LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

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Tabled on Oct 18, 1976

STATEMENT OF EVIDENCE OF

THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

to the

MacKenzie Valley Pipeline Inquiry

Yellowknife, N.W.T.

September, 1976

Presented by The Honourable David H. Searle, Q.C.
Speaker of the Legislative Assembly.

The history of the introduction and development of government in Canada indicates an evolution from appointed councils to representative legislative bodies to responsible government. Another basis of this evolution, long accepted, is that powers once granted are not subsequently revoked or restricted, but are rather expanded in the next phase to reach the full development now established at the federal and provincial levels. The Northwest Territories has passed through all these phases, except the last, i.e., responsible government (See Appendix A). Nevertheless, it is clear that the Northwest Territories Legislative Assembly is the only body truly representative of all the people of the Northwest Territories. There is no other effective voice which can speak for all Territorial residents.

In the light of these facts, the possibility of the building of the Mackenzie Valley Pipeline is of obvious concern to us. Its very proposal has already had a most disruptive effect on the economy of our area. If a decision is reached not to proceed, it would have serious consequences. Equally, if a decision is reached to proceed, the pipeline will have a massive effect upon the economic, social, and political fabric of the Northwest Territories. Clearly the decision is of vital concern to the people we represent. It will affect various matters over which we now have legislative jurisdiction, as well as various matters over which our Legislative Assembly will have jurisdiction when the evolution of our development to provincial status is completed. At the same time we recognize that even if our territory were constituted as a province, it is Parliament, by ss. 91 and 92 of the British North America Act, which would have legislative jurisdiction with respect to the proposed

project, since it has international as well as interprovincial aspects.

Therefore, although we do not support any one applicant over another, or any one route over another, or any one method over another, we urge you to consider resolutions we have adopted concerning the proposed Mackenzie Valley Pipeline:

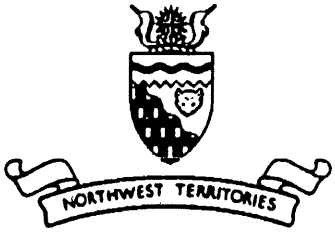
1. We have already passed a resolution favouring construction provided that:
   a) there is optimum employment of northerners during planning, construction and operation;
   b) there is just and equitable compensation of any person or persons adversely affected by the construction;
   c) there is adequate provision for the protection of the environment with minimum disturbance to wildlife and persons living off the land (See Resolution 2-48, 23 January, 1973).
2. We have asked to be involved in the decision about whether to proceed or not. We have already expressed ourselves in favour (See Resolution 2-48, January, 1973).
3. If our desire to proceed is approved, we have asked to be involved in the decisions regarding terms and conditions upon which any pipeline will be built through the Northwest Territories (17-48, January, 1973), as well as the form of the authority to be established to carry out this project (See Resolution 3-58, January, 1976).
4. Regardless of what type of authority is established to administer the enterprise, we have asked for representation on this board,

agency, or authority (See Resolution 3-58).

5. In order for us to be able to participate effectively and equitably in this major economic development of our territory, we have asked that further steps be taken to enable our government to evolve to the full status of a provincial government as regards proprietary rights, legislative jurisdiction, and the responsibility of the executive to the Assembly (See Resolutions: 41-37, 34-37, 1-41, 10-41, 3-45, 31-45, 34-35, 2-46, 9-46, 22-46, 34-46, 5-47, 11-48, 13-48, 5-51, 6-51, 2-59).

6. In order for points 1 to 5 to be realized quickly and justly, we have urged an early and equitable settlement by the Government of Canada of the legitimate claims of the native residents of the of the Northwest Territories (See Resolution 1-48).

(Resolutions referred to are attached as Appendix B.)



APPENDIX A

THE NORTHWEST TERRITORIES COUNCIL:

CONSTITUTIONAL STATUS AND JURISDICTION

A review of Council's historical background, its place in Confederation, its relation to the provinces and present powers.

by

Anthony Jordan

THE NORTHWEST TERRITORIES COUNCIL: CONSTITUTIONAL STATUS AND JURISDICTION

I. INTRODUCTION

The purpose of this paper is to outline briefly the nature of the Council of the Northwest Territories, its jurisdiction and its responsibilities, having regard particularily to matters incidental to the proposed construction of a gas pipe line to carry natural gas from or through the Northwest Territories to southern Canada.

Following a brief historical introduction the Council will be assessed in regard to its nature and status within Confederation and in regard to the extent of its legislative powers. An attempt will then be made to indicate the Council's role, and its own perception of that role, in relation to the construction and operation of a northern gas pipeline.

II. HISTORY

Prior to 1870 the area which now comprises the N.W.T. included three separate jurisdictional divisions. These were the lands drained by rivers flowing into the Hudson's Bay, which had been granted in 1670 by a charter of King George III to the Governor and Company of Adventurers of England trading into Hudson's Bay as absolute Lords and Proprietors (1) (generally referred to as Rupert's Land); the balance of the main land area of the N.W.T., which was governed by the Hudson's Bay Co. under licenses from the Crown granted in 1821 and renewed in 1838 (referred to as the North Western Territory); the remainder of the area, primarily comprised by the Arctic Archipelago, the ownership of which was in doubt but generally claimed by Britain and, for domestic Canadian purposes

assumed to be a British possession.

This whole area, plus other Hudson's Bay Company holdings in what is now Northern Quebec and Ontario, the prairie provinces and British Columbia was inhabited exclusively by Native peoples and Company personnel, with the exception of small white settlements in the Red River area, lower mainland British Columbia and Vancouver Island.

By the mid 1850's a movement was underway to terminate the Company's hold over the vast interior of British North America, both as a trading monopoly and as a government. In 1857 the British House of Commons appointed a Select Committee to consider the future of this area and the company's relationship to it (2).

The proposal to terminate the Company's governmental powers left the difficulty of finding a suitable alternative. The movement in Canada to unite the British colonies into Confederation presented an obvious solution. British Columbia could only be effectively linked to the eastern colonies of Canada (Ontario and Quebec), New Brunswick, Nova Scotia, P.E.I. and Newfoundland, if there was a physical connection. Further, unless concrete steps were taken to exercise dominion over the interior, the eastern colonies faced the strong possibility of American expansion into the area, thus foreclosing any possible transcontinental link. Accordingly, the Quebec Resolutions of 1864 included a resolution (3) which later was included in the British North American Act (4) as section 146, which reads as follows:

> "146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit these Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to

> admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland."

The interesting features of this section are first, that while other colonies would be admitted only if their own legislatures requested it no provision was made for obtaining the consent of the inhabitants of Rupert's Land and the North Western Territory; second, that the section speaks in terms of admitting the colonies or Rupert's Land and the North Western Territory to the union; and, third, all of the areas enumerated in the section were to be admitted on terms the Queen saw fit to approve, subject to the provisions of the B.N.A. Act. No indication was given that Rupert's Land and the North Western Territory were to have a position in Confederation any different from that of the other Colonies.

The next three years leading up to the actual admission of the area into Canada saw the development of a different perception of the North in Confederation. Whatever the factors leading to this approach, whether the realization of the non-existence of traditional European political institutions (save the Council of Assiniboia in the Red River area), the desire to enhance the power of the Dominion government or to recover the cost to Canada of the admission of the North, the pattern which evolved was substantially similar to that which had developed in the United States with regard to its mainland territories (5).

The territorial issue in the United States had arisen shortly after the War of Independence. Briefly, the result of the problems of how to administer the unsettled parts of the States was resolved when those states with large western holdings, principally Virginia and New York, ceded parts of their territory to the central government.

Further extensions of the Territory resulted from cession by international treaties made by the central government or by purchase: for example, as in the case of Louisiana. The acquisition of land in this manner led to three principle elements of U.S. territorial policy, expressed in the North West Ordinance of 1787.

The first of these was a clear policy of land control:

> "The Legislatures of those Districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress Assembled." (6)

The North West Ordinance also contained a commitment which was a necessary consequence of the principles upon which the Union had been formed; that as soon as a particular district attained the population set out in the Ordinance, it would become a State of the Union with a republican Constitution established by the people of the new State.

The third incident of U.S. territorial policy was that, at least initially, a territory would be administered by officials appointed by the central government. The ultimate objective remained the development of local political institutions leading to statehood as soon as possible.

These three incidents of U.S. territorial policy were continued in respect of the whole of the continental United States.

The events and legislative enactments of the period following Confederation showed Canada adopting two of these principles in relation to the N.W.T.: that is, federal ownership of the soil and an administration appointed by the central government, but no clear articulation of, or commitment to, equal status for the N.W.T.

The year after Confederation steps began to prepare the way for the admission into Canada of Rupert's Land and the N.W.T. The first was an Act of the Imperial Parliament, the Rupert's Land Act, 1868 (7), which empowered the Queen to accept a surrender from the Hudson's Bay

Company of their interests in Rupert's Land and the North Western Territory on the conditions that the terms of Union of the area with Canada be settled first, that the Order in Council admitting the area to Canada under Section 146 of the B.N.A. Act be issued within a month of the surrender and that no charge be payable by England as a result of the transaction.

England was prepared to co-operate, but it clearly did not want to assume any responsibility for the area or for extinguishing the Hudson's Bay Company claims. This may have given rise to the feeling that it was Canada that was acquiring the rights held by the Hudson's Bay Company, particularly since by the terms of the surrender Canada was required to pay 300,000 pounds to the Company. (8)

Nevertheless, it is clear from the terms of the surrender (9) and the Order in Council admitting the area to Canada (10) that the Company's governmental and proprietary rights were extinguished and that the N.W.T. became a part of Canada as a British possession with all governmental and proprietary rights (save those for lands granted to settlers and save whatever proprietary rights were enjoyed by native peoples) vested in the Imperial Crown.

Because according to the conventional thinking of the time, there would be no political institutions in existence in the N.W.T. when it became a part of Canada (11), a phenomenon which section 146 of the Act did not contemplate, provision was made in section 5 of the Rupert's Land Act, 1868, to fill this void. The method used was not the creation by Britain of a government for its colony, but in keeping with its studious disinterest in the area, a grant of power to the Parliament of Canada "to make, ordain, and establish within the land and territories so

admitted ... all such Laws, Institutions and Ordinances, and to constitute such Courts and Officers as may be necessary for the Peace, Order and good Government of Her Majesty's Subjects and others therein.'

In other words, the Dominion Parliament was given the responsibility of establishing institutions for the government of the area, as Britain would have done had she retained it. This Canada undertook to do in the first joint address of the Senate and House of Commons (12) when it represented that the welfare of the British subjects of European origin inhabiting the area "would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several Provinces of the Dominion" and expressed "that we are willing to assume the duties and obligations of Government and legislation as regards these Territories".

Pursuant to the power given them in the Rupert's Land Act, 1868, and in anticipation of the Order in Council admitting the area to Canada, Parliament took its first step in creating government institutions for the North-West by passing the Temporary Government of Rupert's Land Act, 1869 (13).

This Act was to stay in force for only a short time, until some better arrangements were made. It designated the area the North-West Territories and permitted the Governor in Council to appoint a Lieutenant-Governor for the N.W.T. and to give the Lieutenant-Governor such powers to legislate as the Governor saw fit. The Lieutenant-Governor was also to administer the government of the N.W.T. on instructions from the Cabinet, and to assist him in the administration, though not legislation, the Governor in Council could appoint an Advisory Council of seven to fifteen members. All laws then in force in the N.W.T. and all public officers, save the Chief Executive Officer were to continue as they were until changed.

Subsequent events in the Red River Valley forced a dramatic change in the federal government's plans. The Riel Rebellion of 1870 lead to the passage of the Manitoba Act (14). Since the most settled area of the N.W.T. was included in the new province of Manitoba, there was no immediate concern for the balance of the N.W.T. and the Temporary Government of Rupert's Land Act, 1869, was simply continued in force (15). The Lieutenant-Governor of Manitoba was appointed Lieutenant-Governor of the N.W.T. but he was not given any legislative powers until August of 1871 and the first Advisory Council was not appointed until December of 1872 (16).

Following passage of the Manitoba Act, doubts had arisen with regard to the powers of the federal government in relation to the north west. Questions about the nature of Confederation had persisted: whether the Provinces were subordinate to the Dominion; whether the Dominion was simply a delegate of the provinces, exercising powers which all of them had enjoyed on their own before. The passage of the Manitoba Act and the Temporary Government of Rupert's Land Act changed the complexion of the debate and the theoretical balance of power between the Dominion and the provinces (17). To resolve the problems and to clarify the meaning of the Rupert's Land Act, 1868, the Imperial Parliament passed the British North American Act, 1871 (18). This Act confirmed the ability of the Dominion Parliament to create new provinces out of the N.W.T. and to make provision for the "Administration, Peace, Order and good Government of the N.W.T." By expressly declaring the Temporary Government of Rupert's Land Act and the Manitoba Act to be valid, the B.N.A. Act, 1871, made it clear that the Dominion could create forms of government short of

provincial status and, indeed, provinces which were different from other provinces (19).

The substantial features of the form of government in the N.W.T. emerged between 1873 and 1875. Rather than examining piecemeal enactments the form can be seen in the first Northwest Territories Act, passed in 1875 (20). The Lieutenant-Governor would administer on the instructions of Ottawa. Ottawa would appoint a Council which would, with the Lieutenant-Governor, have legislative powers similar to those enjoyed by the Provinces, but restricted in that: (a) some powers were not given (for example, public works and undertakings); (b) the others were not to be exercised in a manner inconsistent with Federal enactments; and (c) ordinances could be disallowed within two years. A formula was established whereby the Council would gradually become fully elected as the population increased. Some major areas of concern were reserved to the federal government by the simple expedient of legislating on them, thus preventing the possibility of Territorial legislation in the same area: for example, the administration of justice, descent of real estate, wills, married women's property and prohibition.

One further development of this period deserves special attention. The Department of the Interior was created in 1873 (21) and the Minister of the Interior was given the control and management of the affairs of the N.W.T., Indian affairs and Indian lands. The existence of a separate federal bureaucracy to deal with these matters has continued in various forms to the present (22).

A detailed review of the evolution of the institutions of government in the N.W.T. from 1875-1905 would be helpful, but not essential to the purposes of this paper. Suffice to say that the Council did

become fully elected (in 1861), that its powers gradually increased, that Superior Courts were established for the N.W.T., that increasing control was given to the Council and its committees over financial affairs and its own proceedings and, finally, in 1897, that the Northwest Territories attained responsible government. From responsible government it was a short, logical step to the creation of Alberta and Saskatchewan in 1905, upon basically the same terms as Manitoba.

The process of evolution then began anew for the modern N.W.T. (24). Amendments to the N.W.T. Act in 1905 (25) replaced the Lieutenant-Governor with a Commissioner who, again, would administer the North on the instructions of the Minister of the Interior or the Governor in Council. The Legislative Assembly was replaced by an appointed council and its legislative powers were limited to being those listed in the North-west Territories Act which were designated by the Governor in Council. The Supreme Court of the N.W.T. was abolished and the old system of stipendiary magistrates was reintroduced. The capital was moved to Ottawa (26) and the Deputy Commissioner of the R.C.M.P. was appointed Commissioner.

Ottawa promptly forgot the North; so much so that it didn't get around to appointing a Council until 1921 (27). Apart from minor changes to the N.W.T. Act (28) no significant development took place until 1951. During that period there had been some increase in population and commercial activity in the North, but nothing to compare with the developments on the prairies in the last two decades of the 19th century (29) to stir the federal government to action.

In 1951 (30) provision was made for three elected members in an expanded Council of eight and the Commissioner was required to summon at least two sessions of Council a year, at least one of which was to be held

in the North. After 46 years the government of the North was beginning to move North.

A major revision to the N.W.T. Act was passed in 1952 (31). By the time it came into force in 1955 it was combined with the amendments of 1954 (32). By these two sets of amendments another elected member was added; the Council could authorize the Commissioner to make agreements with the federal government (subject to Ottawa's approval); control over some public lands was given to the Commissioner; major parts of the N.W.T. Act dealing with provincial-type matters were repealed so that they could be replaced with territorial ordinances; the Territorial Court was created and, perhaps of the greatest significance, a separate fund, the N.W.T. Revenue Account, was created in the Consolidated Revenue Fund and the Commissioner in Council was given the power to appropriate it, subject to control by the Minister and a prohibition against a deficit.

The power to appropriate money for Territorial purposes was expanded in 1955 (33) and the power to borrow money, subject to federal approval was given in 1958 (34). Amendments of 1960 declared that all ordinances of general application applied to Eskimos and confirmed the power of the Council to pass laws in relation to game affecting Indians and Eskimos (35).

About this time debate began over a division of the Territories, the theory being, for those who favored it, that the Mackenzie District could progress faster on the road to political and economic development if it were freed of the burden of the less developed eastern and high Arctic (36). In 1963 the federal government, at the request of the Council, introduced two bills into the House of Commons (37) which would divide the Territories and create a resident government for the Mackenzie

Territory in Fort Smith, and the Nunassiaq Territory with a more primitive form of government in the east.

As a result of the divergence of opinion which emerged from the Committee hearings into the two bills, they were allowed to die and the government responded to the request of the new Council, elected in 1964, to create an Advisory Commission on Development of Government in the N.W.T. composed of Jean Beetz, John Parker of Yellowknife and its chairman, A. W. R. Carrothers. The Carrothers Commission report (38) made a number of general and detailed recommendations for development over a ten year period, recommending as well that its work be reviewed at the end of those ten years.

While a lengthy discussion of these recommendations is not in order here, they may be briefly summarized as follows:

a) that the Territories should not be divided or re-organized into new or existing political units at the present time;

b) that the seat of government be moved to the North, and specifically to Yellowknife;

c) that development of political institutions continue along the basic pattern already established, with the Council, Commissioner, and Deputy Commissioner evolving into, respectively, a Legislature, Lieutenant-Governor and Premier;

d) that an Executive Council be created, to evolve into a Cabinet;

e) that administrative responsibility for the North be transferred to a new Territorial civil service operating in the North, while the federal government keepsits strictly federal responsibilities and control over resource management;

f) that political development be oriented to the traditional forms of political institutions existing in the provinces;

g) that the Council be given the trappings of a legislature and all provincial legislative powers other than the amendment of its constitution and resource management (with some restrictions on financial powers and the administration of justice).

h) that the federal government undertake a massive economic development program through the vehicles of a Territorial Department of Economic Development and Finance, a N.W.T. Development Board and a N.W.T. Development Corporation.

The general thrust of the recommendations of the Carrothers Commission has been accepted by the federal government (39) and many of the detailed recommendations of the Commission have been implemented.

While the Commission sat the Council was expanded to five appointed and seven elected members and for the first time the Territorial franchise was extended throughout the North so that all areas were represented by an elected member (40). The Council was given power to set the qualifications of electors and its own members and their indemnities (41). Amendments were made to the financial provisions of the N.W.T. Act to create a separate Consolidated Revenue Fund to be appropriated by Council subject to any specific purposes for which Parliament may designate funds in its grant to the Territories. Provision was also made for Territorial accounts to be laid before the Council annually (42).

Again, in 1970 the Council was expanded to four appointed and ten elected members (43), broader powers were given in relation to the administration of justice and the judicature sections in the N.W.T. Act

were repealed so that Council could, as it has done, replace them with its own ordinances. The time for disallowance of ordinances was reduced to one year in order to put the N.W.T. on the same footing as the provinces in this regard.

Finally, in 1974 (44) the Council underwent its most significant change to date. It was expanded to 15 members, all of whom are elected. The Commissioner no longer acts as chairman and the Council now elects its own Speaker. The Council sits for four years but may be dissolved by the Governor in Council after consultation with Council members.

Many non-legislative changes have been made in the governmental structure of the N.W.T. since the Carrothers report.

The most dramatic of these was the move of the Territorial seat of government to Yellowknife followed by the establishment of a Territorial civil service to assume responsibility for provincial-type services formerly provided by federal government departments. The N.W.T. civil service has grown from approximately 50 employees in 1956 with a budget of $9,646,400. and $4,746,383. for operations and capital expenditures respectively (45) to approximately 2,700 employees (with a further 400 positions authorized) (46) and initial operating and capital budgets for 1976-77 of $157,666,300. and $43,629,000.. respectively (47).

The Territorial civil service is now responsible for the administration of almost all provincial-type services except for the administration of natural resources, provision of health care services, agriculture and the prosecution of criminal offences. In addition, the Territorial civil service acts as the agent for the federal government

in providing some exclusively federal services and some services which would normally be provided by a provincial government but are the responsibility of the federal government in the North. The former include provision of services to Indians and Eskimos; the latter, such things as road maintenance and construction. (48)

Substantial amounts of land have been turned over to the Territories pursuant to Section 46 of the N.W.T. Act which provides that, while it will remain vested in Her Majesty in right of Canada, it is held by the Commissioner for the use and benefit of the Territories and is subject to the control of the Commissioner in Council. This, for the most part, is land in and around the settlements.

Internal changes have been made which affect the Council more directly. While there has not been the creation of an Executive Council in the manner recommended by the Carrothers report (49) there is now an Executive Committee composed of the Commissioner, his Deputy and Assistant and two members of Council chosen by the Minister on the recommendation of Council. Each of these two members is responsible for a department of the government, presently education and social development, and present administration bills in the Council. Though there has not been a clear articulation of their roles and responsibilities to the Council and the administration, this is a clear move towards the establishment of a form of responsible cabinet government.

The result of these developments is that the commitment to establish political institutions in the North analagous to those existing in the provinces has, in large part, been met. The North has its own courts, a representative legislature with most of the powers of a provincial legislature, a civil service to administer provincial-type

services and the beginnings of responsible government. The following chapter will examine the juridical nature of this government and show that not only the appearance, but the substance of local government exists in the North.

III. STATUS OF THE NORTHWEST TERRITORIES COUNCIL AS A LEGISLATIVE BODY

The question of the nature of the Council and government of the N.W.T. arises in many contexts and is implicit in much of the terminology used to describe the institutions themselves. The very words,"Council," "Commissioner"and "Territory"cause confusion. The word "colony", often used in connection with the N.W.T. and the Yukon, carries with it implications often not intended by the speaker or of which he is unaware and connotes a popular preconception of the nature of the N.W.T. Council.

Much of the confusion results from the attempt to compare the N.W.T. with a province without a sufficient awareness of the peculiar nature of the government of the N.W.T., resulting from its relationship with the federal government and the internal relationship between the Council and the administration.

Analogies to the Provinces or to types of federal agencies may be useful in discussing the government of the N.W.T. so long as the temptation to characterize the government of the N.W.T. as one or the other is avoided. The constitutional structure of the N.W.T. is unique (forgetting for the moment the Yukon Territory) and must be discussed in terms of its own unique features. It should not be said that because it may lack some of the features we have come to expect of a provincial government, for example, a responsible executive or a political party system, it is for that reason at the other end of some preconceived spectrum of governmental organizations.

Care must also be taken that the position of the federal government or a federal minister not be adopted as being necessarily correct in its perception of the N.W.T. government. Constitutions are not solely the creation of a bureaucracy, any more than they can be found entirely in legislative enactments, judicial pronouncements or political theories, practices and traditions. A constitution, including the constitution of the N.W.T., is a mixture of all of these, changing as each of its component elements changes to adapt to the political and economic realities of the times and to the values of the society which it seeks to serve.

This paper will concentrate on the function and status of one of the institutions of the government of the N.W.T.--the Territorial Council--and view it primarily from the legislative and judicial components of its makeup. Reference will be made to the Executive of the government of the N.W.T. and the relationship of the Council to the Executive and to the federal government as is necessary.

The Council is a true legislative body and exercises full and plenary powers within the limits of its jurisdiction. It does not act as a delegate, or branch or agency of the federal government or the Dominion Parliament.

An understanding of this status of the Council requires a brief discussion of some familiar, perhaps trite, theories which are basic to Canadian political traditions.

The first is that sovereignty lies in the person of the Monarch. Government is administered by the Queen through her Ministers and supreme legislative power is held by the Queen in the Imperial Parliament. At the same time we recognize that the Queen administers not only through her Ministers for the United Kingdom, but also through her Ministers for

Canada, Australia, Nova Scotia and so on. The Minister of Highways for Alberta is no less a minister of the Crown than the Minister of Labour for England, though their powers and the ambit of their authority may differ. Similarily, the Queen legislates not only with the advice and consent of the Imperial Parliament, but with the Parliament of Canada and the legislatures of the provinces.

The nature of legislative bodies created by Acts of the Imperial Parliament was discussed in R. v. Burah (1878) (51) in the context of whether or not the Governor General in Council of British India could delegate powers to the Lieutenant-Governor of Bengal. The High Court at Bengal had held that the Governor General in Council was, in the exercise of its legislative powers, acting under a delegation of those powers from the Imperial Parliament and, following the principle that a delegate may not sub-delegate, the Governor General in Council could not delegate any authority to a Lieutenant-Governor.

Lord Selbourne, speaking for the Judicial Committee of the Privy Council, commented as follows:

> "But their Lordships are of the opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature and indeed the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature as those of Parliament itself." (52)

This concept was clarified into a distinction between a delegation of legislative power, such as is enjoyed by, for example, a Minister of the Crown when he is given power to make regulations, and a grant of legislative power, as in Hodge v. The Queen (1853) (53) where the

Privy Council said that the Imperial Parliament had, in the B.N.A. Act, 1867

> "conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by Section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances ...[to delegate powers]" (54)

This case is of greater significance in that it applied the principles established in R. v. Burah to one of the provinces of Canada, thus confirming that the provincial legislatures were not in any way subordinate to the Dominion Parliament so long as they acted within the ambit of their powers.

The Privy Council commented again on these cases in Powell v. Apollo Candle Company Ltd. (1845) saying "these two cases put an end to the doctrine which appears at one time to have had some currency, that a colonial legislature is a delegate of the Imperial Parliament". (55)

The N.W.T. Council is not, of course, a direct creation of the Imperial Parliament. As indicated earlier, the responsibility for creating political institutions in the North was given to the Dominion government by the Rupert's Land Act, 1868, the Order in Council admitting Rupert's Land and the N.W.T. and the British North America Act, 1871. The powers given to the Dominion Parliament were not simply to make laws for the North, but to create institutions (56), even to the extent of creating new provinces and establishing their constitutions. (57)

The expressions of the Canadian courts with regard to the status of the N.W.T. Council have displayed a substantial degree of confusion and difference of opinion.

The first major discussion is found in the decision of Killam, C. J., speaking for the majority of the Manitoba Court of Appeal in The Rural Municipality of Cypress et al. v. C.P.R. (58). That case dealt with the problem of whether a school district created pursuant to an ordinance of the N.W.T. could impose a tax upon certain property of the C.P.R. which by the terms of an agreement between Canada and the C.P.R., ratified by Parliament, was exempted forever from "taxation by the Dominion or by any Provinces hereafter to be established or by any municipal corporation therein". (59)

Killam, C. J., looked first to what he perceived to be the constitutional position of the N.W.T. and then interpreted the contract in light of it, saying:

> "It does not seem to me that the Government of the N.W.T. could be properly described as a delegate or branch of the Dominion Government or taxation by its authority, within its then powers, as taxation by the Dominion."
>
> "Its position appears to be approximately described by the language of Lord Selbourne, with reference to India in The Queen v. Burah." (60)

Killam, C. J. predicted and warned against the approach which was ultimately taken by two members of the Supreme Court of Canada when he said:

> "The questions whether, by the contract and the ratifying Act, the authority of the Governor General to extend the legislative powers of the N.W. Council was restricted and whether the subsequent statutes and Orders-in-Council should be interpreted with the limitations accepted by the Dominion upon its powers of taxation, either by virtue of the restrictions against enactments inconsistent with Acts referring to the Territories or under the maximum - Generalia specialisus non derogant - should be kept entirely separate from the question of construction of the contract." (61)

Davies, J. speaking for himself and Sedgewick, J. in the Supreme Court of Canada did in fact confuse the issues and, in dealing with the

application of R. v. Burah said:

> "I am unable for myself to reach the conclusion that the principle with regard to legislation generally and specially with regard to India laid down in the Burah case have or can have any application to the special tentative and uncertain powers of legislation which were vested in the Lieutenant-Governor in Council or the Lieutenant-Governor by and with the advice and consent of the Legislative Assembly for the N.W.T. in 1881." (62)

Further in his judgement he said:

> "I am of the opinion that the powers of legislation of the Northwest Territories Council were delegated powers from the Dominion ..." (63)

These comments may be regarded as dicta. They were unnecessary to the judgement of Davies. J., who had primarily taken the approach of interpreting and applying an Act of Parliament which would in any case take precedence over Territorial legislation. Two other members of the court rested their decision on the grounds, no doubt correct, that taxation by a Territorial body was repugnant to a Dominion act and therefore expressly ultra vires the Territorial Council, while the Chief Justice simply held that the Manitoba Courts had had no jurisdiction to deal with the matter at all.

The Supreme Court has not since directed its attention specifically to the nature of the Council or its legislation, but comments made by members of the Court in three other cases indicate that the Court has had no clear understanding of the Council and its status.

In Re Grey (64) the Court was concerned with the extent of the powers of the Governor in Council under the War Measures Act, 1914. Duff, J., in what must be regarded as obiter, compares these powers with those of the N.W.T. Council as follows;

> "Our own Canadian constitutional history affords a striking instance of the 'delegation', so called, of legislative

> authority with which the devolution effected by the War Measures Act, 1914, may usefully be contrasted. The N.W.T. were, for many years, governed by a Council exercising powers of legislation almost equal in extent to those enjoyed by the provinces.
>
> "The statute by which this was authorized, by which the machinery of responsible government, and what in substance was parliamentary government, was set up and maintained in that part of Canadian territory, was passed by the Parliament of Canada and it was never doubted that this legislation was valid and essential and effectual for these purposes under authority conferred upon Parliament by the Imperial Act of 1871 "to make provision for the Administration, Peace, Order and good Government in any Territory not for the time being included in any Province."
>
> "That, of course, involved a degree of devolution far beyond anything attempted by the War Measures Act, 1914. In the former case, while the legal authority remained unimpaired in Parliament to legislate regarding the subject over which jurisdiction had been granted, it was not intended that it should continue to be, and in fact it never was, exercised in the ordinary course; and the powers were conferred upon an elected body over which Parliament was not intended to have, and never attempted to exercise, any sort of direct control. It was in a word strictly a grant (within limits) of local self-government." (65)

It is interesting to contrast the views of Davies, J. in the North Cypress case and Duff, J. in this case. The former clearly drew his perception of the Territorial Council from the political and economic realities existing in the North West in 1881, while the latter is obviously considering the situation as it existed immediately prior to the creation of Alberta and Saskatchewan. These differences should not make a difference in the legal position of the Council and its legislation, but they clearly have made a difference in the perception of these two judges.

A second case, while not referring specifically to the N.W.T., was the Attorney-General for Nova Scotia v. Attorney-General for Canada (66), dealing with the ability of the Dominion to delegate its legislative powers to a provincial legislature, where Rand, J., said:

> "The essential quality of legislation enacted by these bodies is that it is deemed to be law of the legislature of Canada as a self-governing political organization and not law of the Imperial Parliament. It was law within the Empire and is law within the Commonwealth; but it is not law as if enacted at Westminster, though its source of authority is derived from that Parliament."
>
> "The distinction between the statutes of such a legislature and a delegate arises from the difference between an endowment by a paramount legislature of an original, self-responsible and exclusive jurisdiction to enact laws, subject, it may be, to restrictions and limitations, and the entrustment of the exercise of legislative action to an agency of the entrusting authority. The latter is a present continuing authority to effect provisions of law which are attributed to the delegating authority. The difference between these conceptions is one of substance, the difference lying in the scope and nature of the powers conferred and retained." (67)

Thus far Rand is simply rephrasing the comments made in Burah and Hodge. He goes on to say, however,:

> "Notwithstanding the plenary nature of the jurisdiction enjoyed by them, it was conceded that neither Parliament nor Legislature can either transfer its Constitutional authority to the other or create a new legislative organ in relation to it similar to that between either of these bodies and the Imperial Parliament." (68)

These comments are easily distinguishable. The case dealt with the relationship between the Dominion and the provincial legislatures. The last point made by Rand was, as he said, conceded by counsel, and did not consider the unique position of the Territories or the Imperial Act which gave power to the Dominion to create institutions in the Territories.

The last case is R. v. Drybones (69) and a comment by Ritchie, J. in his reasons for the majority judgement. One issue in that case was whether the Indian Act could be said to give rise to an inequality before the law for Indians compared to others in regard to the offence of being intoxicated off a reserve when the comparable legislation affecting non-Indians was not federal legislation. Ritchie, J., sidesteps that problem by simply saying that in that particular case, involving a conflict between the Indian Act and a Northwest Territories ordinance, "The ordinance in question is a law of Canada within the meaning of Section 5(2) of the Bill of Rights (see N.W.T. Act, R.S.C. 1952, c. 195, S. 17)."

Two approaches may be taken to this comment. First, that it is to be restricted as meaning only that ordinances of the N.W.T. are subject to the Bill of Rights and that it does not mean that ordinances are merely regulations made under the authority of an Act of Parliament. Second, it may be argued that Ritchie, J.'s comments are dicta as they are unnecessary to his judgement in light of his subsequent reasons, particularily his rejection of the reasoning of the British Columbia Court of Appeal in R. v. Gonzales (71), a case which dealt with an almost identical fact situation arising in a province. In any event, the question does not seem to have been considered by the Court with any degree of thoroughness (72).

If the question of whether the N.W.T. Council is a mere delegate of the federal government or an autonomous legislature has never been directly dealt with by the Supreme Court, it has been discussed by the courts of the Yukon and the Northwest Territories. In R. v. Lynn Holdings Ltd. (73) a Yukon magistrate dismissed the argument that the

Yukon Council could not delegate legislative authority to a municipality. Relying on the Apollo Candle case he said that:

> "It would appear the primary purpose of the Yukon Act is to establish in the Yukon Territory a form of limited self-government, similar to the power and authority of the provinces."

And further:

> "In granting powers similar to those in the provinces, it is apparent Parliament intended the Yukon legislative body to have legislative power in certain limited designated fields." (74)

This reasoning was adopted by Morrow, J. A. speaking for the Yukon Territory Court of Appeal in R. v. Chamberlist (75). Morrow, J. A. discusses in that case the type of grant of powers to the Yukon Council in the terms used by Rand, J. in Attorny-General for Nova Scotia v. the Attorney-General for Canada. He does not make a clear choice, saying neither that the Yukon Act grants powers which the Dominion could not grant to a provincial legislature, nor that it is simply a delegation to a subordinate body. He does find that the Yukon Council is a body which may delegate legislative powers - in this case to a municipality. He does not explicity adopt the principle of R. v. Burah as applying to the Yukon Council, for to do so would require that he reject Rand's comments as inapplicable, but he appears to favour that position.

Some confusion can be seen arising in judgements which involve a consideration of the status and the function of the Commissioner. Particularly, in Royal Bank of Canada v. Scott and the Commissioner (76) Morrow, J. indicates that, "substituting a 'Commissioner' for the Lieutenant-Governor' seemed to indicate a change from 'colonial status' to one more akin to a mere department of the federal government. And this is the way it has continued to the present date."

That case simply decided that Territorial funds were funds of Her Majesty and Territorial employees were employees of Her Majesty and, accordingly, wages owing to them could not be garnisheed in the absence of legislation permitting it. That result would follow regardless of the constitutional status of the Commissioner or the Council and Morrow's remarks are clearly dicta. (77)

That the Commissioner is responsible to the Minister of Indian and Northern Affairs and to the federal cabinet does not affect the ability of the Council to legislate. The powers of a legislative body as such are not diminished by the fact that the executive is not responsible to it. (78) The Commissioner is, of course, subject to laws passed by the Council. (79)

That the N.W.T. government is not a mere department of the federal government is clear from the judgement of Thurlow, J. A. of the Federal Court of Appeal in Re City of Yellowknife and Public Service Alliance of Canada (80), where, after referring to the power of Council to legislate with regard to, among other things, municipal institutions in the Territories, property and civil rights and matters of a merely local or private nature, he rejects the argument that the city of Yellowknife is a "federal work, undertaking or business" within the meaning of the Canada Labour Code (81). He does not go so far as to say that Parliament could not legislate with regard to the labour relations of Territorial municipalities, only that they are beyond the normal meaning of a federal work, undertaking or business.

Perhaps the best approach to take in discussing the status of the Council is simply to look at the political realities of its position, as was done by the Privy Council, in R. v. Burah where, speaking of the

practice of legislative bodies delegating powers, it says:

> "The British Statute book abounds with examples of [delegation]; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred. It certainly used no words to exclude it. Many important instances of such legislation in India are mentioned in the opinions of the Chief Justice of Bengal and of the other two learned Judges who agreed with him in this case." (82)

This is an invitation to look more closely at the circumstances and the actions of the N.W.T. Council. A few of its characteristics, derived from the Act creating it and its own practices, suffice to demonstrate that it is a true legislative body, acting on its own, with its own authority and its own responsibilities separate from the federal government. For example:

a. The grant of powers to it in Section 13 of the N.W.T. Act (83) is remarkably similar to the enumeration of the powers of a province in Section 92 of the B.N.A. Act (84);

b. The Council is fully elected and chooses it own speaker;

c. Sessions of the Council are called by the Chief Executive Officer of the Territories (as they are in the provinces by the Lieutenant-Governor);

d. The members of Council hold office for a maximum term of four years, but the Council may be dissolved at any time and an election called;

e. The Council establishes the qualifications for its electors and members and fixes members indemnities;

f. Ordinances may be disallowed by the Governor in Council within one year after passage, as is the case with acts of provincial legislatures. They are not treated simply as federal regulations (85);

g. The form of enactment, that is, "The Commissioner of the N.W.T., by and with the advice and consent of the Council of the said Territories, enacts as follows:" is similar to that used by Parliament and provincial legislatures;

h. Revenue of the Territories may be spent by the executive if appropriated to the public service by the Council, but Council may not appropriate money or impose a tax without the recommendation of the Commissioner (86);

i. Proceedings of the Council are similar in form to those of other legislative bodies, following general parliamentary rules and acting, at times, through special or standing committees and the committee of the whole;

j. The Council has the power, which it has exercised, of creating other institutions of government, most notably, the Supreme Court of the N.W.T., the Court of Appeal and the Magistrates' Court;

k. The Council delegates administrative and legislative power to the Commissioner and a number of special agents or bodies established by its legislation to perform specific functions, such as the Registrar of Securities, the Liquor Licensing Board, the Workmen's Compensation Board, the Law Society, the Territorial Housing Corporation and many more.

While no clear statement of the nature of the N.W.T. Council emerges from the cases, these few examples of what Council may and does do and how it does it clearly demonstrate that it exists as the legislative branch of a government which is in no way a part of the government of Canada a government which has its own areas of responsibility and the powers necessary to meet those responsibilities.

It remains, then, to examine in greater detail the precise powers and responsibilities of the Territorial Council and the limitations on those powers.

IV. THE LEGISLATIVE POWERS OF THE N.W.T. COUNCIL

Any discussion of the powers of the N.W.T. Council to legislate must begin with the N.W.T. Act. For convenience two of the most important sections are reproduced in their entirety.

> "Section 13. The Commissioner in Council may, subject to this Act and any other Act of the Parliament of Canada, make ordinances for the government of the Territories in relation to the following classes of subjects, namely:
>
> (a) direct taxation within the Territories in order to raise a revenue for territorial, municipal or local purposes;
>
> (b) the establishment and tenure of territorial offices and the appointment and payment of territorial officers;

(c) municipal institutions in the Territories, including local administrative districts, school districts, local improvement districts and irrigation districts;

(d) controverted elections;

(e) the licensing of any business, trade, calling, industry, employment or occupation in order to raise a revenue for territorial, municipal or local purposes;

(f) the incorporation of companies with territorial objects, including tramways and street railway companies but excluding railway, steamship, air transport, canal, telegraph, telephone or irrigation companies;

(g) the solemnization of marriage in the Territories;

(h) property and civil rights in the Territories;

(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;

(j) the establishment, maintenance, and management of prisons, gaols or lock-ups designated as such by the Commissioner in Council under paragraph 44 (1) (b), the duties and conduct of persons employed therein or otherwise charged with custody of prisoners, and all matters pertaining to the maintenance, discipline or conduct of prisoners including their employment outside as well as within any such prison, gaol, or lock-up;

(o) the issuing of licenses or permits to scientists or explorers to enter the Territories or any part thereof and the prescription of the conditions under which such licenses or permits may be issued and used;

(p) the levying of a tax upon furs or any portions of fur bearing animals to be shipped or taken from the Territories to any place outside the Territories;

(q) the preservation of game in the Territories;

(r) education in the Territories, subject to the conditions that any ordinance respecting education shall always provide that a majority of the ratepayers of any district or portion of the Territories, or of any less portion or subdivision thereof, by whatever name it is known may establish such schools therein as they think fit, and make the necessary assessment and collection of rates therefore; and also the minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof;

(s) the closing up, varying, opening, establishing, building, management or control of any roads, streets, lanes or trails on public lands;

(t) intoxicants;

(u) the establishment, maintenance and management of hospitals in and for the Territories;

(v) agriculture;

(w) the expenditure of money for territorial purposes;

(x) generally, all matters of a merely local or private nature in the Territories;

(y) the imposition of fines, penalties, imprisonment or other punishments in respect of the violation of the provisions of any ordinance; and

(z) such other matters as are from time to time designated by the Governor-in-Council.

"14 (1). Nothing in Section 13 shall be construed to give the Commissioner in Council greater powers with respect to any class of subjects described therein as are given to the legislatures of the provinces of Canada under Sections 92 and 95 of the B.N.A. Act, 1867, with respect to similar subjects therein described."

"(2). Notwithstanding subsection (1) but subject to subsection (3), the Commissioner in Council may make ordinances for the government of the Territories in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Eskimos, and ordinances made by the Commissioner in Council

> in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Eskimos.
>
> "(3). Nothing in subsection (2) shall be construed as authorising the Commissioner in Council to make ordinances restricting or prohibiting Indians or Eskimos from hunting for food, on unoccupied Crown land, game other than game declared by the Governor in Council to be game in danger of becoming extinct."

It is impossible to discuss the meaning of each of the items enumerated in section 13 within the scope of this paper. Such a discussion would involve a comprehensive review of Canadian constitutional law.

Inherent within the nature of the Canadian constitution is the principle that the legislatures of the country are supreme and, since the passage of the Statute of Westminster (87), all legislative powers may be exercised by either the Dominion or provincial legislatures or the Dominion and the provinces working in cooperation with each other, except for some types of amendments to the constitution itself (88). Unlike the Parliament of Great Britian, however, no single legislature is supreme. The power to legislate is divided by classes of subject matter between the Dominion and the provinces and neither may legislate within an area reserved to the other. There may be areas in which both may legislate - for example, agriculture and immigration (89), or particular subjects which may fall within one of the broad subject areas assigned both to the provinces and the Dominion. In either of these cases, if there is a conflict between the Dominion and the provincial legislation, then the Dominion legislation will prevail (90).

With that fairly simplistic view in mind the easiest approach to take to a discussion of the legislative powers of the N.W.T. Council is to assume initially that whatever a province can do the Territories

can do, (91) and then look for restrictions on the legislative powers of the Council that do not exist for a province.

Whenever one of the legislative powers enumerated in section 13 of the N.W.T. Act corresponds with one of the classes of subjects listed as being reserved to the provinces in sections 92, 93 or 95 of the B.N.A. Act the scope of the power given by it to the Territorial Council is the same as that enjoyed by a provincial legislature, unless it is restricted by some other part of the N.W.T. Act or another federal Act. (92)

This approach may create a negative impression of the Council's powers as it tends to focus attention upon their limits, rather than their extent. A caution therefore, is in order. Regardless of the restrictions imposed upon the Council which are not faced by a provincial legislature the classes of subjects over which the Council may legislate are still almost as extensive as those of the provinces. A casual comparison of a recent table of public statutes for any of the provinces with that found in the 1975 Ordinances of the N.W.T. shows that the Council deals with most of the same concerns and problems faced by a province. Some issues, of course, have not arisen in the North to the same extent as in some provinces, such as town planning, police forces, securities exchanges and so on, but neither have they arisen in many of the provinces. Each of those examples could be dealt with the Territorial Council.

Restrictions may be found within the N.W.T. Act itself or, by reference, in other Acts of Parliament. It goes without saying that if Council and Parliament both legislate within their own powers on the same subject matter and the two pieces of legislation are in conflict, the Act of Parliament will prevail. In the case of the N.W.T. this rule

applies not only when the federal government legislates in what are normally considered to be areas of federal responsibility, but also when Parliament deals with a provincial-type matter in relation to the N.W.T., since the powers of the Council are, by section 13, subject to any Act of Parliament.

In theory, this could give rise to the greatest restrictions upon the Council's power, and in the past it has. Formerly, the federal Parliament has dealt with such diverse matters as wills, devolution of estates, married women's property, the establishment and maintenance of courts, use and possession of alcohol and other topics.

In practice, very few matters of substance are withheld from the Council in this manner at the present time, and many of those which are, are in the area of natural resource control, a subject which will be dealt with at greater length later. Many of the subjects dealt with by the federal government for the N.W.T. come properly within the scope of provincial-type powers which have not been given to the Council and, therefore, which must be dealt with by Parliament. These also will be dealt with later.

There are, then, these three main types of limits on the legislative powers of the Council:

a) federal legislation which applies to the N.W.T. in respect of a provincial-type power, both within the N.W.T. Act and other Acts of Parliament;

b) specific limits imposed on the Council's jurisdiction by the N.W.T. Act;

c) limits imposed upon the Council's powers by the absence from s.13 of the N.W.T. Act of a class of subject matter in respect of which

the Council may legislate, and corresponding federal Acts to fill the resulting legislative void.

These "limitations", so called, are expressed here in the negative sense but they are no more true limitations than the fact that the grant of legislative powers to the Parliament of Canada is a limitation on the legislative powers of a province. The scope of provincial powers is, in general, well known and therefore provides a convenient reference point for a discussion of the scope of Territorial powers. The N.W.T. Act and other Dominian Acts define the scope of the Council's legislative powers, and it is only with reference to provincial powers that they may be said to impose limitations on Territorial powers. The danger of describing the Council's powers in this way is similar to that of describing a cat by comparing it to a dog. Saying that a cat cannot bark tells us nothing of a cat's claws. The warning previously given is therefore repeated: the Council exists as a legislative body with a wide range of plenary powers. What follows is a discussion of the scope of those powers.

The N.W.T. Act at present deals with the following matters which would normally come within the scope of the powers given to the Council in section 13:

a) section 17 provides that, unless otherwise specified in an ordinance, offences against the ordinances may be dealt with in the same manner as summary offences in the Criminal Code. This is a standard provision which might normally be found in an Interpretation Ordinance;

b) section 47 of the N.W.T. Act deals generally with the control, management and protection of reindeer and gives certain powers in that regard to the Governor in Council;

c) section 48 deals with importation of intoxicants into the N.W.T.;

d) section 49 deals with arrangements for the accommodation of mental incompetents and their apprehension in the event of an escape;

e) section 51 deals with arrangements with the provinces for the care of neglected children;

f) section 52 deals with the protection, care and preservation of archeological sites.

These provisions do not mean that the Council is precluded generally from broad areas of concern such as mentally incompetent people and neglected children. So long as they act within their powers they are free to legislate in those areas as long as ordinances do not conflict with these provisions of the N.W.T. Act (93).

Most of the similar provisions of the N.W.T. Act which have existed in the past have been repealed, thus making way for replacements by Territorial ordinances. Most recently, part 2 of the Act dealing with judicature has been repealed and replaced by an ordinance (94). This indirect method of adding to the powers of Council also explains a number of the items in section 13 which would normally be included in such general powers as property and civil rights - for example, the items listed as (o), (p), (q) and (t).

Some areas of provincial-type responsibility are dealt with in other Acts of Parliament. In practice, Parliament has rarely dealt with matters directly affecting local responsibilities in the N.W.T. except in the N.W.T. Act itself. Five pieces of legislation do, however, deal with matters of concern to the North and restrict the powers of Council. The first of these is the Criminal Code (95), which, by section 2, defines "Attorney General" as meaning "with respect to the N.W.T. ... the Attorney General of Canada".

The Attorney General is one of the Ministers of the Crown and is responsible for, among other duties, the prosecution of criminal offences. The effect of this definition in the Code is to remove from the Council any voice in or control or management of that part of the civil service which undertakes criminal prosecutions. As a Minister of the Crown the Attorney General is, of course, responsible to Parliament for the conduct of his office. The Territorial executive is not responsible to the Council and the transfer of this function to the N.W.T. would remove the officer responsible for prosecutions by at least one step from direct accountability to elected representatives.

This does not, however, mean that none of the functions of an Attorney General come within the purview of the Council. The provision of services to the Courts, legal aid, the legal profession, preparation of legislation and enforcement of Territorial ordinances are all within the purview of the Council. In addition, the other traditional functions of an Attorney General of advising the government on legal matters, representing the government in the civil courts and advising the Council on legal matters are all performed by the Territorial government's legal officers and the Council's legal advisor.

The Canada Labour Code (96) appears to deal completely with labour relations matters in the N.W.T. - that is, certification of bargaining agents, unfair labour practices and union-management relations generally. Some areas of the labour code specifically do not apply to the N.W.T. (97) and these areas are dealt with by the Labour Standards Ordinance (98) and the Fair Practices Ordinances (99). The Federal Department of Labour and the Canada Labour Relations Board have, in the past, assumed that the labour relations sections of the Code apply universally in the Territories

(100) and have acted accordingly. The Federal Court of Appeal has rejected this position (101) saying that at least the municipality of Yellowknife does not come within the scope of the Act. There are clearly other employers in the N.W.T. who do not come within the meaning of a "federal work, undertaking or business", and, accordingly there is some scope for the N.W.T. Council to legislate with regard to labour relations if it chooses to do so.

The Land Titles Act (102) of Canada applies to the N.W.T. and the Registrar of Titles is an appointee of the federal government, even though he is, in fact, an employee of the Territorial public service.

The N.W.T. has its own Public Service Ordinance (103) but its employees are covered by the federal Public Service Superannuation Act (104). That the federal government has retained control of employee pensions is a result of the transfer of a large number of employees from federal government departments to the public service of the N.W.T. and the necessity for guaranttes of their vested and anticipated pension rights.

The last significant area of provincial-type responsibility retained by Ottawa through the mechanism of separate legislation is the establishment and maintenance on the Northern Canada Power Commission (105) to provide electricity in the Yukon and the N.W.T. Such public utilities are normally the responsibility of a provincial legislature, though some aspects of their operations in connection with inter-provincial power grids may come within the ambit of federal regulation (106).

The second class of restrictions upon Council's legislative powers are those which are specifically set out in the N.W.T. Act. The form is normally that a specific class of legislative subjects is designated as being within the Council's powers, subject to some specific limitations.

The guarantees entrenched in the constitution in respect of the rights of the Roman Catholic or Protestant minorities to establish their own schools vary to some extent from province to province, depending on whether they joined Confederation as one of the original provinces or were admitted to Canada or created by later orders in council or Acts of Parliament. Similar guarantees of religious education are set out in section 13 (1) of the Northwest Territories Act. While this constitutes a restriction on the powers of the Council to legislate in regard to education, a similar restriction is imposed upon each of the provincial legislatures.

Section 15 of the N.W.T. Act contains a limitation upon the power of the Territorial government to enter into agreements with the federal government, requiring that any such agreement be approved by the Governor in Council. The section appears to be unnecessary but it underlines the position taken by the federal government that it generally speaks for the Territories in discussions with other governments. This is most notably manifest in the absence of representatives of the N.W.T. government, at conferences of First Ministers, except as interested observers. Representatives of the N.W.T. government do attend other federal-provincial conferences as participants, for example, meetings of the ministers of health, the Conference of Uniformity Commissioners, conferences of securities. registrars or motor vehicles registrars and the like.

The federal government would likely question the right of the Council to authorize agreements with other provinces on matters of provincial concern, but the jurisdiction of the Council to do so does not appear to be restricted except by those parts of the N.W.T. Act

authorizing the Commissioner to enter into such an agreement for specific purposes. The Council has passed legislation providing for some reciprocal arrangements with the provinces (107).

The disallowance power in section 16 (2) is the same as for the provinces. There is no section of the N.W.T. Act similar to section 55 of the B.N.A. Act giving the Commissioner any discretion with regard to assent to ordinances or providing for a reservation of assent. The disallowance power may probably still be exercised but it is questionable whether the Commissioner could refuse to assent to an ordinance or whether the Minister could instruct him to do so (108). Section 4 of the N.W.T. Act requires that the Commissioner follow the Minister's instructions in his administrative capacity, but makes no reference to the legislative functions which he exercises in conjunction with the Council.

A substantial limitation of the powers of Council to appropriate money is imposed by section 22, which provides that any appropriation by Council is subject to any specific purpose designated by Parliament in respect of funds which Parliament appropriates for the public service of the N.W.T. In practice this does not create any more serious limitation than the requirement that all money bills be recommended by the Commissioner, so long as the Commissioner is responsible to the federal government rather than the Council. The Council's power is limited to a veto, as is that of a provincial legislature or Parliament. Other legislatures do, of course, exercise a greater measure of political control over the executive; the principle incident of responsible government which the Northwest Territories lacks.

The Council's borrowing powers are limited by requiring the approval of the Governor in Council, though the requirement for such an

approval in regard to lending and investing has now been removed (109).

The last category of limitations on the powers of the Council which are not imposed upon the provinces are those which arise as a result of omissions from the N.W.T. Act - that is, powers given to the provinces but not given to the Territories, and the federal legislation enacted to deal with those classes of subjects.

The Council may not amend the constitution of the Territories. Accordingly a number of internal matters are dealt with in the N.W.T. Act, such as the size of the Council, its duration, quorum, the position of the Auditor General and similar matters. The Council's powers have been expanded in connection with similar matters, such as electoral boundaries and member's indemnities (110), but the Council has only the powers it has been given to establish its own privileges and indemnities (111).

The Council is given the power to establish hospitals, but the wording of section 13 (u) is substantially different from section 92 (7) of the B.N.A. Act giving the provinces legislative power over:

> "The establishment, maintenance and management of hospitals, asylums, charities, and eleeosynary institutions in and for the Province, other than marine hospitals."

Whether the Council is, therefore, precluded from any specific types of legislation is questionable, but in any case the effect is not significant.

The other omission from section 13 of the N.W.T. Act are, for the most part, related to resource use and management. The Council is not given the power over "management and sale of the public lands belonging to the Province and the timber and wood thereon" given to the provinces by section 92 (5) of the B.N.A. Act.

Restrictions are placed on the types of companies which may be incorporated by the Council, so that railways, steamship, air transport, canal, telegraph, telephone or irrigation companies are excluded. These are all resource or transport and communication type companies. Such companies are, however, still subject to the general laws in force in the N.W.T. (112). There is no power given to the Council to legislate with regard to local works and undertakings. The scope of this power is uncertain as many public works are in fact, within the purview of the Council - for example, the new Territorial museum, hospitals, municipal buildings and so on. Many public works and undertakings may be dealt with within the scope of other legislative powers.

Generally the management of natural resources and public lands is given to the Minister of Indian and Northern Affairs by the Department of Indian Affairs and Northern Development Act (113), thus putting the N.W.T. in the same position with regard to resources as the prairie provinces prior to the Natural Resources Agreements Act of 1930 (114). Given that starting point, there are a number of specific resource and land use powers given to the Council. The preservation of game (section 13 (q)) is the most significant of these as game has been and still is of major importance to the economy and lifestyle of the Territories in general, and to smaller communities in particular.

By section 46 of the N.W.T. Act provision is made for the transfer of lands to the Commissioner to be managed for the use and benefit of the Territories under the control of the Council. Lands around settlements have been transferred and other lands (purchased by the Territories, acquired by taxsale, or roads) are automatically controlled by Council. Specific power is given with regard to roads by section 13 (s).

A brief comment is in order on the nature of the Council's jurisdiction with regard to Indians and Eskimos. By section 91 (24) of the B.N.A. Act, 1867 "Indians, and lands reserved for the Indians" are a peculiarly federal responsibility. Since Indians, including Inuit (115), are a majority in the N.W.T. the extent of the applicability of Territorial ordinances in relation to them is particularily important.

Section 88 of the Indian Act (116) provides that all laws of general application in force in a province apply to Indians subject to any treaties or subject to the extent that they are inconsistent with the Indian Act or any regulations made pursuant to it (117). By the Interpretation Act, 'province" includes the N.W.T. (118). Since the Indian Act does not apply to Inuit a similar provision is made in section 18 (2) of the N.W.T. Act:

> "All laws of general application in force in the Territories are, except where otherwise provided, applicable to and in respect of Eskimos in the Territories". (119)

Game legislation in the N.W.T. could and would conflict with treaty rights under treaties 8 and 11 (to the extent that these treaties are valid, (12)). As a result of questions about the ability of the Council to legislate with regard to game so as to affect Indians and Eskimos (121) the N.W.T. Act was amended in 1960 (122) to include what are now subsections (2) and (3) of section 14 which read as follows:

> "14.(2) Notwithstanding subsection (1) but subject to subsection (3), the Commissioner in Council may make ordinances for the Government of the Territories in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Eskimos, and ordinances made by the Commissioner in Council in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Eskimos"

> "(3) Nothing in subsection (2) shall be construed as authorizing the Commissioner in Council to make ordinances restricting or prohibiting Indians or Eskimos from hunting for food, on unoccupied Crown lands, game other than game declared by the Governor in Council to be game in danger of becoming extinct."

The effect of these provisions (123) is basically the same as that of the provisions of the Natural Resources Agreements on the prairies, extending local game laws to Indians in spite of the treaties, but preserving the Indians from interference with their right to hunt for food at all seasons on unoccupied Crown lands (124), subject, in the N.W.T., to the regulation of hunting endangered species.

There is no provision allowing the Council, or any province for that matter, to legislate with regard to Indian lands. Territorial laws would apply on Indian reserves so long as they did not deal with the use of the reserve itself or matters necessarily incidental to the reserve (125).

The Council cannot take action or make laws to extinguish any aboriginal rights of Indians or Inuit or affect any treaty right (except in relation to game). Any land claims settlement must be made with the federal government, as is the case in the provinces (126).

V. THE COUNCIL AND A NORTHERN GAS PIPELINE

The Council has legimate interests and concerns beyond the strict legal limits of its legislative powers. As the only body which is truly representative of all of the people of the N.W.T. it has often in the past expressed its concern over the operations of the federal government in the North and matters which are legally only within the legislative competence of Parliament.

It is wrong to say that the Council is or should be confined narrowly within the limits of its powers as defined in the N.W.T. Act.

If, for example, the Department of Transport closes an airstrip in a remote settlement the whole life of the community is affected and the Council quite properly expresses its concern.

The Council clearly is and should be involved in planning the political evolution of the Territories, even though only Parliament may amend the N.W.T. Act. A number of changes have been made to the Act at the urging of Council and the Carrothers Commission was established at its request.

When the federal government creates a national park in the N.W.T. the future of a large area will be permanently affected and the people of the North have an immediate interest. Parliament has in this specific area of land use seen the need to consult with the Council before the federal government takes a major step having long term implications for the North (127).

The Council has a general legitimate interest in the management and alienation of the natural resources of the North. This is the wealth of the North and the future of the people of the Territories depends on how that wealth is managed, developed and exploited now, whether it be through alienation to the native people of the North as a part of land claim settlement, or alienation to companies engaged in resource extraction and export.

Council is concerned not only because the people of the North have no other effective voice which can speak for all Territorial residents, and not only because it anticipates that at some point in the future the Council itself will have a direct responsibility for natural resource management which could be rendered illusory by full scale alienation now. The Council also has more immediate concerns. If a northern gas pipeline

is constructed it will have an overwhelming effect upon the economic, social and political fabric of the N.W.T. It will, no doubt, be of benefit to the people of the N.W.T. in some respects, but the blessings will be mixed.

Communities will expand, local governments will change, the taxbase will be altered, social problems will inevitably result or be accentuated. These problems will be created by the construction of a pipeline which the Council is powerless to stop. Yet most of these problems come precisely within the scope of the Council's responsibilities and powers.

The Council has, on numerous occasions, given its opinion on matters such as native land claims, pipeline development and political development. It now finds itself, however, faced with three imminent threats to its future development as a legislature and, indeed, its very existence as an effective representative body.

The first of these is the possibility of a type of land claims settlement for native peoples which will seek to guarantee future native economic and political participation in the North through the creation of a form of parallel quasi-governmental structure which will assume, for a part of the population only, the responsibilities and powers which the Council now seeks to obtain on behalf of all of the residents of the N.W.T. The result could be a fragmentation leading to a perpetuation of weak governmental institutions in the North and continued domination by the federal government.

The second threat is the long term alienation of what may be the North's richest natural resource, hydrocarbon fuels. Such an alienation is a natural consequence of the construction of pipelines to carry those resources to southern markets. Under the present state of affairs these resources may be sold by the federal government with no benefit to the North

and no say by the people of the North in the timing or price of the sale, the quantities sold or the methods of extraction and export. Once that source of revenue begins to flow into federal coffers it is unlikely that it could ever be channeled into those of the Territories and the continued control of natural resources by the federal government will thus be guaranteed for as long as the oil and gas continue to flow.

The third threat is the construction of a pipeline itself. The Council is on record as being in favour of such a pipeline, but at the same time has recognized that such a massive project within the jurisdiction of the federal government could, by its very size lead to a concomitant increase in the federal presence in the North and a parallel diminution of the place of the Government of the N.W.T. in the day to day affairs of the Territories. The potential scope of the jurisdiction and activities of any federal agency established to regulate the construction and operation of such a pipeline, particularly in the relatively populous Mackenzie Valley, could be a mechanism for continued federal control over matters which are now Territorial responsibilities.

These three major problems now facing the North are inextricably linked to each other and to the future of the N.W.T. Council. How these problems are approached and resolved will determine the political and governmental make-up in the Territories for the foreseeable future and will certainly determine when, if ever, the people of the North govern themselves in the same manner as other Canadians.

FOOTNOTES

1. Oliver, E. H. (ed.); The Canadian North-West: Its Early Development and Legislative Records (Canadian Archives, Ottawa, 1914), p. 135.

2. Debates of the House of Commons (U.K.), Feb. 5, 1857.

3. Pope, Joesph (ed.), Confederation Documents (Carswell Co. Ltd., Toronto, 1895),p. 40, resolution no. 10.

4. 30-31 Vict., c. 3 (U.K.), R.S.C. 1970, App. II, p. 191.

5. Bloom, John Porter (ed.), The American Territorial System (Ohio U. Press, Athens, Ohio, 1973).

6. ibid., flyleaf.

7. 31-32 Vict., c. 105 (U.K.); R.S.C. 1970, App. II, p. 239.

8. For comments on the theory that Canada purchased the N.W.T. see:
Thompson, A. R.; Ownership of Natural Resources in the Northwest Territories (1967), 4 Alta. Law Rev. 304;
Martin, Chester; The Natural Resources Question (King's Printer, Winnipeg, 1920).

9. The surrender was dated Nov. 19, 1869 and accepted by the Queen on June 22, 1870. It may be found attached as Schedule "C" to the Order in Council of June 23, 1870 admitting Rupert's Land and the North-Western Territory to Canada; R.S.C. 1970, App. II, p. 257.

10. ibid.

11. The conventional thinking of the day did not consider that there could be or were native political institutions or systems of government in the N.W.T. That these are now being recognized to some extent by historians, anthropologists and, foremost, the native people themselves does not affect the premises upon which this paper is based as there has not to date been any formal recognition of these systems and institutions as forming a part of the Canadian constitutional fabric.

12. Attached as Sched. "A" to the Order in Council, op.cit., fn. 9.

13. 32-33 Vict., c. 3 (Canada); R.S.C. 1970, App. II, p. 243.

14. 33 Vict., c. 3 (Canada); R.S.C. 1970, App. II, p. 247.

15. ibid., p. 36, to the end of the first session of Parliament after Jan. 1, 1871. The Act was re-enacted in 1871, 34 Vict., c. 16.

16. Thomas, L. H., The Struggle for Responsible Government in the Northwest Territories, 1870-1897 (U. of T. Press, Toronto, 1956).

17. McDonald, Patrick W., The Juridicial Nature of Canadian Federalism: The Status of a Province (U. of A., Edmonton, 1975) pp. 32-48.

18. 34-35 Vict., c. 28 (U.K.); R.S.C. 1970, App. II, p. 289.

19. Manitoba did not enjoy the same position as the original provinces as it did not receive control over its own ungranted Crown lands. Manitoba Act, op. cit., f.n. 14, s. 30.

20. 38 Vict., c. 49 (1875, Can.).

21. 36 Vict., c. 4 (Can.).

22. The Department of Indian Affairs & Northern Development Act, R.S.C. 1970, C.I-7.

23. See generally for this period, Lingaard, C. C., Territorial Development in Canada (U. of T. Press, 1946).
Thomas, L. H., op.cit., f.n. 16.
Oliver, E. H., op.cit. f.n. 1.

24. Boundary changes in 1912 reduced the 1905 area to its present size by additions to Ontario, Quebec, and Manitoba. The relevant statutes are, respectively, Stats. Can. 1912, c. 40; Stats. Can. 1912, c. 42; Stats. Can. 1912, C. 32.

25. 4-5 Edw. VII, c. 27.

26. By a proclamation of July 24, 1905, effective Sept. 1, 1905.

27. For this period see Zaslow, Morris, A Prelude to Self-Government: the Northwest Territories, 1905-1939 in, Underhill, Frank (ed.), The Canadian Northwest (Royal Society of Canada, Toronto, 1959).

28. (1907), 6-7 Edw. VII, c. 32; (1908) 7-8 Edw. VII, c. 49; (1923) 13-14 Geo. V, c. 21; (1925) 15-16 Geo. V, c. 48; (1927) 17 Geo. V, c. 64; (1940) 4 Geo. VI, c. 36; (1948) 11-12 Geo. VI, c.20.

29. Rae, J. K., The Political Economy of the Canadian North (U. of T. Press, 1968), ch. 2.

30. Stats. Can. 1951, c. 21.

31. Stats. Can. 1952, c. 46; R.S.C. 1952, c. 331.

32. Stats. Can. 1953-54, c. 8.

33. 3-4 Eliz. II, c. 21 (1955).

34. Stats. Can. 1957-58, c. 30.

35. Stats. Can. 1960, c. 70.

36. The Northwest Territories Today: A Reference Paper for the Advisory Commission on the Development of Government in the N.W.T. (1965), p. 82.

37. Bills C-83 and C-84.

38. Report of the Advisory Commission on the Development of Government in the N.W.T. (Ottawa, 1966).

39. Chretien, Jean, Statement on Development of Government in the N.W.T., 40th Sess., Council of the N.W.T., Yellowknife, Nov. 10, 1969.

40. Stats. Can. 1966-67, c. 22; Electoral Districts Ord., O.N.W.T., 1965 (2nd Sess.), c. 4.

41. Stats. Can. 1966-67, c. 22, SS. 2 & 3.

42. ibid., s.5.

43. Stats. Can. 1969-70, c. 69, s. 14; R.S.C. 1970, 1st Supp., c. 48.

44. Stats. Can. 1974, c. 5.

45. Advisory Commission Report, op.cit., f.n. 38, p. 49.

46. Debates of the N.W.T. Council, 8th Council, 58th Sess., Feb. 12, 1976, p. 844.

47. Appropriations Ord., 1976-77, O.N.W.T. 1976, 1st Sess., c.1.

48. For a general review of the division of administrative responsibilities see: Zarwiny, A. R., Paper on Provincial-Type Responsibilities Performed in the N.W.T., tabled document 1-46, 46th Sess., Territorial Council, Jan., 1972.

49. op. cit., f.n. 38, p. 162.

50. Report, op. cit., f.n. 38, p. 162.

51. (1878), 3 App. Cas. 889 (P.C.).

52. ibid., at p. 804.

53. (1883), 9 App. Cas. 117 (P.C.).

54. ibid., at p. 132.

55. (1885), 10 App. Cas. 282 at p. 290.

56. Rupert's Land Act, 1868, op. cit., f.n. 7, s. 5.

57. B.N.A. Act, 1871, op. cit., f.n. 18, s. 2.

58. (1903), 14 Man. L. R. 382.

59. An Act Respecting the Canadian Pacific Railway, (1881), 44 Vict., c. 1, Schedule s. 16.

60. op. cit., f.n. 58, at p. 409.

61. ibid., p. 407.

62. (1904), 35 S.C.R. 550 at p. 570.

63. ibid., at p. 573-74.

64. [1918] 3 W.W.R., 111; 57 S.C.R. 150.

65. ibid, W.W.R. at p. 123.

66. [1950] 4 D.L.R. 369; [1950] S.C.R. 31.

67. ibid., D.L.R. at p. 383.

68. ibid., at p. 383-4 (author's emphasis).

69. [1970] S.C.R. 282; (1970), 3 D.L.R. (3d) 473.

70. ibid., S.C.R. at p. 291 Section 5(2) of the Bill of Rights, R.S.C. 1970, APP. II, p. 457, reads as follows:
"5.2. The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, or any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada."

71. (1962), 32 D.L.R. (2d), 290; 132 C.C.C. 237; 37 C.R. 56.

72. Further, in this regard, see the reasons of Laskin, C. J. C. and Beetz, J., in A.-G. Can. v. Canard, [1975] 3 W.W.R. 1 showing a possible solution to this problem of conflict between federal and provincial enactments giving rise to an inequality based upon race.

73. (1969), 68 W.W.R. 64.

74. ibid., at p. 67.

75. (1970), 72 W.W.R. 746 at p. 753.

76. [1971] 4 W.W.R. 491 (T.C. N.W.T.) at p. 496.

77. It is interesting to note that since that decision the Council has passed legislation allowing the garnishee of wages of Territorial civil servants. R.O.N.W.T. 1974, C. P-14.

78. At the time it became a province, British Columbia had neither responsible government nor a fully elected legislature. See Order-in-Council admitting British Columbia into the Union, May 16, 1871; R.S.C. 1970, App. II, p. 279 at p. 285.

79. Simpson and Hodgson (1975), 63 D.L.R. (3d) 560.

80. (1975), 63 D.L.R. (3d) 753.

81. R.S.C. 1970, C. L-1.

82. op. cit., f.n. 51, at p. 906.

83. R.S.C. 1970, c. N-22, as amended by R.S.C. 1970, C. 48 (1st Supp); Stats. Can. 1972, c. 17; Stats. Can. 1974, c.5.

84. A more detailed examination of these powers is contained in the next section of this paper.

85. Statutory Instruments Act. Stats. Can. 1971-72-73, c. 38, s.2.

86. See B.N.A. Act, 1867, op. cit., f.n. 4, ss 54-90.

87. (1931), 22 Geo. V, c. 4 (U.K.) R.S.C. 1970, App. II, p. 401.

88. B.N.A. Act, op. cit., f.n. 4, ss 91(1) and 92(1).

89. B.N.A. Act, op. cit., f.n. 4, s. 95.

90. For example see Mann v. The Queen [1966] S.C.R. 238.

91. Not all provinces have the same legislative powers as some are bound by restrictions which do not apply to others. The prairie provinces did not have control over their own natural resources prior to 1930 and the B.N.A. Act, 1930, R.S.C. 1970, App. II, p. 365, which gave them that control contains limitations on some powers, for example, in regard to legislating upon the rights of Indians to hunt on unoccupied Crown lands. For most purposes, however, we may assume that all provinces are constitutionally equal.

92. R. v. Massey-Harris Co. (1905), 9 C.C.C. 25; 1 W.L.R. 45; 6 Terr. L. Rep. 126 (N.W.T.C.A.); S.14(1) of the N.W.T. Act provides that in no case shall one of the enumerated heads in s.13 be construed as giving a power greater than that given to a provincial legislature.

93. For example, see the Mental Health Ord. R.O.N.W.T. 1974, C. M-11; Child Welfare Ord. R.O.N.W.T. 1974, C. C-3; Liquor Ord. R.O.N.W.T. 1974, C. L-7.

94. R.S.C. 1970, (1st Supp.) c. 48, s. 22.
Judicature Ord. R.O.N.W.T. 1974, C. J-1, amended O.N.W.T. 1975 (3rd Sess.) c. 6, s. 1.

95. R.S.C. 1970, C. C-34, as amended.

96. op. cit., f.n. 81.

97. ibid., S. 15, 27 and 80.

98. R.O.N.W.T. 1974, c. L-1.

99. R.O.N.W.T. 1974, C. F-2.

100. Except to the public service of the N.W.T. See: Teacher's Association Ord. R.O.N.W.T. 1974, C. T-2; Northwest Territories Public Service Assn. Ord., R.O.N.W.T. 1974, C. N-2.

101. City of Yellowknife and Public Service Alliance of Canada, op. cit., f.n. 80.

102. R.S.C. 1970 C. L-2.

103. R.O.N.W.T. 1974, C. P-13.

104. R.S.C. 1970, C. P-36.

105. Northern Canada Power Commission Act, R.S.C. 1970, c. N-21.

106. McNarron, C. H., "Transportation, Communication and the Constitution; The Scope of Federal Jurisdictions" (1969), 47 Can. Bar. Rev. 355.

107. Maintenance Orders (Facilities for Enforcement) Ord., R.O.N.W.T. 1974, c. M-4.

108. See Generally with regard to disallowance and reservation, La Forest, Gerald, Disallowance and Reservation of Provincial Legislation (Ottawa, 1955, Department of Justice).

109. R.S.C. 1970, C. 48 (1st Supp.), s. 21.

110. The Yukon Council may now change its own size within the limits of 12 to 20 members. Stats. Can. 1974, c. 5, s. 2.

111. Chamberlist v. Collins (1962), 39 W.W.R. 65; 34 D.L.R. (2d) 414 (Y.T.C.A.).

112. The scope of the application of provincial laws to Federal companies has been discussed by the courts in a number of cases. For a recent discussion of these cases and how the principles applied in them apply to Indians see: The Natural Parents v. Superintendent of Child Welfare, (1975), 60 D.L.R. (3d) 148 (S.C.C.).

113. R.S.C. 1970, C. I-7.

114. For purposes of this paper, the retention of the ownership of Crown lands in the N.W.T. by the Dominion is assumed to be legal and no position is taken on whether the federal government holds these resources as a trustee for the Territories. The B.N.A. Act, 1930 recites that therewere doubts as to the legality of this position

and the federal government did agree to compensate the prairie provinces for their monetary loss as a result of the federal management, though a satisfactory accounting proved virtually impossible. See the reports of the three Royal Commissions established to determine the amounts, named the Royal Commission on the Natural Resources of Alberta (Dysart, Chairman); of Saskatchewan (Dysart, Chairman) and the Royal Commission on the Transfer of the Natural Resources of Manitoba (Turgeon, Chairman). The best statement of the argument for the provinces was by Chester Martin, op. cit, f.n. 8. The argument is not substantially impaired by the judgements of the Supreme Court of Canada and Privy Council in Re Transfer of Natural Resources to the Province of Saskatchewan [1931] S.C.R. 263, aff'd [1932] A.C. 28 holding that Saskatchewan could not require an accounting for federal management prior to the creation of the province.

115. Re Eskimos [1939] 2 D.L.R. 417 (S.C.C.).

116. R.S.C. 1970, C. I-6.

117. Whether this is merely declaratory or incorporates provincial legislation by reference is discussed in Natural Parents v. Superintendent of Child Welfare, op. cit., f.n. 112, and Cardinal v. Attorney-General Alberta (1973), 6 W.W.R. 205 (S.C.C.).

118. R.S.C. 1970, C. I-23, s.28.

119. The word, "Eskimos", is not legally defined. There is no "status" group of Eskimos as there is created by the Indian Act for Indians so all Innuit, regardless of racial purity, would come under this section. S.88 of the Indian Act only applies to "status" Indians, but as Parliament does not legislate with regard to non-status Indians or Metis, they would be subject to, at least, the laws of general application, whether they came within the definition of an "Indian", as that word is used in the B.N.A. Act, or not.

120. Their validity as contracts is in doubt. See. Re Paulette's Caveat Application (1973), 6 W.W.R. 97 (N.W.T.S.C.), reversed by 63 D.L.R. (3d) 1 (N.W.T.C.A.). The reversal did not affect the substance of the claim.

121. R. v. Kogogolak (1959), 31 C.R. 12; 28 W.W.R. 376 (N.W.T.T.C.).

122. Stats. Can. 1960, C. 20, s. 1.

123. Considered by the Supreme Court of Canada in R. v. Sigeareak EL-53 (1966), 56 W.W.R. 478.

124. Cardinal v. Attorney-General Alberta, op. cit., f.n. 117.
R. v. Frank (1976), 61 D.L.R. (3d) 327 (Alta. C.A.).
Myran et. al. v. R. [1976] 1 W.W.R. 196 (S.C.C.).

125. Cardinal v. Attorney-General Alberta, ibid.

126. Calder et. al. v. Attorney-General British Columbia (1973), 34 D.L.R. (3d) 145 (S.C.C.). Provincial participation is required for any transaction which involves creating a reserve or establishing conditions of land tenure within the province. In part of Quebec the settlement of Indian claims was left to the province by the Quebec Boundaries Extension Act, Stats. Can. 1912, c. 42.

127. An Act to amend the National Parks Act, Stats. Can. 1974, C. 11, S.11.

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British North America Act, 1867, 30-31, Vict., c.3; R.S.C. 1970 App. II, p. 191.

Rupert's Land Act, 1868, 31-32 Vict. C. 105; R.S.C. 1970, App. II, p. 239.

Order in Council admitting Rupert's Land and the North Western Territory into Canada, June 23, 1870, R.S.C. 1970, App. II, p. 257.

Order in Council admitting British Columbia into the Union, May 16, 1871; R.S.C. 1970, App. II, p. 279.

British North America Act, 1871, 34-35 Vict., c. 28; R.S.C. 1970, App. II, p. 289.

British North America Act, 1930, 20-21 Geo. V, C. 26; R.S.C. 1970, App. II, p. 365.

Statute of Westminster, 1931, 22 Geo. V, c. 4; R.S.C. 1970, App. II, p. 401.

Dominion

Canadian Bill of Rights, Stats. Can., 1960, c. 44; R.S.C. 1970, App. II, p. 457.

Criminal Code R.S.C. 1970, c. C-34.

An Act Respecting the Canadian Pacific Railway (1881), 44 Vict., c. 1.

Indian Act, R.S.C. 1970, c. I-6.

The Department of Indian Affairs and Northern Development Act, R.S.C. 1970, C. I-7.

An Act to Create the Department of the Interior, 1873, 36 Vict., C. 4.

Interpretation Act, R.S.C. 1970, C. I-23.

Canada Labour Code, R.S.C. 1970, C. L-1.

Land Titles Act, R.S.C. 1970, C. L-2.

The Manitoba Act, 1870, 33 Vict., C. 2; R.S.C. 1970, App. II, p. 247.

Manitoba Boundaries Extension Act, Stats. Can. 1912, C. 32.

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(1873) 36 Vict., C.34.
(1875) 38 Vict., C.49.
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MOTION 2-48 (January, 1973)

WHEREAS there are several proposals for construction of pipelines through the Mackenzie Valley;

AND WHEREAS there can be considerable economic and social benefit to all Mackenzie River and Western Arctic settlements, to the Territories as a whole and to Canada resulting from the construction of these pipelines;

AND WHEREAS the present state of northern technology illustrated by the construction of Mackenzie Valley settlements, the Canol Pipeline and road, the Dempster Highway, the CNT land line and the research done by the Mackenzie Valley Pipeline Research Group, the Northwest Study Group, the Gas Arctic Systems Group and various other governmental and private industry research consultants indicate that pipelines can be built through the Mackenzie Valley with tolerable environmental disturbance;

AND WHEREAS the federal government has established guidelines requiring environmental protection, pollution control, Canadian participation and the employment of northern residents on any pipeline or related project;

NOW THEREFORE, I move that the Council of the Northwest Territories formally recommend and support the construction of a pipeline or a systems corridor development through the Mackenzie Valley provided there is:

(a) optimum participation and involvement of the Government of the Northwest Territories and Territorial residents in the planning, route selection, financing and policies pertaining to the construction and operation of the pipelines;

(b) optimum employment of northerners during the planning, construction and operation of the pipelines;

(c) provision for just and equitable compensation of any person or persons adversely affected as a direct result of the pipeline construction; and

(d) adequate provision for the protection of the environment along the pipeline route with minimum disturbance to wildlife and persons living off the land.

MOTION 1-73 (January, 1973)

WHEREAS the Government of Canada's treaty obligations in the Northwest Territories remain unfulfilled;

AND WHEREAS native title or claim to traditional Innuit land and marine water has not been extinguished or infringed on either by treaty or other settlement;

AND WHEREAS there is a rising expectation among native people in the Northwest Territories regarding a claims settlement;

NOW THEREFORE, I move that the Commissioner convey to the Prime Minister this Council's desire to see an early and equitable settlement by the Government of Canada of the moral and legitimate claims of native residents of the Northwest Territories and indicate to the Prime Minister this Council's willingness to participate to this end.

MOTION 17-48 (January, 1973)

WHEREAS the Minister of DIAND has published guidelines regarding the construction of an oil and gas pipeline down the Mackenzie Valley and has asked this Council for its views respecting same;

AND WHEREAS the said guidelines deal with the three aspects: the corridor principle, protection of the environment and job employment of the native people;

AND WHEREAS it is this Council's view that participation by Northern people should not be restricted merely to a few jobs;

NOW THEREFORE, I move that Council request that the Commissioner indicate to his Minister, on behalf of this Council, that there should be a fourth area of emphasis, namely a meaningful political participation by the Territorial Government and this Council in the decision making process regarding all aspects of the proposed pipeline down the Mackenzie Valley and any line planned to extract natural gas from the Arctic Islands.

MOTION 3-58 (January 1976)

WHEREAS it would seem probable that a Mackenzie Valley Pipeline Authority is to be set up to oversee the regulation of the construction of the Mackenzie Valley Pipeline;

AND WHEREAS various powers of many Federal Government Departments and Territorial Government Departments might be delegated to such an Authority in order that the construction might proceed in an orderly manner and that the various environment and other constraints might be policed in a satisfactory fashion;

AND WHEREAS this Council is jealous of its Powers and is desirous that any delegation shall be done only if it sees that such delegation is of benefit to the people of the Northwest Territories;

AND WHEREAS this Council desires representation on any Authority to which its Powers are delegated;

NOW THEREFORE, I move that:

1. No delegation of powers or responsibilities be made to any Mackenzie Valley Pipeline Authority or like Authority except by way of an Ordinance duly passed by Commissioner in Council;

2. There be a Member of this Council appointed to the supreme governing body of any Mackenzie Valley Pipeline or like Authority and that such member be recommended by this Council; and

3. Any delegation of powers, as referred to above, should be:

a) for a period not exceeding four (4) years, and

b) in respect to an area of land not exceeding five (5) kilometers on either side of the center-line of the pipeline right of way.

MOTION 41-37 (June/July, 1968)

WHEREAS a motion, being Motion No. 13, was passed at the 35th Session asking that the Commissioner make representations on behalf of the Council to the appropriate Federal authorities to amend the Criminal Code and, if necessary, the Northwest Territories Act to name the Commissioner the Attorney-General in respect to the Northwest Territories, thereby bringing the enforcement of the Criminal Code, Territorial Ordinances and By-Laws and Legislative drafting for this Council under the jurisdiction of the Commissioner; and

WHEREAS the Honourable Territorial Justice W. G. Morrow, Royal Commissioner on the inquiry re: the administration of Justice in the Hay River Area, recommended (contrary to Motion No. 13, 35th Session) "That immediate consideration be given to the desirability of setting up a new office in the Department of Justice at Ottawa to be designated: Assistant Deputy Attorney-General of the Northwest Territories"; and

WHEREAS it is desirable to transfer basic provincial type functions to the Territorial Government to be administered from within the Northwest Territories; and

WHEREAS the function of Territorial Attorney-General is a basic provincial type service which should be transferred to the Territorial Government to be administered from within the Northwest Territories;

NOW THEREFORE I move that this Council confirm Motion No. 13 passed at the 35th Session of Council and express this Council's desire that any office of the Attorney-General be established, not at Ottawa as recommended by the Royal Commissioner, but within the Northwest Territories at the Capital.

MOTION 34-37 (June/July, 1968)

WHEREAS at this Session and at previous Sessions of the Northwest Territories Legislative Council, action requiring amendment to the Northwest Territories Act has been requested, and

WHEREAS some of these requests, such as the request for amendment in Members' indemnities and allowances are of immediate and pressing concern to Members of Council and to residents of the Territories, and

WHEREAS it appears that requests to implement the Carrothers Commission report, even if accepted, may either fail to cover specific pressing requirements or may fail to occur soon enough to provide the necessary immediate reply, now,

THEREFORE, I move that the Commissioner establish a Northwest Territories Amendment Committee of three people with the Commissioner as Chairman. It would be the duty of this Committee to examine into required changes in the Act and to make specific recommendations to the Minister of Indian Affairs and Northern Development regarding these changes. Specifically, the Committee would be charged with responsibility for examining into and making representations upon the following matters:

1) The question of an Executive Council for the Northwest Territories;

2) The question of a Legislative Assembly for the Northwest Territories including the problem of indemnity and allowances for the Members of the existing Legislative Council;

3) Any other matters regarding the Northwest Territories Act which in the opinion of the Committee require examination and change at this time.

FURTHER, that this Committee report to Council at its next Session.

MOTION 1-41 (January, 1970)

WHEREAS many of the recommendations of the Carrothers Commission have been implemented or are in process, one thing we think in the Council is most important and that is the recommendation in respect that the Executive Council should be included in the Governmental organization of the Northwest Territories;

AND WHEREAS in 1966 the Commission recommended and the Council supported the establishment of an Executive Council which would include elected Members of the Legislative body, that it be presided over by the Commissioner, and that each Member would be charged with the Administration of one or more Departments;

AND WHEREAS the Commission recommended that the Executive Council should be responsible for co-ordinating finance, preparing the budget, legislation, et cetera, that it would have a function and responsibility that would be comparable to that performed by a "Cabinet" in a Provincial Legislature;

AND WHEREAS without such a Council there is no means whereby an elected Member of the Northwest Territories Legislative body can participate or gain experience in the executive responsibilities of the Government;

AND WHEREAS it is not now possible for an elected representative's judgment and experience to be brought to bear or for him to participate in the day to day and week to week Government operations and decisions;

AND WHEREAS this type of advice and experience would be of the utmost assistance and benefit to the Commissioner in the Administration of the Government affairs;

AND WHEREAS we do not feel that the lack of this background of experience and knowledge should continue to be precluded from the Government and electorate as a whole;

AND WHEREAS the present procedure of requiring Territorial public servants to appear before Council in formal session or before the Committee of the Whole is undesirable and contrary to the principle of civil service anonymity; and further there is no other practical procedure under the presently constituted machinery of Government; nor is such a practice followed in any other legislative body in Canada; in this case the Ministers of the Crown are required to speak for their departmental responsibilities before their elected colleagues;

AND WHEREAS this practice is not conducive to the development of a strong and competent Territorial Public Service;

AND WHEREAS an Executive Council would cause this practice to cease and thereby put the Territorial Public Service in a comparable position to those of other provincial services and thereby enhance and strengthen it;

AND WHEREAS every citizen in the Northwest Territories has a right to participate in the institutions of responsible government at the provincial as well as the Federal level under the commitment of the Canadian constitution;

AND WHEREAS the Minister of Indian Affairs and Northern Development stated on November 10th, 1969, that he is planning to place draft legislation before Parliament to amend the Northwest Territories Act to include other recommendations of the Carrothers Commission to come into effect;

NOW THEREFORE, I move that we as a Council strongly urge that the Minister of Indian Affairs and Northern Development obtain inclusion in the draft

legislation to amend the Northwest Territories Act provision for an Executive Council composed in whole or in part of elected Members of the Northwest Territories Council and at the same time change the name of the said Council to the Northwest Territories Legislative Assembly;

AND FURTHER we request you, Mr. Commissioner, to convey the above request to the Minister with despatch.

MOTION 10-41 (January, 1970)

WHEREAS the Carrothers Commission recommended that the salaries of the Commissioner and Deputy Commissioner be paid out of funds voted by this Council;

WHEREAS the salaries of the Commissioner and Deputy Commissioner are still being paid by authority of the Governor in Council out of the Consolidated Revenue Fund of Canada;

WHEREAS the salaries of all other members of the Government of the Northwest Territories are being paid by the Territories and properly so;

WHEREAS the Commissioner is responsible to the Minister of Indian Affairs and Northern Development for the administration of the Government of the Northwest Territories but must account to this Council for his stewardship; and

WHEREAS it is consistent with their responsibilities as Commissioner and Deputy Commissioner that their salaries should properly be a charge against the N.W.T. Budget.

NOW THEREFORE, I move that the Minister of Indian Affairs and Northern Development be requested to take the action necessary to enable payment of the salaries and expenses of the Commissioner and Deputy Commissioner of the Northwest Territories out of the Northwest Territories Consolidated Revenue Fund.

MOTION 3-45 (June, 1971)

WHEREAS the Joint Parliamentary Committee of the House of Commons and Senate on the Constitution recently held public hearings in the Northwest Territories in both Yellowknife and Inuvik;

AND WHEREAS the Council should state its views on the Constitution and the relationship of the Northwest Territories to the Government of Canada and the other provinces in Canada;

NOW THEREFORE, I move that the Commissioner establish a subcommittee of three members of this Council with Mr. Searle as Chairman charged with the responsibility of obtaining the views of the members of this Council and that a position paper be drafted by this subcommittee to be approved by Council for furtherance to the Joint Parliamentary Committee on the Constitution.

MOTION 31-45 (June, 1971)

WHEREAS the Canadian Council of Resource Ministers, a special committee on Resources Development has been created with representatives from all provincial ministers and the Federal Government;

AND WHEREAS there is no representative from or of the N.W.T.;

NOW THEREFORE, I move that this Council petition the Minister of DIAND requesting that the Council of the N.W.T. be represented directly on this committee of resource ministers.

MOTION 34-45 (June, 1971)

WHEREAS during the conduct of business at this session, as was the case in previous sessions, there seems to be considerable confusion or misunderstanding as to the areas of responsibilities for provincial-type responsibilities between the Northwest Territories Council, the NWT Government and the Department of Indian Affairs and Northern Development;

NOW THEREFORE, I move that the Administration prepare and circulate to Members, and table at the next session of Council, a paper outlining the provincial-type responsibilities being performed in the Northwest Territories and identify the following:

(a) those responsibilities that are presently assumed by the Department of Indian Affairs and Northern Development;

(b) those being carried out by the Northwest Territories Council and the Government;

(c) those where the Administration acts on behalf of the Department of Indian Affairs and Northern Development, the Department of Health and Welfare and other Federal Government departments,

(i) for provincial-type responsibilities,

(ii) for federal responsibilities such as distribution of Indian treaty monies, etc.,

(d) those areas where there is an overlapping of responsibility.

MOTION 2-46 (January, 1972)

WHEREAS ownership of the surface and subsurface rights to land within the Northwest Territories is vested in Her Majesty the Queen in right of Canada;

NOW THEREFORE, I move that the Commissioner make representation on behalf of this Council to the appropriate federal authorities requesting that the federal government acknowledge its role as a trustee of natural resources for the future province of the North and establish guidelines for a proper accounting of that trusteeship when same comes to a close (when the province of the North comes into being) coupled at that time with a transfer of ownership of said natural resources to said "province" of the North.

MOTION 9-46 (January, 1972)

WHEREAS the Minister of Northern Affairs and National Resources appointed an Advisory Commission on the Development of Government in the Northwest Territories, in 1965, and that Commission which became known as the Carrothers Commission reported in September 1966;

AND WHEREAS a considerable number of the recommendations of the Carrothers Commission have been implemented, resulting in major changes in Territorial Government administration, and advances in form and responsibility of the Council;

AND WHEREAS the Carrothers Commission recommended a decennial review;

AND WHEREAS the sum of governmental, administrative, economic and sociological change has been very considerable since 1965;

AND WHEREAS there is urgent need for an overall assessment of the Territorial situation;

NOW THEREFORE, I move that we recommend that the Federal Government, and the Minister of Indian Affairs and Northern Development in particular, set up in the near future a commission with specific participation of N.W.T. residents to consider current and foreseeable political, administrative, economic, and sociological structures of Canada's north in the context of the Federal-Provincial-Territorial setting; and that a final report with recommendations be produced not later than 1974.

MOTION 16-46 (January, 1972)

WHEREAS in 1965 the Government of Canada appointed the Carrothers Commission to make recommendations on the action that should be taken to provide for the orderly development of Government in the Northwest Territories;

AND WHEREAS a number of the recommendations of the Carrothers Commission have been accepted and implemented by the Government of Canada through the Minister of the Department of Indian Affairs and Northern Development;

AND WHEREAS no action has been taken in the past year and a half to implement the remaining recommendations of the Carrothers Commission, many associated with the transfer of additional provincial-type responsibilities from the Department of Indian Affairs and Northern Development to the Government of the Northwest Territories;

AND WHEREAS during this period the Department of Indian Affairs and Northern Development has expanded their staff within the Northwest Territories, in order to administer provincial-type responsibilities that the Carrothers Commission had recommended to be transferred to the Government of the Northwest Territories;

AND WHEREAS this has resulted in two Governments, only one of which is directly influenced by the elected representatives of the people of the Northwest Territories, being involved in the administration of provincial-type responsibilities within the Northwest Territories;

AND WHEREAS this overlapping of responsibility for the administration of provincial-type responsibilities has resulted in areas of confusion and inefficiency that are not consistent with a high standard of Government

service to the public;

NOW THEREFORE, I move that:

(a) the Commissioner of the Northwest Territories prepare a program which will set out in detail the means by which the remaining provincial-type responsibilities not presently administered by the Government of the Northwest Territories, could be transferred most expeditiously to the administration of the Government of the Northwest Territories,

(b) that this program exempt from consideration the transfer of administration of sub-surface rights to land, but commence with the transfer of the administration of surface responsibilities such as forest management, roads etc.,

(c) that this program be tabled at the next session of the Territorial Council, after consideration of which the Council may present the program to the Minister of Indian Affairs and Northern Development for implementation.

MOTION 22-46 (January, 1972)

WHEREAS the Carrothers Commission recommended that the salaries of the Commissioner and Deputy Commissioner be paid out of funds voted by this Council;

AND WHEREAS the salaries of the Commissioner and Deputy Commissioner are still being paid by authority of the Governor in Council out of the Consolidated Revenue Fund of Canada;

AND WHEREAS the salaries of all other members of the Government of the Northwest Territories are being paid by the Territories;

AND WHEREAS while the Commissioner is responsible to the Minister of Indian Affairs and Northern Development for the administration of the Government of the Northwest Territories he must account to the Council of the Northwest Territories for his stewardship;

AND WHEREAS it is consistent with such responsibility and accountability of the Commissioner or Deputy Commissioner that their salaries should properly be a charge against the Consolidated Revenue Fund of the Northwest Territories;

NOW THEREFORE, I move that the Minister of Indian Affairs and Northern Development be requested to take the action necessary to enable payment of salaries and expenses of the Commissioner and Deputy Commissioner of the Northwest Territories out of the Northwest Territories Consolidated Revenue Fund.

MOTION 34-46 (January, 1972)

WHEREAS the evolution of the Northwest Territories is subject to many diverse and complex factors;

AND WHEREAS the Northwest Territories since Confederation has been drastically reduced in size as a political unit to permit the formation of the prairie provinces and the Yukon Territory;

AND WHEREAS a fundamental right of each and every political unit is the determination of its geographic boundaries;

AND WHEREAS Canada in its evolution has traditionally moved to recognize the grouping of geographically and demographically like regions when delineating the boundaries of the ten provinces and two territories;

NOW THEREFORE, I move that the Commissioner inform the Prime Minister who has permitted the Northwest Territories to attend at federal-provincial conferences as an interested observer and who, also, is trustee for both the natural resources of these Territories and the political aspiration of its people in their evolution toward a more autonomous status of,

(a) the interest of this Council in acquiring politically and administratively, the geographically and demographically like areas contiguous to the 60th parallel of the N.W.T., and that,

(b) henceforth, arrangements be made for the Northwest Territories to have representation at any provincial, federal or federal-provincial conference dealing with boundary questions of interest to the people of the N.W.T.

MOTION 5-47 (2)

WHEREAS this Council has continu d that there still remain
recommendations made by the Carr ission which have not yet been
implemented by the federal author
AND WHEREAS at the 46th session o ncil a motion was passed,
asking the Commissioner:

(a) to prepare a paper identif cial-type areas of respon-
sibility presently being perform the Territorial Government,
but by federal agencies, and

(b) to prepare a schedule coup e means necessary for the
Territorial Government to assume onsibilities;
AND WHEREAS Information Item 38-4 2, quotes a communication
from the Department of Indian Aff orthern Development advising
that any paper such as requested d first require the approval
of the Minister before becoming a cument; meaning before it
could be released to this Counci quested the paper;
AND WHEREAS the above Information 7 further indicates "that the
Minister has given direction tha ot envisage either now or in
the foreseeable future any furth ansfer of provincial-type
programs ...";
AND WHEREAS this Council shall re either that the papers it
requests from the territorial ad n must first have the
Minister's approval before being to this Council, or that no
further major transfers of provi programs should be made
either now or in the foreseeable

NOW THEREFORE, I move that this Council establish a Committee of Council, which Committee's term of reference shall be as follows:

(1) to identify and examine all areas of provincial-type responsibility,

(2) to separate the areas of provincial-type responsibility into two areas;

(a) those now being performed by the territorial administration, and

(b) those now being performed by a federal department or other federal agency,

(3) to recommend to Council what areas of provincial-type responsibility now being performed by a federal department or other federal agency should be transferred from that agency or department to the territorial administration,

(4) to recommend to Council what steps should be taken to achieve the objective set out in (3) above, and

(5) in the discharge of the foregoing to hold Public Hearings as well as sittings of the Committee throughout the Territories and elsewhere in Canada as the Committee deems advisable;

AND that the Clerk of the Council provide the necessary support staff, information and material as may be requested by the Committee to enable the Committee to perform its functions.

MOTION 11-48 (January, 1973)

WHEREAS the Northwest Territories have the fundamental right to a better status inside the Canadian Confederation;

AND WHEREAS during several sessions, need for an open and compre seminar on northern policy has been often underlined;

AND WHEREAS we have not been adequately provided with the chance participating in discussions pertinent to a better political futu

AND WHEREAS a dominant northern input is a must in such an activ

NOW THEREFORE, I move that the Seventh Council of the Northwest T tories take the initiative of sponsoring a public and a top-level conference on the political future of this part of Canada.

MOTION 13-73 (January, 1973)

WHEREAS the Interdepartmental Committee on Federal/Territorial Financial Relations is chaired by an Assistant Deputy Minister of DIAND, and sits in Ottawa to review our Territorial Estimates;

AND WHEREAS the said estimates involving the above mentioned review are then to be forwarded as part of the said Assistant Minister's budget;

AND WHEREAS DIAND is involving itself more and more in matters of provincial-type jurisdiction to the exclusion of the Territorial Government and this Council;

AND WHEREAS it is becoming more obvious that we can no longer rely upon an Assistant Deputy Minister to put our budget forward, particularly when his area for responsibility is competing for those same needs in provincial-type areas;

NOW THEREFORE, I move that the Commissioner, on behalf of the Council, recommend to his Minister that the Interdepartmental Committee on Federal/Territorial Financial Relations be chaired by either our Commissioner or Deputy Commissioner; that it sit in Yellowknife; that it not include officers of DIAND; and thereafter that the Commissioner, once the budget is set, present same directly to his Minister without departmental scrutiny.

MOTION 6-51 (January, 1974)

WHEREAS the Carrothers Commission Report was submitted to the then Minister on 30 August, 1966;

AND WHEREAS one of the recommendations of the Carrothers Commission (p. 208) was that the political, economic and social development of the N.W.T. be subject to public review not more than ten (10) years after 30 August, 1966;

NOW THEREFORE, I move that the Council ask the Minister to establish a Commission to re-examine the political, economic and social development of the N.W.T.

MOTION 2-59 (May, 1976)

WHEREAS it has been made known that the Government of Canada is considering the patriation of the Canadian constitution;

NOW THEREFORE, I move that:

I) this House believes the consent of the Provinces to be a necessary prerequisite to the patriation of the British North America Act and to any formula for its ammendment and;

II) the Legislature of the Northwest Territories should be represented at any conference called by the Government of Canada and to which the Provinces are invited to discuss the patriation of the Canadian constitution.