LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

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STATEMENT OF EVIDENCE OF

THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

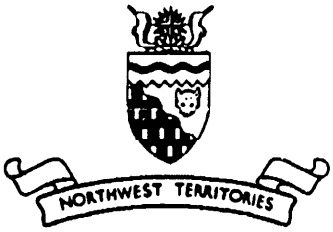
to the

National Energy Board

Yellowknife, N.W.T.

October, 1976

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



The social and economic consequences of a gas pipeline built through the Northwest Territories are matters of direct concern to the Legislative Assembly of the Northwest Territories. This Assembly is directly responsible to the people of the Northwest Territories for a broad range of social and economic matters which will be affected by such a project.

The scope of the Assembly's constitutional responsibilities has been explained in its recent submission to the Berger Commission wherein it is noted that the Assembly is a true legislative body with exclusive authority to legislate within those areas of responsibility given to it by statute. These are substantially those enjoyed by the provinces of Canada, although it is recognized that there are several exceptions, notably the reservation of responsibility for the management of its natural resources to the federal authority. It is also recognized that, at present, other legislatures have much more control over the executive branch than is the case in the Territories where full responsible government has not yet been attained. (See Appendix A of

the Assembly's submission, "The Northwest Territories Council: Political Status and Jurisdiction" by Anthony Jordan.)

These remaining constitutional limitations on its powers undoubtedly restrict the Assembly's ability to deal with many of the social and economic aspects of life in the Northwest Territories in which it has an interest, but the Assembly nevertheless does act, notably through the Executive Committee and in its debates on estimates, to influence the over-all policies and programs by which the government of the Northwest Territories attempts to deal with the serious social and economic problems which exist within this jurisdiction.

Apart from constitutional limitations, the other important factor restricting this Assembly's ability to manage the social and economic interests of the people it represents has been the extent to which the economic life of the Territories has been shaped by decisions taken by both private and governmental agencies in southern Canada without reference to the people of the north themselves. Throughout its history the Northwest Territories has been regarded by southern policy-makers as a blank sheet on which they might inscribe their own designs at will. It must now be recognized that there are institutions of government in the north which are not simply extensions of southern bodies, but which have

a direct political responsibility to the electorate of the Northwest Territories. (Motion No. 17-48 - Page 32)

The economic and social problems of the Northwest Territories are many and complex, but it has been generally established in the course of discussion in the Assembly over the past several sessions that the basic problem has been the inability of the Territorial economy to generate sufficient employment opportunities for the rapidly growing population of native northerners. Although some consideration has been given to ways of facilitating entry into southern job markets, the main thrust of the Assembly's efforts in this area has been in expanding local employment and business opportunities. (Motion 23-38 - Page 20)

The Assembly's over-all approach to economic development in the Northwest Territories has been a balanced one. (See the final report of the Standing Committee on Development and Ecology tabled during the 54th Session, p.2.) It has not advocated a "big push" in which all efforts have been bent to promote one leading sector of the economy at the expense of the others. It has favoured measures to preserve and expand the range of employment opportunities and business opportunities available in the Territories.

In the renewable resource field, the Assembly has supported measures to preserve and reinforce the trapping, fishing and hunting industries. These include support of regulations to maintain the resource base, proposals to improve marketing conditions, and measures to encourage the training and employment of individuals in these pursuits. (Motions 39-38 - Page 22 ; 1-43 - Page 25 ; 27-46 - Page 30 ; 1-50 - Page 35) In the non-renewable resource field, the Assembly has also attempted to promote development in a variety of ways while recognizing that there can be important conflicts between such development and the attainment of other social objectives. (Motions 24-37 - Page 18 ; 35-41 - Page 23)

The Assembly has frequently recognized the desirability of expanding wage employment opportunities in the secondary processing, manufacturing and construction industries and has proposed measures to increase the amount of local processing of materials which would otherwise be exported from the Territories in raw form. (Motion 51 -33 - Page 12)

A number of small manufacturing activities have been encouraged so as to provide both employment and local entrepreneurial opportunities. Programs have been advocated to counteract the tendency of many firms and government

agencies to use imported rather than local supplies of labour and materials. (Motions 42-36 - Page 17 ; 20-45 - Page 27 ; 14-46 - Page 28 ; 37-48 - Page 34 ; 27-58 - Page 39)

The Assembly's efforts to promote economic opportunity in the Territories have also extended into the services sector, where particular attention has been given to increasing employment opportunities for native northerners in government service. (Motions 22-38 - Page 19 ; 29-38 - Page 21 ; 5-44 - Page 26 ; 28-46 - Page 31 ; 28-48 - Page 33)

Although no detailed assessment of these measures aimed at stimulating employment and entrepreneurial opportunity in the Northwest Territories has yet been carried out, it is unlikely that they can be relied upon to stabilize the level of activity in these industries which are faced with major fluctuations in outside forces of demand. It is even less likely that they can bring about a growth in these industries sufficient to meet the needs of an expanding population for more employment opportunities in the future. At best they may be expected to ameliorate the situation in which we find ourselves.

The Assembly recognizes, therefore, the continued importance of the kind of major resource developments which have provided the foundation for economic development here in the past.

At the present time this Assembly is faced with a set of economic conditions which makes the need for a major stimulus to the territorial economy particularly acute. A large infusion of outside capital and the promotion of local activity of the kind expected to be associated with construction of a gas pipeline appears to be the only immediately foreseeable means of supplying the quantity of employment and entrepreneurial opportunities needed if the Territories are to continue on their hoped for course of economic, social and political development. (Motion 22-58 - Page 37)

Generally unfavourable metal prices and increasing mechanization are affecting job opportunities in mining. A narrow resource base and disadvantageous competitive positions are restricting the opportunities available in the renewable resource field, notably in the fisheries and forest industries. Some optimism is expressed with respect to fur, especially by those who hope to find in such a traditional activity an alternative to other types of employment less compatible, in their view, with a revival of native cultural patterns and life styles. The Council is sympathetic to this view and continues to advocate measures to strengthen the position of the trapper and hunter, recognizing in these activities an important option which must be kept open for those people in the Territories who would wish to choose it. But these industries alone show little promise in the present

circumstances of providing the kind of stimulus required if the Territories are to avoid either excessive dependence on welfare or emigration to other parts of Canada.

Nor is the present situation particularly encouraging in the secondary industry sector. What progress has been made in encouraging local manufacturing warrants further efforts in this area, but experience with "forced growth" of small-scale manufacturing in other jurisdictions shows how difficult it can be to establish commercially viable operations which can sustain themselves under adverse operating conditions (which for the most part are due to the high cost of transportation) without continued public subsidy. The Assembly has not taken the view that it should encourage uneconomic projects which have little if any potential for becoming self-supporting productive elements in the territorial economy.

Against this background it will be evident why the Assembly has supported the proposal to construct a major gas pipeline passing through the Northwest Territories. Part of the total assessment of the benefits and costs of such a project must include its potential contribution to the over-all economic and social development of the Northwest Territories. The latter should in turn take into account the costs which would be incurred if it becomes necessary to promote this development by other means.

The Assembly's general position on pipeline construction was stated in the following motion passed at the 48th Session of the Northwest Territories Legislative Assembly:

> WHEREAS there are several proposals for construction op 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 enviromental 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 2-48)

Optimum employment (Section (b) above) can only be assured by protecting such a work force of northeners through an umbrella-type organization such as "Hire North" (as applied e.g. at Fort Simpson) and "Work Arctic" (Hay River).

Our main purpose in the present submission is to reiterate the Assembly's concern that it be enabled to participate effectively in the evaluation and implementation of projects of such potential significance for the development of the Northwest Territories. If the full regional benefits of such a project are to be realized, its planning and execution must be carefully co-ordinated with the existing programs of social and economic development supported by this body. This Assembly is concerned that it may find itself simply responding, with inadequate information and time, to events set in motion by outside decision-makers, as it has in the past.

If this condition is not satisfied, such a project could in the short-run leave the Government of the Northwest Territories with responsibilities for providing additional welfare and

other social services but little additional opportunity to advance its economic and social development objectives. In the longer run this could have a detrimental effect on the economic, social and political development of the Northwest Territories.

Index of Motions

Motion 51-33 (October 1966)
Smelting in the Northwest Territories

MR. WILLIAMSON: I have a motion concerning economic development, Mr. Commissioner.

WHEREAS modern mineral extraction methods employ fewer men each year as mechanization improves;

AND WHEREAS the revenues from such sub-surface extraction industries do not redound directly to the financial benefit of the Northwest Territories;

AND WHEREAS there is a high degree of unemployment in the Northwest Territories and an exceptionally fast growing population;

AND WHEREAS such industrial processes as smelting absorb a significantly larger part of the work force and could build up the economy within the Territories to a significant degree;

NOW THEREFORE I move that the Commissioner inquire into means whereby smelting in the Northwest Territories can be made attractive to the mining industry and inform Council as to these means when his investigation is complete.

Motion 56-3~~4~~ (March 1967)
Development Loans for the N.W.T.

MR. PORRIT~~T~~.

WHEREAS the Government of Canada has established a program of loans to assist the industry educational and social development of the underprivileged countries of the world notably through the Colombo plan and aid to the Caribbean;

AND WHEREAS these loans of social and development capital are made on special terms including low interest rates and lengthy repayment conditions;

NOW THEREFORE, be it resolved that the Government of the Northwest Territories request the Federal Government to consider providing development loans on equally generous and favourable terms.

Motion 57-34 (March 1967)
Study of Business Assistance and Inclusion of the N.W.T. in ARDA and ADA

AIR MARSHAL CAMPBELL:

NOW THEREFORE, be it resolved that the Commissioner and Council of the Northwest Territories call on the Department of Indian Affairs and Northern Development to make a comparison between the forms of Business Assistance which are available to the Provinces in Southern Canada and available to the Northwest Territories.

Be it further resolved that the study contain in the comparison what is in existence in the Maritime Provinces and the Northwest Territories on (a) assistance to individuals and (b) general economic planning.

And it be finally resolved that the Council call on the Federal Government to extend such programs as ARDA and ADA to the Northwest Territories.

Motion 5-35 (November 1967)
Consultative Advice on Means of Developing
Secondary Industries in the Central Arctic

MR. WILKINSON:

WHEREAS the Central Arctic stands in great need of strong economic development;

AND WHEREAS highly competent, completely independent and knowledgeable private enterprise advise, following on-the-spot analysis of the situations last winter, demonstrated great confidence in material growth in a wide variety of enterprises in the Central Arctic, largely with private business funds and entirely in private business control;

THEREFORE I move that the Commissioner again seek non-government business consultative advice on the means of developing the following secondary industry activities in the Central Arctic;

(a) building prefabrication plant at Rankin Inlet;

(b) boat-building plant at Chesterfield Inlet;

(c) stove assembly plant at Eskimo Point;

(d) watch, clock and electronic assembly plant at Baker Lake;

and that this same business consultant advise Council of other private enterprise possibilities, and give advice on how to encourage all such private enterprise endeavours as appear to be feasible.

Motion 19-36 (February 1968)
Establishment of a Pilot Manpower Project at Hay River

MR. STEWART:

WHEREAS Hay River, N.W.T., has a labour force that is not being employed;

AND WHEREAS Hay River has a labour market that can provide employment for the larger part of the local labour force;

AND WHEREAS the Manpower Office of the Federal Government at Hay River has not been successful in melding the labour force to the labour market;

NOW THEREFORE I move that the Commissioner make funds available to establish a pilot manpower project at Hay River. Such a project would utilize the service of the local Metis or Indian organizer who would, through contact with both the labour force and the labour market, undertake to provide the required quantity of labour for given projects. Such a pilot project should provide sufficient funds for a vehicle to transport the force from home to job and return.

Motion 42-36 (February 1968)
Preference to be Given to Local
Materials, Labour, or Work

WHEREAS it is in the best interest of the N.W.T., to support local business;

AND WHEREAS it is in the best interests of the N.W.T. to support local labour;

NOW THEREFORE, I move that all territorial tenders for materials, labour or work contain the words, "local preference will be given", with a request to the Federal Government that they follow this policy. The following guideline to the Commissioner to be used at his discretion:

- local tenders up to 5 per cent higher than "outside" bids could be accepted,

- 80 per cent local labour and equipment to be used on works when available,

- six months residence or six months' continuous operation of business within the Territories required for qualification of "local" immediately preceding time of bid.

Motion 24-37 (June 1968)
Repeal of Subsection of Canada Mining
Regulations Discouraging Foreign Investment

MR. GIBSON:

WHEREAS the N.W.T. is in need of capital to properly develop its mineral resources;

AND WHEREAS section 45 (5) of the Canada Mining Regulations has the effect of discouraging investment from abroad in the Northwest Territories and its mineral resources;

NOW THEREFORE, I move that the Commissioner on behalf of this Council make a request of the relevant federal authorities to repeal subsection (5) of section 45 of the Canada Mining Regulations.

Motion 22-38 (January 1969)
Territorial Employment Program for
Native Northerners

DR. BARBER:

WHEREAS the Minister and Deputy Minister of I.A.N.D. are on record proposing that 75 per cent of Government jobs in the Northwest Territories should be held by Northern natives before the end of the next decade;

AND WHEREAS the philosophy inherent in this objective has been repeatedly advanced by this Council in a variety of ways;

AND WHEREAS if this objective is to be accomplished concrete steps must be instituted as soon as possible because of the many impediments inherent in the present situation;

NOW THEREFORE, I move that the Territorial Administration examine the feasibility of establishing an apprenticeship or training system for the maximum number of positions within the Territorial Public Service. The object would be to create a training position for many classifications in the service. The training position to be filled by a native northerner with a view toward raising the qualifications of the trainee to the level which would enable him to fill the regular position either in the existing location or in some other location.

Motion 23-38 (January 1969)
Gas Tax Amelioration for Resource Harvesters

DR. BARBER:

WHEREAS the rate of natural increase in the native population projects a doubling of this population in less than two decades;

AND WHEREAS development of employment opportunities does not seem capable of absorbing this rate of increase;

AND WHEREAS even if wage employment in the Northwest Territories could increase at a rate sufficient to provide opportunities to all northern peoples, there is no reason why these peoples should not have the right and the opportunity to participate in the activities of the entire Canadian society;

AND WHEREAS one of the serious impediments hampering movement of native Northerners to and from Southern Canada is lack of groups of people in Canadian cities with culture, language, aspirations and interest similar to those of native Northerners;

AND WHEREAS this lack prevents those who desire to compete in the South from doing so;

AND WHEREAS this lack increases the difficulty experienced by those who wish to go South to upgrade their education;

NOW THEREFORE, I move that an investigation be initiated to examine means of assisting native Northwest Territories residents to bridge the social gap when they move to southern Canadian locations for further education or employment.

Motion 29-38 (January 1969)
Feasibility Study Regarding Business Incentives
for Employers of Indigenous Labour

MR. PRYDE:

WHEREAS there is widespread unemployment amongst the native people of the Northwest Territories;

AND WHEREAS we are aware of the chronic problems faced in our efforts to increase the employment of these northerners;

AND WHEREAS we are frequently told by private employers that they cannot employ natives because it is uneconomical to do so;

AND WHEREAS an incentive system available to private businessmen who employ native people would partially overcome these diseconomics;

NOW THEREFORE, I move that the feasibility be examined of the Territorial Government and the Federal Government, in conjunction with each other, paying a proportion of the wages of each Eskimo, Indian and Metis employed by private business in the Northwest Territories and further, that a report on such a feasibility study be placed before the Council of the N.W.T. at the next Session.

Motion 39-38 (January 1969)
Gas Tax Amelioration for Resource Harvesters

MR. WILLIAMSON:

WHEREAS the Territorial tax on gasoline has been rising steadily each year to a maximum of 12 cents per gallon in 1969 and 1970;

AND WHEREAS this is a direct burden upon those Northwest Territories residents for whom the need is most urgent and whose financial resources are most often the least, i.e. the hunters, trappers and fishermen;

AND WHEREAS in the provincial South such as Saskatchewan, the Government has arranged for gasoline tax differentials which favour such resource harvesting people as farmers and such question may be useful to our Territorial Government;

NOW THEREFORE, I move that the Commissioner seek means to introduce into the Northwest Territories a system of gasoline tax which will ameliorate the burden of cost upon the most needful; the hunters, the trappers and the fishermen and that it produce a paper explaining all of the implications for the next Session, or having considered all of the implications he prepare appropriate amending legislation to be placed before Council at the next Session.

Motion 35-41 (January 1970)
Tax Concessions Requested

MR. SEARLE:

WHEREAS the White Paper on taxation recently produced by Mr. Benson, Minister of Finance for Canada, has far reaching effects on residents, businesses and industry in the N.W.T.;

AND WHEREAS regarding the individual, the area of largest personal tax increase proposed is in the $10,000 to $15,000 range;

AND WHEREAS there is considerable disparity in the purchasing power of the dollar of the Northwest Territories due to the higher costs of living in the Northwest Territories as compared to other parts of Canada, hence, the number of persons in the $10,000 to $15,000 tax range being affected is higher in relation to individuals in southern Canada;

AND WHEREAS the establishment of small business in the Northwest Territories at the best of times, is difficult because of the shortage of capital and the higher costs of business operation;

AND WHEREAS the White Paper proposes to increase the corporate tax on the first $35,000 of profit from 21.54 percent to 50 percent, thereby seriously affecting the profitability of small businesses;

AND WHEREAS the mining industry has heretofore enjoyed a three-year tax-free period for operating mines and gains from prospecting and grub-staking have not been taxable;

AND WHEREAS the said White Paper on taxation proposes to abolish the three-year tax-free period on operating mines and further to abolish the tax-free gains from prospecting and grub-staking;

NOW THEREFORE, I move that this Council, through an immediate communication by the Commissioner to the Honourable Mr. Benson, Minister of Finance, relate this Council's feelings to the said Minister, which are as follows:

(1) That, because of the unavoidable high cost inherent in maintaining residency in the Northwest Territories some personal tax relief be provided to residents of the Northwest Territories thereby recognizing the lower purchasing power of the earnings of the people living in the Northwest Territories.

(2) That, regarding the proposal to increase the Corporate Tax from 21.54 percent on the first $35,000 of profit to 50 percent, this increase be closely examined and consideration be given to not implementing same for corporations carrying on business north of the 60th parallel of latitude.

(3) That, the concessions to the mining industry, particularly the three-year tax-free period for operating mines and the tax-free gains arising from prospecting and grub-staking, be retained for mining companies and prospectors carrying on business in the Northwest Territories.

Motion 1-43 (July 1970)
Establish Trading Facilities in Bathurst Inlet

MR. PRYDE:

WHEREAS it is known that the Hudson's Bay Company intend to close down their trading post in Bathurst Inlet for personnel reasons;

AND WHEREAS the lack of a trading post in the Bathrust region will compel the entire Eskimo population there to move to another settlement, probably Cambridge Bay or Coppermine;

AND WHEREAS the present population of Bathurst Inlet do not wish to move to those settlements because of lack of employment and greatly diminished trapping and hunting opportunties there;

NOW THEREFORE, I move that the Commissioner take immediate steps to establish trading facilities in Bathurst Inlet this summer that would be operated by private enterprise or by a Co-op and recommend that the cost of such operation be subsidized by the Government of the Northwest Territories, if necessary.

Motion 5-44 (February 1971)
Lack of Employment of Local Labour

MR. PHIPPS:

WHEREAS there are several Federal Government Departments and Agencies operating in the Northwest Territories;

AND WHEREAS a number of these departments and agencies are not using local labour to the extent possible;

AND WHEREAS often what local labour that is employed by the departments and agencies is misused;

AND WHEREAS the departments and agencies hire labour in the South to do jobs that could be filled by local labour;

NOW THEREFORE, I move that a brief be prepared and submitted to the Advisory Committee on Northern Development detailing this lack of employment of local labour by these Federal Departments and Agencies and recommending steps by which the situation may be improved as quickly as possible.

Motion 20-45 (June 1971)
Amendment to Small Business Loan Program Regulations

MRS. PEDERSON:

WHEREAS the Northwest Territories Small Business Loan Program was established to assist the development of the small businesses in the Territories;

AND WHEREAS only ten applications have been made and loans granted since the beginning of this program;

AND WHEREAS the interest rate, the prescribed date of commencement of repayment and the maximum repayment period place these loans in the same category as those available from commercial sources and therefore they are of little help to the territorial residents;

NOW THEREFORE, I move that the Commissioner request the appropriate federal authorities to give consideration to amending the Northwest Territories Small Business Loan Program Regulations to provide for:

(a) a reduction of the interest rate to the same level which applies to loans granted under the Eskimo Loan Program, that is five percent; and

(b) the examination of each loan application on its own merits to establish a date for the commencement of repayment; which date would provide sufficient time from the date of issue of the loan to permit the project for which the loan was used to begin producing revenue; and that consideration also be given to appointing persons not only from Yellowknife but also from the other communities in the Territories to the Loan Fund Advisory Board.

Motion 14-46 (January 1972)
Preferential Acceptance of Tenders from Contractors
Based Within Northwest Territories

AIR MARSHAL CAMPBELL:

WHEREAS the Minister of IAND, the Department, the N.W.T. Council and the administration has had as an objective the development of industries within the Territories and thereby utilize available local materials and manpower;

AND WHEREAS encouragement has been given through many avenues, to develop the capability of the N.W.T. entrepreneurs, contractors and local industry to assume the responsibility, for contracts that have been and are being carried out by southern contractors, tradesmen and labourers;

AND WHEREAS to date the actions on the part of the DIAND and Territorial administration programs have not met with any significant degree of success;

AND WHEREAS it is accepted that territorial-located contractors are at a disadvantage in many ways as compared with contractors outside of the Territories;

AND WHEREAS some provincial governments give preference to varying degrees to local contractors and suppliers on government projects and programs;

AND WHEREAS such preference if extended by the territorial government should be able to increase the use of local materials and manpower;

AND WHEREAS it is the objective of this Council and the Commissioner to remove able-bodied men from the welfare payroll;

NOW THEREFORE, I move, Mr. Commissioner, that in respect of territorial government contracts for construction and for the supply of goods and services you negotiate or devise and introduce, by administrative

orders or regulations, procedures that will prefer the acceptance of any tender from territorial contractors whose tender is within ten per cent of any tenders offered by contractors from outside of the Territories and who, in the judgement of the administration, have the capability or the potential to perform such contract provided that;

(a) the ten per cent preference level may be raised where necessary to ensure that a satisfactory amount of work is awarded to territorial contractors,

(b) the territorial contractors entitled to preference be limited to those who reside in the territories and also have an active administrative head-quarters within the Territories provided further that such contracts let by the territorial government contain clear and unequivocal provisions requiring the preferred use of N.W.T. labour and materials.

Motion 27-46 (January 1972)
Level of Payment for N.W.T. Freshwater Fish

MR. SIBBESTON:

WHEREAS the Freshwater Fish Marketing Corporation on 15 November, 1971 announced a reduction in the price to be paid to Northwest Territories' fishermen this winter from 1¢ to 3 ¢ a pound from that paid in 1970-71;

AND WHEREAS this fishery operation comprises the sole livelihood of a large number of fishermen, some of whom are indigenous;

AND WHEREAS the announced price schedule for both whitefish and lake trout will reduce the return to the small fishermen below the level at which they can operate;

AND WHEREAS there is no alternate form of employment for such fishermen;

NOW THEREFORE, I move that this Council endorse the Great Slave Lake Fishermen's Federation brief and request the Commissioner to communicate immediately with the Honourable Jack Davis, Minister of the Environment, and with Mr. David F. Corney, President of the Freshwater Fish Marketing Corporation, and request that special consideration be given to making payment for Northwest Territories' fish resulting from this winter's fishery at a level not below that paid in 1970-71.

Motion 28-46 (January 1972)
Employment of Residents of Trapping
Communities as Land Use Inspectors

MR. TRIMBLE:

WHEREAS land use operations in some areas of the Northwest Territories have considerable effect on trapping areas of northern people;

AND WHEREAS residents of the trapping community of Sachs Harbour have been employed as land use inspectors to monitor the activities of land use operations on Banks Island;

AND WHEREAS trappers in the MacKenzie Delta region have recommended that local persons knowledgeable about the trapping industry be employed by the department of Northern Development as land use inspectors for that region;

NOW THEREFORE, I move that the Minister of the Department of Indian Affairs and Northern Development be requested to provide for the employment of residents of trapping communities as land use inspectors in these areas of significant trapping or hunting activity in the Northwest Territories in which land use operations are to be carried out.

Motion 17-48 (January 1973)
Guidelines for Construction of
Mackenzie Pipeline

MR. SEARLE:

WHEREAS the Minister of the Department of Indian Affairs and Northern Development 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 28-48 (January 1973)
Council Support of Hire North Concept

MR. BUTTERS:

WHEREAS the territorial program, Hire North, has epitomized in conception, co-operation between the territorial and federal governments and in the carrying out of the project's development approaches and objectives long advocated and advanced by the Council of the Northwest Territories;

AND WHEREAS the Hire North project, begun in August 1972, is, in effect, being penalized for the very success of its management and work force having fulfilled its fall and winter work schedules earlier than originally anticipated;

AND WHEREAS Members of this Council have examined the Hire North project on site and have found it to be well-managed, efficient, with a high degree of proficiency, pride and "esprit de corps" being developed among native northerners participating in the project:

NOW THEREFORE, I move that the Commissioner communicate to the:

(1) Prime Minister,

(2) Minister of Indian Affairs and Northern Development,

(3) Minister of the Environment,

this Council's full support and endorsement of the Hire North concept and take such steps as are required to provide reasonably continuous employment opportunities on the highly desirable Mackenzie road construction program through the Hire North project and comparable projects plus enjoying the associated on-the-job training and adult education benefits devolving from such projects.

Motion 37-48 (January 1973)
Preferential Treatment to Local Entrepreneurs

AIR MARSHAL CAMPBELL:

WHEREAS this Council requested that a policy be established whereby local entrepreneurs would be given preferential treatment on government tenders for contracts;

AND WHEREAS one suggestion was made where this might be achieved;

AND WHEREAS the department replied on June 16, 1972, that this was not practical;

AND WHEREAS the Minister of Supplies and Services announced in the House of Commons on June 12, 1972, that the Federal government had adopted a policy whereby the purchase of services and supplies would be handled on a regional basis throughout Canada to enable federal funds to be distributed more equitably;

AND WHEREAS the address of the Minister of Supplies and Services is consistent with and in line with the Council's proposal for the Northwest Territories;

NOW THEREFORE, I move that you, Mr. Commissioner, communicate with the Minister of Indian Affairs and Northern Development indicating your unhappiness with the reply and requesting that:

(a) the Council's proposal of last January be reconsidered, and

(b) that it appear on the agenda of our next meeting with the minister.

Motion 1-50 (October 1973)
Commissioner and Government Officers to Meet with Great Slave Lake Fishermen's Federation

MR. SIBBESTON:

WHEREAS the Great Slave Lake Fishermen's Federation have expressed great concern for the future of the fisheries industry on Great Slave Lake;

AND WHEREAS the fishermen feel the Freshwater Fish Marketing Corporation set up to help the fishermen and fishing industry has failed in its main purposes;

AND WHEREAS the fishermen feel that the problem will have to be resolved before they will continue fishing;

AND WHEREAS the fishermen feel it is imperative in resolving their problem that the Commissioner meet with them;

NOW THEREFORE, I move that the Commissioner of the Northwest Territories and officers of this government hold a meeting with the Great Slave Lake Fishermen's Federation as soon as this Council session is over.

Motion 3-58 (January 1976)
Mackenzie Valley Pipeline Authority

MR. NICKERSON:

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 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 environmental 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:

I. 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;

II. There be a Member of this Council appointed to the supreme governing body of any Mackenzie Valley pipeline of like authority and that such member be recommended by this Council; and

III. 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 centre line of the pipeline right of way.

Motion 22-58 (January 1976)
Continued Petroleum Exploration, N.W.T.

MR. BUTTERS:

WHEREAS the Government of Canada bears the overriding responsibility for the development of non-renewable resources in the Northwest Territories;

AND WHEREAS economic development generally in the Mackenzie River system communities is currently in a depressed state owing to the indecision and uncertainty related to future petroleum and development activity in the Canadian northwest;

AND WHEREAS the 7th Council of the Northwest Territories on February 2nd, 1973, approved the following motion, to the effect:

"Now therefore, I move that the Council of the Northwest Territories formally recommend and support the construction of a pipeline or a system corridor development through the Mackenzie Valley provided there is:

"(a) optimum participation and involvement 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."

AND WHEREAS such support was predicated on the conditions that the anticipated development and the associated capital construction programs be carried on with no or minimal disturbance to northern residents, their communities, lifestyle and environment and will optimize resulting benefits and advantages to all people resident in the Northwest Territories;

NOW THEREFORE, I move that this Council indicate its approval of continued petroleum exploration and development activity in the Mackenzie district of the Northwest Territories and reaffirm the 7th Council's support for and approval of the associated pipeline or pipeline systems required to market northern petroleum resources discovered and delineated as a result of such exploration. Such approval to be effective after December 1, 1976, to allow for native land claims to be heard.

Motion 27-58 (January 1976)
Preferences to Northern Businesses

MR. WAH-SHEE:

WHEREAS the present purchasing and contracting policies of the territorial government do not afford sufficient preferences to northern businesses;

AND WHEREAS government does not appear to intend to implement any of the recommendations contained in the report of the task force formed to study problems encountered by northern businessmen in obtaining federal contracts, or in fact to implement any other changes;

NOW THEREFORE, I move that this legislative assembly request the government to prepare and to table at the May, 1976, session of this legislative assembly, a paper setting forth:

1. The preferences presently given to northern business in territorial government purchasing and contracting;

2. An assessment of the pertinent recommendations contained in the said task force report, and of the recommendations the government has received from time to time; and

3. A statement of the government's future intentions in this matter. Thank you.

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 1881), 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 keeps its 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. (1345) 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, 1970 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. 39.

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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(1873), 36 Vict., C.5.
(1873) 36 Vict., C.34.
(1875) 38 Vict., C.49.
(1905) 4-5 Edw. VII, C. 27.
(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. 36.
(1927), 17 Geo. V, C. 64.
(1940), 4 Geo. VI, C. 36.
(1948), 11-12 Geo. VI, C. 20.
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Ontario Boundaries Extension Act, Stats. Can., 1912, C.40.

Public Service Superannuation Act, R.S.C. 1970, C. P-36.

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COUNCIL OF THE NORTHWEST TERRITORIES

STANDING COMMITTEE ON DEVELOPMENT AND ECOLOGY

THE FINAL REPORT OF THE STANDING COMMITTEE ON DEVELOPMENT AND ECOLOGY

CHAIRMAN -- TOM BUTTERS, WESTERN ARCTIC

MEMBERSHIP:

COUNCILLOR JOHN H. PARKER, YELLOWKNIFE
COUNCILLOR JAMES RABESCA, GREAT SLAVE NORTH
COUNCILLOR LYLE TRIMBLE, LOWER MACKENZIE
COUNCILLOR LOUIS EDMOND HAMELIN, QUEBEC CITY

Mr. Commissioner, on January 28, 1972, during the 46th Session of Territorial Council a motion was passed approving the terms of reference for the Standing Committee on Development and Ecology. As this Session will see both the demise of the 7th Council of the Northwest Territories and all Standing Committees of this House, I wish to present to Council a document I have entitled "The Final Report of the Standing Committee on Development and Ecology."

Since the Standing Committee on Development and Ecology was established, Dr. Hamelin before me, and I subsequently, have endeavoured to provide Council with an ongoing summary of the Committee's projects and activities.

Committee members have consistently taken a balanced approach to development in the Northwest Territories, recognizing the special ecological concerns relative to the northern environment and stressing that development occurring in the North must be of demonstrable benefit to northern residents.

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In previous reports of the Standing Committee you will recollect that our activities have ranged from support of the International Biological Program's proposal for the establishment, after consultation, of Ecological Sites in the Northwest Territories to an examination of the effects of the Pointed Mountain Gas Pipeline Project on Fort Liard residents. In all matters considered, I believe, we have reflected a strong territorial position predicated on the expectation that our evolution continues toward increased fiscal and political independence from the Federal Government; an evolution that will be especially affected by non-renewable resource development.

A development that could affect both present and future generations of the Northwest Territories is the Mackenzie Valley natural gas pipeline, should it be approved.

The 7th Council of the Northwest Territories has long been aware of the potential importance of this proposed development, especially in the Mackenzie District of the Northwest Territories, and as an expression of this concern, on February 2nd, 1973, adopted the following motion:

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 Study 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 of 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 to 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.

The pipeline proposal has received the attention of the Standing Committee on Development and Ecology in previous reports. My report to the 51st Session of Council included a recommendation that material be obtained through the medium of holding hearings along the Mackenzie River System which would enable the Council of the

Northwest Territories to participate in the Mackenzie Valley Pipeline Inquiry being carried out by the Honourable Mr. Justice T. R. Berger. Council by motion on Friday, February 8, 1974, approved the Committee's recommendation. However, since the Berger Inquiry hearings are scheduled for March 3rd, 1975, this Council's participation is excluded. Therefore, Mr. Commissioner, this final report of the Standing Committee on Development and Ecology incorporates many of the objectives and attitudes expressed by members of this Council over the past four years of its life and, hopefully, will be of assistance to Justice Berger in his Inquiry.

If the natural gas pipeline project is approved, the pipeline must be constructed so as to provide maximum benefit to residents of the Northwest Territories. Criteria for such benefits should be defined in people terms; in improvements in the quality of northern life, in increased opportunities for individual achievement and fulfilment, not just in statements of profit and loss.

Furthermore, because of the strong inter-relationship between northern peoples and the land, very high priority should be given to any ongoing program of scientific assessment and research that will ensure the protection of our northern environment and the wildlife resources therein.

Because of the strong demand by native northerners for a settlement of land claims, a just and early settlement must occur and, in fact, should be seen as part of the planned process of northern development which will guarantee the participation of northern native people.

Development planning to be most effective, must include and involve the people most directly affected. Government and industrial planners must recognize this reality and respond positively. The decision-making must occur as close as possible to the point of program delivery.

This report examines some of the specific benefits that could result from the construction and operation of a pipeline in the Northwest Territories. Such benefits might, in fact, be considered as conditions under which territorial residents could whole-heartedly endorse a pipeline proposal; conditions, Mr. Commissioner, which would accelerate our political evolution through diminishing our financial dependence on the federal government.

NORTHERN DEVELOPMENT

Few northern voices are raised to condemn development out of hand. No one seriously suggests that any appreciable

number of young people now thronging Northwest Territories' schools will pursue their livelihood in the manner of their forefathers.

Concerns more frequently heard relate to social, economic and environmental impact considerations and take the form of conditions which northern residents would wish to see imposed on planners of large scale projects such as a pipeline. Obviously, few, if any, residents of the Northwest Territories would approve or support an exploitative development activity which returns nothing to the Territories but social dislocation and temporary affluence.

The approach to development, I suggest, welcomed by the majority of northern peoples must be a balanced approach; an approach respecting both the environment and the associated wildlife and one which recognizes, encourages and satisfies the aspirations and needs of residents of the Northwest Territories.

DIRECT BENEFITS FROM PIPELINE DEVELOPMENT

I now turn to an examination of the anticipated benefits, both direct and indirect, that could result from the construction and operation of a natural gas pipeline. Such benefits fall generally into the categories which I identify thusly:

A. Taxation of the pipeline and facilities

B. Royalties on natural gas

C. Sale of leases

D. Pipeline surcharge

E. Economic rent

F. Low cost natural gas to communities

G. Assistance to northern business

H. Employment preference

I. Industrial growth

The main fiscal considerations dealt with in this Report relate to anticipated revenues associated with pipeline development that would accrue to the Government of the Northwest Territories, if we enjoyed full provincial status.

In terms of quantifiable increased fiscal autonomy for the Government of the Northwest Territories from the construction of the Mackenzie Valley Pipeline there are many areas to examine. The following analysis does not attempt to identify all revenue streams which will accrue to governments because of oil and gas activity in the Northwest Territories. Not enough is known about the precise nature and magnitude developments will take to be able to predict all revenue streams. For example, we do not know what multiplier effect industry expenditures on goods and services is likely to have on the Northwest Territories economy or how this effect will manifest itself in terms of government revenues.

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I will, however, list some directly applicable revenue streams and will attempt to quantify some of them, including taxes on the pipeline and facilities, and royalties on natural gas. First, we will examine the situation as it exists today and then relate it to the situation that would apply if we enjoyed full provincial status.

TAXATION OF THE PIPELINE AND FACILITIES

Territorial Government participation is identified by P.M. Manders, who while with the University of Toronto did an analysis for the federal government of governmental revenues which could result from a pipeline. He wrote, in part " .... *estimated total territorial revenues from a gas pipeline are roughly 1% of the estimated total federal revenues. This is explained in large part by the present limited taxing power of the northern territories*".[1] These revenues are primarily taxes on the property of the pipeline company and the producer.

Estimates of pipeline and right-of-way taxes can be derived from the Canadian Arctic Gas Pipeline Limited Application[2] and Commissioner's Order 181-74 of the Taxation Ordinance. With the assessment rate for a 48 inch pipeline at $56,232 per mile and $30,677 per mile for a 30 inch pipeline, the total assessment on the Northwest Territories' portion of the Mackenzie Valley Gas

Pipeline, based on 998 miles of 48 inch line and 15 miles of 30 inch line would be approximately $56.5 million. Under existing legislation, with a mill rate established at 25 mills, the pipeline and right-of-way tax payable to the Territorial Government commencing in 1980 (assuming a completed line) would be approximately $1.4 million per year. I should add that excepting for legislative or regulatory changes this is a constant tax with a built-in depreciation factor.

Pipeline facilities such as compressor stations, metering units, communication towers, together with warehouses, employee accommodations, vehicle shelters, etc., would be assessed at a percentage of their capital construction costs. Without any legislative or regulation changes, the 1980 assessment would be roughly 18.5%[3] of the escalated construction costs. Based on the phased introduction of the various facilities and utilizing a mill rate of 25 mills, the following property taxes would be payable to the Government of the Northwest Territories:

YEAR	APPROXIMATE TAX ON PIPELINE FACILITIES
1980	$2.5 million
1981	$4.6 million
1982	$6.0 million
1983	$7.5 million
1984	$7.2 million

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In the years following 1984 property taxes on the pipeline facilities will decrease by approximately $.3 million per year because of re-assessments, but will level off once the assessment decreases to 50% of the original assessment. Coupled with the constant tax from the pipeline and right-of-way we are looking at continued income during the projected 20 year life of the pipeline.

Mackenzie Delta producers, while not in a position to provide actual figures at this time, have indicated that unescalated costs for the plants and gathering systems may be in the area of $400 million. Applying an escalation factor of 1.4 to place the value in a comparative position to those of Canadian Arctic Gas Pipeline Limited, capital costs would reach $560 million. If assessed at 18.5% of this value and with a mill rate of 25 mills, property taxes on the completed facilities would be in the area of $2.5 million per year; all of which would be payable to the Government of the Northwest Territories.

Totalling the preceding figures for the pipeline, the pipeline facilities and plant and gathering systems, we see approximately $6.7 million in property taxes alone accruing to the Government of the Northwest Territories in 1980, assumed to be the first operational year, and over $11 million in 1984, the fourth year of operation.

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ROYALTIES ON NATURAL GAS

Under present federal oil and gas regulations for the Northwest Territories, the royalties which would accrue to the Federal Government are calculated at the rate of 5% of the well-head price for the first three years of production and 10% thereafter. Over the first ten year period, according to Manders, at a production rate of 2.25 billion cubic feet per day, these revenues, which would accrue to the Northwest Territories as owner of the resource, if we enjoyed full provincial status, would total over the first ten year period $248 million assuming a well-head price of $.32/mcf for the first 2 years, $.34/mcf for the next 5 years, and $.39/mcf for the final 3 years.[4]

It is interesting to consider the revenues that other jurisdictions having control over the disposition of their own natural gas resources would receive over a 10 year period for an equivalent volume of gas under the same price assumptions. For example, total royalties to the Government of Alberta, if the gas were being extracted from that province, would be $605.3 million[5]; if from British Columbia royalties would total $480.5 million[6]; or if extracted from Alaska, state revenue would amount to $576.5 million[7].

For the sake of clarification, let us assume a well-head price of $.50/mcf. The value of well-head production would then be $410,625,000 per year.

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However, based on current trends even this projection is conservative. Oil companies are now forecasting that the price to the consumer will be higher than first expected. Following Imperial Oil's calculation as developed in their September 1974 submission to the National Energy Board[8] a more realistic well-head price at competitive energy costs might be closer to $1.00/mcf. Assuming $1.00/mcf gives a product well-head value of $821,250,000 per year.

Should the projection be carried one step further as the oil industry has indicated as within reason, to a well-head price of $1.50/mcf, then the annual well-head value would be $1,231,875,000.

As suggested earlier, royalty revenue from Mackenzie Delta gas production could be significantly lower under existing rules and regulations than it would be if developed in other jurisdictions. The federal government is at present amending its oil and gas regulations and presumably will develop new royalty rates. Manders[9] estimates that they will be in the range of 12 1/2% to 15%. If the rates were 12 1/2% the ten year royalty figure derived above would increase to $360.3 million but still remain substantially below the Alberta figure of $605.3 million.

addendum

Mr. Commissioner, I am sure my colleagues are even now mentally comparing the foregoing revenue projections with the

ADDENDUM

However, as previously mentioned, should the well-head price be substantially higher than $.50/mcf then royalty revenues will increase accordingly.

WELL-HEAD PRICE	ROYALTY	FIRST YEAR REVENUE
$ .50/mcf	12 1/2%	$ 51,328,000
$ .50/mcf	15%	61,594,000
$1.00/mcf	12 1/2%	102,656,000
$1.00/mcf	15%	123,188,000
$1.50/mcf	12 1/2%	153,984,000
$1.50/mcf	15%	184,781,000

NOTE: All figures are based on a production rate of 2.25 billion cubic feet per day which is the estimated Delta portion of the 4.5 billion cubic feet per day which will move through the line.

1975/76 Budget items we have recently debated and approved, a budget totalling some $164,000,000. Deducting recoveries and other sources of territorial income from this figure leaves only some $124,000,000 in deficit financing required from federal sources.

The conclusion, inescapably, is that should the pipeline development proposal presently under consideration be approved, the resulting revenues would assure the Northwest Territories financial independence from Ottawa -- if we enjoyed full provincial status.

SALE OF LEASES

The federal government currently offers land in the Northwest Territories to companies wishing to carry on exploration programs for oil and gas through a lease arrangement.

Revenues realized by the federal government through the medium of land permits and leases for 1974-75 approached $5 million.

I should add that in Canada the terms of our system of disposition are purposely generous in order to encourage exploration. Although this is a laudable objective it is argued by some that the terms are too liberal and result in the granting of rights to oil companies which extend for unreasonably long periods of time, ranging up to 53 years in some cases.

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In the United States for example, a substantial amount of revenue is derived from the sale of leases at auction. Perhaps some system will be developed, whereby exploration could still be made attractive, but which would increase the revenue potential from land rights through a mechanism that would promote a turn-over of areas held under lease permit thus enabling government to regain control from time to time[10]. Such an arrangement might be seen as a potential alternative revenue stream for the future.

PIPELINE SURCHARGE

Another potential revenue source from petroleum development not currently under consideration is a tax or surcharge on the pipeline throughout. This tax in effect is passed on to consumers in the form of increased gas prices. Economists define such surcharges as a value added taxes and if implemented could result in a significant source of revenue for the owners of the non-renewable resource.

ECONOMIC RENT

Another potential source of revenue for the owner of a depleting non-renewable resource such as oil and gas involves the concept of economic rent.

Industry rightly deserves a reasonable rate of return for the capital investment required to develop a resource and the risk incurred in this effort. However, the resource itself is a gift of nature and as such belongs to the public. Since by definition non-renewable resources are finite, their value tends to increase as they are used up. As has been dramatically shown recently, the value of all petroleum resources has increased greatly due to relative scarcity.

To whom then should this additional value accure? Economists call this value, economic rent, and many feel it should accrue to the public benefit. This principle has been advanced for some time by economic theorists, but few governments have tried to devise a practical way of applying it to increase revenues.

INDIRECT BENEFITS FROM PIPELINE DEVELOPMENT

To provide optimum benefits to northerners from pipeline construction and operation, several possibilities other than direct dollar revenue exist.

LOW COST GAS TO COMMUNITIES

One of the negotiated benefits to residents of the Mackenzie District of the Northwest Territories or of the Keewatin

District in the case of the proposed Polar Gas Pipeline would be to supply low cost natural gas to Mackenzie Valley and Keewatin communities.

ASSISTANCE TO NORTHERN BUSINESS

Goods and Services

The operator, his agent or contractor should also be required to ensure that the local capacity to supply goods and services during construction and operation of the pipeline is utilized to the maximum extent possible. Where a constraint exists preventing local suppliers from participating in pipeline activity, the operator should consider ways and means of alleviating that constraint. For example, where the constraint is lack of finance for extending inventories, the developer or his contractor might prepay part or all of their order to an individual supplier. Where the constraint is lack of logistical planning in comparison to southern suppliers, the developer or his contractor could provide advice and technical assistance to northern suppliers.

Contracts

The operator should agree, where possible, to contract

the goods and services, necessary in construction and operation of the pipeline, rather than generate them internally and wherever possible break these contracts up into small units which could be more easily managed by northern contractors and suppliers[11].

Technical and Managerial Assistance

The operator should, working with government, undertake to identify opportunities for northerners wishing to become involved in pipeline-related enterprises, and in conjunction with all levels of government encourage the establishment of these enterprises through the provision of technical and managerial assistance and/or minority equity financing, or through guaranteed contracts (competitively determined) for a given period of time.

Some opportunities[12] recently identified in the Territorial Governments report entitled, Entrepreneurial Opportunities Study which should be investigated include:

(i) Establishing a prefabricated housing vacility for the production of construction camps;

(ii) Contracting for operations and maintenance related services;

(iii) Construction and supply of pre-cast concrete river weights;

At the same time the Federal and Territorial Governments should greatly increase the amount and availability of concessional development financing for residents of the Northwest Territories. Native people should be fully informed of the extent of such assistance available to them and an all-out effort made to supply them with the managerial skills needed to utilize opportunities resulting from development activity. With such considerations operating in conjunction with the early settlement of native land claims, we believe the northern development will take on a new and challenging meaning.

EMPLOYMENT PREFERENCE

Mr. Commissioner, with respect to the employment opportunities that will accompany the construction and operation of the Mackenzie Valley Gas Pipeline, we believe that the operator should give residents of the Northwest Territories every opportunity

for employment and right of first refusal of employment before labour is sought outside. You will recall the recommendations regarding employment opportunities contained in the Report of the Board of Inquiry into Labour Standards and Labour Regulations in the Northwest Territories, tabled during the 49th Session of Council and discussed at some length by members of that House on that occasion.

The report was prepared under the Chairmanship of Dr. K.A. Pugh who, along with Mr. Reg Clarke and Mr. Roy Jamha appeared before this Council, at the request of Council members.

INDUSTRIAL GROWTH

Many northerners, whether they live in the Territories or in the northern reaches of the provinces, resent and resist any definition of development that suggests the irresponsible exploitation of the North's non-renewable resources by their fellow Canadians to the South.

Northerners, I suggest, would well understand and appreciate the intention of the Alberta government to use a portion of the revenues derived from primary industry, particularly the exploitation of non-renewable resources such as petroleum and natural gas, to ensourage the growth of a healthy, self-perpetuating

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economy based on thriving secondary and tertiary industries.

Residents of the Northwest Territories should be similarly concerned and give conceptual consideration to the feasibility of developing an industrial base for the Northwest Territories in the southern portion of the Mackenzie District.

This suggestion recognizes the reality of Canada's 21st Century and the fact that we are a Pacific power and as well enjoy a long-standing position in the Atlantic family of nations.

While transportation and communication links between the Mackenzie District and the South are for the most part with Edmonton, we must not lose sight of the fact that the Pacific Coast as the crow flies is only some 700 miles distant. This Council has constantly urged that improved transportation and communication links must be developed between the Yukon, northern British Columbia, and by extension, the Pacific Basin.

Progmatically speaking, we recognize that Canada's increasingly urgent need for fossil fuels could preclude the setting up of a petro-chemical processing centre in the Northwest Territories. However, I suggest and recommend that this possibility should not be overlooked if approval is given to build a pipeline system that will carry fossil fuel to southern Canada through the Mackenzie River Valley.

Mr. Commissioner, this concludes the final report of the Standing Committee on Development and Ecology. On behalf of the members of this committee, John Parker, Jim Rabesca, Louis Hamelin and Lyle Trimble, and myself, may I say that we are pleased to have served as members of this Council's first Standing Committee on Development and Ecology. On behalf of Committee members and myself, I wish to express our thanks and appreciation to our very able Secretary Larry Elkin and his Research Officer, Bill Carpenter, who provided us with much valuable assistance and information.

During the past few minutes your generous patience and attention have permitted me to outline for you some of the benefits, both real and potential, that could accrue to the Government of the Northwest Territories <u>if we enjoyed full provincial status</u>.

IN SUMMARY, THEN, ANY PIPELINES CONSTRUCTED IN THE NORTHWEST TERRITORIES MUST DEVELOP BENEFITS DEFINED IN TERMS OF NORTHERN PEOPLES AND THEIR ENVIRONMENT, IN THE ENHANCEMENT OF THE QUALITY OF NORTHERN LIFE STYLES, AND IN REAL OPPORTUNITIES FOR INDIVIDUAL ACHIEVEMENT AND GROWTH.

A JUST AND EARLY NATIVE LAND CLAIMS SETTLEMENT MUST OCCUR IN THE NORTHWEST TERRITORIES AND SHOULD BE SEEN AS PART OF THE

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PLANNED PROCESS OF NORTHERN DEVELOPMENT WHICH WILL ENSURE AND GUARANTEE THE PARTICIPATION OF NATIVE NORTHERNERS.

AND FINALLY, THROUGH UTILIZING REVENUES GENERATED FROM THE PROPOSED MACKENZIE VALLEY PIPELINE DEVELOPMENT, THE GOVERNMENT OF THE NORTHWEST TERRITORIES, IF WE ENJOYED FULL PROVINCIAL STATUS, COULD EXIST FISCALLY INDEPENDENT OF THE GOVERNMENT OF CANADA, WITHIN CONFEDERATION.

As Chairman of this Committee, I move receipt of this final report by the Commissioner in Council of the Northwest Territories.

Tom Butters

THE STANDING COMMITTEE ON
DEVELOPMENT AND ECOLOGY.

DATED at YELLOWKNIFE, N.W.T.
This 21st Day of January A.D.,
1975.

N O T E S

1. P.M. Manders, An Evaluation of Federal and Territorial Revenue Streams Accruing from a Mackenzie Valley Gas Pipeline. Institute of Policy Analysis, University of Toronto, 1973, page 62.

2. Canadian Arctic Gas Pipeline Limited, Exhibits in Support of an Application of the National Energy Board of Canada for Certificate of Public Convenience and Necessity Authorizing the Construction of Pipeline Facilities, 1974, Section 10 and Section 11.

3. This is an approximated figure, but is based on the premise that as construction costs escalate, there will be a corresponding decrease in the percentage used for assessment purposes. CAGPL figures show an escalating factor of 1.4 or 40%. The percentage currently used for assessment is approximately 29% of the construction and therefore will decrease as costs escalate.

4. P.M. Manders quotes probable well-head prices of gas according to a schedule of: $.32/mcf for first 2 years; $.34/mcf for next 5 years; $.39/mcf next 5 years; $.44/mcf for next 5 years; and $.49/mcf for next 5 years and claims it is taken from an advance sale agreement between Imperial and some U.S. gas companies for 10 trillion cubic feet of gas.

5. Average Alberta rates are now 21%, Peter H. Pearse, The Mackenzie Pipeline: Arctic Gas and Canadian Energy Policy, McClelland and Stewart, 1974, P. 90.

6. Average B.C. rates were 16-2/3%, Ibid., p. 89.

7. Average Alaska rates are 20%, Ibid., p. 90.

8. Imperial Oil Limited, Submission to the National Energy Board in the Matter of Determining the Supply and Deliverability of Canadian Natural Gas in Relation to Reasonably Forceable Requirements for Use in Canada and Potential for Export, 1974, Appendix I.

9. Manders, Op cit., p. 46.

10. There is a detailed discussion of this issue in the Mackenzie Pipeline Arctic Gas and Canadian Energy Policy, Pp. 91-97.

11. Pipeline Application Assessment Group: Mackenzie Valley Pipeline Assessment DINA, 1974, Pp 87-99.

12. Department of Economic Development, Entrepreneurial Opportunities Study, 1974 (unpublished).

ACKNOWLEDGEMENTS

As Chairman of the Standing Committee on Development and Ecology, I wish to express my appreciation to Larry Elkin, Gord Rozen, John Munro, and Bill Carpenter for their administrative support and assistance in gathering material and data for use in our final report.

A special thank you is extended to Mr. Carpenter of the Program Policy and Planning Division of the Executive Secretariat, who as Acting Secretary to the Committee, provided the necessary co-ordination and assistance in preparing the various drafts of the final report.

Sincere thanks, also, to the typists who have so patiently assisted during the final stages of completing our report.