest Territories for hospital care of Indians and Eskimos, subsidies for housing and development of campgrounds. There was also a payment calling for \$28.8 million in accordance with agreements signed by the Territories which stipulates that they will not impose income tax or succession duties. Also provided is a loan of \$10.2 million to the Northwest Territories for

capital expenditures.<sup>7</sup> Of the types of allocation mentioned, the equalization payment is absent. The Interdepartmental Committee on Federal-Territorial Financial Relations, Report on the Northwest Territories, 1967, states that after the examination of the implications of the federal equalization payments to the Northwest Territories, it has "concluded that there would be no advantage in the alternative form of subsidy... because it would be insufficient".<sup>8</sup> Apart from the insufficiency argument, the primary reason for not granting equalization payments is that the provision of the payment would necessitate conferring provincial status upon the Territories, an implication the Committee studiously avoids mentioning.

The second reason for the restriction might very well be the fact that the Territorial revenue sources from taxation (e.g., gasoline tax), licensing and liquor profit produce a small portion of the total revenue requirement and the subsequent interest rates incurred by borrowing on

---

<sup>7</sup> The National Finances, op. cit., pp. 152-153.

\* Emphasis my own.

<sup>8</sup> Report on the Northwest Territories, 1967, op. cit., p. 37.

the international money market would reduce the revenue creating an undesirable deficit.

Finally, the Northwest Territories has "no sole credit" available to borrow funds since its necessary collateral, natural resources, is under the control of the Federal Government.

(4) Attorney General and Law Enforcement

(a) Attorney General

The provincial attorney general is appointed by the leader of the political party in power. He has the powers specifically allotted to him by provincial statutes commensurable to section 92(14) of the British North America Act. In the Northwest Territories there is no such office as the Attorney General of the Northwest Territories. The appointment in itself is a provincial responsibility, a responsibility that the Northwest Territories does not have.

Apart from section 13(i) (j) of the Northwest Territories Act, and those responsibilities carried out by the Territorial Department of Legal Services which include legal advice at the policy and administration level, legislation and documentation, legal aid, land titles, and the administration of justice not the responsibility of the Department of Justice;<sup>9</sup> the Minister of Justice has powers, duties

---

<sup>9</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, Department of Information, Yellowknife, 1970, p. 64.

and functions commensurable to those provided by provincial statutes to the provincial attorney generals. Thus, even though the Department of Legal Services maintains a liaison with the Federal Department of Justice, it is possible for the Minister of Justice to make decisions of justice which may affect Territorial policy.

This action is strengthened by the fact that the Minister of Justice, as Attorney General of Canada, can adjudicate on all matters of law which relate to the matters within the classes of subjects assigned by section 91 to the Parliament of Canada. For example, he has the power to curtail or withdraw jurisdiction of provincial courts (and for that matter Territorial courts) in respect to matters within federal competency.<sup>10</sup>

(b) Law Enforcement

Government Activities in the North, 1969, states

"The basic responsibility of the Royal Canadian Mounted Police in the... Northwest Territories is the preservation of peace and the maintenance of law and order. The Force is the only law enforcement agency in the North and is responsible for the enforcement of all Federal Statutes (and) Territorial laws...."<sup>11</sup>

---

<sup>10</sup> Valin v. Langlois [1879] 3 S.C.R., 1; Nanaimo Community Hotel v. Board of Referees [1945] 3 D.L.R., 225, [1945] 2 W.W.R., 145.

<sup>11</sup> Government Activities in the North, 1969, Advisory Committee on Northern Development, Information Canada, Ottawa, 1970, p. 324.

As in some provinces, for example, Alberta and Saskatchewan, the RCMP provide provincial-type police services in the Northwest Territories. Law enforcement is a provincial-type responsibility given to the Northwest Territories by section 13(y), however as with some provinces, law enforcement in the Northwest Territories has been contracted to the Royal Canadian Mounted Police. The Territorial Government commenced on April 1, 1967, to reimburse the RCMP for "42% of the costs incurred by the Force in performing provincial-type services... with a further escalation of one percent per annum thereafter, up to a maximum of 50%".<sup>12</sup>

What is of interest here, is not necessarily the percentage cost shared by the Territorial Government, but rather that RCMP statistics since 1962 indicate "that more than 80% of their total man hours in the Northwest Territories have been spent on provincial-type duties and not Federal responsibilities".<sup>13</sup> Bearing this fact in mind plus the facts that; (1) the RCMP is "responsible for the enforcement of all Federal Statutes, [and] Territorial laws", and (2) the legal head of the Force is the Minister of Justice, it becomes more evident how the Attorney General

---

<sup>12</sup> Report on the Northwest Territories, 1967, op. cit., p. 28.

<sup>13</sup> Ibid., p. 27.

of Canada may affect Territorial policy.

(5) Natural Resources

The Department of Indian Affairs and Northern Development is "responsible for the effective management of oil and gas, mining, water, forests, and land resources... of the Northwest Territories".<sup>14</sup> The development of natural resources within a province is an exclusive provincial responsibility and it generates the greatest single provincial source of revenue. Since the Federal Government has effective control in the Northwest Territories over this responsibility it also has the provincial-type responsibility for the management and the development of the economy of the Northwest Territories which is directly dependent upon the exploitation of its natural resources. In addition to the economic or growth implication, ownership of the natural resources by the Federal Government generates other externalities, noted below, which impinge on what are provincial-type responsibilities.

Since the Federal Government has property rights of

---

<sup>14</sup> Annual Report, 1968-69, Department of Indian Affairs and Northern Development, Queen's Printer, Ottawa, 1970, p. 53.

those lands and waters where natural resources are located\* it can make regulations respecting the use, management and conservation of the surface of those lands and waters.

The Territorial Lands Act sets out in sections 7(3), 8, 13, 14 and 16 the sale, lease, use and trespassing regulations of the lands. License revenues obtained from fees for the inspection and regulation of natural resources (other than game) go to the Federal Government. Recent amendments to the Territorial Lands Act have given the Governor in Council authority to make regulations respecting the use and conservation of the surface of the territorial lands managed by the D.I.A.N.D. The Land Use Regulations are designed to assure the elimination or minimization of ecological disturbances in the Northwest Territories. The regulations provide for land management zones to be established within the specific guidelines set forth to regulate resource exploration activities in each zone. Companies,

---

\* It should be pointed out that the administration and control of all vacant Crown owned lots in the municipalities, townsites and settlements was transferred to the Territorial Government. As a result of this transfer the Territories have some "autonomy in the disposal of the most active portion\*\* of the land's surface".<sup>15</sup> But the "active portion" primarily includes industrial development and excludes economic activity and the greater portion of the land mass of the Northwest Territories which contain the resource areas. Significantly the regulations in the Commissioner's Land Ordinance covers the surface rights but the mineral rights remain under federal jurisdiction.

\*\* Emphasis my own.

<sup>15</sup> The Annual Report of the Commissioner of the Northwest Territories, 1967-68, Yellowknife, 1968, p. 64.



individuals, etc., carrying out operations in a land management zone are required to obtain a permit prior to commencing operations. The permits set conditions on land use operations, such as vehicles, explosives, etc. These regulations were designed in close collaboration with the Territorial Government, but the authority over the regulations is vested in the Federal Government. All those regulations stipulated deal with activities that come under provincial jurisdiction and, as in Alberta, are dealt with by a provincial department of environment. The regulations are a method, aside from protecting the environment, of controlling resource exploitation in the Northwest Territories, a provincial-type of responsibility. For example, forest management, as well as mineral exploitation, is a provincial responsibility, but in the Northwest Territories management of the forests by the provisions in the Territorial Lands Act plus Land Use Regulations is under Federal jurisdiction. In the rest of Canada, the federal Forestry Department has only concentrated on basic and applied research in co-operation with provincial authorities.\*

Though Bill C-187, the Northern Inland Waters Act enacted 26 June 1970, provides for an "equitable disposition of the rights to use northern water resources and holds those

---

\* Ontario and British Columbia carry on their own forest research services.

who use it responsible for the restoration of water quality to set standards, it places under Federal jurisdiction the determination of who uses the water and how it is used. All inland waters are the property of the Federal Government, rather than the property of the Territorial Government. Hence it can be argued that the Federal Government has effective control over the hydro potentials of the rivers within the Territories.\*

Presently N.C.P.C., a Crown Corporation has the provincial-type responsibility for the provisions of the hydro-electric power in the Northwest Territories, with the exception of a few settlements. The Northern Canada Power Commission was created in 1948 (as the Northwest Territories Power Commission) for the purpose of providing electric power on a self-sustaining basis to mines and other areas in the Northwest Territories. Since the time of its inception, the Power Commission's hydro-electric power developments have become nearly all encompassing. It has power generating facilities on the Snare River, diesel electric plants at other locations, power and central heating plants and water and sewerage services at Inuvik and Frobisher Bay. Major capital projects expected to start in 1970-71 include: the Aklavik Power Project, the Arctic Red River Power Project,

---

\* The Federal Government is responsible for the administration of the Dominion Water Power Act and Regulations.

the Coppermine Hydro Power Project, the Fort Resolution Transmission Line Project, the Inuvik Expansion Project, and the Frobisher Bay Expansion Project. The spending power of the Federal Government is a predominant factor in determining hydro-electric power development in the Territories.

Licenses setting out conditions for water quality control are issued by the territorial water boards composed of federal water conservation officials and officials of the Territorial Government. The Territorial Government thus has an indirect, but minor and ineffective say in matters dealing with water quality and perhaps hydro-electric power. With the exception of interprovincial trade and commerce, generally agreements entered into, by and between provinces are provincial matters. Under Bill C-187 agreements may be entered into with the provinces for the management of river basins that cross the 60th parallel, but such agreements are not made by the Territorial Government and the provincial governments but rather by the Federal Government and the provincial governments.

Finally, in relation to the Northern Inland Waters Act there is the matter of water transportation. The Northern Transportation Company Limited (N.T.C.L.), a Crown Corporation acts as a carrier for people and goods by land and water in the western and central Arctic and the Mackenzie Basin. The responsibility for the N.T.C.L. was transferred to the Minister of Transport in 1970 commensurable with the Federal Government power to legislate in matters of

water transportation. The question that arises is what activities carried on in the Northwest Territories by the N.T.C.L. include those that would be under provincial jurisdiction? Under the Northern Inland Waters Act all northern waters are public property belonging to the Federal public domain. It is correct to assume that no provincial government nor the Territorial Government have established public rights of navigation over the northern waters. If public rights of navigation over the northern waters has been established by the federal Parliament, then it is for the Parliament alone to regulate their exercise.\* Viewed in this manner, the N.T.C.L. under the jurisdiction of the Minister of Transport would not be encroaching upon the jurisdiction of the Territorial Government. It is however, performing a responsibility that would be under provincial jurisdiction.

According to the Privy Council's decision in Montreal v. Montreal Harbour Commissioners, [1929] A.C. 299, [1926] 1 D.L.R. 840, [1926] 1 W.W.R. 398, control of navigation and shipping would suggest that local, interprovincial, international navigation and shipping fall within the jurisdiction of the Federal Government. However, in light of section 91(13) and the exceptions in section 92(10) (a) and (b) of the B.N.A. Act, there have been statements as those reached by the Supreme Court of Canada in Reference re Validity of

---

\* See Reference re Waters and Water Powers (1929), S.C.R. 200, [1929] 2 D.L.R. 481.

Industrial Relations and Disputes Investigation Act and Its Applicability in Respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd. [1955] 3 C.R. 526, [1955] 3 D.L.R. 721 that the federal power should be excluded where intra-provincial shipping is concerned. The position was taken that intra-provincial or local shipping in contrast to navigation was under provincial jurisdiction. However, "shipping" was not broken down into specifics. Unfortunately, there is no clause in the Northwest Territories Act, section 13, which is identical to section 92(10) of the B.N.A. Act. Instead, section 13(r) of the Northwest Territories Act is a combination of section 92(12) dealing with incorporation of companies and the exceptions noted in section 42(10) of the B.N.A. Act. The specific reference in section 92(10) dealing with "local works and undertakings" has not been included in section 13 of the Northwest Territories Act. Generally, most of the court cases dealing with navigation and shipping rights have come to the conclusion that section 91(10) of the B.N.A. Act is to be considered as a sweeping phrase.

Referring back to the subject matter at hand, that is, the activities of the N.T.C.L., there are two areas which fall under provincial authority and similarly could be argued to fall within Territorial jurisdiction.

The Stevedoring case referred to above states that the "civil rights" of crew members engaged in strictly local

services, including intra-provincial carriage, fell within provincial jurisdiction and also included labour matters.\* An identical reasoning might be presented for the crew members of the N.T.C.L. that are engaged in strictly Territorial transportation according to section 13(h), "property and civil rights" clause.

In the T.T.C. v. Aqua Taxi, 6 D.L.R. 2d 721, [1957] O.W.N. 65 the Court ruling that provincial legislation could be enacted to provide for a system of municipal transportation, regardless where the mode of transportation touched water and land owned by the federal Crown, was based on the rationale that a federal waterway is as much a public highway for provincial purposes as a provincial highway is for federal purposes. The Mackenzie waterway could be equally utilized by the Territorial Government.\*\*

When the Northern Inland Waters Act, together with the Territorial Lands Act and the Land Use Regulations are weighed, it becomes clear that the industrial and economic development in the Northwest Territories is contingent upon federal initiative rather than Territorial. In addition to the federal jurisdiction over the development of resources, the federal spending power is instrumental in determining

---

\* See also Underwater Gas Developers Ltd. v. Ontario Labour Relations Board, 21 D.C.R. 2d 345, [1960] O.W.N. 53.

\*\* e.g., Operation of the "Johnny Berens" ferry.

the economic development of the Territories.

From the above it can be seen why, for example, the Territorial Department of Industry and Development has not developed programmes similar to its provincial counterparts (Chapter IV). Development of natural resources in the Northwest Territories is dependent upon the federal spending power, which in turn accounts for the minor programmes, relative to provincial programmes of development, that the Department of Industry and Development initiate.\* Such programmes as the Territorial Small Business Loan Fund which is administered by the Territorial Government must rely on the Federal Government for the providing of the cost of management and advice for the funds (Chapter V). Major economic development is also under federal jurisdiction.

In the provinces jurisdiction over the inland fisheries goes with the public domains of the provinces, in the Northwest Territories inland fisheries are under the public domain of the federal Parliament as are the sea coast fisheries of Canada. The full power of regulation over all fisheries in the Northwest Territories may lead to some confusion. If an industrial dispute was to occur in the inland fisheries it can be assumed that federal Parliament has the power to

---

\* For example, the Territorial Department of Industry and Development is restricted to research studies on Northern oil and gas exploration. It has not, and cannot initiate development programs directed at exploitation of these resources.

enact compulsory legislation since it has the comprehensive general power to regulate over such industries in the N.W.T. as fisheries. Though situations arise between the Federal Government and the provinces concerning the settlement of an industrial dispute, the provinces have power to legislate respecting industrial disputes. This provincial-type responsibility is not performed by the Territorial Government, rather the Federal Government provides the conciliation and arbitration services for the Territories under the provisions of the Federal Industrial Disputes and Investigations Act. It is also this Act which allows the Federal Government to certify unions located in the Northwest Territories.

Another contentious area is the setting of labour standards for people employed in the exploitation of natural resources. The Judicial Committee in the Labour Convention case held all three federal acts dealing with a weekly day of rest, maximum hours and minimum wage ultra vires<sup>\*</sup> on the ground that they dealt with matters within the exclusive jurisdiction of the provinces, and the treaty powers did not give the Federal Government jurisdiction because "the Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority incon-

---

\* All three were held by the Privy Council to affect "Property and Civil Rights in the Province".



sistent with the constitution which gave it birth".<sup>16</sup> If a treaty is made with a foreign country in regards to the transmission of a pipeline in the Northwest Territories, does the Territorial Labour Standards Ordinance apply or do those standards set by the Federal Government apply?

Furthermore, there is no doubt that the federal Parliament has authority to regulate the lives and affairs of Indians on federal public lands, but, in relation to the "property and civil rights", to what extent are Indians off the federal public domain and on the lands in the immediate areas of municipalities, townsites and settlements subject to Territorial legislation?<sup>17</sup>

The precedent established in the 1930 amendment to the B.N.A. Act that confirmed "the agreements which transferred to the Prairie Provinces the natural resources which had been held by the Dominion since their admission to the federation".<sup>18</sup> Is the Federal Government obligated to abide by that precedent when the Northwest Territories becomes a province? Or will the Federal Government abide by the claims of other

---

<sup>16</sup> Attorney-General for Canada v. Attorney-General for Ontario [1937], A.C. 326.

<sup>17</sup> for information dealing with provinces see Rex v. Commanda [1939], O.W.N. 466, [1939] 3 D.L.R. 635; Warman v. Francis [1958], 20 D.L.R. 2d 627, 43 M.P.R. 197; the Indian Act, R.S.C. 152, c. 149 as amended.

<sup>18</sup> Dawson, op. cit., p. 128.

provinces who view natural resources as the property of all Canadians and maintain all provinces should benefit from the large amounts of revenue obtained from their exploitation.<sup>19</sup> If the Federal Government does transfer the exploitation of natural resources to the Territories when it gains provincial status, then accordingly, the Federal Government would have to compensate the Northwest Territories for any loss of revenue they might have sustained as they did to Alberta and Saskatchewan.\*

Finally, though not necessarily, the remaining implication deals with the construction of roads. All roads on Crown land in the Northwest Territories are under the control of the Federal Government with the exception of the administration of a tote trail financial assistance programme, the maintenance of the Mackenzie Highway System and the roads on the lands administered by the Commissioner in Council, i.e., roads in and around municipalities, townsites and settlements.

---

<sup>19</sup> Prince Edward Island in the Dominion-Provincial Conference, 1960, Queen's Printer, Ottawa, 1960, states

"We stand firmly upon the principle that none of the public lands of Canada, in all of which every part of Canada is beneficially interested, should be applied to the special area or benefit of any particular province without compensating the non-participating provinces".

\* The final settlement for the loss of revenue was made in 1947 to Alberta and Saskatchewan.

Since the Federal Government has the power to legislate in relation to those lands that are under its jurisdiction it also has the provincial-type responsibility for construction and maintenance of roads which transverse those lands. The construction and maintenance is carried out primarily by the D.I.A.M.D., even though the Territorial Government has assumed a certain amount of responsibility for the maintenance of those roads. However, since the spending power for construction and maintenance coupled with control of land resources lies with the Federal Government, it has the effective control over highways. For example, the most costly expenditures under the Roads for Northern Economic Development in 1970-71 were \$1.3 million for the Mackenzie Highway; \$1.3 million for a highway between Fort Simpson and Fort Liard; and \$1.5 million for access road construction, all funds being provided by the Federal Government.

(6) Health Services

The Department of National Health and Welfare carry out the following provincial-type responsibilities in the Northwest Territories:\* (1) the provision of consultative and advisory services to the Territorial Government in the

---

\* According to the Interdepartmental Committee on Federal-Territorial Financial Relations, Report on the Northwest Territories, 1967, the "Northern Health Services was to act for the Territorial Government in a capacity similar to a department of public health in a provincial administration", 1967, p. 14.

general field of environmental health; and (2) the provision of complete health care in the Northwest Territories. The Department has the dual role, as does the Minister of Justice, of being a federal agency as well as a provincial agency operating under special financial arrangements concluded with the Government of the Northwest Territories.\* The financial arrangements call for the Federal and Territorial Governments to share the cost incurred in provision of health care. Such an arrangement is favourable to the Territories since the provision of health services by the provinces has proven to be a very expensive public good.<sup>20</sup>

(7) Agriculture and Immigration

Section 95 gives concurrent powers to the Dominion and the provinces over two matters -- agriculture and immigration. The Northwest Territories Act, section 13(v) gives the Territorial Government the power to legislate in relation to the class of agriculture, but nowhere in the Act is there a stipulation that states legislation is concurrent. In this matter, it would appear that the Territorial Government has, relatively speaking, more power in

---

\* Northern health services are provided to residents of the N.W.T. comparable to those provided by provincial governments in the provinces.

<sup>20</sup> E.J. Hanson, The Public Finance Aspects of Health Services in Canada, Royal Commission on Health Services, Queen's Printer, Ottawa, 1964.

agriculture than do the provinces. However, section 14(1) states "Nothing in section 13 shall be construed to give the Commissioner in Council greater powers... than are given to legislatures of the Provinces of Canada under sections 92 and 95...." Though the Territorial Government may be increasing its scope of involvement in agriculture as evidenced by the transfer of the Fort Simpson Farm,<sup>\*</sup> the development of the limited potential for agriculture in the Territories remains with the Federal Department of Agriculture which primarily provides advisory services relating to agriculture to other government agencies.

The Territorial Government has no power to legislate in relation to immigration. Both provincial and federal governments can legislate in the area of immigration. Broadly speaking, the responsibilities of the Department of Manpower and Immigration in the Territories involve assisting "in the development of the... economy by encouraging a flow of desirable immigrants, adaptable to the needs of the country and by controlling the entry or stay in Canada of non-immigrants."<sup>21</sup>

---

<sup>\*</sup> Operation of the Fort Simpson Farm was transferred to the Northwest Territories Government in 1970.

<sup>21</sup> Government Activities in the North, 1969, op. cit., p. 175.

The provincial power to determine entry of an immigrant into a province under section 95 of the B.N.A. Act, though subordinate to that conferred on the Federal Government in the same section, has not been given to the Territorial Government.\* Thus the federal Parliament carries out its own powers which include the power to exclude or deport either alien or naturalized persons, or even natural-born persons;\*\* and it carries out for the Northwest Territories the provincial-type responsibility related to immigration. The dual role of the federal Parliament brings two questions to the forefront. To what extent can Federal Government legislation in relation to immigration interfere with the "property and civil rights" of the Northwest Territories? Since the Northwest Territories does not have the power commensurable to that of the provinces in relation to immigration, can the Territorial Government discriminate against immigrants vis-a-vis "property and civil rights"?

---

\* In 1921 an ordinance was proclaimed by the Commissioner in order to control the entry of persons into the Northwest Territories. Its validity was challenged and ruled ultra vires by the Department of Justice reasoning that the Commissioner could not proclaim such an ordinance, and that a council had to participate in the making of Territorial laws.

From The Northwest Territories Today, A Reference Paper for the Advisory Commission on the Development of Government in the Northwest Territories, Queen's Printer, Ottawa, 1965, p. 80.

\*\* Consideration must be given to international law, i.e., reception of such people.

(8) Others(a) Changing the Seat of Government

The Governor in Council nor for that matter the Lieutenant-Governor has the sole power to change the seat of government of a province. Consider section 9, Alberta Act, 4-5 Edward VII, Chapter 3, which states that "unless and until the Lieutenant-Governor in Council of the said province otherwise directs by proclamation under the Great Seal, the seat of Government of the said province shall be Edmonton". As indicated earlier, the Lieutenant-Governor, though federally appointed does not act contrary to the desires of the provincial government.\* If, for example, Alberta desired to have its capital changed it would instruct the Lieutenant-Governor to proclaim the change. In other words, though the seats of provincial governments are named in the B.N.A. Act, they are subject to change by the provincial executive since provincial powers are as full and as complete as those of the federal Parliament.<sup>22</sup>

In the Northwest Territories, this provincial-type of responsibility is carried out by the Governor in Council

---

\* The reaction to the revival of the power of reservation by the Lieutenant-Governor of Saskatchewan in 1961 confirms this point. See J.R. Mallory, "The Lieutenant-Governor's Discretionary Powers", C.J.E.P.S., XXVII, No. 4, November, 1961, pp. 518-21.

<sup>22</sup> Dawson, op. cit., p. 139.

who "...may, from time to time..." change the seat of government;<sup>23</sup> and it would appear from the absence of any such indication that the Governor in Council's decision is not subject to the Territorial Executive or Council.

(b) Incorporation of a Telephone Company

Section 13(f) of the Northwest Territories Act gives the Territorial Government the power to incorporate companies with territorial objects except "railway, steamship, air transport, canal, telegraph, telephone or irrigation companies". Of particular interest to this paper is the matter dealing with the incorporation of a telephone company.

Any telephone company incorporated by a Dominion statute has a scope of business not confined within the limits of any one province and, unlike the Territorial Government, the provinces have the power to incorporate a telephone company confined to business within that province.\* There is no question about federal legislation being predominant over any inter-provincial communication (e.g., Bell Canada).<sup>24</sup> It would appear from section 13(f) that the Northwest Territories cannot incorporate a telephone

---

<sup>23</sup> The Northwest Territories Act, section 7.

\* Example, Alberta Government Telephones.

<sup>24</sup> See C.P.R. v. Attorney General for British Columbia, [1950] A.C. 122, [1950] 1 D.L.R. 721, [1950] 1 W.W.R. 220.



company confined to its boundaries. In addition to the federal responsibility of incorporating an inter-provincial telephone company, the Federal Government also has the responsibility of incorporating a telephone company that has chosen to carry out its business within the confines of the Territorial boundary. This dual role of the Federal Government in relation to incorporation of telephone companies has certain implications.

A telephone company whose business is confined within the Territorial boundary and incorporated by the Federal Government might be free of Territorial legislation influencing its direction, legislation that could be in the interest of the Northwest Territories.<sup>25</sup> Such legislation could take the form of a consent of the Territorial Council for the company to exercise its company powers in townsites, municipalities and settlements. The implication of the dual role is brought to bear further when one considers under whose jurisdiction is the company when it constructs and maintains its lines "along, across, or under any public highways, streets, bridges, water courses, or any other such places",<sup>26</sup> in the Northwest Territories?

---

<sup>25</sup> For information related to the provinces in this field see Toronto v. Bell Telephone Company [1905] A.C. 52.

<sup>26</sup> Ibid.

Provincial-Type Responsibilities Carried Out by the Federal Government (Indirectly by Commissioner)

The Federal Government carries out certain provincial-type responsibilities in the Northwest Territories through an indirect method; that is, by the authority vested in the "Commissioner". Before commencing with a definition of "Commissioner" and some of the provincial-type of responsibilities he carries out for the Federal Government, there is a fine distinction made in section 2 of the Northwest Territories Act that should also be included here in the paper. The distinction is the office of "Commissioner" means the "Commissioner of the Territories", while "Commissioner in Council" means the Commissioner acting by and with the advice and consent of the Council.\* The Commissioner does not occupy two separate offices, but by the above distinction he does, in the writer's estimates, exercise two inter-related but separate capacities.\*\* In the capacity of "Commissioner" he is accountable to and acts on the advice of the Federal Government, whereas in the latter capacity he acts by and with the advice and consent of the Council. It is the former capacity which gives him the power to carry out provincial-type responsibilities for the Federal Government, and it is in this capacity which

---

\* Emphasis my own.

\*\* This definition is the author's.

the Commissioner will be discussed in this section of the paper.

The "Commissioner" is appointed by the Federal Government (i.e., by the Governor in Council) as the chief executive officer of the Northwest Territories. He is on the "establishment of the Department of Indian Affairs and Northern Development and his salary is paid out of Federal funds".<sup>27</sup> Further, section 4 states that the "Commissioner" administers the government of the Territories under the "instructions from time to time given by the Governor in Council". The "Commissioner" is not responsible to the legislative branch of the Territorial Government but to the Federal Government (in particular the Minister of Northern Development). In essence, he is a federal appointee who in the capacity of "Commissioner" is responsible to and acting on federal advice and authority.

In this capacity he has been given by the Northwest Territories Act and various ordinances passed by the Territorial Council, specific powers some of which are provincial-type responsibilities. A few of these responsibilities are indicated below; but any specific reference made to the duties, powers or functions of the "Commissioner" (rather than the "Commissioner in Council") that are provincial

---

<sup>27</sup> Report of the Northwest Territories, op. cit., p. 30.

in scope could, in the writer's view, be considered as provincial-type responsibilities carried out indirectly by the Federal Government.

(1) Ordinances

The "Commissioner" cannot make any laws for the Northwest Territories by himself -- the Territorial Council must participate in the legislation. The Territorial Council can give the "Commissioner" duties, powers or functions which may be provincial in nature. It should be clearly understood that it is not the contention of this paper that having these powers the "Commissioner" acts as an instrument of the Federal Government, in the detrimental manner, but rather that he is carrying out those responsibilities given to him by the Council in the interests of the Northwest Territories; and because of his accountability the Commissioner is at the same time indirectly performing provincial-type responsibilities for the Federal Government.

For example, consider the Ordinance Respecting A Financial Agreement Between The Northwest Territories And The Government Of Canada (assented to January 30, 1970). Part I, section 5 states that the "agreement may be viewed or amended, from time to time, as may be agreed upon with the Government of Canada by the Commissioner". The preamble states that the Commissioner enacted the ordinance "by and with the advice and consent of the Council", hence the provincial-type responsibility to amend or vary the

agreement referred to has been given to the Commissioner by the Council. The Commissioner, in turn, will carry out this responsibility in the interest of the Northwest Territories. On the other hand since the Commissioner is accountable to the Federal Government, he will by definition, be carrying out indirectly this provincial-type of responsibility for the Federal Government. A similar dichotomy can be made in relation to the Ordinance Respecting Justices Of The Peace which enables the Commissioner to appoint Justices of the Peace and to set out their jurisdiction, duties and remuneration; the Ordinance Respecting Magistrate's Courts which enables the Commissioner to appoint Magistrates and other officials and to set out their powers, duties and jurisdictions; the Public Service Ordinance which gives the Commissioner the power of management and direction of the public service; and other ordinances specifically defining the powers of the Commissioner.

(2) The Northwest Territories Act

Certain sections of the Act specify that the Commissioner carry out various functions, which are provincial in nature.

(1) Section 20(2) gives the Commissioner the power to establish in "the name of the Government of the Northwest Territories, accounts with... chartered banks as he designates for the deposit of public monies and revenue".

(2) Section 21 states that any "bill for appropriations

of any part of the public revenue of the Territories" must be "first recommended to the Council by message of the Commissioner" before Council can vote or adopt it. It is interesting to note that since the Commissioner is not responsible to the legislative branch of the Territorial Government but to the Federal Government, he still remains in power even if his fiscal budget is entirely rejected by the Council.

(3) Section 48(1) gives the Commissioner the power to designate which intoxicant can be manufactured in and imported to the Northwest Territories.

(4) Section 49(1) gives the Commissioner the right to "arrange with any province of Canada for the admissions" of patients to mental institutions, etc., subject to the approval of the Minister. A similar power has been conferred on the Commissioner in relation to neglected children, section 51(1).

Chapter III has listed and examined those responsibilities or functions that are provincial in nature and that are performed by the Federal Government on behalf of the Northwest Territories. The Federal Government's activities are not wholly regulatory but rather there is a mixture of regulatory and service-providing activities (see Table 2), i.e., in addition to performing provincial activities related to agriculture, immigration and so on, the Federal Government also carries out such provincial responsibilities as resource development, health and law enforcement, to

TABLE 2

**PROVINCIAL-TYPE RESPONSIBILITIES  
CARRIED OUT SOLELY BY THE FEDERAL  
GOVERNMENT (DIRECTLY OR INDIRECTLY)**

REGULATORY	SERVICE
1. AMENDMENT OF THE <u>NWT ACT</u>	1. LAW ENFORCEMENT - CONTRACT RCMP
2. DIRECT TAXATION - COLLECTION	2. DEVELOPMENT OF NATURAL RESOURCES
3. BORROWING OF MONEY - APPROVAL BY GOVERNOR IN COUNCIL	3. HEALTH SERVICES
4. OFFICE OF ATTORNEY GENERAL	4. "COMMISSIONER" ESTABLISHES ACCOUNTS
5. AGRICULTURE AND IMMIGRATION	5. "COMMISSIONER" ARRANGES FOR TRANS- MISSION OF MENTALLY DISORDERED AND NEGLECTED CHILDREN
6. CHANGING THE SEAT OF GOVERNMENT	
7. INCORPORATION OF TELEPHONE COMPANIES	
8. "COMMISSIONER'S" POWERS VIS-A-VIS ORDINANCES	
9. "COMMISSIONER" RECOMMENDS BILL FOR APPROPRIATION	
10. "COMMISSIONER" DESIGNATES MANUFACTURE AND IMPORTATION OF INTOXICANTS	

name a few. The result is that a significant sphere of public activity which normally could be carried by a province through formal constitutional arrangements has been superseded by the performance of these activities by the Federal Government, thus limiting the role of the Territorial Government. The relationship of the Territorial Government to the Federal Government has been instrumental in the allocation of functions. Unlike the rest of Canada, where two separate governments exist, neither of which have authority over the other, the Federal Government has predominant authority over the Northwest Territories. Though such a relationship, as indicated above, has limited Territorial power, there exist some favourable attributes.

Since the Federal Government is predominant it is unlikely that disagreements over Territorial objectives and the means of reaching them can achieve the high pitch as occasioned during the Federal-Provincial Conferences. Also, once a policy has been agreed upon there is a concerted effort to pursue the policy and due to the lack of much disagreement there is a minimum amount of frustrations. Finally, the cost of those service-providing activities performed by the Federal Government is paid for in a great proportion by the Federal Government. Though these are advantages working in favour of the Northwest Territories, Chapter V and Chapter VI will show that these same advantages can be detrimental to the political development of the Northwest Territories.



## CHAPTER IV

Territorial legislation implementing changes of those responsibilities outlined in Chapter III would require federal delegation of authority to do so. Aside from the delegation of authority, section 13 of the Northwest Territories Act gives the Territorial Council authority to legislate in most matters provincial in nature except for natural resources (other than game). Generally, the list of legislative powers given to the Commissioner in Council are similar if not identical in some matters to those classes given to the province to legislate in. Since they are straightforward and the Territorial Council has made ordinances with respect to a majority of them, there is little chance of misinterpretation and hence each one will not be examined but rather a select few. The selection is not arbitrary but rather purposeful for those that have been chosen for scrutinization are areas of contention.

Section 13 gives the Commissioner in Council the power to legislate in relation to such classes of subjects as direct taxation; establishment, tenure, appointment and payment of territorial officers; administration of municipal institutions; controverted elections; licensing of any business or trade "in order to raise a revenue for territorial, municipal or local purposes"; incorporation of companies except "railway, steamships, air transport, canal, telegraph, telephone or irrigation companies";

solemnization of marriage; the administration of justice; public and reformatory prisons; issuing licenses for scientists or explorers; taxes on furs; preservation of game; education; "closing up, varying, opening, establishing, building, management control of any roads, streets, lanes or trails on public lands"; intoxicants; hospitals, agriculture; all matters of a merely local or private nature; imposition of fines, penalties, or imprisonment in respect of the violation of the provisions of any ordinance; and "such matters as are from time to time designated by the Governor in Council". Section 14(1) states that none of the enumerated powers in section 13 "shall be construed to give the Commissioner in Council greater powers with respect to any class of subjects... than are given to legislatures of the Provinces of Canada under section 92 and 95 of the British North America Act, 1867,...." Conversely, the Commissioner in Council might, by the implication of section 14(1) be given powers which are not as great as those given to the Provinces (Chapter III).

#### Direct Taxation

When dealing with direct taxation, or for that matter, any subject in the enumerated list of section 13, it is the contention of this paper that the Territorial Government can, on condition of Federal disallowance, legislate in any matter it so desires by exercising its exclusive authority over the matters assigned to it. It is not incorrect

to state that a direct tax, as income tax, instituted by the Territorial Government could not be overridden by the federal general power,<sup>1</sup> unless the Federal Government chose to exercise the power of disallowance. If the Federal Government so chose to do so, an argument could be made that it would not be disallowing legislation that is ultra vires but rather because the Federal Government merely desired to veto it. To institute a direct tax, the Northwest Territories need satisfy two conditions: (1) does it fall within the description of taxation given in section 13(a); and (2) if it does, on what grounds could the Federal Government disallow it?<sup>2</sup> Examined somewhat differently, the question can be asked, is federal requirement a condition necessary before the Territorial Government can impose an income or corporation tax? If so, then does the Territorial Government have any jurisdiction in the field of direct taxation?

The above arises directly from one of the recommendations put forward by the Interdepartmental Committee on Federal-Territorial Financial Relations which states that the Territorial Government undertake on its part and that

---

<sup>1</sup> Citizens Insurance Company v. Parsons [1881], 7 App. Cas. 60.

<sup>2</sup> For more information on the matter see the ruling in Bank of Toronto v. Lambe (1889), 12 App. Cas. 575.

of the municipalities to abstain from imposing income, corporation and succession taxes. It continues by stating that the above recommendation "is made with the knowledge that the Federal Government is not prepared to require the Territories to impose an income tax<sup>\*</sup> as is required of the provinces that enter into the tax collection agreements",<sup>3</sup>

If Federal requirement is a condition then other issues must be investigated. What is a direct tax? Relying on John Stuart Mill's definition, the Privy Council defined a direct tax as a tax "demanded from the very person whom the legislature intended or desired should pay it".<sup>4</sup> Further, what do the words "for Territorial... purposes" encompass? Can the Territorial Government impose a tax on a particular locality in the Northwest Territories for the purpose of raising money for the exclusive dispositions of the Council?<sup>5</sup> Section 125 of the B.N.A. Act expressly provides that "no lands or property belonging to Canada... shall be liable to taxation". The interests of the Crown in the

---

\* Emphasis my own.

<sup>3</sup> Report on the Northwest Territories, 1967, op. cit., p. 51.

<sup>4</sup> Bank of Toronto v. Lambe, op. cit., pp. 581-583

<sup>5</sup> For more information on the matter as it relates to the provinces see St. Catherine's Milling & Lumber Company v. The Queen [1888], 14 App. Cas. 46; Dow v. Block [1875], L.R. 6 P.C. 272.

Northwest Territories are protected by this section from a direct tax, but does this section as well protect those individuals, companies, corporations, etc., who derive beneficial interests from the Crown land and the Territorial Government? <sup>\*</sup> As for the provinces section 125 does not protect the latter group for they are subject to provincial taxation.<sup>6</sup>

### Property and Civil Rights

As indicated earlier in this paper, most of the recent legislation in Canada has been of a type not provided for by the Founders of Confederation, and must be enacted, if at all, by the provinces. The Royal Commission on Dominion-Provincial Relations, 1937, contends that because of this lack of "foresight" the "property and civil rights" clause has become the real residuary clause of the British North America Act.<sup>7</sup> Can a comparable statement, in relation to

---

\* According to section 46 of the N.W.T. Act the right to the beneficial use or to the proceeds is limited to those lands acquired "before, on, or after the 1st day of April, 1955 with territorial funds;... public lands, the administration of which has before, on or after the 1st day of April, 1955 been transferred by the Governor in Council to the Territories;... all roads, streets, lanes and trails on public lands; and lands acquired by the Territories pursuant to tax sale proceedings".

<sup>6</sup> See Calgary and Edmonton Land Company v. Attorney General of Canada, (1911), 45 S.C.R. 170.

<sup>7</sup> D.V. Smiley, The Rowell/Sirois Report/Book I, op. cit., p. 193.

the enactment of Territorial legislation, be made about the "property and civil rights" clause in section 13(h) of the Northwest Territories Act?

The extent of the Territorial power of legislation over "property and civil rights in the Territories" cannot be determined without determining the power and rights of the Federal Government in the Northwest Territories. It would appear to this writer that the jurisdiction conferred upon the Territories' "property and civil rights" clause is, relatively speaking, similar to the jurisdiction reserved for the federal Parliament in relation to matters outside the jurisdiction of the Northwest Territories. In other words, the Territorial Government can legislate in matters within the Territories except for those exclusively retained by the Federal Government such as noted in Chapter III. With the provinces federal interference can be no more than is necessary to effectively exercise its own powers,<sup>8</sup> but it is possible in the Northwest Territories, because of those certain provincial-type responsibilities carried out by the federal Parliament, to interfere beyond what is effectively necessary and in the process encroach upon the Territorial jurisdiction for "property and civil rights".

Considering the above, a valid conjecture is that the

---

<sup>8</sup> Valin v. Langlois, op. cit.

Territorial jurisdiction of the "property and civil rights" clause is not comparable to the jurisdiction of the provincial "property and civil rights" clause. Federal control over some provincial-type responsibilities could become intertwined, consciously or unconsciously with federal legislation that could affect the "property and civil rights" clause.

Powers given to the Commissioner in Council other than those enumerated in Section 13 and indicated above, include: section 9(1), the power to prescribe qualifications for election of council members; section 12(1), the power to provide "for the payment out of the Northwest Territories Consolidated Revenue Fund<sup>\*</sup> of indemnities to members of the

---

\* Prior to the amendment of the Northwest Territories Act the Northwest Territories did not have a separate Territorial Consolidated Revenue Fund. Instead the Northwest Territories had an account established in the Consolidated Revenue Fund of Canada. All expenditures in the Northwest Territories before April 1, 1967 were financed by the Consolidated Revenue Fund of Canada which gave the Federal Government unlimited use of its "federal spending power". Expenditures paid from the Consolidated Revenue Fund do not require any constitutional amendment, and hence the Federal Government could support any activity it desired within the territorial jurisdiction. One effect of providing for a Territorial Consolidated Revenue Fund involved setting up the Territorial Liquor System on a revolving fund basis in line with provincial practice. Such a change added to the provincial-type of responsibilities carried out by the Territorial Government. See Report on the Northwest Territories, 1967, Interdepartmental Committee on Federal-Territorial Financial Relations, Queen's Printer, 1967, p. 38.

Council"; section 14(2), the power to make game ordinances in respect of Indians and Eskimos; section 15, the power to authorize the Commissioner to enter into agreement with the Federal Government "under and for the purposes of any Act of the Parliament of Canada that authorizes the Government to enter into agreements with the provinces..."; section 16(1), the power to transmit ordinances to the federal Parliament; section 24, grants the legislative power to make ordinances in relation to borrowing subject to section 24(2), approval of the Governor in Council, lending and investing money by the Commissioner; section 45(2), the right to designate the Commissioner to make regulations respecting prisons and prisoners; and section 46, the right to the beneficial use and proceeds of those lands "vested in Her Majesty in right of Canada" and limited to those lands as indicated in the section.\*

---

\* A significant change in policy took place in 1969 with the transfer to the Government of the Northwest Territories of the administration, control and management of "hundreds of administrative and educational sites in the Northwest Territories, including the appurtenant buildings and services installation", and land in the immediate vicinity of municipalities, townsites and settlements. The transfer increased the scope of the provincial-type of responsibilities carried out by the Territories by giving the Territorial Government "greater autonomy through the control of municipal development in concert with the local councils". See Government Activities in the North, 1969, Advisory Committee on Northern Development, Information Canada, Ottawa, 1970, p. 160; Annual Report, 1960-1969, Department of Indian Affairs and Northern Development, Queen's Printer, Ottawa, 1970, p. 87; Annual Report of the Commissioner of the Northwest Territories, 1967-68, Yellowknife, 1968, p. 64.



Section 8 of the Northwest Territories Act

Aside from the above sections which give the Commissioner in Council provincial-type responsibilities, the recent amendments\*\* to section 8 are of sufficient importance, historically and politically, to warrant a part in this paper devoted entirely to them.

Historically the number of appointed members to Council has tended, until 1957, to exceed the number of elected members. With the implementation of the Advisory Commission's\*\*\* recommendation to increase the number of elected members and decrease the number of appointed members,<sup>9</sup> there has been a definite trend to move in that direction (see Plate 2). Prior to the amendments, Council consisted of twelve members, seven of whom were elected and five appointed; now the Territorial Council consists of fourteen members, ten elected and four appointed.<sup>10</sup>

---

\*\* 1967-70.

\*\*\* Report of the Advisory Commission on the Development of Government in the Northwest Territories, Ottawa, 1966.

<sup>9</sup> Development of Government in the Northwest Territories, 1966, op. cit., p. 163.

<sup>10</sup> The Northwest Territories Act, section 8(11).

Before the amendment to section 8(2) the Governor in Council had the power "to dissolve", at any time, "the Council and cause a new Council to be elected and appointed". However, the amendment to this section stipulates that the Governor in Council carries out the above mentioned powers upon consultation with the Council or after consultation with each member of the Council. The amendment also includes a new subsection (2.1) which states that "subject to the approval of the Governor in Council" the number of appointed members can be reduced "at such times and in such numbers as the Commissioner in Council may determine".\*

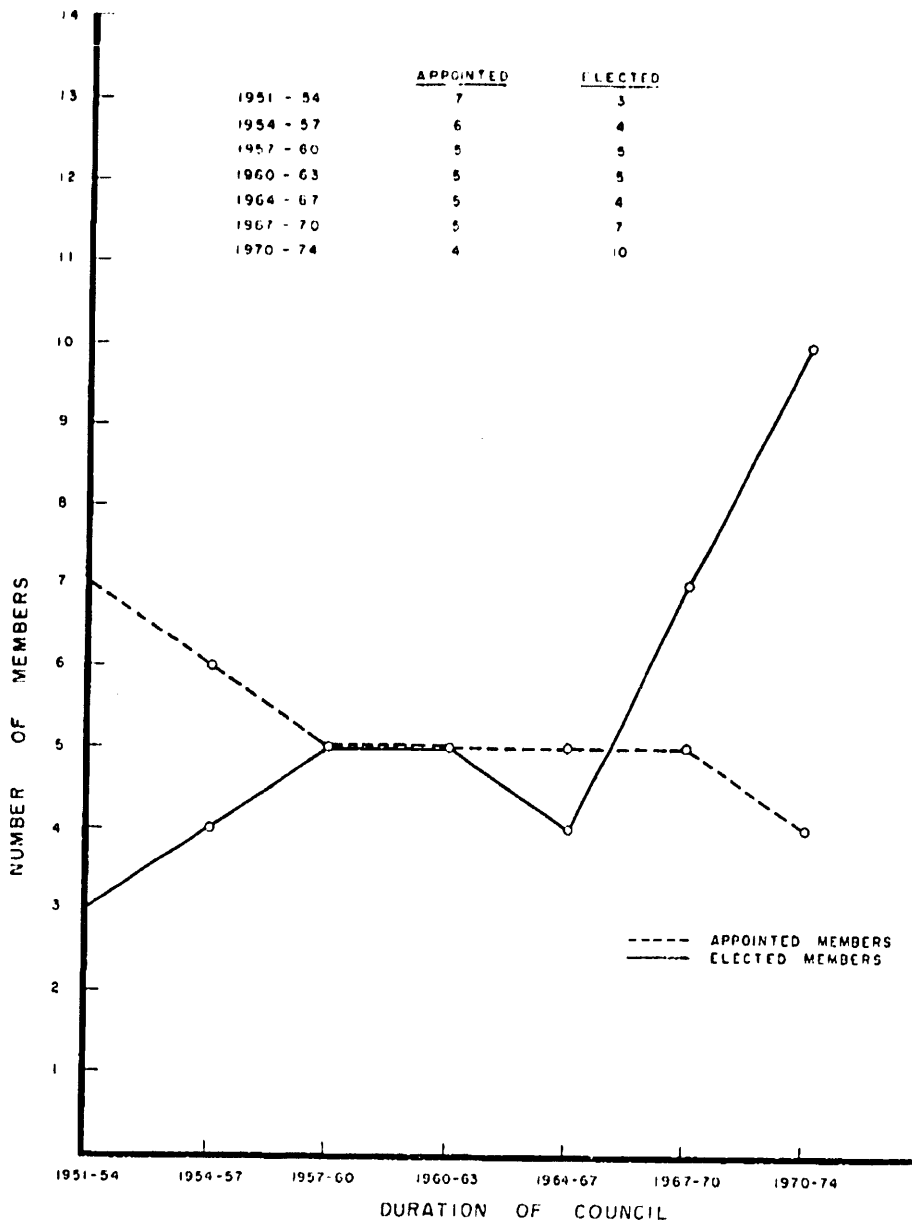
These amendments have undoubtedly increased the power of the Council and the Commissioner in Council. The political implications can only be construed as making the Territorial governmental systems more conducive to responsible and representative government. The degree of provincialism, that is, the quality of being provincial, of the legislative branch has increased by the addition of these responsibilities brought about by amendments to section 8. It is for the above reason that the author would mark the amendments to section 8, in particular subsection 2 and 2.1 as of great importance, second to the Advisory Commission's recommendations, in the political development of the Northwest Territories.

---

\* Emphasis my own.

# THE NUMBER OF APPOINTED AND ELECTED MEMBERS OF THE TERRITORIAL COUNCIL

(1951 TO 1974)\*



\* COMPILED FROM THE ANNUAL REPORTS OF THE COMMISSIONER OF THE N.W.T.

### Transfer of Administrative Responsibilities

Of the main recommendations put forward by the Advisory Commission and implemented by the Federal Government, perhaps the one which created an awareness of provincial-type of responsibilities lacking in the Northwest Territories was the recommendation outlining the need for a Territorial Public Service organized along departmental lines. Presently the public service is, in addition to the executive branch, comprised of the following departments; service - administration, public works, information, public services; and programme - industry and development, local government, education, and social development.

The responsibilities of this public service are identical to those administrative responsibilities carried out by provincial governments; and all are compatible with the jurisdictional limits set out in section 13 of the Northwest Territories Act. However, the responsibilities mentioned in this Chapter are not representative of the entire range of provincial-type responsibilities performed by the province. Those provincial-type responsibilities that are not handled by the Territorial Government have been noted in Chapter III, while those which are strictly administered by the Territorial Government but are financially controlled by the Federal Government are specifically discussed in Chapter V.\*

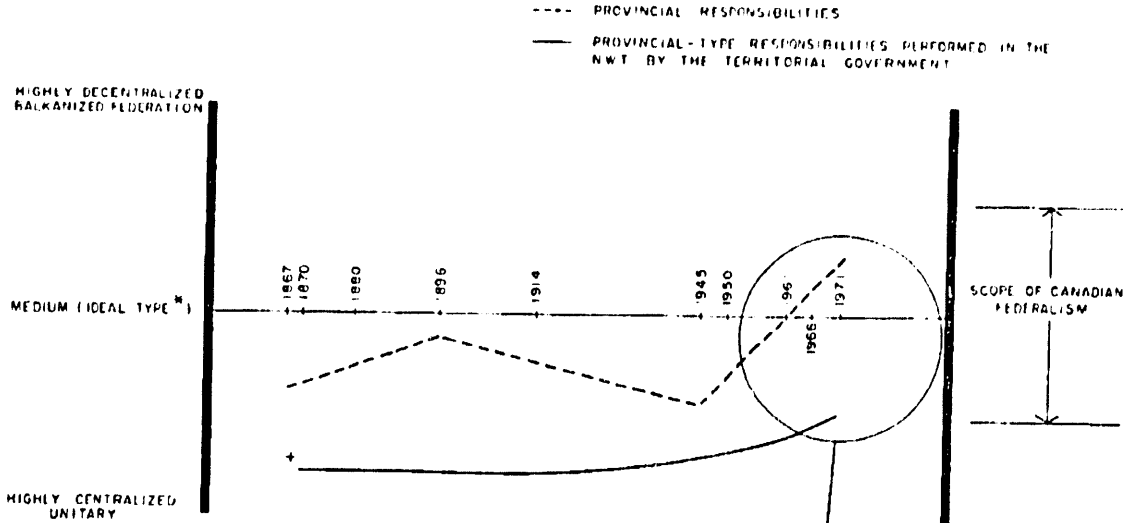
---

\* The Advisory Commission states that the dissimilarities in those responsibilities performed by the provinces and those performed by the N.W.T. "amount to differences in nature". Report of the Advisory Commission on the Development of Government in the Northwest Territories, Vol. 1, 1966, Ottawa, p. 97.

Perhaps the most effective method of illustrating the comparison between those responsibilities performed by the provinces and those provincial-type performed by the Territories is through a diagram. Such a diagram is presented on Plate 3 and does not specifically list the responsibilities but illustrates the scope of provincial responsibilities.

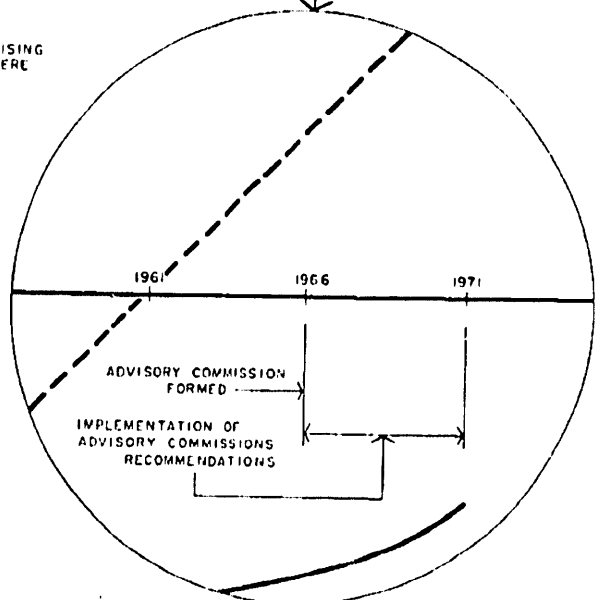
Though the Canadian Constitution provides for a division of powers between two levels of government, the degree or scope of Canadian federalism has exhibited cyclical tendencies unlike that of the Australian and American federations. At different periods in Canada's political history the Federal Government has tended towards either centralization of powers or decentralization of powers. Reflecting these cyclical tendencies provincial powers have either decreased or increased. Plate 3 illustrates the cycle and likewise includes the trend the Northwest Territories has experienced. Unlike the provinces the power of the Territorial Government has tended to steadily increase, but very gradually.

# TENDENCIES OF RESPONSIBILITIES IN RELATIVE TERMS†



\* IT IS QUESTIONABLE WHETHER CANADA HAS EVER BEEN AN IDEAL FEDERAL STATE ACCORDING TO K.C. WHEARE'S FEDERAL PRINCIPLE

+ THE TERRITORIES OF THE HUDSON'S BAY COMPANY, COMPRISING RUPERT'S LAND AND THE OLD NORTHWESTERN TERRITORY, WERE TRANSFERRED TO CANADA IN 1870. ALL OTHER BRITISH TERRITORIES OR TERRITORIAL RIGHTS IN THE ARCTIC WERE HANDLED OVER IN 1880. FOR MORE INFORMATION SEE EXCERPTS FROM JUSTICE W.G. MORROW OF THE TERRITORIES COURT OF THE NORTHWEST TERRITORIES, TOOTALIK VS. THE QUEEN, 1970.



† THE COMPARISON MAY NOT BE CONSIDERED AS APPROPRIATE SINCE THE TERRITORIES DO NOT HAVE PROVINCIAL STATUS, HOWEVER, IF THE RESPONSIBILITIES OF THE PROVINCES AND THOSE OF THE TERRITORIES ARE CONSIDERED IN RELATIVE TERMS A COMPARISON IS POSSIBLE.

## CHAPTER V

It has been shown in Chapter III that certain responsibilities that normally would fall under provincial jurisdiction have been retained and are performed by the Federal Government in the Northwest Territories. On the other hand, Chapter IV has indicated those provincial-type responsibilities that are performed by the Territorial Government. Chapter V will discuss those responsibilities that are performed by the Territorial Government on behalf of the Federal Government and which are either provincial in nature or, federal in nature (see Table 3).

### Provincial-Type of Responsibilities Performed by the Territorial Government on Behalf of the Federal Government

#### (1) Related to Indian and Eskimo Affairs

In order to obtain a delineation of provincial and federal responsibilities as they are related to Indian and Eskimos, it is necessary to establish some terms of reference.

By section 91(24) of the B.N.A. Act, the Federal Government has exclusive power to legislate concerning all aspects of Indians and Eskimos.\* The federal Parliament has authority

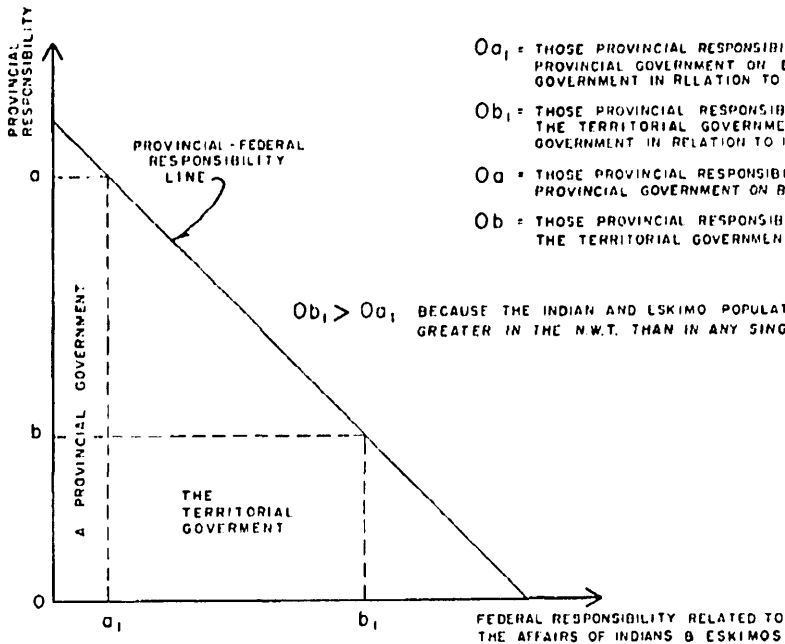
---

\*The Supreme Court in 1939 decreed that the Eskimo inhabitants of Quebec were included in the aboriginal groups covered by section 91(24). See Re Eskimos [1939] S.C.R. 104, [1939] 2 D.L.R. 417.

**TABLE 3 RESPONSIBILITIES, PROVINCIAL AND FEDERAL IN NATURE, PERFORMED BY THE TERRITORIAL GOVERNMENT ON BEHALF OF THE FEDERAL GOVERNMENT**

PROVINCIAL IN NATURE	FEDERAL IN NATURE
<p><b>A RELATED TO INDIANS AND ESKIMOS *</b></p> <p><b>1 EDUCATION</b></p> <p><b>2 HOUSING</b></p> <p>    a NORTHERN RENTAL HOUSING PROGRAM</p> <p>    b TERRITORIAL RENTAL HOUSING PROGRAM (REGARDLESS OF ETHNIC ORIGIN)</p> <p><b>3 WELFARE</b></p> <p>    a THIS (REGARDLESS OF ETHNIC ORIGIN)</p> <p>    b MEDICARE SCHEME (REGARDLESS OF ETHNIC ORIGIN)</p> <p>    c CATEGORICAL ALLOWANCES</p> <p>    d FOSTER HOMES, ADOPTION ASSISTANCE, CARE OF AGED, ETC.</p> <p>    e COMMUNITY WELFARE PROGRAMS</p> <p>    f LOCAL WORKS</p> <p>    g ARTS &amp; CRAFTS</p> <p><b>B MAINTENANCE AND LIMITED CONSTRUCTION OF ROAD.</b></p>	<p><b>A AIRSTRIPS CONSTRUCTION WHERE DOT OR DND DOES NOT CARRY OUT CONSTRUCTION</b></p> <p><b>B ADMINISTRATION OF TERRITORIAL SMALL BUSINESS FUND</b></p> <p><b>C FIELD SERVICES RELATED TO ADMINISTRATION OF THE ESKIMO LOAN FUND</b></p> <p><b>D. OTHERS</b></p> <p>    1 EXECUTION OF NOTIFICATION OF SALE, LEASE, ETC.</p> <p>    2 CERTAIN RESPONSIBILITIES UNDER THE INDIAN ACT.</p> <p>    3 MAINTENANCE OF A CERTAIN PORTION OF ROAD IN THE WOOD BUFFALO NATIONAL PARK</p>

\* SCHEMATIC DIAGRAM BELOW ILLUSTRATES AREAS OF RESPONSIBILITIES IN RELATION TO INDIANS & ESKIMOS.



$Oa_1$  = THOSE PROVINCIAL RESPONSIBILITIES PERFORMED BY A PROVINCIAL GOVERNMENT ON BEHALF OF THE FEDERAL GOVERNMENT IN RELATION TO INDIANS AND/OR ESKIMOS.

$Ob_1$  = THOSE PROVINCIAL RESPONSIBILITIES PERFORMED BY THE TERRITORIAL GOVERNMENT ON BEHALF OF THE FEDERAL GOVERNMENT IN RELATION TO INDIANS AND/OR ESKIMOS.

$Oa$  = THOSE PROVINCIAL RESPONSIBILITIES PERFORMED BY A PROVINCIAL GOVERNMENT ON BEHALF OF THE PROVINCE.

$Ob$  = THOSE PROVINCIAL RESPONSIBILITIES PERFORMED BY THE TERRITORIAL GOVERNMENT.



to regulate the lives and affairs of Indians on "lands reserved for Indians", but Indians off these lands and on, for example, the Commissioner's Lands would appear to be subject to general Territorial property and regulatory legislation.<sup>1</sup> Similarly as with the provinces, it can be assumed that the Indian as an individual is not subject to attachment nor may he be taken under Territorial process (or provincial process) any more than can the proposed Mackenzie pipeline.<sup>2</sup> But regulatory legislation such as that stipulated in section 14(2), game laws; and section 18(2) laws of general application of the Northwest Territories Act; and aspects related to property such as municipal taxes do apply to Indians and Eskimos. On the other hand, the provision of such services as education, welfare, for the Indian and Eskimo is a federal responsibility; but though these responsibilities in relation to Indians and Eskimos fall within federal jurisdiction, they are also provincial-type responsibilities performed by the Territorial Government. In order to avoid administrative duplication and possible

---

<sup>1</sup> For the provincial story see Sanderson v. Heap [1909] 11 W.L.R. 238, 19 Man. R. 122; Rex v. Hill [1907] 15 O.L.R. 406.

<sup>2</sup> For information pertaining to similar aspects and how it affects provincial legislation see Re Caledonia Milling Company v. Johns [1918], 42 O.L.R. 338; Ex parte Tenasse [1931] 1 D.L.R. 806, 2 M.P.R. 253; Re Kane [1940] 1 D.L.R. 390.

encroachment on autonomy, the Federal Government, as with the provinces, has delegated some administrative power to the Territorial Government enabling it to provide education, welfare, and housing services to the Indian and the Eskimo. What is occurring then, is that the Territorial Government performs functions which are provincial in nature and these functions include a subject matter that is under federal jurisdiction. This delegation of functional responsibility should not be construed as meaning that the Territorial Government can implement legislation which regulates the affairs and lives of the Indian and the Eskimo. On the contrary, by section 91(24) this power is exclusively invested with the Federal Government. The delegation of authority is achieved by amendments to the Indian Act.

One final note before proceeding with the discussion of the responsibilities. Some of the responsibilities examined here are representative of areas where Territorial and federal responsibilities overlap. For example, education is a Territorial responsibility but at the same time the Federal Government contributes to the operation of the educational services through grants-in-aid. A dichotomy of responsibilities into those performed by the Territorial Government on behalf of the Federal Government, and those that overlap is difficult to examine on a financial basis. But if one keeps in mind that those dealt with in this section, though they are all encompassing, specifically refer

to those provincial-type responsibilities performed by the Territorial Government on behalf of the Federal Government in relation to Indians and Eskimos, then a dichotomy can be achieved.

(a) Education

In 1955, responsibility for the education of Indians in the Northwest Territories was transferred from the Indian Affairs Branch of the Department of Citizenship and Immigration to the Department of Northern Affairs and Natural Resources (presently the D.I.A.N.D.).

As indicated in the introduction of this Chapter, the Federal Government is also responsible for the affairs of Eskimos. The schools were operated under the Indian Act and the regulations contained therein. Because the Territorial Council lacked a civil service which could organize and administer a school system, the Territorial Government contracted its educational service to the Federal Government. The Federal Government, then, was responsible for the provision of educational services not only for Indians and Eskimos whose education it is responsible for, but for all children. The Federal Government acted as a provincial Department of Education deriving its authority from the Territorial Council and section 91(24) of the B.N.A. Act. The school system was administered, through a federal department, and where school districts existed, they were supervised and inspected by the Federal Government.

Financially, the Territorial Government was responsible for the education cost of the "territorial pupil", while the federal Government was responsible for the education cost of the "federal pupil", that is, a child of Eskimo or Indian status. The Territorial Government contributed towards the operational costs in direct proportion to the number of "territorial pupils" enrolled in the Federal Day Schools. An identical policy was followed in covering the capital costs of schools and the capital and operating costs of pupil residences.<sup>3</sup> Such an arrangement proved to be workable and economical. With implementation of the Advisory Commission's recommendation pertaining to education, an almost reverse situation came into being.

In 1969 a two-stage programme authorized the Director of Education of the Northwest Territories to assume direct responsibility for the administration of all education programmes in the Northwest Territories. On April 1, 1970, responsibility for a total of sixty schools in the Mackenzie, Franklin and Keewatin Districts was transferred from the northern administration programme of the Department of Indian Affairs and Northern Development to the Territorial

---

<sup>3</sup> Report on the Northwest Territories, 1967, op. cit.,  
pp. 8-13.

Government. Thus the responsibility for the education of the "federal pupil" became the responsibility of the Territorial Government. In other words, the Federal Government delegated to the Territorial Government the responsibility for providing a provincial-type of service for the Indian and Eskimo. Legally, by section 91(24) the Federal Government can retract the delegation and assume the responsibility by itself, even though education is a provincial-type responsibility.

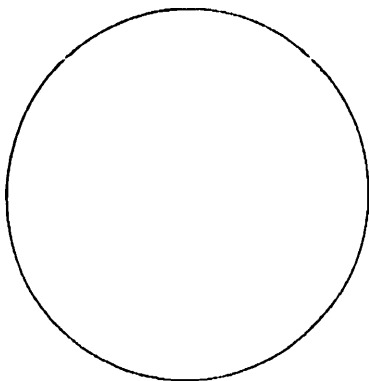
The majority of the students enrolled in the schools of the Northwest Territories are Indian and Eskimo. Out of a total of 10,311 students enrolled in 1970-71, 5,995 were Indians and Eskimos, the remaining number 4,316 were classified as Others.\* The Estimates of the Northern Administration Program for 1970-71 contained provisions totalling \$3.0 million for additions and improvements to schools in the Northwest Territories.<sup>4</sup> Considering the present ratio of "federal pupil" to "territorial pupil", the combined cost of administering this conditional grant and the allocation of the grant according to pupil ratios is in favour of the "federal pupil" (see Plate 4).

---

\* The Annual Report of the Commissioner of the Northwest Territories, 1970, p. 96. The Annual Report has contradicting figures on school enrollment: on p. 96 and p. 105 the enrollment figures are identical to those noted above; on p. 104 the enrollment reads Indians 4,296, Eskimo 4,264 and Others 1,731.

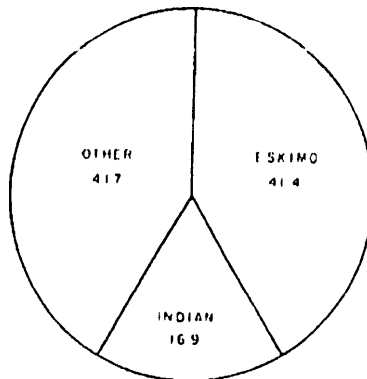
<sup>4</sup> The National Finances, op. cit., p. 234.

# SIMPLE SET THEORY APPLIED TO EDUCATION IN THE N.W.T.



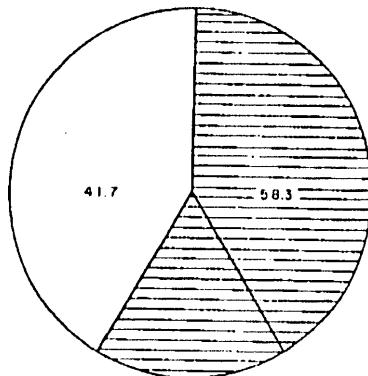
**A**

**A** REPRESENTS THE PROVISION OF EDUCATIONAL SERVICES IN ITS BROADEST SENSE.



**B**

**B** REPRESENTS PUPIL DISTRIBUTION BY ETHNIC ORIGIN\*



**C**

**A U B = C** REPRESENTS THE SUPERIMPOSITION OF SET 'B' ON SET 'A'. SHADED PART OF SET 'C' INDICATES THE QUANTIFICATION OF THE EDUCATIONAL SERVICES PROVIDED FOR THE SUBJECT CLASS UNDER FEDERAL JURISDICTION — SECTION 91 (24), B N A ACT

THE ABOVE DIAGRAMS SHOW THAT THE TERRITORIAL GOVERNMENT, IN THE FIELD OF EDUCATION, DIRECTS 58.3 UNITS OUT OF A TOTAL OF 100 UNITS FOR THE EXPLICIT PURPOSE OF PROVIDING EDUCATION FOR THE INDIAN & ESKIMO. "UNITS" IN THIS CASE REPRESENT SUCH FACTORS AS MEMOS WRITTEN OR TYPED, ETC. TO SUCH THINGS AS HIRING TEACHERS, FINANCES, ETC.

\* BASED ON FIGURES OBTAINED FROM THE ANNUAL REPORT OF THE COMMISSIONER OF THE NORTHWEST TERRITORIES, 1970, DEPARTMENT OF INFORMATION, YELLOWKNIFE, 1970, p. 105.

The Northwest Territories Student Grant and Bursary Programs is open to all students of the Northwest Territories, as is the Canada Student Loans Program.<sup>5</sup> Through the former two policies the Territorial Government provides grants for tuition, transportation and textbooks for students under federal jurisdiction, i.e., Indian and Eskimo graduates from secondary schools. A similar cost argument could be extended to include the salaries of teachers, janitors, maintenance people, etc.

Aside from the cost argument, the pertinent point to remember is that education, as welfare, or any matter of local nature is a provincial-type responsibility. The affairs of Indians and Eskimos is a federal responsibility. The Federal Government can delegate to the provinces or as it did to the Northwest Territories, the responsibility of providing certain provincial services to the Indian and Eskimo; but by section 91(24) it retains jurisdiction over the Indians and Eskimos.

(b) Housing

The initiation of housing programmes is normally the responsibility of the provinces. The provision of this service falls within the "property and civil rights" clause,

---

<sup>5</sup> The Annual Report of the Commissioner of the Northwest Territories, 1967-68, op. cit., p. 42.

section 92(13) of the B.N.A. Act.<sup>6</sup> Doubtless to say, the lack of municipal initiative in public housing, the lack of fiscal capacity of some provinces, and the federal view that poverty and provision of public housing for low-income families is a federal responsibility, has prompted the Federal Government to move into the areas of public housing.<sup>7</sup> For example, the National Housing Act of 1949 provided for public housing constructed by the Federal Government and financed under a federal-provincial agreement whereby the Federal Government provided 75% of the capital costs and the provinces 25%. In 1964, the National Housing Act was amended permitting the C.M.H.C. to loan up to 90% of the cost of a project, while other sections as amended provided for a 50% federal contribution to operating losses of projects and a 90% loan toward acquisition of land for public housing purposes. In the provinces there was a definite lack of public housing, and the provision in the National Housing Act attempted to alleviate this shortage by encouraging residential construction through credit at reasonable interest rates.

Such was not the case in the Northwest Territories

---

<sup>6</sup> A.D. Wilson, "Canadian Housing Legislation", in Canadian Public Administration, Vol. II, December, 1959, p. 214.

<sup>7</sup> A. Rose, Canadian Housing Policies, Canadian Conference on Housing, Background Paper, No. 2, 1968, pp. 26-27, 35, 109.



in the 1949-1964 period. The provisions of the National Housing Act did not benefit the Territories as it did the provinces. The amount of loan available was proportionate to the cost of the building and had a maximum limit which depended in part upon the size of building. Thus, one might assume correctly, that since construction costs in the Territories are high a house comparable to that built in the provinces would cost more, and yet the amount of credit available would be the same. Almost the entire portion of the Indian and Eskimo population continued to live through this period in extremely low standard housing. A re-evaluation of the entire housing scheme in the Territories was responsible for the introduction of the Northern Rental Housing Program.

Up until 1969 the programme was administered by the Federal Government. Presently the programme is administered and operated by the Territorial Government, but the Federal Government has retained policy and financial control, as well as ownership of properties.<sup>8</sup> Under this programme houses are built and rented to Indians and Eskimos of the Northwest Territories and Arctic Quebec, complete with basic furniture, fuel, electricity, and other available municipal services, at a rent based upon income. Rental collections, property management and maintenance are carried out by the

---

<sup>8</sup> Government Activities in the North, 1969, op. cit., p. 133.

Territorial Government. The Territorial Government has a similar program for residents who are not Indian or Eskimo, and this is financed through its appropriations. Public housing programmes that come under the National Housing Act are financed by the C.M.H.C. (75%), the Territorial Government (15%) and the municipal government (10%). This programme provides housing to lower income families regardless of ethnic origin.

As with education,\* public housing is a provincial-type of service provided by the Territorial Government, whether through co-operation with the Federal Government, mere administration or actual initiation, for all Territorial residents. However, because of the Territories unique demographic characteristics the majority of the public housing projects have been geared towards the housing necessities of the Indian and Eskimo.

(c) Welfare

During the late 1950's the Federal Government not only administered the federal Family Allowance and Old Age Security programmes in the Northwest Territories, but it also participated in the provisions of Old Age Assistance,

---

\* Educational and community development projects were set up in a manner that imparted house management and maintenance techniques to Indians and Eskimos who were renting new houses.

Disabled Persons Pensions, Blind Persons Allowance and, under the Unemployment Assistance Agreements, social assistance measures in the Territories. These programmes were applied equally to all residents of the Northwest Territories. In addition to these programmes, a number of measures were implemented for different ethnic groups. For example, the Territorial Government through the Federal Government civil service provided child welfare services, rehabilitation services, and social assistance services for the residents of the Northwest Territories other than Indians and Eskimos. Similar programmes were provided for Indians and Eskimos by the Federal Government. As with education, certain changes occurred with the transfer of administrative responsibilities to the Territorial Government.

Presently hospital care is provided for Indians and Eskimos through the Territorial Hospital Insurance Service (T.H.I.S.). This plan came into effect on April 1, 1960, and the administration of the programme was transferred to the Territorial Government on October 5, 1970. The T.H.I.S. provides coverage for in-patient services and out-patient services on an emergency basis, and applies in respect to care in active treatment or general hospitals and in chronic and convalescent hospitals. The programme is administered by the Territorial Hospital Insurance Board, a Crown Corporation established under Territorial ordinance. The programme provides free hospital care for all bona fide

residents of the Territories, but the Federal Government allocates a yearly appropriation to the Territorial Government to cover the cost of hospital care provided for Indians and Eskimos.\*

An ordinance to provide Medicare services for residents of the Northwest Territories was approved by the Territorial Council in 1970. As with the provincial medicare agreements, the cost is to be shared by the Federal and Territorial Governments. Considering the Territories unique demographic characteristics, and that the per capita cost of providing insured services in the Northwest Territories is below the national average, the Federal Government will pay more than 50%, an amount equal to \$1,114,500 a year.<sup>9</sup>

In addition to the above, the Territorial Government by agreement with the Federal Government administers and provides categorical allowances such as old age assistance, blind persons allowances and disability allowances without reference to ethnic origin. The Territorial Government also provides welfare services such as foster home care for children, assistance to parents wishing to adopt children,

---

\* Contributions in 1969 totalled \$546,100 for hospital care. Government Activities in the North, 1969, Advisory Committee on Northern Development, Information Canada, 1970, p. 166.

<sup>9</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, Department of Information, Yellowknife, 1970, p. 73.

care for the aged, and infirm and mentally retarded persons in boarding homes and institutions. Residences for the aged are constructed and operated under a cost-sharing agreement between the Government of the Northwest Territories and the C.M.H.C. Further, the Territorial Government operates Children's Receiving Homes in Fort Smith, Hay River, Inuvik, and Frobisher Bay.

The Territorial Government also administers programmes which encourage citizen participation in the solutions of local government problems and management of communities, originally administered by the Federal Government for the explicit purpose of encouraging Indian and Eskimo involvement in municipal government. In the area of community welfare, the Territorial Government administers the Community Development Fund which is available to northern communities to enable Indians and Eskimos to undertake locally-initiated projects that are beneficial to the community.\* The Territorial Government also administers the construction of such local works as water purification and distribution systems, sewerage systems and utilidors in communities of the Northwest Territories. These projects are financed through federal conditional grants allocated specifically

---

\* In 1969 plans called for the transfer of the Community Development Fund to be transferred to the Northwest Territorial Government. Annual Report, 1968-1969, Department of Indian Affairs and Northern Development, Queen's Printer, 1970, p. 95.

for such purposes by the Department of Indian Affairs and Northern Development.<sup>10</sup> The construction activity mentioned in the preceding sentence is included under the welfare section since the provision of welfare assistance to Indians and Eskimos is a function of the amount of public spending incurred in the community on the same groups of people.

Finally, though the Federal Government has retained the responsibility for the development of cultural expression\* (in itself a provincial matter) among Indians and Eskimos of the Northwest Territories,<sup>11</sup> the Territorial Government is responsible for the administration of arts and crafts programmes of the Indian and Eskimo.<sup>12</sup>

It can be readily deduced, as with education and housing that in providing welfare services for Indians and Eskimos, the Territorial Government is performing a function on behalf of the Federal Government. This conclusion centres on the

---

<sup>10</sup> The National Finances, op. cit., p. 112

\* The Cultural Development programme of the D.I.A.N.D. sponsors cultural exchange. The Territorial Government prepares a certain amount of translation services as does the D.I.A.N.D. See Annual Report of the Commissioner of the Northwest Territories, 1970, Department of Information, Yellowknife, 1970, p. 63.

<sup>11</sup> Government Activities in the North, 1968, Advisory Committee on Northern Development, Queen's Printer, Ottawa, 1969, p. 122.

<sup>12</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, op. cit., p. 78.

fact that the Federal Government has overall responsibility for Indians and Eskimos, and this responsibility includes the provision of welfare services even though they are provincial in nature.

In conclusion, education, housing and welfare are illustrative, in the broad sense, of those services performed in the Territories which are local in nature, under provincial jurisdiction, and performed by the provincial governments. Specifically, the provision of these services to Indians and Eskimos constitute a process whereby the Territorial Government is performing provincial-type responsibilities on behalf of the Federal Government who in turn compensate the Territorial Government by conditional grants. However, by section 91(24) of the B.N.A. Act the Federal Government has complete authority over Indian and Eskimo affairs, and if it so desired it could perform those functions indicated above through the Department of Indian Affairs and Northern Development as it does in some provinces. Furthermore, since the Territorial Government is a creation of the Federal Government, as municipalities are creations of the provincial governments, the Federal Government can determine the degree of Territorial involvement in relation to Indians and Eskimos. The Territorial Government has no power to legislate in matters dealing specifically with Indians and Eskimos unless given that authority by the Federal Government.

(2) Construction and Maintenance of Roads

The provincial-type responsibility of road construction and maintenance is performed, in the main, as mentioned briefly in Chapter III, by the Federal Government; and all roads on federal Crown land in the Northwest Territories are public roads "notwithstanding contributions which may be made to their construction and maintenance by private companies or individuals".<sup>13</sup> Before the paper deals specifically with the "limited" Territorial responsibility in the area of construction and maintenance of roads, the scope of federal control over the roads in the Northwest Territories must be determined. One need only look at the different types of roads being constructed in the Northwest Territories and whose approval is necessary to initiate the construction. This information is supplied by the Territorial Roads Policy which deals with the twenty year road-building programme for the Northwest Territories. The project was initiated by the Federal Government in October, 1965, and its purpose is to bring potential resource areas within permanent roads, to connect centres of population in the Northwest Territories, and provide roads through areas of potential resource development.

The approval of the Federal Government is necessary for the construction of the following roads.

---

<sup>13</sup> Report on the Northwest Territories, 1967, op. cit., Appendix A.



# SUMMARY OF MAJOR PROVINCIAL - TYPE RESPONSIBILITIES PERFORMED BY THE FEDERAL AND TERRITORIAL GOVERNMENTS IN THE NORTHWEST TERRITORIES

RESPONSIBILITIES *	REPORT OF ADVISORY COMMISSION	1971 **
NATURAL RESOURCES	1	1
EDUCATION	2	4
AMENDMENT OF THE <i>NWT ACT</i>	1	2
LAW ENFORCEMENT - PUBLIC SAFETY	1	2
ATTORNEY GENERAL - PUBLIC SAFETY	1	1
ECONOMIC DEVELOPMENT	1	2
HEALTH	1	1
TRANSPORTATION	1	2
CIVIL RIGHTS	2	4
PROPERTY RIGHTS	1	3
FINANCES AND CREDIT	1	4
UTILITIES	1	2
CULTURE	1	2
RECREATION	1	4
AVERAGE	1.1	2.4

**RATING SCALE \*\*\***

- 1 RESPONSIBILITIES PERFORMED EXCLUSIVELY BY THE FEDERAL GOVERNMENT.
- 2 RESPONSIBILITIES PERFORMED PREDOMINANTLY BY THE FEDERAL GOVERNMENT, WITH THE TERRITORIAL GOVERNMENT PLAYING A SIGNIFICANT SECONDARY ROLE.
- 3 RESPONSIBILITIES PERFORMED BY BOTH GOVERNMENTS IN EQUAL PROPORTIONS.
- 4 RESPONSIBILITIES PERFORMED PREDOMINANTLY BY THE TERRITORIAL GOVERNMENT, WITH THE FEDERAL GOVERNMENT PLAYING A SIGNIFICANT SECONDARY ROLE.
- 5 RESPONSIBILITIES PERFORMED EXCLUSIVELY BY THE TERRITORIAL GOVERNMENT.

THE TABLE SHOWS THAT PRIOR TO THE YEAR 1966 THE FEDERAL GOVERNMENT PERFORMED ALMOST EXCLUSIVELY IN THE NORTHWEST TERRITORIES THOSE RESPONSIBILITIES THAT ARE PROVINCIAL IN NATURE. AFTER THE IMPLEMENTATION OF THE *ADVISORY COMMISSIONS RECOMMENDATIONS*, THE TERRITORIAL GOVERNMENT BEGAN TO PLAY A SIGNIFICANT SECONDARY ROLE, BUT THE AVERAGE ILLUSTRATES THAT THE FEDERAL GOVERNMENT STILL HAS A DOMINANT ROLE IN THE NORTHWEST TERRITORIES. OVERALL, THE 2.4 AVERAGE RATING ILLUSTRATES THE TREND OF GRANTING THE TERRITORIAL GOVERNMENT A MORE IMPORTANT ROLE IN PERFORMING PROVINCIAL - TYPE RESPONSIBILITIES. THOUGH THE TRANSFER OF RESPONSIBILITIES TO THE NORTHWEST TERRITORIES CENTRALIZED ADMINISTRATION, AREAS SUCH AS EDUCATION, FINANCES AND CREDIT, AND CIVIL RIGHTS ARE NOT EXCLUSIVELY PERFORMED BY THE TERRITORIAL GOVERNMENT AS LONG AS THE FEDERAL GOVERNMENT HAS SOME SAY IN THE APPROVAL OF BORROWING AND PROVISION OF FINANCES, AND THE AFFAIRS OF INDIANS AND ESKIMOS.

\* FUNCTIONS PERFORMED BY THE COMMISSIONER HAVE BEEN INCLUDED UNDER THE BROAD AREAS OF RESPONSIBILITIES. FOR EXAMPLE, HEALTH ALSO INCLUDES THE RIGHT OF THE COMMISSIONER TO ARRANGE FOR ADMISSION OF PATIENTS TO MENTAL INSTITUTIONS. ADMINISTRATIVE RESPONSIBILITIES SUCH AS A SOCIAL DEVELOPMENT AND LOCAL GOVERNMENT HAVE BEEN ACCOUNTED FOR UNDER THE CIVIL RIGHTS AREA.

\*\* THE ASSIGNING OF THE NUMBERS TO THE RESPONSIBILITY AREAS IS BASED ON MY SUBJECTIVE JUDGEMENT OF THE STUDY. THE CHOICE OF THE AREA RESPONSIBILITIES AND THE ASSIGNMENT OF THE NUMBERS BY SOMEONE ELSE MAY PRODUCE DIFFERENT RESULTS.

\*\*\* THE RATING SCALE HAS BEEN ADAPTED FROM ONE USED BY WILLIAM H. RIKER IN HIS ANALYSIS OF THE DEGREE OF CENTRALIZATION IN THE UNITED STATES. FOR MORE INFORMATION SEE W H RIKER, *FEDERALISM: ORIGIN, OPERATION AND SIGNIFICANCE*, LITTLE, BROWN AND COMPANY, 1969, pp. 81-84

(a) Initial Access Road

A low standard road to provide temporary, seasonal, or year round access to the property of the exploration company. Maintenance and construction costs are the responsibility of the company, but the Federal Government can contribute.

(b) Permanent Access Road

A road that leads from the nearest permanent road to the location of the resource development. Maintenance and construction costs are the responsibility of the company, but the Federal Government can contribute.

(c) Resource Development Roads

A road that leads from the nearest permanent road into an area where two or more resource projects have reached the "Pre-Production-Production Stage". Construction cost is the responsibility of the Federal Government. Maintenance costs are shared by the Federal Government (85%) and the Territorial Government (15%).

(d) Area Development Road

A road of low construction standard into or through undeveloped regions of favourable resource potential for the purposes of fostering economic growth. Construction cost is the responsibility of the Federal Government. Maintenance costs are shared by the Federal Government (85%)

and the Territorial Government (15%).

(e) Trunk Highways

Roads of high construction standards providing for links with the provinces or centres of population in the Territories. Construction cost is the responsibility of the Federal Government. Maintenance costs are shared by the Federal Government (85%) and the Territorial Government (15%).

(f) Secondary Trunk Roads

Roads designed to carry a lower density of traffic and built to lower construction standards than trunk highways. Construction cost is the responsibility of the Federal Government. Maintenance costs are shared by the Federal Government (85%) and the Territorial Government (15%).

(g) Airport Roads

Roads that connect the property boundary of approved public airports on land or water with the nearest local or other public road. Construction cost is the responsibility of the Federal Government. Maintenance costs are shared by the Federal Government (85%) and the Territorial Government (15%).

It is evident, notwithstanding any amendments to the Territorial Roads Policy, that the Federal Government by this policy and its control over Territorial lands, has

effective control of major road construction and maintenance in the Northwest Territories. The construction of the roads noted above is contingent upon the approval of the Federal Government (see Table 4).

On the other hand, the construction of those roads subject to the approval of the Commissioner of the Northwest Territories include: (1) tote trails - a low standard road to provide temporary, seasonal or all year access to an exploration site, and lower in cost than an initial access road; and (2) local roads - a road lying within a community that is constructed and entirely maintained on a seasonal or year-round basis by a municipality and/or the Territorial Government. Under the tote trail assistance program, up to 50% of the actual cost may be contributed by the Commissioner, however the Commissioner determines the actual amount which can not exceed 5% of the expenditures to be made by the exploration company. A conditional grant of \$100,000 is made annually to the Territorial Government for the purpose of providing the assistance.

Paramount to one's understanding of the road issue is the fact that all roads in the Northwest Territories and the construction and maintenance of them, is a provincial-type responsibility that is under the jurisdiction of the Federal Government. Those provincial-type responsibilities in relation to roads which the Territorial Government has, have been delegated to them by the Federal Government. These responsibilities are in fact, provincial-type responsibilities

TABLE 4

## THE DEGREE OF FEDERAL CONTROL OVER ROADS IN THE NORTHWEST TERRITORIES

ROADS	APPROVAL	CONSTRUCTION COSTS *	MAINTENANCE COSTS *
1 INITIAL ACCESS	1	1	
2 PERMANENT ACCESS	1	1	
3 RESOURCE DEVELOPMENT	1	1	2
4 AREA DEVELOPMENT	1	1	2
5 TRUNK HIGHWAYS	1	1	2
6 SECONDARY TRUNK ROADS	1	1	2
7 AIRPORT ROADS	1	1	2
8 TOTE TRAIL	3	3	
9 LOCAL ROADS	3	3	3
AVERAGE	<u>1.4</u>	<u>1.4</u>	<u>2.1</u>

## LEGEND:

- 1 EXCLUSIVELY OR ALMOST EXCLUSIVELY FEDERAL.
- 2 PREDOMINANTLY FEDERAL, ALTHOUGH A SIGNIFICANT SECONDARY ROLE BY THE TERRITORIAL GOVERNMENT.
- 3 EXCLUSIVELY TERRITORIAL OR ALMOST EXCLUSIVELY.

\* EXCLUDING THE CONTRIBUTIONS OF THE PRIVATE SECTOR.

carried out by the Territorial Government on behalf of the Federal Government; and it is the Federal Government through its control of Territorial lands and its spending power that can and does determine road policy in the Northwest Territories via the Territorial Roads Policy.

Territorial responsibilities deal with the designing, construction and maintenance of roads and bridges. Specifically, these include the maintenance of the Mackenzie Highway System,\* of resource development roads, of winter trails, and the supervision of the construction of a portion of the Fort Resolution Highway -- all for the Federal Government. Finally, though the Tote Trail Program is administered by the Territorial Government, in terms of the federal spending power in providing assistance and control over the natural resources development it could be argued that the administration of this programme is a provincial function performed on behalf of the Federal Government.

In this section of the chapter an attempt was made to examine the extent of federal control over roads in the Northwest Territories and to what extent the Territorial Government was performing responsibilities provincial in nature, in relation to roads, for the Federal Government.

---

\* On April 1, 1968, the maintenance of the Mackenzie Highway was contracted to the Territorial Government.

The results of this examination are summarized in Table 3 which indicates the nine types of roads in the Territories and areas of approval for, and construction and maintenance costs of the roads. A three-point scale has been used which for the sake of limiting the approval and costs to the public sector has neglected the private sector influence, no doubt an important contributor to the maintenance and construction costs of roads on the initial access, permanent access, and tote roads.

It is apparent from Table 3 that maintenance costs are shared by both governments, even though the federal share is predominant. The reverse appears in the matters dealing with approval and construction costs. Federal approval for the construction of roads is absolutely necessary and this approval is indicated by the 1.4 average rating. Territorial approval for the tote trail and local road construction accounts for the .4. The verbal examination conducted earlier and the results of Table 3 confirm the fact that though the Territorial Government performs some maintenance of roads and a very limited amount of construction, the Federal Government still maintains the crucial aspects of road building by retaining authority over approval for and construction of the roads. In light of this retention by the Federal Government, those responsibilities performed by the Territorial Government are done on behalf of the Federal Government.

Federal-Type of Responsibilities Performed by the Territorial Government on Behalf of the Federal Government

Section 14(1) of the Northwest Territories Act explicitly states that the legislative powers of the Commissioner in Council can not be construed as giving "greater powers with respect to any class of subjects described... under sections 92 and 95 of the British North America Act, 1867, with respect to similar subjects" given to the provinces to legislate upon. With this in mind, it is valid to say that the Territorial Government cannot legislate in matters falling under federal jurisdiction. Those responsibilities federal in nature that are performed by the Territorial Government on behalf of the Federal Government must then deal with administrative activities delegated to the Territorial Government. These are few in number and since they are straightforward they will not require the degree of elaboration that has been accorded to provincial-type responsibilities.

(1) Airstrips

The Federal Government through the Department of Transport assumes the basic responsibility for the construction of the runways, taxiways and aids to navigation for federal and municipal airports served by scheduled or regular services<sup>14</sup> and also makes contributions toward the establish-

---

<sup>14</sup> See Re Regulations and Control of Aeronautics in Canada [1932] A.C. 54, [1932] 1 D.L.R. 58, [1931] 3 W.W.R. 625.



ment and improvement of local airports and related facilities. Airports and runways in the Northwest Territories are the responsibility of the Federal Government, and through the D.I.A.N.D. the Federal Government provides contributions toward resource airports and towards the development of remote airports. The 1970-71 estimates of the Department of Indian Affairs and Northern Development called for the construction of airfields in the Eastern Arctic at a cost of \$2 million beginning in the summer of 1970 and extending over the next nine years.\* Those airstrips specifically not constructed by the Department of Transport or the Department of National Defence are constructed by the Territorial Government with federal funds vis-a-vis conditional grants. For example, these include those airstrips that "were started or constructed in Lac La Martre, Pelly Bay, Fort Franklin and Snowdrift",<sup>15</sup> and those that will be constructed in Port Burwell, Lake Harbour, Chesterfield Inlet and Whale Cove.

(2) Territorial Small Business Loan Fund

Under the authority of the Small Business Loan Act

---

\* The Northern Resource Airports Program provides financial assistance on a cost-sharing basis for the construction of airports which are intended to provide access to resource exploration and development projects.

<sup>15</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, op. cit., p. 86.

the Federal Government guarantees bank loans for the improvement and modernization of the equipment and premises of small businesses engaged in manufacturing, wholesale or retail trade, or service activities. The Act was amended in 1962 to include loans for relocating business premises and the 1967 amendments broaden the area of activity to include small businesses in the transportation, communication and construction fields. The latest amendments in 1970 designated credit unions, coisses populaires and other institutions as lenders. According to the Act a small business is defined as one whose annual estimated gross revenue does not exceed \$500,000.

In February, 1969, a small business loan totalling \$5.0 million was established for the Northwest Territories. The Federal Government bears the cost of management and advice for the funds, but unlike elsewhere the Territorial Government administers the loan instead of the federal Department of Finance. Up to \$300,000 is available annually to the Territorial Government to assist small businesses.<sup>16</sup>

(3) Eskimo Loan Fund

The Eskimo Loan Fund was established by the Federal Government to provide a source of credit to Eskimos who do not have access to ordinary lending institutions but wish

---

<sup>16</sup> Ibid., p. 78.

to obtain assistance in order to improve their economic position. The Territorial Government provides field services related to administration of the loan for the Federal Government.<sup>17</sup>

(4) Others

Other responsibilities federal in nature carried out by the Territorial Government include: the execution of notification of sale, lease or "other disposition of territorial lands"<sup>18</sup> which have been allotted to the Territorial Government under section 46 of the Northwest Territories Act; the federal responsibilities formally under the Indian Act which deal with issuance of treaty monies, membership functions, annuity payments, "and the follow-up action with respect to Treaty Indian matters",<sup>19</sup> and the maintenance of a certain portion of road in the Wood Buffalo National Park.

In conclusion to this chapter, a note on flexibility as it applies to Territorial initiative appears to be warranted. One theme is running through the discussion on

---

<sup>17</sup> Government Activities in the North, 1969, op. cit.,  
p. 135.

<sup>18</sup> The Territorial Lands Act, section 5, subsection  
2(b).

<sup>19</sup> The Annual Report of the Commissioner of the  
Northwest Territories, 1970, op. cit., p. 76.

responsibilities that are provincial in nature and performed by the Territorial Government on behalf of the Federal Government. The theme is that the Territorial Government has acquired certain duties that are provincial in scope but not normally performed by provincial governments, i.e., in relation to Indians and Eskimos. Such a delegation should increase the power of the Territorial Government, and no doubt it has for now it is responsible for administration of services for all residents of the Territories. However, this increase in power has also put a straight-jacket over its activities. The Territorial Government is not as free as some provincial governments in determining its levels of services because the larger proportion of residents are Indians and Eskimos who fall under federal jurisdiction. Though legal, such inflexibility is inconsistent with the present trend of political development noted in Plate 1, Chapter I. Such a movement warrants the removal rather than the imposition of constitutional burdens or impediments brought about directly by section 91(24) of the B.N.A. Act, and indirectly by the federal spending power vis-a-vis conditional grants in relation to Indians and Eskimos.

## CHAPTER VI

Chapter VI discusses those responsibilities of the Federal Government and the Territorial Government that overlap. These include: (1) in the main, those responsibilities that are financed by federal transfer payments; (2) the constitutionally concurrent area of responsibility; and (3) other responsibilities some of which perhaps involve duplications but nevertheless are illustrative of areas of overlapping responsibilities.

### Joint Aspects, Shared Cost Programmes

To avoid unnecessary repetition of Chapter V, this section deals in general terms with those joint aspects or shared cost programmes performed in the Northwest Territories with no specific reference made to Indians and Eskimos. Unfortunately some of the discussion may be repetitive, but an attempt is made to restrict the repetition to financial calculations. Before discussing the specific areas of overlapping, the conditional grant system mentioned briefly in Chapter V, that has an instrumental role in financing territorial expenditures, requires examination.

If a grant is conditional, then it is to be used "only for the purpose specified, and the details for the service are to conform to certain universal standards... set by

the central parliament".<sup>1</sup> There is also the condition specified in the agreement that the regional government "match" the grant or, as with the Northwest Territories, a certain fraction of it. The major conditional grant arrangements concluded between the Territorial and Federal Governments are in the fields of health, education, welfare, industry and development, public works, and local government; and these are generally implemented under the terms of agreements signed by the Minister of Northern Development on behalf of the Federal Government and the Territorial Government. The Report on the Northwest Territories, 1967, compiled by the Interdepartmental Committee on Federal-Territorial Financial Relations deals with such an agreement and it spells out the conditions which the Northwest Territories agreed to meet in order to qualify for federal assistance, the methods of reimbursement and the condition under which the agreement can be terminated.\* The Report not only

---

<sup>1</sup> A.D. Scott, "Conditional and Unconditional Grants in Theory", A.J. Robinson and J. Cutt (eds.), Public Finance in Canada: Selected Readings, Methuen, Toronto, 1968, p. 116.

\* For specifics see An Ordinance Respecting Expenditures For The Public Source Of The Northwest Territories For The Financial Year Ending The 31st Day Of March, 1971.

commits federal spending on a shared cost basis for a particular service but, it also provides for a division of functional responsibilities between the two levels of government through recommendations.<sup>2</sup>

Aside from providing federal financial assistance on behalf of functions within the legislative competency of the Territories, the paternalistic attitude of the Federal Government in recommending certain divisions of responsibilities is not totally overpowering since the Territorial Government has a certain amount of influence in determining the conditions and the terms under which conditional grants are given to them. In the view of this writer, Territorial influence in the determination of conditions and terms is definitely minimal and less than that of the provinces.<sup>3</sup> Unlike the arrangements made with the provinces where "measures of federal control vary from close supervision of the aided activity to situations in which the province is asked to do no more than demonstrate that federal funds have in fact been expended on the specified functions",<sup>4</sup> the expendi-

---

<sup>2</sup> Report on the Northwest Territories, 1967, op. cit., p. 3.

<sup>3</sup> Ibid., pp. 4-6.

<sup>4</sup> D.V. Smiley, Conditional Grants and Canadian Federalism, op. cit., p. iii.

ture of the conditional grants by the Territorial Government is closely supervised through the powers given to the Auditor General of Canada, section 23(4), and to the federal Parliament, section 22 of the Northwest Territories Act. Federal actions in determining the costs on behalf of which the Territorial Government is reimbursed and supervising the expenditure of the grant are areas which no doubt contribute a certain amount to tension between the Federal and Territorial Governments.

The Territorial Government is not alone in experiencing this tension for since the inception of the conditional grant there have been heated arguments about the pros and cons of the system. Considering that conditional grants during the 1968-69 fiscal year constituted over one-third of the federal payments to the Northwest Territories,<sup>5</sup> and that this amount has since increased in relation to unconditional grants (i.e., payments to the Territories covering the deficiency on ordinary account, capital needs and amortization of debt), an awareness of the advantages and disadvantages of the conditional grant as they pertain to the Territorial Government can be useful in observing future negotiations in Federal-Territorial financial arrangements.

#### Disadvantages

- (1) Providing the Territorial Government with condi-

---

<sup>5</sup> Dominion Bureau of Statistics.



tional grants necessitates the retention by the Federal Government of the control over the method of spending the tax revenue collected by the Federal Government in the Northwest Territories.\*

(2) The conditions and terms of conditional grants impose a rigidity which involves "such minute inspection and regulation as to be a major infringement on... autonomy".<sup>6</sup> Territorial priorities are then relegated second to federal priorities,\*\* and as noted in Chapter V the relegation results in federal influence directing Territorial and municipal policies.

(3) The bulk of federal conditional grants are available for health and welfare functions, but the aims of the

---

\* Unconditional grants remove this federal control over spending the tax revenues, since by definition unconditional grants have no conditions attached.

<sup>6</sup> The Report of the Royal Commission on Dominion-Provincial Relations, King's Printer, Ottawa, 1940, Book II, p. 127.

\*\* Premier Shaw during the Federal-Provincial Conference of July 25-27, 1960, commented that conditional grants entail "a degree of rigidity in the direction of provincial expenditures and reduce budgetary flexibility" as well as acting as a deterrent to long-term budgetary planning by introducing uncertainties attendant upon future federal action in embarking on new programmes or expanding existing ones. See D.V. Smiley, Conditional Grants and Canadian Federalism, A Study in Constitutional Adaptation, Canadian Tax Foundation, Toronto, 1963, p. 13. When dealing with priorities, the question that must be answered is whether the Federal or the Territorial Government is in possession of the means for evaluating Territorial priorities.

grants are seldom defined, and "the principles which should govern administration have seldom been formulated".<sup>7</sup>

Attempts to achieve a consensus on the aims, standards and terms of the conditional grants may lead to dispute between officials of both government levels, especially if the "program... already has been decided at the federal level...."<sup>8</sup>

(4) Considering that the procedures for defining sharable costs are complex,<sup>9</sup> unnecessary burdens are imposed upon the Territorial financial staff. The period that the financial staff must wait between the time that the claims are submitted and reimbursed are long.

#### Advantages\*

(1) Federal conditional grants have removed many of the inequities that have existed in the Northwest Territories. It can be correctly surmised that without these grants the inequities might still be present.

---

<sup>7</sup> J. A. Maxwell, Federal Subsidiaries to the Provincial Governments in Canada, Cambridge University, Mass., 1937, p. 224.

<sup>8</sup> Premier Luage of Quebec, Federal-Provincial Conference of July 25-27, 1960, Proceedings, Queen's Printer, Ottawa, 1960, p. 27.

<sup>9</sup> D.V. Smiley, Conditional Grants and Canadian Federalism, op. cit., p. 37.

\* Conditional grants have no inherent superiority over unconditional grants. For further arguments on this subject see D.V. Smiley, Conditional Grants and Canadian Federalism, op. cit., pp. 60-64.

(2) The consultative and advisory services provided by the Federal Government in connection with conditional grants, have put at the disposal of the Territorial Government certain skills which it may not have otherwise had. For example, grants directed at northern development have supplied the Territorial Government with specialized expertise and technical assistance, a commodity that some provinces would envy.

(3) Finally, the conditional grants covering such aspects as vocational training, housing grants and hospitalization grants have taken into account the basic needs of the Northwest Territories.

Conditional grants have been questioned and upheld in different instances, some of which are noted above. The most serious criticism of the conditional grant is that it has created uncertainties in regional government programmes by providing grants for those activities the federal government wishes to pursue at the expense of regional priorities. With that concluding remark, what are the shared-cost programmes financed by both levels of government?

(1) Social Development

The Federal Government contributes to Territorial welfare programmes which have been discussed in Chapter V.

Briefly, the welfare programmes include income maintenance programmes such as Old Age Assistance,\* Blind Persons Allowance and Disabled Persons Allowance; benefits of which are available to all residents of the Northwest Territories. Other cost-shared programmes include an Alcohol Education Program and a Bursary Program to provide assistance to "students at schools of social work willing to work in the Territories for a specified period of time after graduation".<sup>10</sup> The Community Development Fund receives grants from the Federal Government for the specific purpose of fostering local responsibility for local affairs and the encouragement of local decision and participation in local improvements. The Territorial Government on a shared-cost basis also provides for welfare services such as "foster home care for children in need of protection, assistance to parents wishing to adopt children [the Special Care Program], care of aged, infirm and mentally retarded persons in boarding homes and institutions; financial assistance to disabled persons and eligible for Disabled Persons Allowance".<sup>11</sup> Residences for single employables and for aged persons are constructed and operated

---

\* Old Age Assistance disappeared in 1970 and was replaced by Old Age Security.

<sup>10</sup> Report on the Northwest Territories, 1967, op. cit., p. 17. 50% of the Bursary costs are shared by the Department of National Health and Welfare.

<sup>11</sup> Ibid., p. 18.

under a cost-sharing agreement between the Territorial Government and the C.M.H.C.

Before 1967 no financial adjustments were made to the Territories to fulfill the "special contribution provision" of the Canada Assistance Plan\* (CAP) which allows the Federal Government to allocate special funds to a provincial government if it agrees to extend its welfare programmes to Indians.<sup>12</sup> The reason such contributions were not made was that welfare services were administered by the D.I.A.N.D. Presently, Territorial welfare programmes do provide services to Indians and Eskimos, but the enactment of the Social Assistance Ordinance in 1967 was necessary so that the Territorial Government could enter into agreement with the Federal Government pursuant to the Canada Assistance Plan through which special contributions to the Territorial Government could be made. Finally, the Federal Government

---

<sup>12</sup> The National Finances, op. cit., p. 122.

\* The Canada Assistance Plan was passed in July 1966 and it provides for a federal contribution of 50% of the provincial costs of providing medical and associated health care costs for recipients of provincial welfare assistance. At the option of the provinces categorical shared-cost assistance programmes may be replaced by "one general co-ordinated program for assisting all needy persons regardless of the cause of the need". The National Finances, op. cit., p. 121.

shares equally with the Territorial Government the costs of Territorial programmes of vocational rehabilitation for disabled persons.\*\*

(2) Health

The Department of National Health and Welfare has assumed the responsibility on behalf of the Territorial Government of providing the development and co-ordination of health services in the Territories. The Northern Health Service, a branch of the D.N.H.W., acts in a capacity similar to provincial departments of public health; and the agreements thus established for this service call for the Territorial Government to provide the cost for services for residents other than the Indians and Eskimos. In addition to sharing the costs of the Northern Health Services Plan,\* the Territorial Government shares with the Federal Government the costs incurred through the Medical Care Plan and the Territorial

---

\* The Plan covers construction and operation costs of nursing stations, health stations and health clinics; free treatment of tuberculosis, cancer, venereal disease, mental illness; free school dental services; touring doctor services; and all treatment for indigents.

\*\* The Vocational Rehabilitation of Disabled Persons Agreement Ordinance authorizes the Commissioner to enter into agreement with the Federal Government to share the costs of the programme.

Hospital Insurance Service (T.H.I.S.), both of which are administered by the Territorial Government. The Federal Government's share in the Medical Care Plan is \$1,114,500 a year,<sup>13</sup> and it reimburses the Territorial Government for hospital care costs covered by the T.H.I.S. There is no recent detailed data on the costs shared under the T.H.I.S., but the T.H.I.S. expenditure during the 1967-68 fiscal year amounted to \$1,803,379. The Territorial Government recovered \$934,559 from the Federal Government under the formula of the Plan and "a further \$486,754 was payable by the Federal Government as a special grant to cover the cost of insured services given to indigent Indians and Eskimos".<sup>14</sup> Aside from recoveries from third party liability claims, the Territorial Government was left with a net cost of \$387,293.

### (3) Education

In addition to those cost-shared programmes involving education and noted in Chapter V, there is the vocational education programme in the Northwest Territories. Not only is the programme important as an example of the Federal Government's willingness to give financial assistance, but it also serves as a means of alleviating high

---

<sup>13</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, op. cit., p. 73.

<sup>14</sup> The Annual Report of the Commissioner of the Northwest Territories, 1967-68, op. cit., p. 21

levels of unemployment, especially among people who have little or no occupational training or experience. Under the existing federal-territorial agreements conditional grants are paid for the operating expenses of nine vocational training programmes\* and federal funds are available for capital expenditures to provide training facilities as in Fort Smith and Yellowknife. The financial agreement between the Territorial and Federal Governments, through the Federal Department of Manpower, is made in accordance with the Technical and Vocational Assistance Act, 1960.<sup>15</sup> Through this agreement the Federal Government contributes 50% of the expenditures as does the Territorial Government. In some cases the Territorial share is 75% and 90% of the "costs incurred in vocational training of white residents on recognized programmes",<sup>16</sup> whereas Indian and Eskimo trainees costs are paid by the Federal Government.

---

\* The Annual Report of the Commissioner of the Northwest Territories, 1966-67, Territorial Government, 1968, pp. 74-75 lists the following programmes: Programme 0 (Handicapped); Programme 1 (Vocational High School); Programme 2 (Technician Training); Programme 3 (Trade and Other Occupational Training); Programme 4 (Training in Co-operation with Industry); Programme 5 (Training the Unemployed); Programme 6 (Training of Disabled Persons); Programme 7 (Training Technical and Vocational Teachers); and Programme 9 (Student Aid).

<sup>15</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, op. cit., p. 99

<sup>16</sup> The Annual Report of the Commissioner of the Northwest Territories, 1966-67, Yellowknife, 1967, p. 67.



Other education costs which are on a share basis are those dealing with adult education in the field such as the housing education component of the Eskimo Rental Housing Program.

Aside from the financial contributions, the Federal Government occupies with the Territorial Government the position of providing education in certain schools in the Northwest Territories. In particular, the Churchill Vocational Centre and the Duke of Edinburgh School at Churchill, Manitoba, is operated on behalf of the Territorial Government. The Eskimo Language School at Rankin Inlet is a federal operation and it is administered by Ottawa.<sup>17</sup>

(4) Housing

The Territorial Government administers all housing programmes in the Northwest Territories except the "House Ownership programmes carried out by Central Mortgage and Housing Corporation which relate to Fort Smith, Hay River, Yellowknife and Inuvik".<sup>18</sup> The public housing projects in the Northwest Territories are funded by federal-territorial partnerships and include such partnership activities as the local assembly projects, the senior citizens housing project,

---

<sup>17</sup> Government Activities in the North, 1969, op. cit., p. 170.

<sup>18</sup> The Annual Report of the Commissioner of the Northwest Territories, 1970, op. cit., p. 91

the low-income families housing project and the single persons residence project in Yellowknife, Hay River, Fort Smith and Inuvik. The Federal Government shares in the profits and losses of federal-territorial rental housing projects to the extent of 75% and it makes loans available for 75% of the construction costs of such projects as noted above.<sup>19</sup>

Further, the Federal Government through the D.I.A.N.D. can increase to a total of \$1.8 million loans to the Northwest Territories for the construction of rental houses for non-Indians and non-Eskimos in the Northwest Territories. Also through the northern development programme of the D.I.A.N.D., grants of \$20,000 are available to the Territorial Government to enable it to pay subsidiaries of \$1,000 on each low-cost house for which the territory makes a loan.

---

<sup>19</sup> Ibid.

(5) Roads

Chapter V discussed the (85%-15%) federal-Territorial cost-sharing agreements of the Territorial Roads Policy. It was shown that though the Territorial Government does have some responsibility for maintenance of the roads in the Northwest Territories and is allowed a limited degree of road construction, the Federal Government is responsible for the construction and maintenance of the Northwest Highway System and roads for northern economic development.\*

By way of comparison, the Federal Government has been making conditional grants to the provinces for the construction of the Trans-Canada Highway since 1949. Initially, grants were 50% of construction costs, but in 1956 an amend-

---

\* The 1970-71 federal financial estimates reveal that the most costly road projects include, \$1.3 million for the Mackenzie Highway and \$1.3 million for a highway between Fort Simpson and Fort Liard. The construction of these roads is part of the ten-year road building programme announced in the fall of 1965 for the Yukon and Northwest Territories which calls for an average expenditure of \$10 million a year. See Chapter V, construction and maintenance of roads. The Annual Report of the Commissioner of the Northwest Territories, 1970, Territorial Government, 1970, p. 61 states that the 180 mile highway extensions to Fort Simpson will cost \$8 million.

ment provided for an additional 40% (90% in all) of "the shareable costs of one-tenth of the mileage in each province".<sup>20</sup> The total federal share paid to 1970 is \$783.1 million for 4784 miles of road. A rough estimate shows that from the inception of the road-building programme for both Territories, approximately \$60 million has been spent for less than one-half\* of the total mileage of the Trans-Canada Highway.

(6) Others

In addition to the above five areas where conditional grants play a major role in financing the activities, the Federal Government also provides grants for emergency measures (e.g., Fort Smith land slide), recreation and culture, and winter works programmes.

The Municipal Winter Works Incentive Program has seemed to cease completely in the Northwest Territories. This observation is based on the Annual Reports of the Commissioner of the Northwest Territories. For example, mention is made in the Annual Report, 1966-67 of \$192,000 being spent on the Program and in accordance with the terms of the Program,

---

<sup>20</sup> D.V. Smiley, Conditional Grants and Canadian Federalism, op. cit., p. 11

\* The Mackenzie Highway System is almost 1,000 miles long. Annual Report of the Commissioner of the Northwest Territories, 1970, Department of Information, Yellowknife, 1970, p. 61.

50% was paid directly by the Federal Government. The Annual Report 1967-68 states the programme "was sharply reduced, due primarily to the change in policy of the Department of Manpower, by which brushing and clearing of road areas was not acceptable".<sup>21</sup> To the writer's knowledge no mention of the Program is made in the Annual Report after 1968. However, federal contributions to winter works programmes to municipalities in the provinces totalled \$21.5 million in 1969 and \$.4 million in 1970.<sup>22</sup>

In conclusion it might be pointed out that federal contributions to the provinces have favoured the conditional grant payment over the unconditional payment. For example, in 1961 unconditional grants to the provinces totalled \$537.8 million while conditional grants totalled \$435.8 million, whereas in 1971 unconditional grants amounted to \$1,411.8 million and conditional grants \$12,234.1 million. Though figures are not available to make a similar comparison for the Territories, the figures for the 1968-69 fiscal year reveal that the Northwest Territories received \$6,271,000 in the form of unconditional grants and \$2,351,000 in conditional grants, however the total contributions during 1968-69 fiscal year to the provinces shows that \$868,231,000

---

<sup>21</sup> The Annual Report of the Commissioner of the Northwest Territories, 1967-68, op. cit., p. 33.

<sup>22</sup> The National Finances, op. cit., p. 154. The 1969 and 1970 figures are estimates.

was paid in unconditional grants and \$1,467,895,000 in conditional grants. The provinces of Newfoundland, Prince Edward Island, New Brunswick and Quebec\* received more in the form of unconditional grants than conditional grants.<sup>23</sup>

### Concurrent Area of Responsibilities

#### Agriculture

Section 13(v) of the Northwest Territories Act does not state that agriculture is an area where both the Federal Government and the Territorial Government can legislate. But section 14(1) dealing with the "greater powers... than are given to... the Provinces" would imply that it is an area where the Federal Government can legislate, in addition to the Commissioner in Council. If the Federal Government can legislate in agriculture, then the overriding federal legislation applies to the Territories as it does to the provinces by section 95 of the B.N.A. Act.

The federal government has made available conditional grants to the provinces in aid of specific agricultural functions such as potato warehouse construction, transportation of fodder and related programmes. No such grant-in-aid is made available to the Territorial Government,

---

\* Quebec received \$473,468,000 in unconditional grants and \$163,268,000 in conditional grants which is approximately 4 to 1 ratio, compared to the Territorial 3 to 1 ratio.

<sup>23</sup> Ibid., pp. 154-155.

primarily due to the outstanding fact that agricultural programmes have a very limited chance of succeeding beyond the 60th parallel. Even if a programme could become successful, for example, the Fort Simpson Farm, the prevailing of federal legislation in case of conflict in relation to agriculture would suggest little need for shared-cost programmes.

### Others

Areas of overlapping responsibilities in this section do not deal with transfer payments but rather with joint consultative and advisory services. Such services include legal surveys carried out by the federal Department of Public Works and the territorial Department of Public Works in relation to site investigation, economic analysis, designing, etc. In fact it would not be incorrect to state that since the Territorial Public Service is modelled after the Federal Public Service information of various sorts, similar in scope to legal survey information is shared by both governments. Further, as with provincial governments, the responsibility for game and wildlife management is shared by both governments; the Federal Government being responsible for the management of migratory birds, and by section 13(g) of the Northwest Territories Act, the Territorial Government is responsible for the preservation of all other wildlife.

One area of dubious overlapping of responsibilities is the entry into agreements with the Government of Canada by the Territories. The Federal Government shares the deciding authority with the Territorial Government in relation to any agreements the latter government should enter into with the Federal Government. Section 15 of the Northwest Territories Act states that the Commissioner in Council can make ordinances authorizing the Territorial Government to enter into agreements with the Federal Government similar to the agreements entered into by the provincial governments with the Federal Government "but no such agreement shall be entered into... without the approval of the Governor in Council". Whether such an approval is a mere formality is questionable.

A 1970 amendment to the Territorial Lands Act established another milestone in the political development of the Northwest Territories. Section 3.1 and 3.2 of the Territorial Lands Act acknowledges that ecological balance and physical characteristics of the Northwest Territories must be maintained. In an endeavour to accomplish the above goal, the Federal Government has deemed it necessary to consult with the Council of the Northwest Territories in order to set apart and appropriate territorial land as land management zones. Also in consultation with the Council, regulations can be effectualized respecting "the protection, control and the surface of land in a land management zone; and... the issue of permits for the use of the surface of land in a land management zone, the terms and conditions of such permits



and fees...." Even though the Governor in Council by section 19(i.1) has deciding authority over territorial lands, the amendment is in the right direction.

Finally, there is the area of overlapping responsibility in relation to fisheries. This is a very delicate area for the Territorial Government does not have jurisdiction over the fishing since it is part of the natural resources which are under federal jurisdiction. Nevertheless, the Territorial Government made a Fresh Water Fish Marketing Ordinance allowing it to collaborate with the Federal Government through the Freshwater Fish Marketing Corporation (a Crown Corporation) to provide effective marketing agencies for freshwater fish caught in the Territories. Similar arrangements have been made with other provinces, in particular the prairie provinces and Ontario. The Corporation regulates interprovincial and export trade in freshwater fish, and prior to the beginning of each fishing season a price schedule for fishing catches is announced establishing, in effect, a minimum income for fishermen.

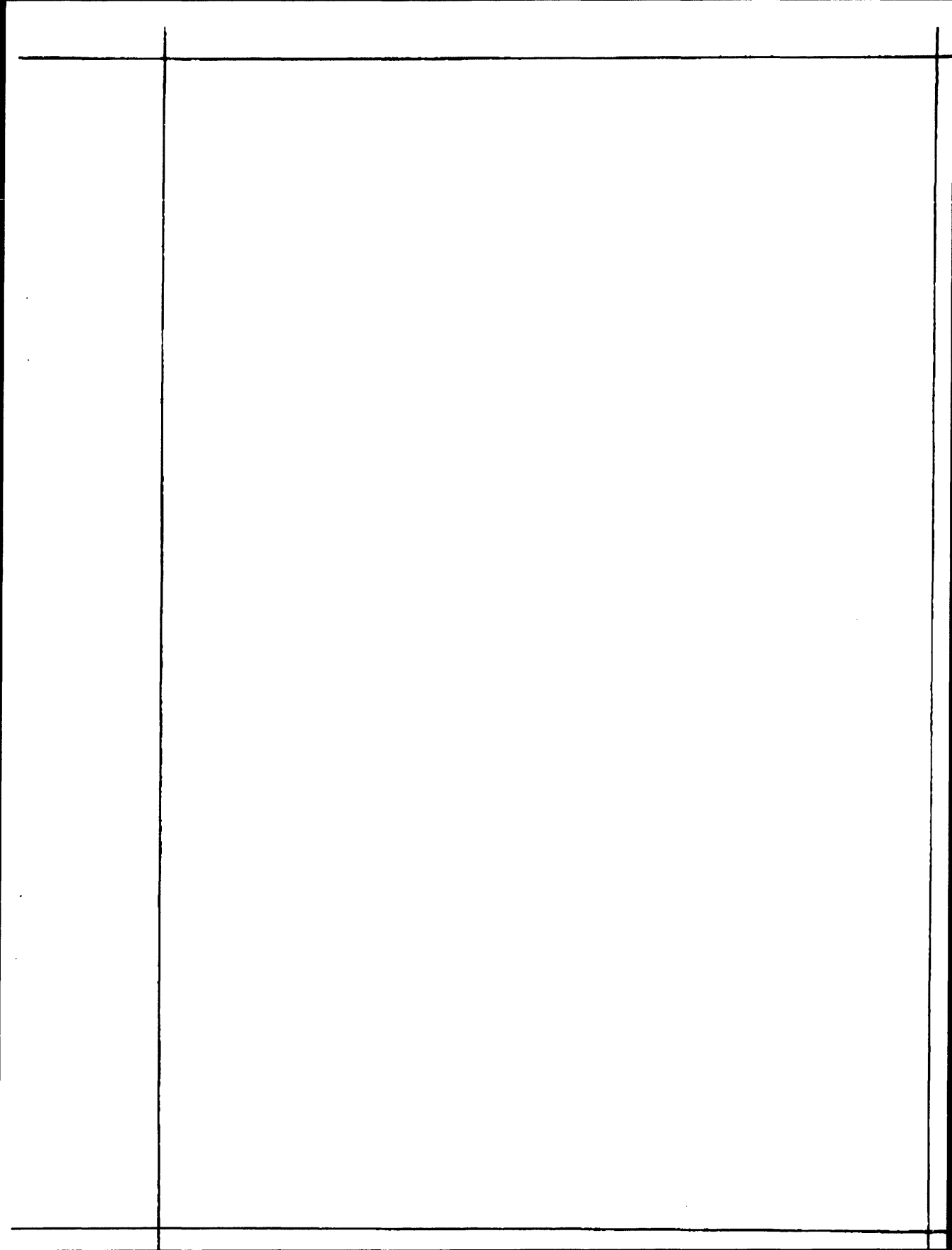
### Conclusion

The discussion in Chapter VI has centred around those responsibilities that overlap, i.e., governmental responsibilities that overlap through the media of cost-shared programmes, through constitutional means, or departmental liaison. The author of this paper doubts whether joint administration of certain activities by the Federal and Territorial Govern-

ments, in particular through conditional grants, is the most effective way of aiding the political development of the Territories. Though the transfer of responsibilities has pooled under the control of the Government of the Northwest Territories the administration of governmental activities, the Territorial Government must progress before it actually can decide its own priorities. The Government can only perform activities set according to its priorities if it has the financial capacity to do. Although the Territorial Government lacks a financial base extensive enough to do such a thing, conditional grants should not play such a significant role in deciding the fate of those priorities.\* An alternative would be the provision of revenues through more unconditional grants thus enabling the Territorial Council and the Commissioner to direct their own course in revenue expenditures.

---

\* R. J. May argues that if the regional government perceives a need for a programme and seeks assistance for the programme by way of a conditional grant from the national government, then there "seems little reason for describing this [the assistance] as a loss of sovereignty to the recipient unit". He also makes a similar argument when interest groups pressure the national and regional governments for conditional grants. See R.J. May, Federalism and Fiscal Adjustment, Oxford University Press, London, 1969, pp. 164-166.



## BIBLIOGRAPHY

### Books

- Bird, R. M. The Growth of Government Spending in Canada. Canadian Tax Foundation, Toronto: 1970.
- Dawson, R. M. The Government of Canada. (4th edition), University of Toronto, Toronto: 1969.
- May, R. J. Federalism and Fiscal Adjustment. Oxford University Press, London: 1969.
- Maxwell, J. A. Federal Subsidiaries to the Provincial Government in Canada. Cambridge University, Mass. 1937.
- Riker, W. H. Federalism: Origins, Operation, Significance. Little, Brown and Company, Toronto: 1964.
- Robinson, A. J., and J. Cutt. Public Finance in Canada: Selected Readings. Methuen, Toronto: 1968.
- Rose, A. Canadian Housing Policies. Canadian Conference on Housing, Background Paper, No. 2, 1968.
- Saywell, J. T. The Office of Lieutenant-Governor. University of Toronto, Toronto: 1957.
- Smiley, D. V. Conditional Grants and Canadian Federalism. Canadian Tax Foundation, Toronto: 1963.
- Smiley, D. V., (ed.). The Rowell/Sirois Report/Book I. McClelland and Stewart Ltd., Toronto: 1967, pp. 191-214.
- The National Finances. Canadian Tax Foundation, Toronto: 1970.
- Wheare, K. C. Federal Government. (3rd edition). Oxford University Press, Toronto: 1956.

### Periodicals

- Breton, A. "A Theory of Government Grants," CJEPS, May, 1965, pp. 175-187.
- Buchanan, J. M. "Federalism and Fiscal Equity," American Economic Review, September, 1950, pp. 583-599.

Mallory, J. R. "The Lieutenant-Governor's Discretionary Powers," C.J.E.P.S., Vol. XXVII, No. 4, November, 1961, pp. 518-521.

Smiley, D. V., and R. M. Burns. "Canadian Federalism and the Spending Power: Is Constitutional Restriction Necessary?" Canadian Tax Journal, November and December, 1969, pp. 468-482.

Wilson, A. D. "Canadian Housing Legislation," Canadian Public Administration, December, 1959, pp. 214-228.

#### Government Publications

Annual Report 1967-1968, Department of Indian Affairs and Northern Development, Queen's Printer, Ottawa: 1969.

Annual Report 1968-1969, Department of Indian Affairs and Northern Development, Queen's Printer, Ottawa: 1970.

Appropriation Ordinances, 1968-1971, Government of the Northwest Territories, Department of Information, Yellowknife, N.W.T.

Dominion-Provincial Conference 1960, Queen's Printer, Ottawa: 1960.

Federal-Provincial Grants and the Spending Power of Parliament, Queen's Printer, Ottawa: 1969.

Government Activities in the North, 1968, Advisory Committee on Northern Development, Queen's Printer, Ottawa: 1969.

Government Activities in the North, 1969, Advisory Committee on Northern Development, Information Canada, Ottawa: 1970.

Hanson, E. J. The Public Finance Aspects of Health Services in Canada, Royal Commission on Health Services, Queen's Printer, Ottawa: 1964.

Lynn, T. H. Federal-Provincial Fiscal Relations, Studies of the Royal Commission in Taxation, Queen's Printer, Ottawa: 1967.

Report of the Advisory Commission on the Development of Government in the Northwest Territories, 1966, Vol. I&II. Queen's Printer, Ottawa: 1966.

The Northwest Territories Today, A Reference Paper for the Advisory Commission on the Development of Government in The Northwest Territories, Queen's Printer, Ottawa: 1965.

Report of Proceedings of the Federal-Provincial Conference,  
1963, Queen's Printer, Ottawa: 1964.

Report on the Northwest Territories, 1967, Interdepartmental  
Committee on Federal-Territorial Financial Relations,  
Queen's Printer, Ottawa: 1967.

Report of the Quebec Royal Commission of Inquiry on Consti-  
tutional Problems, 1956, Vol. II, Quebec: 1957.

The Annual Report of the Commissioner of the Northwest  
Territories, 1966-1967, Government of the Northwest  
Territories, Yellowknife: 1968.

The Annual Report of the Commissioner of the Northwest  
Territories, 1967-1968, Government of the Northwest  
Territories, Yellowknife: 1969.

The Annual Report of the Commissioner of the Northwest  
Territories, 1969, Government of the Northwest Territories,  
Yellowknife, 1970.

The Annual Report of the Commissioner of the Northwest  
Territories, 1970, Department of Information, Yellowknife:  
1971.

The Report of the Royal Commission on Dominion-Provincial  
Relations, Book II, King's Printer, Ottawa: 1940.

#### Court Cases

Attorney-General for Canada v. Attorney-General for Ontario.  
[1937] A.C. 326, [1937] I.D. L.R. 673, [1937] I.W.W.R. 299.

Bank of Toronto v. Lambe. [1887] 12 App. Cas. 575.

Calgary and Edmonton Land Company v. Attorney General of  
Canada. [1911] 45 S.C.R. 170.

Citizens Insurance Company v. Parsons. [1881] 7 App. Cas. 60.

C.P.R. v. Attorney-General for British Columbia. [1950] A.C.  
122, [1950] I D.L.R. 721, [1950] 1 W.W.R. 220.

Dow v. Black. [1875] L.R. 6 P.C. 272.

Ex parte Tenasse. [1931] 1 D.L.R. 806, 2 M.P.R. 253.

Fielding v. Thomas. [1896] A.C. 600

Montreal v. Montreal Harbour Commissioners. [1926] A.C. 299,  
[1926] 1 D.L.R. 840, [1926] 1 W.W.R. 398.

Nanaimo Community Hotel v. Board of Referees. [1945] 3 D.L.R.  
225, [1945] 2 W.W.R. 195.

Re Caledonia Milling Company v. Johns. [1918] 42 O.L.R. 338.

Re Eskimos. [1939] S.C.R. 104, [1939] 2 D.L.R. 417.

Re Kane. [1940] 1 D.L.R. 390.

Re Regulations and Control of Aeronautics in Canada. [1932]  
A.C. 54, [1932] 1 D.L.R. 58, [1931] 3 W.W.R. 625.

Reference Re Alberta Statutes. [1938] S.C.R. 100, [1938] 2  
D.L.R. 81.

Reference Re Validity of Industrial Relations and Disputes  
Investigations Act and its Applicability in Respect of  
Certain Employees of Eastern Canada Stevedoring Co. Ltd.  
[1955] 3 C.R. 529, [1955] 3 D.L.R. 721.

Reference Re Waters and Water Powers. [1929] S.C.R. 200,  
[1929] 2 D.L.R. 481.

Rex v. Commanda. [1939] O.W.N. 466, [1939] 3 D.L.R. 635.

Rex v. Hill. [1907] 15 O.L.R. 406.

St. Catherine's Milling & Lumber Company v. The Queen. [1889]  
14 App. Cas. 46.

Toronto v. Bell Telephone Company. [1905] A.C. 52.

T.T.C. v. AquaTaxi. [1957] O.W.N. 65, 6 D.L.R. 2d 721.

Underwater Gas Developers Ltd. v. Ontario Labour Relations  
Board. [1960] O.W.N. 53, 21 D.L.R. 2d 345.

Valin v. Langlois. [1879] 3 S.C.R.

Warman v. Francis. [1958] 20 D.L.R. 2d 627, 43 M.P.R. 197.

#### Acts

Dominion Water Power Act and Regulations

Land Use Regulations

Federal Industrial Disputes and Investigation Act

Northern Inland Waters Act

< Territorial Lands Act

The British North America Act

The Indian Act

The Northwest Territories Act



