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GOVERNMENT OF THE NORTHWEST TERRITORIES
CANADA

Yellowknife, N.W.T.,
May 12, 1976

The Honourable D.H. Searle, Q.C.,
Speaker of the Legislative Assembly,
of the Northwest Territories,
Yellowknife, N.W.T.

Dear Mr. Speaker:

At its 58th Session Territorial Council directed me to review the formulae used by the federal government, and other governments if I so wished, in making appointments to boards and other bodies, so as to determine which formulae are legally and constitutionally acceptable. Accordingly I reviewed approximately one hundred each of the Statutes of Canada, the Statutes of Alberta and the Ordinances of the Yukon Territory. The results are contained in the attached appendices. It should be noted that the terms:

"Commissioner" in the Northwest and Yukon Territories is the equivalent of Governor in Council (Canada) and Lieutenant-Governor in Council (Alberta);

"Council" in the Territories is the equivalent of "Senate and House of Commons" (Canada), and "Legislative Assembly" (Alberta);

and "Commissioner-in Council" in the Territories is the equivalent of "Parliament" (Canada), and "Her Majesty, by and with the advice and consent of the Legislative Assembly" (Alberta).

The Territories have no true equivalent of federal and provincial "Ministers".

Of significance is the fact that in only one case (Canadian National Railways Act) is an appointment made by the equivalent of Commissioner in Council. The reason for this unique proviso is buried in the sands of antiquity, but I would guess it was because of the importance of railways and railway financing in Canada's early years, and attendant scandals. The Clerk of the Council was good enough to check with his counterparts in Ottawa, and we learn that the appointments are made by enactment of an Act. This apparently has proven impractical. Although the Canadian

Cont'd.

National Railways Act provides that the auditors be appointed annually, in point of fact the last appointments were made for a term of seven years (two of the years being after the fact). The appointments were made by section 14 of the Canadian National Railways Financing and Guarantee Act, 1973, which reads as follows:

14. (1) Notwithstanding subsection 38(1) of the Canadian National Railways Act a continuous audit of the accounts of the National Railways as defined in the Canadian National Railways Act shall be made for the years 1972, 1973 and 1974 to 1978 inclusive by independent auditors.

(2) For the purpose of carrying out the audit described in subsection (1), the following firms of chartered accountants are appointed as independent auditors:

(a) for the year 1972, the firm of Peat, Marwick, Mitchell & Co., of the Cities of Toronto and Montreal;

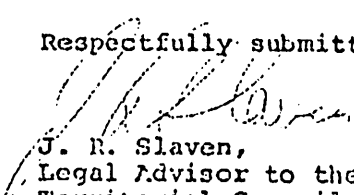
(b) for the year 1973, the firm of Peat, Marwick, Mitchell & Co. and the firm of Coopers & Lybrand, both of the Cities of Toronto and Montreal; and

(c) for the years 1974 to 1978 inclusive, the firm of Coopers & Lybrand, of the Cities of Toronto and Montreal.

My conclusion is that appointments may legally be made by the Commissioner, or by the Commissioner on the recommendation of Council, with various minor variations in particular situations. Appointments cannot legally be made by the Commissioner in Council unless it be by enactment of an Ordinance, which is impracticable, and legally questionable.

If appointments are to be made by the Commissioner on the recommendation of Council, provision will have to be made (likely in the Interpretation Ordinance) for the Commissioner to fill vacancies when Council is not sitting, and for him to make appointments when Council fails to recommend, or fails to recommend appointees acceptable to the Commissioner.

Respectfully submitted


J. R. Slaven,
Legal Advisor to the
Territorial Council.

SLAVEN:als

A3.

Appointed by miscellaneous

Act

Army Benevolent Fund Act

Bank Act

Bank of Canada Act

Canada Pension Plan Act

Canadian Film Development
Corporation Act

Cape Breton Development
Corporation Act

Appointment

Army Benevolent Fund Board - five members appointed by the Governor in Council of whom one shall have been nominated by the Royal Canadian Legion and one by the National Council of Veterans Association in Canada

The Governor in Council on the recommendation of the Minister of Finance appoints an Inspector General of Banks

The Minister, with the approval of the Governor in Council, appoints twelve directors. The directors, with the approval of the Governor in Council, appoint the Governor and Deputy Governor

Review Committee - one appointed by applicant, one by the Minister, and those two appoint a third who is Chairman

The Governor in Council may on the recommendation of the Corporation appoint an executive director. The Minister may on the recommendation of the Corporation appoint an Advisory Group.

Chairman and President appointed by the Governor in Council after consultation with the Lieutenant Governor in Council of Nova Scotia; remaining directors by the Governor in Council, two on recommendation of the Lieutenant Governor in Council

Central Mortgage and Housing Corporation Act

The Governor in Council appoints a President and Vice President, plus three directors from within the public service.

The Minister, with the approval of the Governor in Council, appoints five directors from outside the public service.

The Minister, with the approval of the Governor in Council, appoints the auditors.

Company of Young Canadians Act

Volunteer members elect ten members of the Council, Governor in Council appoints five.

The Governor in Council may, on the recommendation of the Council, appoint an Executive Director who shall hold office during pleasure and with the concurrence of the Council.

Economic Council of Canada Act

Chairman and two directors appointed by Governor in Council. Other members appointed by Governor in Council after consultation with appropriate representative organizations.

Electoral Boundaries Readjustment Act

One commission per province - chairman is a judge appointed by the Chief Justice of the province; two appointed by the Speaker of the House of Commons; plus the Representation Commissioner.

Financial Administration Act

The Governor in Council shall by commission under the Great Seal appoint an officer called the Auditor General of Canada to hold office during good behaviour until he attains the age of sixty-five years, but he is removable by the Governor General on address of the Senate and House of Commons.

A4.

Appointed by Parliament

Act

Canadian National Railways Act

Appointment

38.(1) A continuous audit of the accounts of National Railways shall be made by independent auditors appointed annually by Parliament who shall annually report to Parliament in respect of their audit

(2) The report of the auditors shall call attention to any matters that in their opinion require consideration or remedial action.

(3) The auditors shall be paid by the National Company such amounts as the Governor in Council approves. 1955, c. 29, s. 38.

B1.

Appointed by Lieutenant-Governor in Council

<u>Act</u>	<u>Appointment</u>
Agricultural Chemicals Act	Agricultural Chemicals Advisory Committee
Alberta Government Telephones Act	Alberta Government Telephones Commission
Alberta Heritage Act	Historic Sites Advisory Committee
Alberta Resources Railway Corporation Act	Alberta Resources Railway Corporation
Alcoholism & Drug Abuse Act	Alcoholism & Drug Abuse Commission
Amusements Act	Board of Censors (moving pictures)
Apprenticeship Act	Provincial Apprenticeship Board
Assessment Appeal Board Act	Alberta Assessment Appeal Board
Building Associations Act	Building Associations Advisory Board
Child Welfare Act	Child Welfare Commission appointed from among the officers and employees in the Department of Social Development
Coal Mines Regulation Act	Board of Examiners
Colleges Act	Alberta Colleges Commission College Boards
Commercial Services Act	Alberta Commercial Corporation
Commercial Property Act	Commercial Property Control Board
Corrections Act	Provincial Parole Board
Securities Act	Alberta Securities Commission
Seed-Control Areas Act	Seed-control Committee
Sexual Sterilization Act	Board
Special Areas Act	Special Areas Board
Tradesmen's Qualification Act	Board of examiners
Workmen's Compensation Act	Workmen's Compensation Board

B2.

Appointed by a Minister

Act

Artificial Insemination of
Domestic Animals Act

Special Areas Act

Students Assistance Act

Trade Schools Regulation Act

Appointment

Artificial insemination
advisory committee

Area advisory committees

Students Assistance Board
Students Assistance Advisory
Council

Advisory Board

Appointed by MiscellaneousActAppointment

Agricultural Service
Board Act

Council of a municipal district, or the
Minister of Agriculture, may constitute
agricultural service boards

Agricultural and
Vocational Colleges Act

7.(1) There shall be a Board of Agriculture
and Vocational Education consisting of:

- (a) the Deputy Minister of Education, or some member of the Department of Education appointed by him to represent him in his absence,
- (b) the Dean of Agriculture of each university under The Universities Act having a faculty of agriculture, or some member of that faculty appointed by him to represent him in his absence,
- (c) the Director of the Division of Extension and Colleges of the Department of Agriculture or some representative of the Division appointed by him to represent him in his absence,
- (d) the chairman of the Alberta Colleges Commission or some member of the Commission appointed by him to represent him in his absence,
and the members appointed in accordance with subsection (2).

(2) The remaining members of the Board shall be appointed by the Lieutenant Governor in Council and shall consist of

- (a) one representative from the governing body of each of the following organizations:
 - (i) The Alberta School Trustees' Association;
 - (ii) The Alberta Association of Municipal Districts and Counties;
 - (iii) Unifarm;
 - (iv) The Farm Women's Union of Alberta;
 - (v) The Alberta Women's Institutes;

- (b) one representative nominated by each agricultural and vocational college alumni association;
- (c) one representative nominated by each advisory committee of an Agricultural and Vocational College and who is not otherwise a member of the Board, and
- (d) three members appointed at large.

Apprenticeship Act

Provincial Apprenticeship Board appoints local advisory Committee

Cancer Treatment & Prevention Act

Lieutenant Governor in Council appoints the first members of the Provincial Cancer Hospitals Board; subsequent appointments to fill vacancies are made by the Minister of Health.

Chartered Accountants Act

14.(1) There shall be a Board known as the Accountants Experience Appraisal Board, which shall be composed of three members,

- (a) one of whom shall be recommended by the Institute,
- (b) one of whom shall be recommended by the Universities Co-ordinating Council and who shall not be a member of the Institute, and
- (c) one of whom shall be recommended by the Minister.

(2) The Board shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may appoint a member of the Board to be chairman and may also appoint a secretary of the Board.

Surface Reclamation Act

5.(1) There shall be a Council which shall be styled as the Surface Reclamation Council

(2) The Council shall consist of

- (a) the Deputy Minister of Mines and Mineral who shall be chairman of the Council,
- (b) members appointed by the Lieutenant Governor in Council, and
- (c) members appointed by local authorities pursuant to subsection (3).

(3) Each local authority may appoint one or more members to the Council but any member so appointed may act only in cases involving land in the municipality for which he is appointed.

Teachers' Retirement
Fund Act

(4) A member appointed under subsection (3) shall not be a mayor, councillor or administrator.

- 4.(1) The Board shall be composed of
- (a) three persons who shall be appointed by the Lieutenant Governor in Council to hold office during pleasure, and
 - (b) three teachers nominated by The Alberta Teachers' Association and appointed by the Lieutenant Governor in Council for a term of four years each or until their respective successors are appointed subject to revocation of the appointment for cause.

Universities Act

3. When the Lieutenant Governor in Council establishes an additional Provincial university under section 4, he shall also incorporate a board for the university with such name as he considers appropriate.

4. The board of each university shall consist of

- (a) a chairman of the board appointed by the Lieutenant Governor in Council,
- (b) the chancellor of the university,
- (c) the president of the university,
- (d) 13 other persons appointed by the Lieutenant Governor in Council,
 - (i) two of whom shall be members of the alumni association of the university, nominated by the association,
 - (ii) one of whom shall be a member of the senate, nominated by the senate from its members who are not on the staff of the university,
 - (iii) two of whom shall be members of the academic staff of the university, nominated by the general faculties council, and
 - (iv) two of whom shall be full members of the students' union, nominated by the council of the students' union,

and

- (e) if the university has a graduate students association, one person appointed by the Lieutenant Governor in Council who shall be a full member of the association nominated by the council of the association.

c1

Appointed by the Commissioner

Ordinance

Apprentice Training
Electrical Public Utilities
Housing Corporation
Health Insurance Services
Liquor

Appointment

Apprentice Advisory Board
Electrical Public Utilities Board
Housing Corporation Board
Health Care Insurance Plan
Administrator
Liquor Board

C2

Appointed by the Commissioner on the recommendation of Council

Ordinance

Historic Sites and Monuments

Appointment

Historic Sites and Monuments
Board

C3

Appointed by Miscellaneous

Ordinance

Labour Standards

Appointment

Labour Advisory Board, appointed by the Commissioner, and consisting of:

- (a) a Chairman;
- (b) one member representative of the interests of employces, and
- (c) one member representative of the interests of employers.