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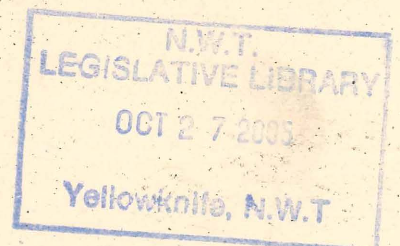
Provincehood for the Northwest Territories

Volume One

August 2005



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Volume One

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WALLBRIDGE & ASSOCIATES
barristers and solicitors

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15 August 2005

Mr. Norman Yakeleya
Member of the Legislative Assembly
Government of the Northwest Territories
Tulita, NT

Dear Sir:

Re: Provincehood for the Northwest Territories
Our File # 1141-01

You and I have discussed the need for some basic research on the process by which the NWT could become a province. This is the report of my firm's initial research. As you can see from the index we have included details of how each of the provinces that subsequently joined Canada, after the initial four, accomplished that. The reasons why each jurisdiction joined are varied. When one takes a disciplined approach to such a project one often discovers interesting facts. One such fact is that the population of any specific area at the time they become a province was often quite modest. Were the NWT to become a province today, with a population approaching 50,000, we would in fact be in the middle of the pack in terms of population at the time of provincehood.

When one considers the fact that Canada must in an increasingly complex world continue to display acts of sovereignty over the North, and the over the Northwest Passage, I can not think of any one action that would more fully show the world that Canada includes the North than by having the NWT become a province at this time.

This initial research was primarily, and quite ably I must say, done by a summer student at my firm this year, Mr. Sean Gray.

The next step in my opinion to keep this project moving forward would be to obtain the records of the many debates and discussions that in each case led to provincehood and to review those debates in order to develop an analysis of what was said and what the results were.

The following step will then be to develop a thorough understanding of what must be done at this point in Canadian history in order to effect provincehood for the NWT. The legal, constitutional and political situation must be fully explored in order to develop a plan to achieve this next most important step in the evolution of this country.

I look forward to continuing to work with you on this project as our time and financial resources permit.

Sincerely,

WALLBRIDGE & ASSOCIATES

Per:

Garth L. Wallbridge

5016 – 47th Street, Box 383, Yellowknife, NT X1A 2N3
Tel: 867-920-4000 Fax: 867-920-7389

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Manitoba

Entrance Date: 1870

Population at Entrance (1870 Census): 12,228*

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*Census Data Provided by Statistics Canada at www.statcan.ca (Accessed 10/08/05)

Consequences of the Rupert's Land Act

In 1870 the settlement of Assiniboia, situated along the banks of the Red River, was still part of the fur frontier with almost all of its approximately 12,000 residents employed or connected to two rival trading companies (The Hudson's Bay Company, and the Northwest Company). The majority of the population (about 5,750) were of French Métis descent and were practicing Catholics.[1]

By the tenets of the Rupert's Land Act of 1868 the Hudson's Bay Company ('HBC'), which had previously claimed ownership over all territory west of Ontario (formerly Upper Canada), had sold ownership to the newly created federal government. The transfer of control had sparked widespread fear amongst the population of Assiniboia - particularly Métis - who feared they would be swept aside by an influx of Canadian settlers from the east.[2] Of particular threat were those settlers from Ontario, some of whom were members of the fiercely anti-Catholic 'Orange Lodge', a secret society devoted to the radical advancement of Protestantism. The 'Orangemen' were known to look down upon the Métis because of their mixed ancestry, their use of the French language, and their Catholicism.[3]

Under the HBC after 3 years of service an employee would receive land grants and deeds to uninhabited tracts as payment. Many Métis, generations of whom had acquired land through employment with the HBC, thus regarded their family plots as owned.[4] This was not necessarily the view held by the Canadian federal government when it acquired Rupert's Land.

In the late 1860s the continual threat of American expansionism into the west had caused serious concerns in Ottawa. With the United States already in control of both Oregon and Alaska the Canadians felt that territorial incursions into Rupert's Land were not out of the question. In response to these fears then Public Works Minister William McDougall commissioned a road to be constructed from Lake Superior to Assiniboia in an effort to provide a more direct connection with Canada's new western territory.[5] By 1868 survey teams had arrived from Ottawa and began dividing the Red River settlement into sections to prepare for the road. Those family plots directly interfering with construction were simply taken without compensation. Frustrated and fearful of these continued incursions, the Métis knew that something had to be done to protect their farms.[6]

An Armed Response

On October 11, 1869 a young French Métis by the name of Louis Riel stopped a survey crew south of the settlement and declared all land south of the Assiniboine River to be Métis owned. Accompanied by a small group of supporters Riel repelled and then drove out both the surveyors and the newly appointed Governor of the territory, William McDougall. McDougall and his team were escorted to the American border by Riel and told "not to return beyond this line".[7] Realizing that his actions would be seen as treasonous and would evoke a strong response by the Canadians, Riel and 120 Métis then seized Upper Fort Gary - the only military post in the area - and quickly established a provisional administration to work with Canada to establish what they believed would be fairer terms by which the Northwest could enter union.[8]

By December 1, 1869 McDougall returned with the official documentation of the transfer of the territory to Canada and declared himself the rightful Lieutenant-Governor of the region, though he then quickly retreated across the border once more afterwards.[9] Ignoring the claims of McDougall, it was the position of Riel and his provisional government that the HBC had abandoned the people of Assiniboia to a foreign power without their consent. Riel now had control of the entire Red River Settlement and with

the colony's support began to draft a 'List of Rights', which, if McDougall consented to them, would pave the way for legitimate union with Canada.[10]

Canada Delays the Annexation of the Northwest

In response to the alarming reports coming from the west Ottawa decided to delay the official assumption of Rupert's Land past the original date, which had been set for December 1, 1869.[11] Though the federal government refused to officially recognize Riel's provisional administration, emissaries were immediately sent out to assess the situation. By February 8, 1870 the federal government moved to respond to the emissaries' report and delegates from Riel's government were invited to Ottawa to negotiate the union of Assiniboia.[12]

Now confident that it had been fully recognized as a legitimate administration and was not attempting to challenge either the sovereignty of the HBC or the Canadian government, Riel moved to formalize his government's existence. The National Committee of the Métis officially became the provisional government with the full support of both the English and French settlers in the region and Riel was unanimously voted the new Committee's President.[13]

However all was still not well in the colony and a small contingent of Protestant Orangemen had become increasingly frustrated with the stance of the Métis. On February 15, 1870 a small contingent led by a local doctor named Thomas Scott attacked Riel's stronghold of Upper Fort Gary in the hopes of freeing numerous jailed compatriots.[14] The attack quickly backfired as Scott's men were faced with fighting a heavily armed Métis guard and Scott's surrender was quick and nearly bloodless. But Scott's challenge seemed to create a crisis of confidence that Riel's government could ill afford as it began negotiations with Ottawa.[15]

A Court Marshal and Crisis of Confidence

Thomas Scott, captured in the Orangemen's unsuccessful attempt at ousting Riel, had long been a champion of the cause of Canada in the region. His methods were considered extreme, and he had a disdain for the Métis who he saw as racially inferior. While imprisoned he was said to have continually insulted his captors and when opportunity presented itself, brawled openly.[16]

In late February, 1870 Scott was court marshaled for insubordination and sentenced to be executed in a firing line for his part in the Orangemen Rebellion, as well as for his continued aggravation of the Métis.[17] Riel needed a way to quickly deal with the consequences of the insurrection and above all had to appear in control as he negotiated with Canada. Despite numerous pleas for mercy, he allowed Scott to be executed on March 4, 1870, the first death in what had started as a bloodless resistance.[18]

News of the death angered many settlers in Ontario and pressure began to mount on Ottawa to resolve the situation. Much of the anger in Eastern Canada was fuelled by the Orangemen, many of who claimed to be refugees fleeing Métis occupation.[19] On March 24, 1870, in an attempt to return to business as usual, Riel's provisional government selected the three delegates who would journey to Ottawa to seek terms of union. The delegation ventured to Ottawa with a re-drafted list of demands that included provisions for denominational schools as well as the creation of a new province.[20]

Turbulent Negotiations

Upon the arrival of the Métis delegation two of the three delegates, Reverend Joseph Ritchot and Alfred Scott were arrested on charges laid by Hugh Scott in connection to the execution of his brother Thomas by the Riel government.[21] Prime Minister John A. MacDonald and Canadian officials assured the delegates that they were not party to the arrests and met several times with all of them to show their good intentions. However, Ottawa still refused to recognize the delegation as part of a legitimate government (with diplomatic immunity) as doing so would have caused significant anger in Ontario.[22]

Reverend Ritchot was furious at the reception the Métis delegation had received, and threatened to return to Assiniboia if his party was not officially recognized. On April 26, 1870 MacDonald invited him to enter into formal negotiations, though he still refused recognition.[23] The Métis demands for provincial status and denominational schools were met, but talks snagged over the control of public lands. MacDonald initially offered to set aside 200,000 acres for the Métis as recognition of their aboriginal title, but he finally was bartered up to offering 1.4 million acres.[24]

As negotiations continued, MacDonald secretly dispatched a Northwest Mounted Police expeditionary force to travel to the Northwest and seize control should talks fail. The pressure was now mounting for the situation to be resolved quickly.[25]

Manitoba Joins Confederation

Despite the possibility of military intervention a deal was finally brokered with Ritchot's delegation and the way was paved for Manitoba's entrance into confederation.

On May 12, 1870 the *Manitoba Act* passed third reading in the House of Commons creating a postage-stamp province about 20,000 square kilometers in size. The province was to be governed by a Lieutenant Governor appointed by Ottawa with a bi-cameral legislature consisting of a nominated upper house, and an elected lower one. Manitoba was also granted two Senators and four Members of Parliament, the numbers to increase in proportion to the population growth of the region.[26]

Despite the victory for Riel the federal government still retained control of all unallocated lands in the province, a significant factor that would lead to another rebellion in 1885 as Canada pushed through a transcontinental railway without the consent of its newest province.[27]

Endnotes:

1. *A History: Manitoba 125* Vol. 2 (Great Plains Publishing Ltd., 1993) pg 162
2. Ibid pg 163
3. Ibid
4. Ibid pg 171
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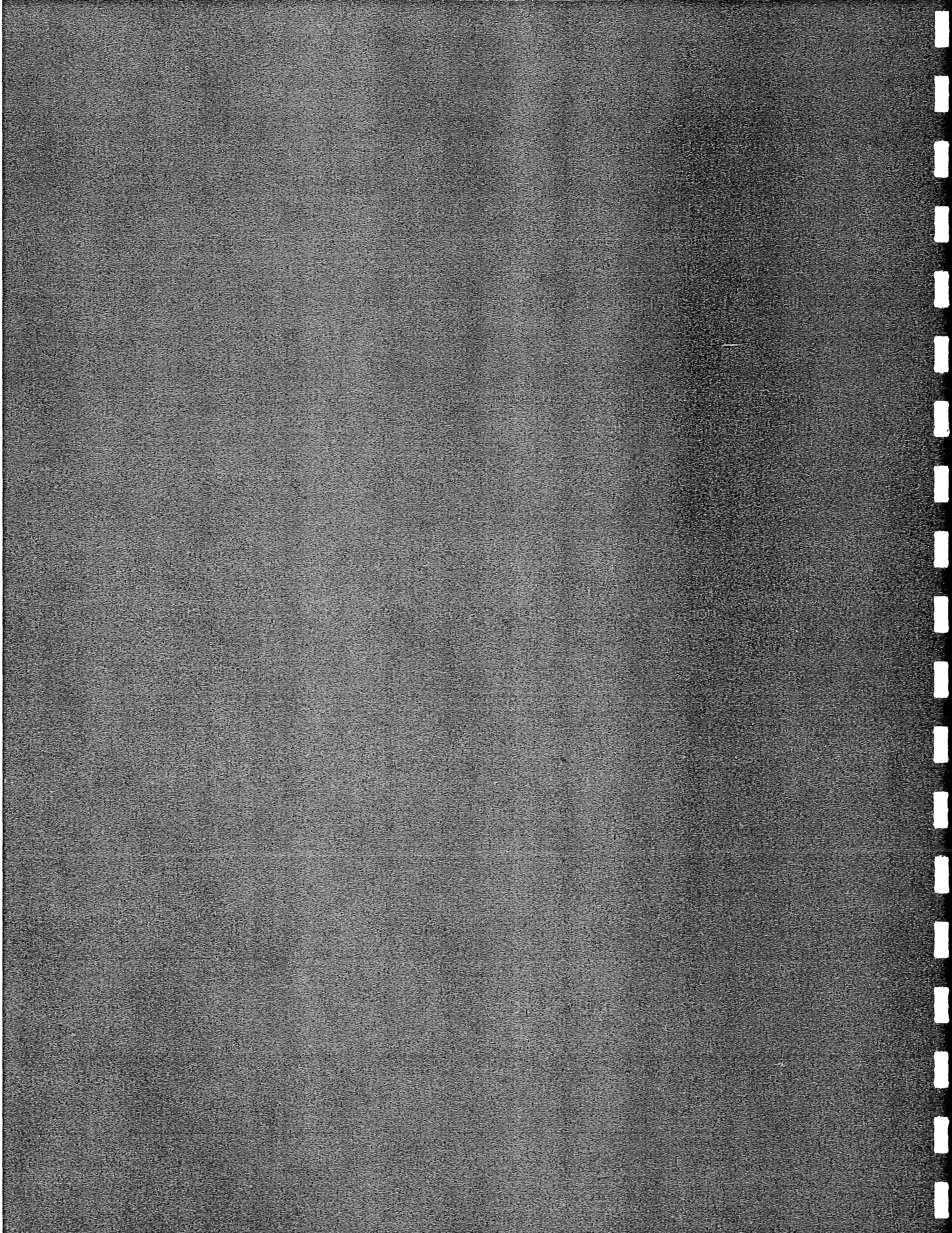
27. Ibid pg 195



British Columbia

Entrance Date: 1871

Population at Entrance (1870 Census): 10,586*

*Census Data Provided by Statistics Canada at www.statcan.ca (Accessed 10/08/05)

1840-1860: The Settlement of Vancouver Island

In 1846 the United States had initiated a massive expansion towards the west into Oregon causing concern amongst the British Colonial administration that their access to the Pacific was being challenged.[1] Unwilling to allow the increasing American presence to go uncontested the British mandated the Hudson's Bay Company ('HBC') to create a settlement on the west coast.[2]

By 1854 the colony of Vancouver Island was fully established having been financed primarily by the sale of land titles so as not to deplete meager public funds.[3] However, it would be the discovery of gold in the Fraser Valley in 1858 that would be the catalyst for expansion. As settlers rushed into the Valley the HBC's jurisdiction was increased and it established settlements in the Queen Charlotte Islands and mainland British Columbia.[4]

Despite the influx of settlers following the discovery of gold the cost of expansion was placed solely on the shoulders of the local colonial government which was forced to finance roads and other public works aimed at extending British authority into the interior mainland. The policy of local financing nearly bankrupted the early government of the region which did not yet have the fiscal resources to meet the mandate the British had set out despite the increased revenue from the gold rush.[5] Taxation was not yet a possibility as not only did most settlers reject the idea of being taxed but the tax-base itself was not yet sufficiently large enough. The situation was further exacerbated by

increasing civil unrest over the lack of political rights and freedoms the colonies were afforded compared to the more eastern settlements in the Maritimes and the Canadas.[6]

The Push for Political Autonomy

In December of 1860 the HBC's jurisdictional grant over Vancouver Island had expired and the settlement became a Crown colony leaving the governing council with little choice but to attempt to raise revenue by imposing taxation and collecting what additional resource monies it could command. These actions immediately produced a confrontation between the local assembly and the Governor's council over control of Crown funds, funds which the council possessed and the assembly wanted.[7]

Widespread protesting finally broke out on the mainland in the later months of 1860 over high taxes, a profligate public works policy, faulty administration of Crown lands, and the domination of Vancouver Island both politically and economically (the other colonies had no formal political representation of their own).[8] While then Governor James Douglas ignored these initial protests recommendations were forwarded to the Colonial Office that the situation – and the grievances of the settlers – should be reviewed.

In 1863 the assembly won the dispute as the Colonial Office authorized separate executive and legislative councils which effectively combined the two governing bodies (the Assembly and the Council) into one. The mainland colony of British Columbia, which was now 5 years old, was also given its' own political executive and legislative assembly affording it the same political rights as those granted to Vancouver Island.[9] The move came as a result of a local census which had allayed British fears that there was not yet a strong enough loyalist majority on the mainland to warrant greater political freedoms (a large transient American population had resided in the region since the gold rush fuelling continual fears of annexation).[10]

A Greater Colonial Union

The actions taken by the British Imperial administration in 1863 had detrimental effects for Vancouver Island. Subsidies paid to Victoria by resource-rich British Columbia for its

civil establishment were effectively ended and Vancouver Island's Assembly faced another financial crisis. By the summer of 1865 the government of Victoria was heavily in debt and the entire colony faced a lengthy economic recession.[11]

In 1866 Amor De Cosmos, a real-estate speculator and newly elected member of Victoria's General Assembly was the first to propose a larger confederation of the Pacific colonies rather than direct Imperial rule. Accordingly, De Cosmos introduced a motion which stated that given the current financial conditions facing the colony the Assembly should seek terms of union with British Columbia under such constitution "as her Majesty's Government may be pleased to grant."[12] De Cosmos' motion passed the house without much debate and two seats in the house were immediately vacated and put up for by-election as a test of public opinion; pro-union supporters won both.[13]

While the residents of British Columbia and the colony's Governor, Frederick Seymour, favored the status quo the British government saw this as an opportunity to finally deal with Victoria's perpetually unstable finances. In the summer of 1865 Seymour was summoned to London by the Colonial Secretary to remind him of Britain's determination to solve the economic turmoil in their Pacific holdings.[14]

In 1866 Vancouver Island was annexed to British Columbia with the former adopting the latter's constitution, and the capital was moved to New Westminster (something Victoria would recapture in 1868 after two years of protests). Union did not have the affect the British had hoped for however and by 1867 nearly one-third of all colonial revenue went to paying down the debt.[15]

Disgruntled merchants in both New Westminster and Victoria began to advocate union with the United States which had just completed the purchase of Alaska. The Americans were demanding the colony of British Columbia as compensation for damage done to the American shipping industry by British-built Confederate raiders during the American Civil War.[16] Then American Secretary of State, William H. Seward, further fuelled speculation of annexation by admitting that the purchase of Alaska was the first step towards the acquisition of the entire North American Pacific coast, something he considered inevitable.[17]

1868-1870: The Canadian Solution

Until the late 1860s the Pacific colonies had had little to do with their eastern counterparts in the newly created Dominion of Canada. Without a transcontinental railway there was no easy way to transport either goods or migrants between the two colonies and contact was thus extremely limited. Yet beginning in 1868 the British government, realizing the extent of the United States' military supremacy in North America, began advocating for BC's union with Canada so that the colony could properly defend itself.[18]

Two factors increased Canada's own claim for the inclusion of BC. First, with the acquisition of the Northwest Territories from the HBC in 1869 the Canadians could now complete their plans for a rail line linking the west to the rest of the country.[19] The second factor was the death of BC's Governor, Frederick Seymour, who had been a continuous conservative on the question of confederation. Seymour's successor, Anthony Musgrave, was an avowed confederate from Newfoundland who had watched his own colony reject union and refused to allow the same to happen to BC.[20]

With confederation now a firm option to the dilemma of American annexation it was Amor De Cosmos again stirring support for another kind union. In 1868 he founded the Confederation League in Victoria and by the Legislative Council's next election held in 1869 had emerged victorious with a strong majority running on the clear-cut issue of confederation.[21] The victory was largely seen as a public endorsement of union with Canada and now all that remained was for BC to formally seek terms of union with Ottawa.

British Columbia Enters into Union

By early 1870 officials in Victoria had completed a draft proposal of acceptable terms of union which it would present to the Canadian government. The terms provided for an annual investment of $1 million to begin the construction of a railway linking BC to central Canada, construction of a coach road from Manitoba's Fort Gary, the assumption

of all debt and liabilities by the Dominion, and provisions for 4 Senators and 8 Members of Parliament to represent the region.[22]

Then Prime Minister George Etienne-Cartier accepted BC's draft terms with little modification, with the federal government further agreeing to a $100,000.00 loan interest free for ten years for the construction of a dry dock in Esquimalt.[23] The only stumbling block that remained was the question of responsible government, which Governor Musgrave was loath to concede as he was still fearful that the local population, as in Newfoundland, would reject it.

In January 1871 a compromise was struck and the Legislative Council voted to adopt the terms of union in exchange for the right to responsible government under the purview of the Canadian government. A further amendment was made replacing the Legislative Council with a provincial style Legislative Assembly consisting of 25 elected members with a term of four years.[24] With the political negotiations finally over BC entered into union with Canada on July 20, 1871.[25]

Endnotes:

1. Johnston, Hugh J.M., Editor, *The Pacific Province: A History of British Columbia* (Douglas & McIntyre, 1996) pg 68
2. Ibid
3. Ibid pg 69
4. Ibid pg
5. Ibid pg 70
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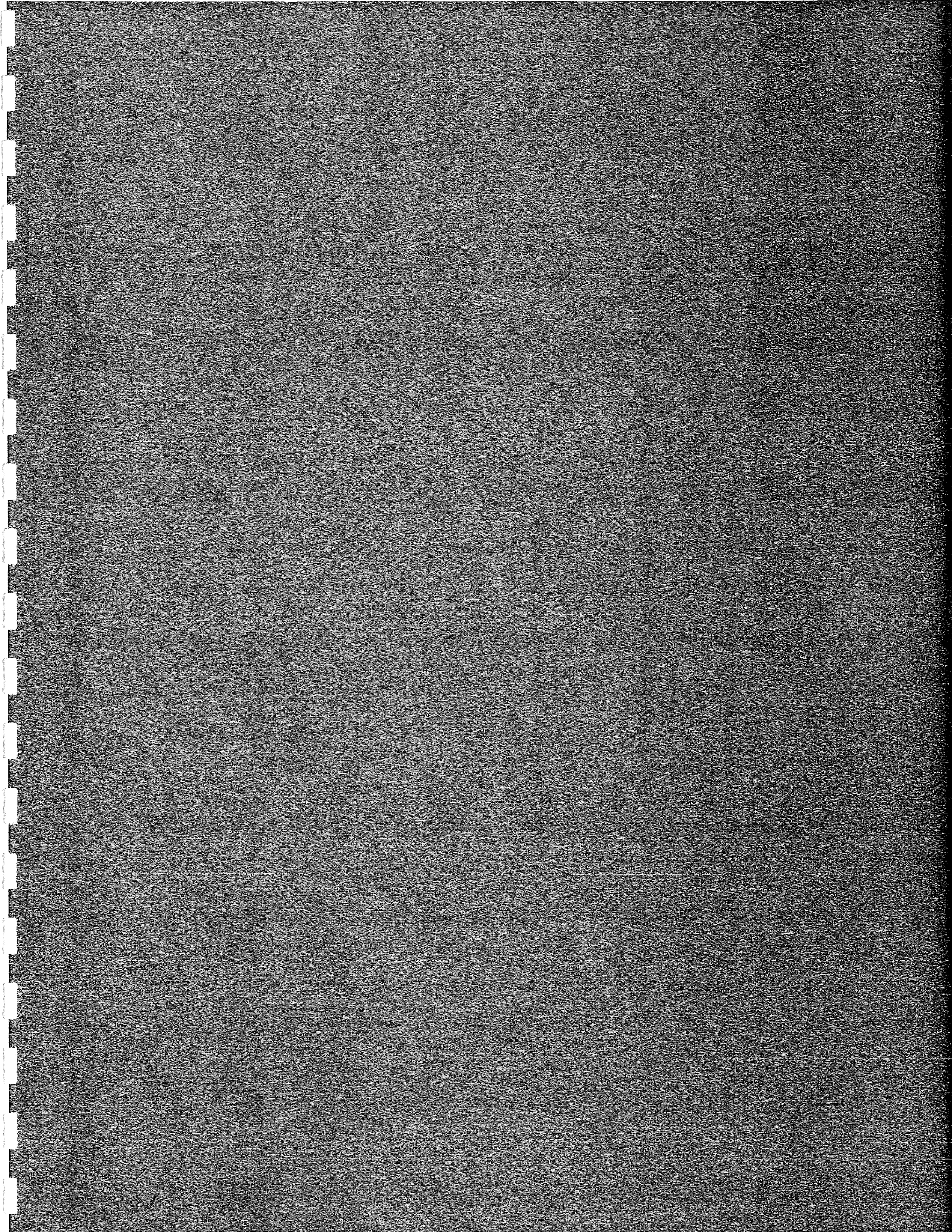

Prince Edward Island

Entrance Date: 1873

Population at Entrance (1870 Census): 94,021*

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*Census Data Provided by Statistics Canada at www.statscan.ca (Accessed 10/08/05)

The Quebec Conference

Delegates from Prince Edward Island ('PEI') had been present during the Charlottetown Conference initially held amongst the Atlantic colonies to discuss a possible Maritime union.[1] At the urging of a small Canadian delegation led by John A. MacDonald meetings were adjourned and a broader Canadian union was set to be discussed in Quebec City on October 10, 1864.[2]

The PEI delegation found itself immediately at odds with most of the other delegates in Quebec. The Island was repeatedly ignored in its' attempts to establish provincial or even sectional equality of representation in the House of Commons and the Senate. Under the proposed terms of union both Upper Canada and Lower Canada would each receive 24 seats in the House of Commons and the Maritimes together would make up another 24 seats.[3] As further allotment of seats would be based on the idea of representation by population, it was clear from the outset that a federal union would be dominated by the mainland.

Not only were the delegates from PEI concerned about the political control the Canada's would exert in a federation, they were also furious at having been allotted only 5 seats in the House of Commons something they felt would mean the island's concerns would be ignored as T.H. Haviland, head of the delegation noted when he stated that, "...[we] would rather be out of confederation than consent to this motion (representation by population). We should have no status. Only five members out of 194 would give the island no position."[4] There were other issues that also caused significant frustration

among the PEI delegates including compensation for the transfer of customs duties to the federal government and a grant of $200,000.00 for the purchase of proprietary lands (a deal previously agreed to during the Charlottetown talks and which federal delegates were backing out of). [5] By the end of the conference on October 27, 1864 only one delegate from PEI, A.A. MacDonald, remained in attendance. It was apparent that PEI would not accept the federal plan drafted in Quebec.[6]

Prince Edward Island Rejects Confederation

During the months between December, 1864 and February, 1865 a series of public meetings were held around the island to discuss the Quebec Resolutions with one or more of the delegates from the Quebec Conference always in attendance. At the conclusion of these meetings a resolution expressing the sentiments of the meetings was tabled and carried by a large majority on February 13, 1865.[7] The resolution stated that the people of PEI considered, "...the details of the scheme agreed upon by the Quebec Conference, especially in reference to finance and representation are most injurious, unjust, and illiberal and confidently relies that the said details will by no means receive the sanction of the Legislature or government of this island."[8] On April 3, 1865 Confederation was officially rejected by a vote of 23-4 in the Lower House of the PEI Legislature and unanimously in the Upper House in a manner that left no doubt as to the ideas unpopularity.[9]

Frustrated by PEI's refusal to join the Dominion, the British Government immediately began to exert financial pressure. The British pointed out that in light of the island's dependence upon them in regards to both defense and colonial administration it deeply regretted the island's rejection of a scheme that would have made for easier and more effective administration. As a consequence the Crown forced PEI to pay the substantial salary of its' Lieutenant Governor directly out of colony funds.[10]

Yet despite these reproaches PEI remained unmoved in its stance against confederation. In 1866 while in London negotiating the final terms of the *British North America Act* with the British, both Nova Scotia and New Brunswick attempted one last time to open negotiations offering an $800,000.00 grant to enable PEI to purchase

proprietary lands. The offer was to no avail however; the confederate opposition was firmly entrenched and denounced the deal as an attempt by Canada to bribe the colony into union.[11]

The British government acted swiftly to intensify pressure on PEI by canceling a $100,000.00 loan the colony had secured to address its proprietary lands problem (compared to the $800,000.00 it would have received if it had joined union). It was clear that if PEI wanted to solve its' land problem it would have to now turn to Ottawa, not London, to do so. However as the Dominion was formed on July 1, 1867 PEI was still no closer to union and stubbornly refused to even open discussions on the subject with Ottawa.[12]

Courting Dominion: 1867-1870

In 1868 a US Congressional Committee had visited PEI to discuss the possibility of reestablishing reciprocity between the two nations. In exchange for admitting the products of PEI into the States duty free the island agreed to treat American products in a similar manner, provide American fisherman use of its' ports for supplies, and issued permission to fish in a 3 mile radius of its' coast.[13] The Committee's report presented to Congress in 1869 caused immediate panic in Canadian circles, which were fearful of American expansion into the North Atlantic. PEI was situated right on the mouth of the St. Lawrence River and control over the island was of strategic importance.

In response to American interest in the region in 1869 the Canadian House of Commons authorized the government to "...enter into such negotiations and to make such fiscal arrangements as are deemed expedient with the Government and Legislature of PE Island, with a view to its' admission into the Dominion."[14] The Canadians presented PEI with a new deal offering a debt allowance of $25.00 per capita on the basis of the 1861 population census, an annual subsidy of $25,000.00 to meet the expenses of local government, and a guarantee that steam service (meaning ships and ferries) for the conveyance of mail and passengers was to be established between the island and Dominion in both winter and summer. The Canadians also promised to attempt to secure compensation from the Imperial Government for Crown lands, and should it

refuse, would provide a grant of $800,000.00 to enable the land question to be dealt with.[15]

Despite these better terms, on June 7, 1870 the Legislature categorically rejected the deal. It pointed out that only Britain could satisfactorily settle the land issue, and should the island accept the $800,000.00 it would look as if the colony had been bought. Furthermore, a clause in the *British North America Act* had placed all railways not connecting at least two provinces under the purview of local funding.[16] This meant the colony's plans to construct a much needed rail-link could not be financed through Dominion funds. However, PEI had indicated that should the Canadian government be able to persuade the British to settle the land issue they believed confederation would be viewed in a more favourable light.

Given the risk involved in offering such a generous deal the federal government was furious at PEI's refusal and indicated that it would not be entering into any further negotiations.[17]

The Railway Crisis: 1871-1873

The need for a railway on the island continued to grow and it was apparent that the economic advantages of attempting to link the island far outweighed any financial risks. On April 17, 1871 the Legislature successfully passed the Railway Bill, which increased taxation significantly so that the colony could finance construction of the railway independently.[18]

By the autumn of 1872 unfavorable trade conditions and a poor crop harvest had finally exhausted the colony's finances. Farmers, unable to sell their harvest, lost all purchasing power and the economy began to plummet into recession. The government was unable to meet interest payments on its' debt and as a result could not continue investing in its' railway securities. Construction of the rail-line ground to a halt.[19]

London immediately informed the colony that it would not grant any further loans and once more suggested the island consider union with Canada as a solution. PEI had no

choice but to reopen negotiations for confederation this time at the colony's insistence rather than Canada's.[20]

Prince Edward Island Joins Confederation

On January 2, 1873 the Executive Council adopted a formal minute asking the Dominion Government for a statement of commitments it was prepared to offer the island. The minute requested that Canada concede, along with the terms offered to the island in 1869, an additional allowance of $5,000.00 (to bring the proposed subsidy for local government to $30,000.00), $69,000.00 for the construction of new Law Courts and Post Office Buildings, $22,000.00 for a new steam ship, and an assumption of the debt incurred from PEI's Railway Bill.[21]

Indicating that it would be receptive to more discussions Ottawa welcomed a small delegation from the colony on February 24, 1873. After 10 days of formal discussions the two parties mutually agreed to generous terms of union.[22] The island's debts and liabilities (including the railway) were to be completely assumed by the federal government with a debt allowance of $45.00 per head based on the 1871 census, an annual grant of $30,000.00 was to by paid out to subsidize local government, a provision of $800,000.00 to purchase proprietary lands and a further grant of $45,000.00 per year to alleviate the financial loss the colony had incurred from not having Crown lands were all included.[23]

Having secured satisfactory terms the delegation returned to the Legislature and recommended union with Canada unanimously. The Legislature, unwilling to act without the support of the electorate, called a referendum so the voters could choose between accepting confederation or opting for heavy taxation. On April 2, 1873 Islanders went to the polls and overwhelmingly voted for union.[24]

Charlottetown, acting quickly on the results of the referendum, sent another delegation to Ottawa on May 6, 1873 to initiate further negotiations.[25] After five days additional concessions were agreed upon including an increase in the island's debt allowance from $45.00 per head to $50.00 and federal maintenance of telegraphic communications.

Returning to PEI victoriously the delegation presented the final terms of union to the Legislature which ratified them almost unanimously.[26]

In Ottawa the Canadian Branch of the Privy Council office similarly submitted the terms of union to the House of Commons where it passed without division, so that by the end of May 1873 the Act was put to the Imperial government in London for final consent. After 8 years of bargaining PEI officially entered union on July 1, 1873. [27]

Endnotes:

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5. Ibid pg 164
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7. Ibid pg 171
8. Ibid
9. Ibid pg 178
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11. Ibid pg 185
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17. Ibid pg 199
18. Ibid pg 207
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21. Ibid
22. Ibid pg 212
23. Ibid
24. Ibid pg 222
25. Ibid
26. Ibid pg 229

Alberta and Saskatchewan

Entrance Date (for both provinces): 1905
Population at Entrance – Alberta (1901 Census): 73,022*
Population at Entrance – Saskatchewan (1901 Census): 91,279*

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*Census Data Provided by Statistics Canada at www.statscan.ca (Accessed 10/08/05)

Early Government in the West

In 1875 Canada's *Northwest Territory Act* put into place a rudimentary system of government enabling the collection of taxes, administration of justice, imposition of punishment, regulation of all matters concerning cemeteries, public morals, nuisances, police, roads, bridges, and jails.[1]

The Territory was divided into semi-autonomous districts that were created out of areas not exceeding 1,000 square miles with more than 1,000 settlers residing there. These districts each had the ability to elect one representative to sit on the Territorial Council. In 1882 the four provisional districts in the region were Assiniboia, Saskatchewan, Athabasca, and Alberta.[2]

The Territorial Council itself consisted of four appointed members as well as representatives from all districts. The Council, while having little actual control of funds, reported to the Lieutenant Governor with recommendations about new policy initiatives.[3]

1883-1890: The First Push for Western Autonomy

By 1883 there were 6 elected representatives sitting on the Territorial Council and for the first time they outnumbered the 4 Ottawa appointed representatives.[4] Using their new-found majority to influence the political agenda of the Council the elected representatives began to protest the Governor's sole control over Territorial funds.

Following the Métis Rebellion in 1885 the Territorial Council's concerns were finally addressed by then Lieutenant Governor Edgar Dewdny who feared similar revolts if political concessions were not made in the Northwest.[5] The demands made by the Council centered on the need for greater control over the disbursement of local funds, representation for the Northwest Territories in the House of Commons and a guarantee that future patronage appointments in the Territory would only be awarded to those residing in the west.[6]

Ottawa was initially reluctant to concede to any of the Council's demands but did grant the Territory representation in the House of Commons in 1887 allowing for the election of four Members of Parliament from the Northwest.[7] However further pushes for Territorial autonomy were met with staunch resistance on the part of the federal government which continually refused to allow the Territorial Council authority over legislative matters without the consent of the Lieutenant Governor, a patronage appointment under tight control by Ottawa.

Frustrated and unwilling to relent in its demands for more political control over local matters the elected representatives initiated a boycott of the Council beginning in 1890.[8] Members refused to ratify legislation, and given the majority elected representatives held on the Council, a crisis of legitimacy plagued any decision made without their consent. In response Ottawa amended the *Northwest Territory Act* the same year, acknowledging responsible government on the prairies and allocating money to address specific Territorial needs such as the need for schools, roads, and bridges. This would only be the first in a series of concessions by Ottawa ending in 1895 with a formal push for province-hood as the Council sought even further autonomy.[9]

1890-1900: The Strains of Immigration

Following Ottawa's concessions in the early 1890s the political climate in the west changed dramatically and for the first time province-hood was openly discussed as a possibility. In March of 1895 public meetings were held in Calgary, the result of which was the publication of a pamphlet entitled "Provincial Government for Alberta".[10]

However, despite this new determination to achieve provincial status for the prairies significant local debate ensued over whether the Territories should become one united province or several separate ones. Meanwhile Ottawa had initiated a massive immigration campaign around the world encouraging settlers to journey to the "Last Best West".[11] Between 1897 and 1901 homestead entries (immigrant families moving on to undeveloped land) had risen from 2,384 to 8,167 and by 1905 would further rise to 30,819. Despite the massive influx of immigrants to the region, grants from the federal government did not increase placing significant strain on what little infrastructure the Territories had been able to afford.[12] Furthermore the amount of the grants differed from fiscal year to fiscal year depending upon the amount unilaterally decided upon by Ottawa, which had placed a further financial burden on the prairies by prohibiting the Council from borrowing funds or taxing the newly built Canadian Pacific Railroad. Unable to properly forecast its income the Council could do little to deal with the massive problems immigration was causing.

Forging the Path to Province-hood

In May of 1900 Frederick Haultain, the first Premier of the Northwest Territories, delivered a three hour speech to the Territorial Council outlining the region's grievances and calling for a united push for provincial status. "What we want in the West, and what we have the right to expect, is to be established as a province with equal rights with the rest of the Dominion. We do not ask more, and we will not be willing to take less."[13] The result was a unanimous resolution reciting the constitutional progress of the Territories and lamenting the inadequacy of the annual federal grant.

Ottawa immediately responded to the resolution by scheduling a conference to be held in October, 1901 and Haultain and the Territorial Treasurer, Arthur Sifton journeyed to Ottawa and opened discussions with then Prime Minister Wilfrid Laurier and his cabinet.[14] Following the meetings Laurier asked Haultain to submit a proposal in the form of a draft bill to use as a framework to write the Act which would create a western province. Within two months of the meeting Haultain submitted the requested draft which proposed the creation of one united western province under the name of Buffalo.

The proposed province encompassed over 404,000 square miles making it larger than continental Europe.[15]

In March 1902 Laurier rejected the draft as he was concerned about the political implications of having such an expansive province in the Dominion.[16] Both British Columbia and Manitoba had also furiously protested that the bill would interfere with their own desire to expand their current boundaries to encompass more of the Northwest and Quebec took exception to plans for the public administration of education rather than allowing schools to be run by the Catholic Church.[17]

Unwilling to enter into a lengthy dispute with the current provinces Laurier instead opted for the consideration of a two-province plan proposed by Frank Oliver which would divide the Northwest along a North-South boundary.[18]

The Federal Election of 1904 and the Final Push for Province-hood

The political impasse created by Laurier's refusal to consider Haultain's draft bill came to a head in the federal election of 1904. Before the election Laurier had increased the Northwest's representation in the House of Commons from 4 Members of Parliament to 10.[19] This caused a significant amount of focus to be paid to the western agenda as federal parties vied for control over the new seats. Haultain threw his support behind Robert Borden's Tories who had made western autonomy a key part of their election platform. However Laurier had previously undermined Borden with similar promises and the results of the election saw Laurier's Liberals returned firmly to power. Haultain's credibility with Laurier had now been further diminished by his support for the opposition Tories.[20]

On January 4, 1905 Haultain and his Minister for Public Works, George Bulyea boarded a train bound for Ottawa to begin the final stage of provincial negotiations.[21] Over the next month the two delegates were joined by other various western representatives who had been sent by municipalities and religious groups to ensure their voices were also heard.

While Haultain attempted to resurrect his original proposal Laurier instead chose to consult exclusively with his western cabinet and on February 21, 1905 handed Haultain drafts of both the *Saskatchewan Act* and the *Alberta Act*. Under the terms of the Acts the Canadian Pacific Railway was to continue to be exempt from taxes, Crown lands which Haultain had wanted under provincial jurisdiction would remain with Ottawa and education was to be controlled by the Churches, not the provinces.[22]

Alberta and Saskatchewan Enter Confederation

On March 11, 1905 Haultain wrote a final blistering letter to Laurier protesting the manner in which the federal government had created the two Acts. This move is said to have cost Haultain consideration for the position of first Premier of Alberta which instead was given to Alexander Rutherford.[23] Despite Haultain's protests Laurier introduced Bills 69 and 70 on the autonomy of Alberta and Saskatchewan. Debate raged in the House of Commons for over ten weeks as Members of Parliament (both Liberal and Tory alike) protested the government's position on secular schools.[24]

Following the resignation of Laurier's Interior Minister as the debate began to fracture the Liberal caucus, an amendment was introduced to the school clause establishing schools run by Catholic boards, with teachers and curricula certified by the provincial government. Overcoming this final hurdle the two Acts passed the House of Commons and came into force on September 1, 1905.[25]

Several issues remained unresolved the most significant of which was control over natural resources in the newly created provinces. It would be another twenty-five years before the federal government finally resolved this issue with the *Natural Resources Transfer Agreement* of 1930 which transferred control of natural resources from the federal government to the two provinces.[26]

Endnotes:

1. Van Herk, Aritha, Mavericks: An Incorrigible History of Alberta (Penguin Books Ltd., 2002) pg 203
2. Ibid pg 204
3. Ibid pg 205
4. Ibid pg 207
5. Ibid pg 205
6. Ibid
7. Ibid pg 208
8. Ibid pg 210
9. Ibid pg 208
10. Ibid pg 209
11. Ibid
12. Ibid pg 210
13. *Alberta in the 20th Century: A Journalistic History of the Province in Twelve Volumes* Vol. 2 (United Western Communications Ltd., 1992) pg 28
14. Van Herk, Aritha, *Mavericks: An Incorrigible History of Alberta* (Penguin Books Ltd., 2002) pg 212
15. Ibid pg 210
16. Ibid pg 214
17. Ibid pg 212
18. Ibid pg 214
19. Ibid
20. Ibid pg 215
21. Ibid pg 217
22. Ibid pg 215
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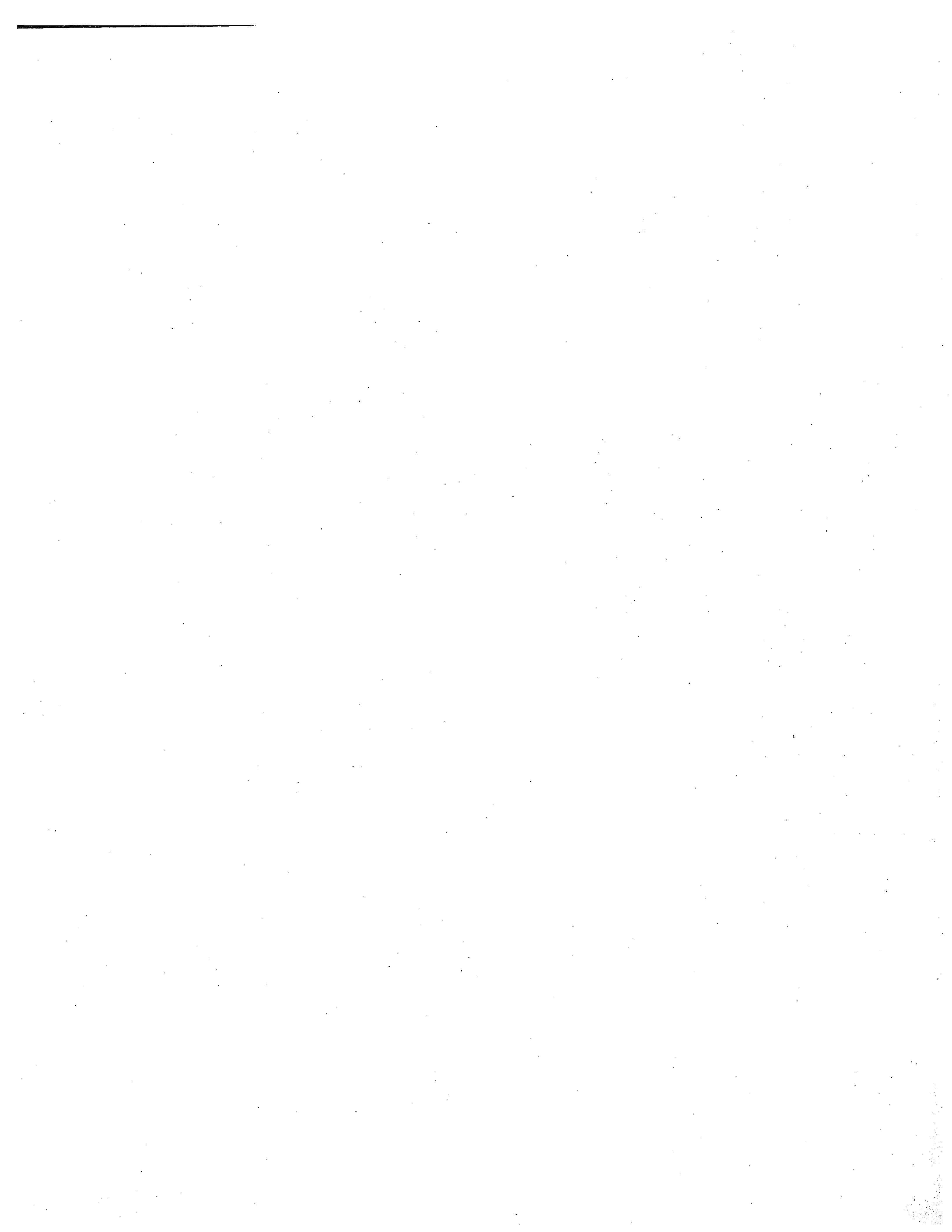
25. Ibid
26. www.wikipedia.com, Search "Natural Resources Transfer Agreement", (Accessed 30/06/05)



Newfoundland

Entrance Date: 1949

Population at Entrance (1951 Census): 361,416*

*Census Data Provided by Statistics Canada at www.statcan.ca (Accessed 10/08/05)

Newfoundland's entrance into union with Canada was long and protracted. Between 1880 and 1933 Canada and Newfoundland discussed the possibility of confederation no less than five times, with the main stumbling block in negotiations being the Federal Government's unwillingness to entice Newfoundland to join at the expense of relations with the other provinces.[1] Newfoundland, Canada believed, could not be offered a deal significantly better than the one the other provinces had negotiated.

The Charlottetown Conference

The first formal conference to discuss the union of British North America was held in Charlottetown in September of 1864.[2] The meeting, originally organized by the three Maritime Provinces to discuss the possibility of a union amongst themselves, was also attended by a small Canadian delegation who had requested to be present. [3] The Government of Newfoundland had originally been invited as an after thought and did not send a delegation to attend these meetings. Led by John A. Macdonald and George-Etienne Cartier, the Canadians attempted to persuade the Maritime Provinces to embrace a larger federal union and managed to convince the Maritime Provinces of abandoning their original idea of a regional union. The delegates adjourned on September 7 and agreed to reconvene meetings at Quebec City on October 10, 1864.[4]

The Quebec Conference

The Government of Newfoundland decided to send two delegates to the Quebec Conference, Frederic Cartier and Ambrose Shea. Although not given the power to

negotiate and commit the colony to any deal the two delegates did sign the draft Quebec Resolutions as individuals and became staunch supporters of confederation.[5]

A federal system in which each province had its own legislature and shared political responsibilities with a central government was agreed upon. The main problem for many of the Atlantic Provinces was adequate representation given the precept of 'Representation by Population' adopted by the proposed Federal Parliament. Upper and Lower Canada would each get 24 members, with the Atlantic Provinces together given another 24 (of which Newfoundland had only 8), which in effect meant that the political agenda of the new country would be centrally controlled.[6]

Financial arrangements also favoured a Canadian agenda. The federal government would assume the public debts of future provinces up to a certain maximum amount and would control all the major sources of revenue. Newfoundland, with a small public debt, would receive additional grants based on the difference between its debt per capita, and that of the rest of the provinces.[7] However even with this grant many feared that the colony would not be able to raise enough money in provincial taxation to meet its' expenses. The agreement allowed provinces to levy direct taxes only and given the isolation of most of Newfoundland's communities it would be extremely difficult to do so.[8]

Despite these problems both Cartier and Shea returned to Newfoundland determined to convince the colony that confederation was the best possible option arguing that in the long term the colonies future was inevitably linked to that of the mainland.[9] They forecasted that union would lower taxation, improve public services and strengthen the economy.

Confederation Rejected

The contents of the Resolutions did not receive a warm welcome at home. Two major groups displayed significant hostility towards the idea of union with Canada – the merchant class and the significant Roman Catholic population of Irish descent.[10]

For Irish Roman Catholics opposition to union was based primarily on an unwillingness to give up recently gained political freedoms. In Newfoundland the Irish had been afforded home rule, state-funded separate schools, as well as government patronage. With Upper-Canada seen as a hotbed of militant anti-Catholicism there was a genuine fear that these newly acquired rights would be taken away.[11]

As for the merchant class they could see no economic or financial advantage to the proposed federation, predicting instead a significant increase in taxation imposed by 'mainlanders' for mainland purposes. Not only would the cost of doing business increase but confederate proposals for a federal tariff (designed to protect mainland industries) would restrict the ability of businessmen to buy and sell freely. There was, in their opinion, simply no evidence that confederation would be of any advantage to the colony.[12]

The election of 1865 changed the political landscape of Newfoundland in favor of the colony's independence. For the first time Roman Catholics entered into the formerly Protestant, Conservative government resulting in 'confederates' becoming a minority in the new house.[13] Opposition to confederation now became so vocal that in the 1865 session of Newfoundland's House of Assembly the government decided against asking the House to vote on the Quebec Resolutions. With the merchants of St. John's combining their political force with the Roman Catholics in conservative out-ports, not even pressure from the British Colonial Office, continued economic crisis, or two-thirds of Newfoundland's newspapers could persuade Newfoundland to join confederation. As July 1, 1867 came and went, the House of Assembly refused to even mention the matter.[14]

Following another two years of stifled debate the Government of Newfoundland, quietly in favor of confederation, thought it could carry the day. Persistent economic depression seemed to prove the confederate argument that change was badly needed. In 1869 Terms of Union were settled between the Newfoundland and Canadian governments along similar lines as the original terms offered to the colony in the Quebec Resolutions.[15] The one proviso to this agreement was that it would have to be endorsed by the electorate that year.

Unfortunately the anti-confederate movement had been bolstered by a significant improvement in the seal and cod fisheries, swinging public opinion. Despite the best attempts of the government, the anti-confederates managed to win a famous victory and keep the colony out of union.[16]

Relations with Canada 1870-1929

Though many Newfoundlanders suspected that Canada was anxious to absorb their country, this was not the case. The Canadian Government was content to tolerate Newfoundland's continued sovereignty so long as the colony did not take any actions that directly harmed Canadian interests.[17]

The first real conflict between Canada and Newfoundland came in the 1880s and early 1890s with Newfoundland attempting to negotiate an independent bi-lateral trade agreement with the United States. Fearful of American expansionism the federal government attempted to do what it could to stop Newfoundland from entering into such an agreement.[18] Confederation was once more raised as a possibility with the rationale being that Ottawa and St. John's must present a common front against Washington on issues of trade and fisheries.

In 1888 the Canadian government invited a Newfoundland delegation to visit Ottawa and discuss union. Newfoundland refused and no delegation was ever sent.[19] Two years later a trade deal with the United States known as the 'Bond-Blaine' convention was finally drafted with Newfoundland intent upon ratifying it within the year.[20] The Canadian government in a last effort to stall the deal appealed to the British government to intervene, which they did, refusing consent to any deal between the colony and the United States.

The dispute over the failed trade agreement caused further fighting between the two nations as both Newfoundland and Canada now entered into a retaliatory trade war with one another. The Newfoundland government began to impose duties on Canadian imports and refused to allow Nova Scotian fishing vessels to purchase baitfish caught in

Newfoundland waters.[21] Canada replied by imposing surcharges on its imports from the colony, and threatened further sanctions. Despite agreeing to a meeting in Halifax in 1892, Canada refused to withdraw its objections to the Bond-Blaine convention, and confederation was only briefly discussed.[22]

The last real chance at negotiation between the two sides came in December of 1894 during a serious economic crisis that had caused the collapse of Newfoundland's two banks. As a result the government's financial position had become serious. Now facing bankruptcy confederation seemed the only solution.[23] A delegation was dispatched to Ottawa in 1895 to seek terms of union but once more negotiations stalled with the Canadian government unwilling to concede any privileges not already afforded to the current provinces.[24] In the end the colony managed to secure a loan and negotiations concerning confederation were not initiated again for another 50 years.

The Loss of Responsible Government and the War

The start of the Great Depression in 1929 had left Newfoundland in a dire economic position. By the early 1930s the government proposed to default on its debt payments and was preparing to declare bankruptcy.[25] The British government immediately dispatched a royal commission to investigate and allowed several Canadians to take part in the inquiry. While confederation was raised as a possible solution there was no action taken in this direction. Instead the Government of Newfoundland was forced to resign in favor of a British appointed Commission of Government which was given a mandate to administer the colony until it could become financially independent once more.[26]

The outbreak of war in 1939 left Newfoundland without any effective defenses. There were no troops, guns, or fortifications and the government did not have the means to provide them. Limited assistance from Britain meant the defense of the colony was a North American responsibility with Canada taking the lead. By 1941 RCAF planes were patrolling the waters around Newfoundland using newly acquired bases in Gander, Torbay and Botwood which were placed under direct Canadian control for the duration of the war.[27] The Canadians were not the only presence in Newfoundland with a strong

American presence in St. John's, Argentia and Stephenville. The Americans had been given permission to expand their presence in the colony under the terms of Leased Bases Agreement signed with Britain. At the height of the war in 1943 there were approximately 10,000 American personnel and 6,000 Canadians stationed in the colony.[28]

The large American presence in Newfoundland caused unease in Ottawa who now feared the colony might drift into the American sphere of influence. Recognizing it had permanent and important interests in Newfoundland the federal government established a Canadian High Commission in St. John's in 1941 to "emphasize Canada's special relationship with Newfoundland".[29] By the end of the war in 1945 Newfoundland had become part of an integrated defenses scheme with Canada which now controlled vital strategic installations in the region. Vast mineral resources were also discovered with the potential to become highly profitable. Unwilling to allow further American influence senior Canadian officials decided that, if at all possible, the colony should be brought into confederation.[30]

Confederation at Last

Post-war Britain was in dire economic and financial straits as it attempted to reconstruct its infrastructure following the devastation it had suffered. In September of 1944 the Commission of Government in Newfoundland had presented an ambitious ten year plan to the British Government to modernize and reconstruct the colony at a cost of almost $100 million dollars.[31] Regarding the colony as a serious and unaffordable financial liability then British Prime Minister Clement Atlee announced the formation of an elected National Convention in Newfoundland to discuss changes in the colony since 1934 and which was to recommend a new form of government for the colony. At the same time the British government began to withhold financial assistance in an effort to convince the colony that maintaining the status quo was no longer an option.[32]

In 1946 the National Convention dispatched a delegation to Ottawa to discuss terms with the federal cabinet of a possible union with Canada. It was determined that union with Newfoundland would cost Canada between $10-15 million annually and there was a

serious concern that the other provinces might demand more money as a result.[33] Further delegations were dispatched to enter into discussions with Britain, Canada, and the USA in order to consider all possibilities. When the Convention's delegation reached London in 1947 the British government gave a chilly response indicating that if the delegation chose to return to self government it could expect no financial support from the crown. Confederation, suggested the British government, was the most desirable option.[34]

Despite the considerable pressure from the British government anti-confederate sentiment in Newfoundland was still considerable. There was a prevalent belief that the British government was bullying the colony into union with Canada. In 1948, satisfied it had considered all options, the Convention moved to hold a widespread referendum to allow Newfoundlanders themselves to decide the colony's future. On January 23, 1948 the Convention finalized its recommendations to the British government about which forms of government should be placed on the referendum ballot.[35] All members agreed that both responsible government and the continuation of Commission government should be on the ballot. Debate centered on the third option, that being confederation. By a vote of 29-16 it was decided that confederation would not appear on the ballot.[36]

Acting quickly to the news the British government decided to intervene and overrule the Convention's decision putting the option on the ballot anyways. It saw the anti-confederates as unfairly dominating the political agenda and was hopeful that the general public would see union in a different light.

By the terms of the referendum a clear majority was needed for one of the options to win. The first referendum saw responsible government poll at 45%, union at 41%, and Commission government at 14%. However the results of the second referendum held on July 22, 1948 saw the option of confederation emerge with 52.35% of the vote. Union had finally won.[37]

The federal government immediately accepted the referendums' outcome and quickly moved to finalize Newfoundland's terms of entrance using the terms offered during discussions in 1946 before the referenda. Under the terms, Canada assumed

responsibility for a wide array of public services, including the Newfoundland railway, postal service, airports and aids to marine navigation. Newfoundland maintained control over its natural resources (though not those offshore) and Newfoundland's civil service was to be absorbed into the federal bureaucracy. Finally, on April 1, 1949 Newfoundland entered into union with Canada becoming the country's tenth province.[38]

Post Script

The name "Newfoundland and Labrador" became the official name of the province in 1999.

Endnotes:

1. Blake, Raymond B., *Canadians at Last: Canada Integrates Newfoundland as a Province* (University of Toronto Press, 1994) pg.9
2. Ibid.
3. Ibid.
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6. www.heritage.nf.ca/law/quebec.html (Accessed 25/07/05)
7. Ibid.
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11. Ibid.
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13. Waite, P.B. *The Life and Times of Confederation:1864-1867* (University of Toronto Press, 1962) pg.173
14. Ibid pg.177
15. www.heritage.nf.ca/law/debate.html (Accessed 16/07/05)
16. Ibid.
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21. Ibid.
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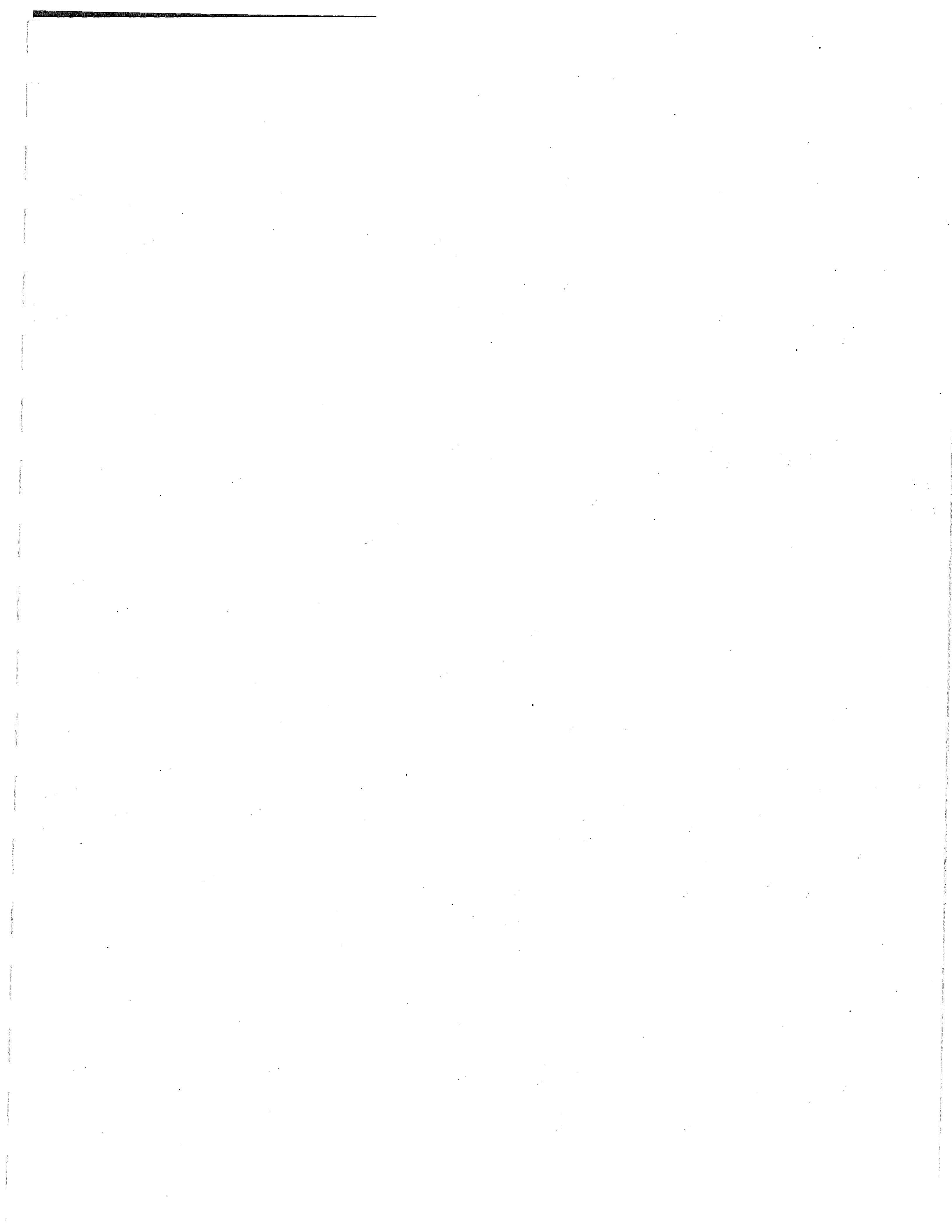
23. Ibid.
24. Ibid.
25. www.heritage.nf.ca/law/relations_1939.html (Accessed 16/07/05)
26. Ibid.
27. www.heritage.nf.ca/law/war_years.html (Accessed 13/07/05)
28. Ibid.
29. Ibid.

30. Ibid.
31. Blake, Raymond B., *Canadians at Last: Canada Integrates Newfoundland as a Province* (University of Toronto Press, 1994) pg.13
32. Ibid pg.15
33. Ibid pg.16
34. Ibid.
35. Ibid pg.18
36. Ibid.
37. Ibid pg.22
38. Ibid pg 24



The Northwest Territories

Territorial Incorporation Date: 1875

Population at Incorporation (1871 Census): 48,000*

Entrance Date: ________________

Population at Entrance: ____________ (41,389 as at 2005)*

*Census Data Provided by Statistics Canada at www.statcan.ca (Accessed 10/08/05)

In 1875 the federal government passed the *Northwest Territories Act* which provided for the administration of Rupert's Land, a newly acquired region formerly under the jurisdiction of the Hudson's Bay Company. *The Northwest Territories Act* ('NWT Act'), along with the *Indian Act* of 1873 provided the constitutional basis for the governance of the territory.[1]

By definition a territorial government is a government in transition. Initially, the federal government administered the Northwest Territories ('NWT') from Ottawa to maintain public order and preserve sovereignty. Today the Government of the Northwest Territories ('GNWT') has acquired constitutional powers approaching those of provinces; a political evolution which has based its' legitimacy solely on convention. Yet despite the great leaps the NWT has made towards province-hood the federal government still retains control of Crown lands and non-renewable resources and none of the three northern territories have any formal say in the constitutional amending process.[2]

Originally the NWT encompassed an area of over 3.3 million square kilometers that stretched from the borders of British Columbia all the way to northern Quebec, containing all of modern day Alberta, Saskatchewan, Nunavut, the Yukon and parts of Ontario.[3]

Under the provisions of the *Indian Act* agents of the Department of Indian Affairs were responsible for all 'Indians' in the Northwest Territories, but the Act placed those of Inuit

or Métis descent under jurisdiction of the Department of the Interior as it did not recognize the latter two as aboriginal peoples in any legal sense.[4] With a vast majority of the northern population of Inuit, Dene, or Metis descent, this move alienated a significant number of those residing in the region.

Government Before 1950

The first major political milestone in the evolution of governance in the NWT occurred in 1905 with the first amendment to the *NWT Act*.[5] The act was altered to accommodate new boundaries (arising out of the creation of Alberta and Saskatchewan from land formerly within the boundaries of the NWT), gave the chief executive officer the title of Commissioner rather than Lieutenant Governor, and created a four person appointed Territorial Council to assist the Commissioner. After 1920 the 'Commissioner-in-Council' became an important part of the Department of the Interior answering directly to the Minister.[6]

Following the discovery of oil 80 kilometers north of Norman Wells in 1920 the small governing body of the NWT, the Commissioner-in-Council, in coordination with the Department of the Interior began to prepare for increased development along the Mackenzie River. In April of 1921 the 4 Territorial Council members, appointed to assist the Commissioner, voted to expand the Council's membership to include 6 appointed members.[7] The move was the first in a series of government expansions that would see the council grow considerably and eventually be replaced by the legislative arm of the GNWT. However, the expected influx of miners never occurred on the scale imagined and the Territorial Council began to oversee more day-to-day matters rather than dealing with resource related issues.

Up until 1947 membership in the Territorial Council consisted of high-ranking civil servants responsible for the administration of the NWT. The Commissioner also held the position of Deputy Minister for the Department of the Interior, with the Assistant Deputy Minister also holding the post of Deputy-Commissioner.[8]

In 1936 faced with the economic crisis of the Great Depression and the need for governmental and institutional reform, the Department of the Interior was abolished and its functions absorbed into the newly created Department of Mines and Resources.[9] Responsibility for the administration of the NWT fell to the Bureau of the Northwest Territories and Yukon Affairs, a part of the Lands, Parks, and Forests Branch of the Department of Mines and Resources. While the Department was still directly responsible for the administration of the NWT it is important to note that under this new format the government of the NWT was given significantly more autonomy then ever before with funding now provided to the administrative branch directly and not through federal grants.[10]

1950-1969: The Carrothers Commission Redefines Northern Governance

In the early 1950s there was a marked shift in the policy of the federal government in regards to northern issues as it attempted to exert a greater degree of 'Canadian' sovereignty in the region in the wake of World War II and the subsequent rise of tensions between the United States and the USSR.[11] Aboriginal peoples of the north were also finally given a more prominent place on the northern agenda following harsh public criticism leveled at Ottawa's handling of native issues by the media in New York and Washington and in the writings of highly circulated authors such as Farley Mowat.[12] What followed was a decade of dramatic bureaucratic reorganization as federal officials attempted to meet the growing demands of the Territorial agenda.

In 1950 the Department of Mines and Resources was split into three new departments (all of which dealt with issues on the northern agenda). The Northern Affairs branch - which dealt with the administration of the Territory - was moved to the Department of Resources and Development, while the Indian Affairs branch was merged into the Department of Citizenship and Immigration.[13] In 1951 the *NWT Act* was amended to include eight council members, three of whom would now be elected and the Act was further amended in 1954 to include a fourth elected member.[14]

By 1953 a new Department of Northern Affairs and National Resources was formed to take over the Northern Administration and Lands branch, formerly a part of the Department of Resources and Development.[15]

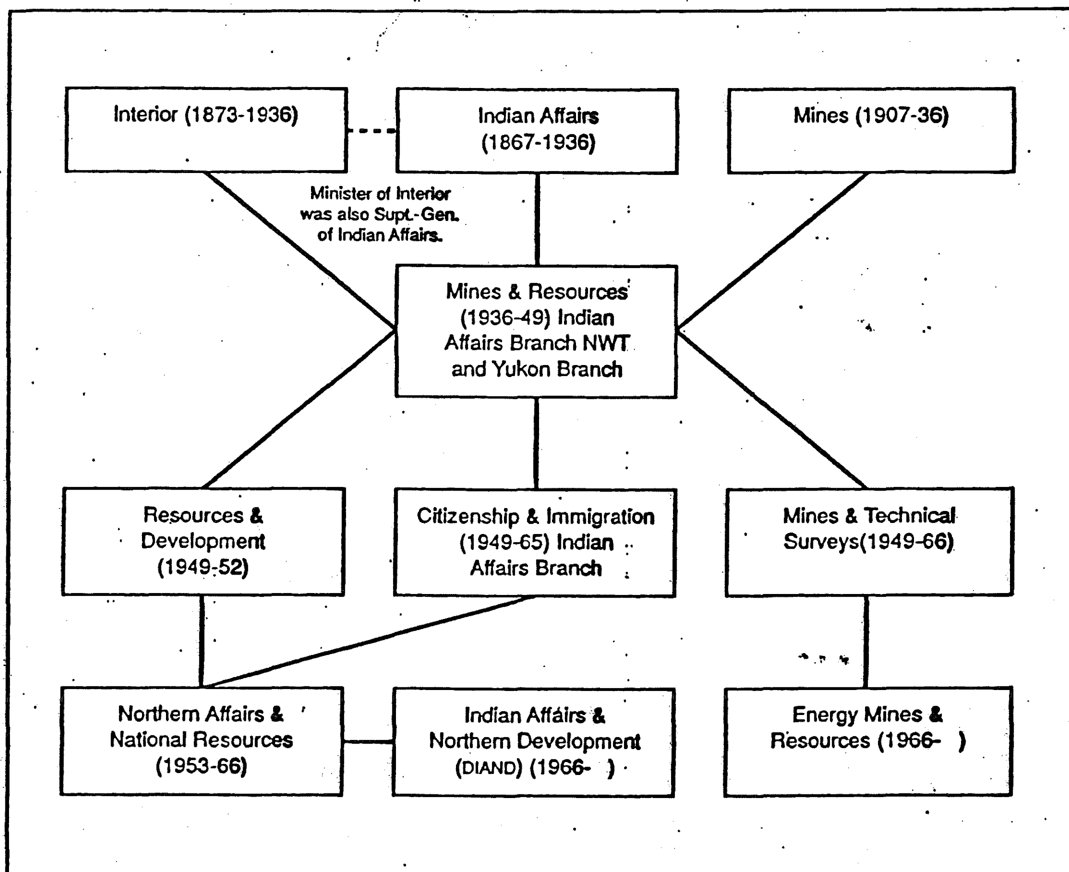
Turbulent administrative changes were far from over. In 1965 the Carrothers Commission was appointed by the Minister of Northern Affairs and National Resources to report on the increasingly popular idea of dividing the NWT into two jurisdictions and to advise the federal government on the nature of the governmental process evolving in the region's local municipalities.[16] By 1967 the Commission had traveled to fifty-one communities and noted a strong public desire and orientation towards issues of community and local government.[17]

In its' recommendations the Commission responded to the trend by recommending further development of local governmental organizations in the NWT so that individuals in the community could more actively attend to local problems. However the Commission did not regard the then popular idea of dividing the Territory recommending instead "To retain the Territories as a political unit, to locate the government of the territories within the territories, to decentralize its operation as far as practicable, to transfer administrative functions from the central to the territorial government in order that the latter may be accountable on site for the administration of public business, and to concentrate on economic development and opportunity for the residents of the North."[18]

The final Departmental shift occurred in the late 1960s as the federal government attempted to redesign its administration of the north modeling itself on the Carrothers recommendations. In 1963 the Northern Administration Branch was granted its own Deputy Minister, giving it equal status with the National Resources Branch of the department. During the same period Indian Affairs responsibilities were turned back over to the Department of Northern Affairs and National Resources which officially became the Department of Indian Affairs and Northern Development ('DIAND') in 1966 in a direct response to the interim reports issued by the Carrothers Commission.[19]

During this period the operating budget of the GNWT continued to rise sharply with the budget in 1966 seventeen times what it had been a mere decade earlier.[20] Many communities in the Mackenzie Valley and in the Eastern Arctic were moving towards some sort of municipal status which forced the Department's hand in increasing financial funding to local government. The rift between the increasingly autonomous GNWT and DIAND was further heightened in 1967 with the move of the Commissioner and his staff to a new seat of government in Yellowknife.[21]

Government Departments Responsible for Native Affairs and Northern Development[22]



The Carrothers Commission advocated for a stronger more autonomous GNWT where the Commissioner would remain responsible to the Minister of DIAND but have the

authority and status of a Deputy-Minister. The report also served as a blue print for the movement to build a responsible representative government centered in Yellowknife. In the next decade, bolstered by the Commission's report, the GNWT would assume full responsibility for an increasing number of administrative portfolios including education, housing, local government, and public works.[23]

Executive Branch of the GNWT: Evolution to Responsible Government, 1967-79[24]

1980 Two additional Legislative Assembly members elected to Executive Council
Commissioner, deputy commissioner, 7 elected members
(Legislature agreed that one member of elected executive serve as elected executive leader)
3 executive committees formed:
Priorities and Planning: George Braden, chair
Financial Management Board: Commissioner John Parker
Legislative and House Planning: Richard Nerysoo

1981 Elected member becomes minister of Finance: commissioner remains chair of Financial Management Board

1983 Executive Council:
Leader of elected executive takes deputy chairman, Executive Council
Minister of Finance becomes chairman of Financial Management Board
Deputy commissioner no longer sits on Executive Council (one more seat to be elected, total of eight)
Executive Committee becomes Executive Council

1984 Leader of elected executive called government leader: Richard Nerysoo

1985 Two of the eight executive members replaced by assembly after interim vote, representing a type of 'responsible government.' Nick Sibbeston is chosen government leader

1986 Government leader becomes chairman of Executive Council
Government leader takes over management of Public Services, last formal administrative responsibility of commissioner

1987 Dennis Patterson chosen government leader

1989 John Parker retires as commissioner; Daniel L. Norris, resident of the Western Arctic, is appointed commissioner

1991 Nellie Cournoyea chosen government leader

The Berger Inquiry & the Drury Report

The discovery of extensive oil and gas reserves in the Mackenzie Delta region hastened further political progress in the early 1970s. In 1974 the Trudeau government appointed a former Judge of the British Columbia Supreme Court, Thomas Berger, to assess the impact of constructing a pipeline down the Mackenzie Valley.[25] The "Berger Inquiry"

traveled throughout the Western Arctic visiting and consulting local communities similar to the Carrothers Commission. The findings of the inquiry were twofold:

(1) The majority of northerners stated opposition to the idea of the pipeline because it would possibly destroy vast tracts of land (critical to the survival of many aboriginal communities), and therefore before development can occur there must be a settlement of all land claims in the region.[26]

(2) Some degree of autonomous self government must be a part of any deal to ensure that the aboriginal peoples of the north can control the destiny of their own land, with the power of local councils to expand to include greater control of responsibilities such as education, healthcare, housing, social services, policing, and local economic development.[27]

For the first time Canadians were made aware of the plight of native peoples in the NWT and specifically their concerns over allowing the unrestrained economic exploitation of such a delicate region.

The territorial election of 1975 had eliminated all federal appointees to the Territorial Council and for the first time the Legislative Assembly was completely elected with 24 MLA's representing constituencies throughout the entire region.[28] Having an elected Legislative Assembly enabled the GNWT to strengthen its executive apparatus while the administrative branch continued to expand following a steady devolution of power from the federal government. As a measure of the growth of the GNWT's bureaucracy from 1967-1991 operating and capital budgets increased by 700%. [29] This large increase is attributed to low levels of economic development in many of the more isolated communities which thus require subsidies from the GNWT to maintain local services.

The financial strain from such a sharp rise in government spending has been the most worrisome consequence of increased territorial autonomy. With the GNWT facing an exponentially growing operating budget it has yet to secure the financial resources to fully fund its operations alone. Two factors can be attributed to this problem, (1) a relatively small tax base upon which to draw revenue and (2) a lack of alternative

revenue sources such as the royalties from natural resources etc. As a result, the GNWT still derives almost 80% of its revenue from federal funds.[30]

Now fully aware of the need for formal discussions to begin with regards to the political evolution of the GNWT and the shape of local governments in the north, the federal government commissioned C.M. Drury as a 'Special Government Representative for Constitutional Development in the Northwest Territories' in 1977.[31] The mandate of Drury was:

> *To conduct a systematic consultation with recognized leaders of the Territorial Government, northern communities and native groups about specific measures for modifying and improving the existing structures, institutions and systems of government in the Northwest Territories, with a view to extending representative, responsive and effective government to all parts of the Territories and at the same time accommodating the legitimate interests of all groups in northern society, beginning with those of the Indian, Inuit and Métis.*[32]

The final report was published in January of 1980, and its findings were both significant and controversial. Drury perceived, as perhaps few in the South at the time, why all was not well with the new GNWT. The findings were controversial because at the time many people in the NWT were debating the issue of division of the territories and there was much support, particularly in the Eastern Arctic, for division.[33] Drury came out against the idea of division and the creation of Nunavut as he felt that the region did not yet possess the infrastructure required to meet the needs of the people of that region. What was needed in Drury's opinion was funding to strengthen local governments rather than divide them. The problem, he noted, was part historical:

> *Government in the NWT has not emerged from the grassroots. It is the product of a progressive transfer of administrative and then political structures and authorities from Ottawa to Yellowknife and thence to communities. Community authority is not seen to be the prime focus of the system of government, even though some decentralization may be considered as a desirable long-term objective. The result is that government in the NWT tends to be centralized.*[34]

In the communities, the problem was exasperated by a desire for the decentralization of power into the hands of local and regional governmental organizations.

> *Local councils and committees are perceived by the communities as possessing no real authority over those issues that are of vital importance to the lives of residents of the communities. The territorial and federal governments consider the local councils and committees to be their agents, or merely advisory bodies, and not part of a separate and distinct level of government. Thus, the same phenomenon occurs at the community levels as at the territorial level: despite the existence of fully elected representative bodies, there is a sense of powerlessness and a feeling that government is being 'administered' from afar. The principles of accountable and responsive government are not being fulfilled.*
>
> *The current jurisdictional areas of municipal councils relate primarily to the physical operation of hard services and include services such as water, sewerage, garbage collection, road maintenance, zoning and community planning. The soft services, namely social and cultural matters, education and land management, are largely excluded from the local process of decision making. Many residents of the smaller communities regard the soft services as being critical of their lives, but ones over which they have little influence.*[35]

These observations were a serious indictment of the development and growth in the GNWT. Extensive energy and time had been spent constructing a territorial government, a province-like apparatus to govern the entire region and it had faltered over several stumbling blocks. Firstly, Ottawa was loath to give up power, instead preferring to leave the final 'say' with officials at DIAND despite the constant pressure caused by the expansion of the GNWT's administrative duties. Secondly, it was also difficult to establish an effective governmental body that could meet the unique needs of some sixty diverse, isolated communities that had never previously been a part of the economic interests of southern Canada.[36]

Drury's recommendations were broad and far reaching. Of specific importance was the need to create a statutory base for local and regional governments in the north:

> *The territorial and federal governments should recognize a real and distinct first tier of government at the local level. At such time as the NWT Act is revised, an article should be added that would explicitly recognize the municipal order of government in the NWT and specify those jurisdictions in which the communities would have paramount authority. Communities should, however, be permitted to choose to exercise such responsibilities as they feel ready to accept. The NWT Act should also permit communities to delegate any of their responsibilities to regional structures.*[37]

In terms of the actual role local government should play in this under the jurisdiction of an amended *NWT Act* Drury recommended that:

> *The GNWT should adapt its structures, functions and attitudes so as to foster and reflect the development of community government. As communities assume the major operations of programs now delivered by the GNWT, progressive reorganization and consolidation of territorial program departments will be required. Moreover, a extensive decentralization of community-related territorial functions will allow the GNWT effectively to advise and assist the communities to assume new responsibilities.*
>
> *Communities should have the choice of forming regional councils through voluntary delegations upward of community authorities.*
>
> *Communities should define the extent of authority to be exercised regionally through a regional council.*
>
> *Consistent with the conclusion that the incorporated community council should be the prime public body at the local level, a regional council, where it exists, should be the prime public political structure at the regional level.*[38]

Finally, to address concerns over the division of power between the communities and Yellowknife Drury included suggestions in terms of local finances, so that the delegation of power to local councils would be met with sufficient financial resources. This would be done through 'block transfers' from the GNWT to community councils. Funds would be allocated on a formula basis, enabling local governments to plan according to local needs and interests.[39]

Drury's assessment of the constitutional development of the GNWT shed light on the strains a decade of rapid evolution had caused. What was desperately needed was a concerted focus upon the problem of divisions of power, not just between Ottawa and Yellowknife, but Yellowknife and the northern communities. Furthermore, the issue needed to be dealt with in a manner that reflected the unique values and cultural diversity of the north.

Executive Branch of the GNWT: Evolution to Responsible Government, 1980-91[40]

1967	Capital of NWT moved to Yellowknife and with it government of the Northwest Territories
1967-8	Executive Committee (GNWT) Commissioner - chief executive officer - chairman (Hodgson) Deputy commissioner Executive assistant (becomes assistant commissioner in 1969) Department heads and regional administration report to Executive Council
1969	Executive Committee: acquires permanent secretary
1971	Executive Committee: adds Executive Secretariat to co-ordinate 'the collection, analysis, and presentation of management information in a systematic and organized fashion'
1973	Executive Committee: second assistant commissioner appointed but removed after reorganization in 1975
1974	Federal minister authorizes two members of elected Territorial Council to be members of Executive Committee: after the 1975 election, council chooses these members Executive Secretariat grows: Audit Bureau; Financial Co-ordination and Program Analysis; Personnel Policy and Planning; Program Policy and Planning; and Petroleum Resource Development Project Group
1976	Executive Committee: adds third member of elected Territorial Council (named Legislative Assembly in 1976)
1978	Land Claims Secretariat becomes part of Executive Office
1979	Executive Committee: authorized 5 to 7 members of elected Legislative Assembly; after 1979 election, 5 selected; assistant commissioner's position phased out of Executive Committee in movement toward more responsible government. John Parker becomes commissioner.

The legacy of the Drury report lies in the way in which it addressed what was then, and is still today, one of the most contentious issues in the political evolution of the NWT: to what extent should the GNWT disperse its' power to regional and local governments? Here it is important to acknowledge that as political development has continued such local and regional governments are in many cases now in place by way of land claims agreements.

The Decentralization Debate

The GNWT itself has put out mixed messages on the centralization-decentralization issue. The executive of the government commissioned a study of regional governments, and, in 1987, its findings were tabled in the *Report on the Regional and Tribal Councils in the Northwest Territories*.[41] The report was an endorsement of decentralization that essentially recommended strengthening the role of regional councils. The federal government's response to the report was negative with a document tabled on November 4, 1988 recording the response: "The final Report of the Review Coordinating Committee did not fulfill our expectations of a comprehensive analysis of regional and tribal councils in a broader context of the evolution of the Government of the NWT."[42]

Despite this negative reception the GNWT did pass the *Charter Communities Act* which came into force in 1988.[43] The act enabled local communities to create a single community council at the municipal level by combining responsibilities of the band council (a product of the *Indian Act*) and the local government council (a product of the GNWT's *Municipal Act*). Now a single municipal council would represent a single source of authority in communities rather than having, for example, competing band and hamlet councils. The act also dealt with a number of changes to the election codes of these new councils and reiterated areas in which councils could enact by-laws.[44]

Since the elections in October 1991 and the formation of a new Executive Committee it appears that the GNWT has shifted its policy on decentralization. Former government leader Nellie Cournyea conveyed the GNWT's new position stating:

"Our budget situation means that tough financial, operational and organizational decisions have to be made right now at both the territorial and community levels...both government and public expectations will have to decrease...[yet] all of us want to encourage greater community self-sufficiency, with strong community governments making their own decisions on behalf of the people who elected them. We want to see community ownership of programs and services. We want to see programs and services delivered in a way that reflects the unique conditions of each community, controlled by local peoples who know the community and who can set their own funding priorities...[we] will be developing approaches and arrangements designed to provide for local control and to set the stage for increased social and economic self-sufficiency at the community level."[45]

With recent developments such as the formation of Nunavut in 1999 and the conclusion of the Tli Cho agreements in 2005, as well as other land claims agreements in the past two decades, it is apparent that despite financial issues movement towards the decentralization of power from Yellowknife into the hands of local and regional governments is well on its way to becoming a political reality.

The Bourque Report

As the push for aboriginal self-government moved forward in the early 1990s there was significant concern over the impact the 'opening of the north' to economic expansion was having on both the environment and the traditional way of aboriginal life. Specifically, many feared that an influx of migrants from the south could cause the majority of aboriginal northerners to become outnumbered in their homeland.

To move the debate forward the GNWT established a broadly-based Commission for Constitutional Development in the summer of 1991 (chaired by Jim Bourque) which was given the mandate to "develop a comprehensive constitutional proposal for those regions of the NWT remaining after the creation of Nunavut for consideration by way of plebiscite".

In April 1992, following extensive public consultation, this commission released its phase one report: 'Working Toward a Common Future'.

The Commission's report came to the conclusion that, "the New Western Territory's constitution should affirm that all authority to govern belongs to the people, collectively, and flows, collectively, from them to their institutions of government." This was seen as a harsh criticism of the way in which the GNWT had administered services in a heavily Yellowknife-centric manner, often at the expense of the needs of more isolated communities. As a solution the commission recommended that a district order of governments be established in the western Arctic and that these assume wide-ranging authority.

According to the model set out in Bourque's recommendations outlying regions would exercise considerable power now in the hands of the territorial government. Critics of this approach suggest this is a recipe for the political 'balkanization' of the western Arctic and Mackenzie Valley and argued that it would perpetuate a strong federal presence in the north for years to come.

The decentralization Bourque was advocating was very different from the steps the GNWT had taken in devolving power to local communities. Whereas the GNWT had been rapidly decentralizing the administration and delivery of government programmes and services Bourque called for a decentralization of governmental power structures entirely.

The legacy of the Bourque report lies in its foresight in advocating for the empowerment of northern communities which were being disenfranchised by the lack of direct political authority they were being afforded. Bourque's recommendations were further key in laying the final groundwork for the formation of Nunavut in 1999 and the unique government structure it would adapt.

The Local-Regional-Territorial Model of Government

There seems to be no reason to consider external models of government for constitutional development in the NWT. The existing framework of the GNWT includes

local, regional and territorial jurisdictions similar to the divisions of government seen in most Canadian provinces.[46] Since 1967, local governments have been an emerging institution within the territorial government. In 1977, a regional government was instituted in the Baffin area. Since that time, regional governments have become an integral part of the government process in the territories.[47]

Before territorial division in 1999 regional governments existed in some form in nine separate jurisdictions: three within the Nunavut area, five within the Denendeh area, and one within the Inuvialuit settlement region.[48] With the local-regional-territorial model already in operation within the NWT the biggest issue remains the nature and establishment of an agreeable power relationship within that framework.

Other potential problems exist as well. For instance, despite the current framework of the GNWT and its' willingness to enter into a process of decentralization, the question of the legitimacy of the GNWT itself still remains. With a different power arrangement, many individuals in the NWT might feel they have an opportunity to influence public decisions that directly affect their lives in small communities. Then and only then might they feel that they live under a government to which they consent.

Elected representatives in the GNWT are crafting a system of government that is different from any jurisdiction in Canada and the process is far from complete. Only when the GNWT is given full constitutional control of the financial means to end its transitory state and assume an equal place within confederation will it be able to effectively implement a system responsive to the special needs of northerners.

The Constitutional Challenge

The path to province-hood is an exceptionally complicated process and would require an amendment to the *Constitution Act 1982* in order to vest provincial status in the NWT. Section 38 of the Constitution lays out the specific guidelines such an amendment would have to pass in order to be ratified:

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(a) resolutions of the Senate and House of Commons; and

(b) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces. [49]

Section 42(1) sub-sections (e) and (f) of the Constitution make reference specifically to the case of admitting new provinces into Dominion:

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(e) the extension of existing provinces into the territories and

(f) notwithstanding any other law or practice, the establishment of new provinces.[50]

The guideline for the initiation of amendment procedures is also outlined in the Constitution under section 46 (1), which states that:

46. (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.[51]

Given the guidelines set out in the Constitution it is unclear whether or not the Legislative Assembly of the NWT would have the authority to initiate a constitutional amendment process itself, as it is still a 'territorial' assembly and not a 'provincial' one. However, a legal argument could be made on the basis of common law; that is, if there exists legal precedent in which the GNWT has acted under the authority of the '*Crown in Right of the Northwest Territories*' rather then the '*Crown in Right of Canada*'.

This is the position taken by Charles F. McGee in a paper titled *'The Legal Personality of the Government of the Northwest Territories'* published in 1988.[52] Though dated, the paper notes several instances in which the Northwest Territories has acted in a manner that is best described as being the Crown in Right of the Northwest Territories. Given that the NWT is still under the purview of direct federal authority this would mean that there exists legal precedent in which the NWT was considered an autonomous legal entity, analogous to a full-fledged province. If such an argument could be successfully made then it would be possible for the NWT's Legislative Assembly to pass a resolution calling for the initiation of Constitutional amendment procedures (though it would still need to meet the conditions laid out in section 38. (1) to be ratified).

In the alternative, the initiation of the Constitutional amending process could be made by a resolution from either a member of the House of Commons or the Senate.

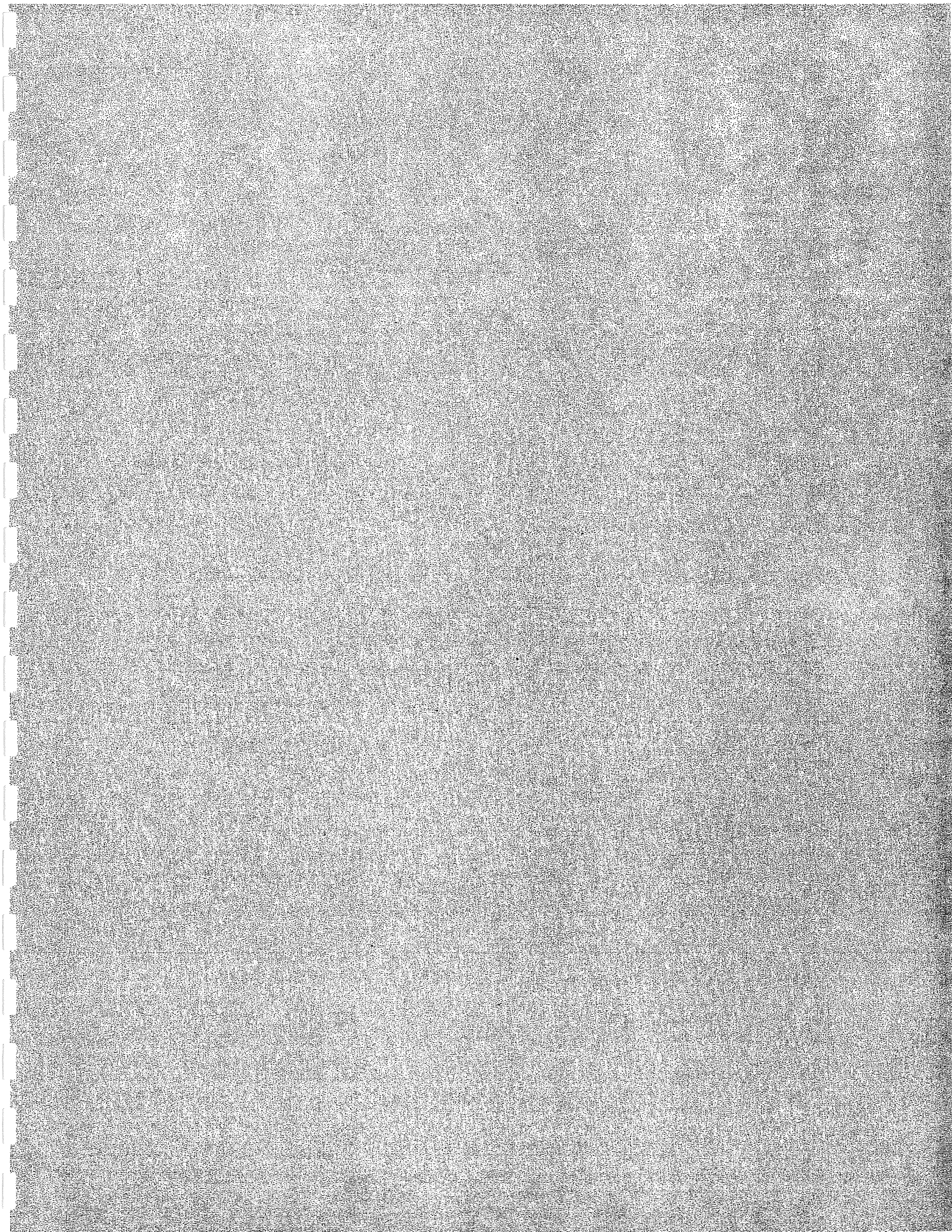
If such a path were to be followed the Legislative Assembly of the NWT would have to pass a motion recommending that the issue of province-hood be placed before the Parliamentary Standing Committee of Indian and Northern Affairs.[53] The Standing Committee is directly responsible for the federal administration of the north and is headed by the Minister of DIAND. It would then be up to the Committee to recommend and draft an 'Act of Parliament' to put before the consideration of the House of Commons.

If such an Act were to pass the House of Commons and the Senate then the Provincial Legislatures' would be asked to voice their own approval or disproval on the amendment in accordance with section 38 (1) of the Constitution. If two-thirds of the Provincial Legislatures' (representing at least 50% of the population of Canada) give their ascent to the amendment, the last remaining step would be to amend the *NWT Act* itself, ascribing the full status and powers of province-hood to the Territories.

Endnotes:

1. Dickerson, Mark O., *Whose North? Political Change, Political Development, and Self-Government in the Northwest Territories* (UBC Press, 1992) pg 5
2. Ibid
3. www.explorenwt.com/adventures/ historic-sites/Timeline.asp (Accessed 04/08/05)
4. Dickerson, Mark O., *Whose North? Political Change, Political Development, and Self-Government in the Northwest Territories* (UBC Press, 1992) pg 28
5. Ibid pg 5
6. Ibid pg 29
7. Ibid pg 30
8. Ibid
9. Ibid pg 32
10. Ibid pg 33
11. Ibid pg 61
12. Ibid
13. Ibid pg 55
14. Ibid
15. Ibid pg 61
16. Ibid pg 84
17. Ibid pg 85
18. Ibid pg 86
19. Ibid pg 65
20. Ibid pg 84
21. Ibid
22. Ibid pg 33
23. Ibid pg 89
24. Ibid pg 93
25. Ibid pg 107
26. Ibid pg 108
27. Ibid
28. Ibid pg 117

29. Ibid pg 123
30. Ibid pg 117
31. Ibid pg 109
32. Ibid
33. Ibid
34. Ibid pg 110
35. Ibid pg 111
36. Ibid
37. Ibid pg 112
38. Ibid
39. Ibid pg 113
40. Ibid pg 120
41. Ibid pg 171
42. Ibid
43. Ibid pg 172
44. Ibid
45. Ibid pg 174
46. Ibid pg 182
47. Ibid
48. Ibid
49. law.justice.gc.ca/en/const/annex_e.html (Accessed 09/08/05)
50. Ibid
51. Ibid
52. Please See Appendix G
53. www.parl.gc.ca/information/about/process/house/standingorders.html (Accessed 02/07/05)



The Yukon Territory

Territorial Incorporation Date: 1898
Population at Incorporation: 27,219*

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*Census Data Provided by Statistics Canada at www.statcan.ca (Accessed 10/08/05)

In 1898 the Canadian federal government divided the Northwest Territories to fill the need for local government in the far western portion of the territories, which had been experiencing an influx of settlers due to the Klondike Gold Rush.[1] The *Yukon Territory Act* created a new Territorial administration based in Whitehorse to fulfill the need for responsible government in the region.[2]

Today, like the provinces, and unlike the other two territories, the Yukon's unicameral legislature has a party system. Prior to 1979 the territory was administered by a Commissioner who was appointed by the federal Minister of Indian Affairs and Northern Development ('DIAND').[3] The Commissioner chaired and had a role in appointing the territory's *Executive Council* and had a day to day role in governing the territory. However a significant degree of power was devolved in 1979 from the federal government and Commissioner to the territorial legislature which, in that year, adopted a party system of responsible government. The territory has one senator and one member in the Parliament of Canada.[4]

The *Yukon Act*, passed in 2002 formalised the powers of the Yukon government and devolved a number of additional powers to the territorial government (e.g. control over land and natural resources). As of 2002, other than criminal prosecutions, the Yukon government has much of the same powers as provincial governments.[5]

Endnotes:

1. en.wikipedia.org/wiki/Yukon, (Accessed 13/08/05)
2. Ibid
3. Ibid
4. Ibid
5. Ibid

Nunavut

Territorial Incorporation Date: 1999

Population at Incorporation: 29,300*

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*Census Data Provided by Statistics Canada at www.statcan.ca (Accessed 10/08/05)

Political Evolution

In 1976 negotiations for a land claim agreement between the Inuit Tapirisat of Canada and the federal government began. In April 1982 a majority of Northwest Territories residents voted in favour of division and the federal government gave conditional agreement seven months later. A land claims agreement was reached in September, 1992 and ratified by nearly 85 percent of the voters in Nunavut.[1]

In June 1993 the *Nunavut Land Claims Agreement Act* and the *Nunavut Act* were passed by Parliament and the transition was completed on April 1, 1999 with the formation of a new territory.[2]

The members of the unicameral legislative assembly are elected individually; there are no parties and the legislature is consensus-based. The head of government, the premier of Nunavut, is elected by and from among the members of the legislative assembly.[3]

What is unique about the Government of Nunavut itself is the role traditional aboriginal governing structures play in formation of the current governmental process. In 2004 Premier Paul Okalik set up an advisory council of 11 elders, the *inuit qaujimajatuquangit*, whose function is to help integrate Inuit culture into the territory's political decisions.[4] This development facilitates the unique need for local responsible government in an area traditionally administered by unresponsive bureaucrats in Ottawa.

Endnotes:

1. en.wikipedia.org/wiki/Nunavut, (Accessed 13/08/05)
2. Ibid
3. Ibid
4. Ibid

Appendix A

The Manitoba Act

A Copy of Which Was Obtained From

canada.justice.gc.ca/en/ps/const/loireg/index.html

An Act to amend and continue the Act 32-33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba, 1870, 33 Vict., c. 3 (Can.)

[*12th May, 1870*]

Preamble.

WHEREAS it is probable that Her Majesty The Queen may, pursuant to the British North America Act, 1867, be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next Session of the Parliament of Canada:

And Whereas it is expedient to prepare for the transfer of the said Territories to the Government of Canada at the time appointed by the Queen for such admission:

And Whereas it is expedient also to provide for the organization of part of the said Territories as a Province, and for the establishment of a Government therefor, and to make provision for the Civil Government of the remaining part of the said Territories, not included within the limits of the Province:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Province to be formed out of N.W. territory when united to Canada.
Its name and boundaries.

1. On, from and after the day upon which the Queen, by and with the advice and consent of Her Majesty's Most Honorable Privy Council, under the authority of the 146th Section of the *British North America Act, 1867*, shall, by Order in Council in that behalf, admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, there shall be formed out of the same a Province, which shall be one of the Provinces of the Dominion of Canada, and which shall be called the Province of Manitoba, and be bounded as follows: that is to say, commencing at the point where the meridian of ninety-six degrees west longitude from Greenwich intersects the parallel of

forty-nine degrees north latitude,--thence due west along the said parallel of forty-nine degrees north latitude (which forms a portion of the boundary line between the United States of America and the said North-Western Territory) to the meridian of ninety-nine degrees of west longitude,--thence due north along the said meridian of ninety-nine degrees west longitude, to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude,--thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the before-mentioned meridian of ninety-six degrees west longitude,--thence due south along the said meridian of ninety-six degrees west longitude to the place of beginning.

Certain provisions of B. N. A. Act, 1867, to apply to Manitoba.

2. On, from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid, the provisions of the *British North America Act, 1867*, shall, except those parts thereof which are in terms made, or, by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act.

Representation in the Senate.

3. The said Province shall be represented in the Senate of Canada by two Members, until it shall have, according to decennial census, a population of fifty thousand souls, and from thenceforth it shall be represented therein by three Members, until it shall have, according to decennial census, a population of seventy-five thousand souls, and from thenceforth it shall be represented therein by four Members.

Representation in the House of Commons.

4. The said Province shall be represented, in the first instance, in the House of Commons of Canada, by four Members, and for that purpose shall be divided by proclamation of the Governor General, into four Electoral Districts, each of which shall be represented by one Member: Provided that on the completion of the census in the year 1881, and of each decennial census afterwards, the representation of the said Province shall be re-adjusted

according to the provisions of the fifty-first section of the *British North America Act, 1867.*

5. Until the Parliament of Canada otherwise provides, the qualification of voters at Elections of Members of the House of Commons shall be the same as for the Legislative Assembly hereinafter mentioned: And no person shall be qualified to be elected, or to sit and vote as a Member for any Electoral District, unless he is a duly qualified voter within the said Province.

Qualification of voters and members.

6. For the said Province there shall be an officer styled the Lieutenant-Governor, appointed by the Governor General in Council, by instrument under the Great Seal of Canada.

Lieutenant-Governor.

7. The Executive Council of the Province shall be composed of such persons, and under such designations, as the Lieutenant-Governor shall, from time to time, think fit; and, in the first instance, of not more than five persons.

Executive Council.

8. Unless and until the Executive Government of the Province otherwise directs, the seat of Government of the same shall be at Fort Garry, or within one mile thereof.

Seat of Government.

9. There shall be a Legislature for the Province, consisting of the Lieutenant-Governor, and of two Houses, styled respectively, the Legislative Council of Manitoba, and the Legislative Assembly of Manitoba.

Legislature.

10. The Legislative Council shall, in the first instance, be composed of seven Members, and after the expiration of four years from the time of the first appointment of such seven Members, may be increased to not more than twelve Members. Every Member of the Legislative Council shall be appointed by the Lieutenant-Governor in the Queen's name, by Instrument under the Great Seal of Manitoba, and shall hold office for the term of his life, unless and until the Legislature of Manitoba otherwise provides under the *British North America Act, 1867.*

Legislative Council.

Members and their appointment, &c.

11. The Lieutenant-Governor may, from time to time, by Instrument under the Great Seal, appoint a Member of the Legislative Council to be

Speaker.

Speaker thereof, and may remove him and appoint another in his stead.

12. Until the Legislature of the Province otherwise provides, the presence of a majority of the whole number of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers.

Quorum.

13. Questions arising in the Legislative Council shall be decided by a majority of voices, and the Speaker shall, in all cases, have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

Voting.

Equality of votes.

14. The Legislative Assembly shall be composed of twenty-four Members, to be elected to represent the Electoral Divisions into which the said Province may be divided by the Lieutenant-Governor, as hereinafter mentioned.

Legislative

15. The presence of a majority of the Members of the Legislative Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers; and for that purpose the Speaker shall be reckoned as a Member.

Quorum

16. The Lieutenant-Governor shall (within six months of the date of the Order of Her Majesty in Council, admitting Rupert's Land and the North-Western Territory into the Union), by Proclamation under the Great Seal, divide the said Province into twenty-four Electoral Divisions, due regard being had to existing Local Divisions and population.

Electoral Divisions.

17. Every male person shall be entitled to vote for a Member to serve in the Legislative Assembly for any Electoral Division, who is qualified as follows, that is to say, if he is:--

Qualification of Voters

1. Of the full age of twenty-one years, and not subject to any legal incapacity:

2. A subject of Her Majesty by birth or naturalization:

3. And a *bonâ fide* householder within the Electoral Division, at the date of the Writ of Election for the same, and has been a *bonâ fide* householder for one year next before the said date; or,

4. If, being of the full age of twenty-one years, and not subject to any legal

Special - for

incapacity, and a subject of Her Majesty by birth or naturalization, he was, at any time within twelve months prior to the passing of this Act, and (though in the interim temporarily absent) is at the time of such election a bonâ fide householder, and was resident within the Electoral Division at the date of the Writ of Election for the same:

first election only.

But this fourth sub-section shall apply only to the first election to be held under this Act for Members to serve in the Legislative Assembly aforesaid.

Proviso.

18. For the first election of Members to serve in the Legislative Assembly, and until the Legislature of the Province otherwise provides, the Lieutenant-Governor shall cause writs to be issued, by such person, in such form, and addressed to such Returning Officers as he thinks fit; and for such first election, and until the Legislature of the Province otherwise provides, the Lieutenant-Governor shall, by Proclamation, prescribe and declare the oaths to be taken by voters, the powers and duties of Returning and Deputy Returning Officers, the proceedings to be observed at such election, and the period during which such election may be continued, and such other provisions in respect to such first election as he may think fit.

Proceedings at first election, &c.,-- how regulated.

19. Every Legislative Assembly shall continue for four years from the date of the return of the writs for returning the same (subject nevertheless to being sooner dissolved by the Lieutenant-Governor), and no longer; and the first Session thereof shall be called at such time as the Lieutenant-Governor shall appoint.

Duration of Legislative Assembly.

20. There shall be a Session of the Legislature once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in one Session and its first sitting in the next Session.

Sessions at least once a year.

21. The following provisions of the British North America Act, 1867, respecting the House of Commons of Canada, shall extend and apply to the Legislative Assembly, that is to say:--Provisions relating to the election of a Speaker, originally, and on vacancies,--the duties of the Speaker,--the absence of the Speaker and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to the Legislative Assembly.

Certain provisions of B.N.A. Act, 1867, to apply.

exclusively make Laws in relation to Education, subject and according to the following provisions:--

subject to certain provisions.

(1.) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:--

(2.) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:

(3.) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

Power reserved to Parliament.

23. Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the British North America Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.

English and French languages to be used.

24. Inasmuch as the Province is not in debt, the said Province shall be entitled to be paid, and to receive from the Government of Canada, by half-yearly payments in advance, interest at the rate of five per centum per annum on the sum of four hundred and seventy-two thousand and

Interest allowed to the Province on a certain amount of the debt of Canada.

26. Canada will assume and defray the charges for the following services:--

Canada assumes certain expenses.

1. Salary of the Lieutenant-Governor.

2. Salaries and allowances of the Judges of the Superior and District or County Courts.

3. Charges in respect of the Department of the Customs.

4. Postal Department.

5. Protection of Fisheries.

6. Militia.

7. Geological Survey.

8. The Penitentiary.

General provision.

9. And such further charges as may be incident to, and connected with the services which, by the *British North America Act, 1867*, appertain to the General Government, and as are or may be allowed to the other Provinces.

Customs duties,

27. The Customs duties now by Law chargeable in Rupert's Land, shall be continued without increase for the period of three years from and after the passing of this Act, and the proceeds of such duties shall form part of the Consolidated Revenue Fund of Canada.

Customs laws.

28. Such provisions of the Customs Laws of Canada (other than such as prescribe the rate of duties payable) as may be from time to time declared by the Governor General in Council to apply to the Province of Manitoba, shall be applicable thereto, and in force therein accordingly.

Inland Revenue laws and duties.

29. Such provisions of the Laws of Canada respecting the Inland Revenue, including those fixing the amount of duties, as may be from time to time declared by the Governor General in Council applicable to the said Province, shall apply thereto, and be in force therein accordingly.

31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

Provisions as to Indian title.

Grant for half-breeds.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:--

Quieting titles.

1. All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

Grants by H. B. Company.

2. All grants of estates less then freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

The same.

3. All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

Titles being occupancy with permission;

4. All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council.

By peaceable possession.

5. The Lieutenant-Governor is hereby authorized, under regulations to be made from time to time by the Governor General in Council, to make all such provisions for ascertaining and adjusting, on fair and equitable terms, the rights of Common, and rights of cutting Hay held and enjoyed by the settlers in the Province, and for the commutation of the same by grants of land from the Crown.

Lieut.-Governor to make provisions under Order

in Council.

33. The Governor General in Council shall from time to time settle and appoint the mode and form of Grants of Land from the Crown, and any Order in Council for that purpose when published in the Canada Gazette, shall have the same force and effect as if it were a portion of this Act.

Governor in Council to appoint form, &c., of grants.

34. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company, as contained in the conditions under which that Company surrendered Rupert's Land to Her Majesty.

Rights of H. B. Company not affected.

35. And with respect to such portion of Rupert's Land and the North-Western Territory, as is not included in the Province of Manitoba, it is hereby enacted, that the Lieutenant-Governor of the said Province shall be appointed, by Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories, and subject to the provisions of the Act in the next section mentioned.

Lieut.-Governor to govern N. W. Territory for Canada.

36. Except as hereinbefore is enacted and provided, the Act of the Parliament of Canada, passed in the now last Session thereof, and entitled, "An Act for the Temporary Government of Rupert's Land, and the North-Western Territory when united with Canada," is hereby re-enacted, extended and continued in force until the first day of January, 1871, and until the end of the Session of Parliament then next succeeding.

Act 32 and 33 V., c. 3, extended and continued.

Appendix C

The Prince Edward Island Act

A Copy of Which Was Obtained From

canada.justice.gc.ca/en/ps/const/loireg/index.html

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and royal subjects, the Commons of the Dominion of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing: --

That during the present Session of Parliament we have taken into consideration the subject of the admission of the Colony of Prince Edward Island into the Union or Dominion of Canada, and have resolved that it is expedient that such admission should be effected at as early a date as may be found practicable, under the one hundred and forty-sixth section of the "*British North America Act*, 1867," on the conditions hereinafter set forth, which having been agreed upon with the Delegates from the said Colony; that is to say: --

That Canada shall be liable for the debts and liabilities of Prince Edward Island at the time of the Union;

That in consideration of the large expenditure authorized by the Parliament of Canada for the construction of railways and canals, and in view of the possibility of a re-adjustment of the financial arrangements between Canada and the several Provinces now embraced in the Dominion, as well as the isolated and exceptional condition of Prince Edward Island, that Colony shall, on entering the Union, be entitled to incur a debt equal to fifty dollars per head of its population, as shewn by the Census Returns of 1871, that is to say : four millions seven hundred and one thousand and fifty dollars;

That Prince Edward Island not having incurred debts equal to the sum mentioned in the next preceding Resolution, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, interest at the rate of five per cent. per annum on the difference, from time to time, between the actual amount of its indebtedness and the amount of indebtedness authorized as aforesaid, viz., four millions seven hundred and one thousand and fifty dollars;

That Prince Edward Island shall be liable to Canada for the amount (if any) by which its

public debt and liabilities at the date of the Union, may exceed four millions seven hundred and one thousand and fifty dollars and shall be chargeable with interest at the rate of five per cent. per annum on such excess;

That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per cent. per annum, upon any sum not exceeding eight hundred thousand dollars which the Dominion Government may advance to the Prince Edward Island Government for the purchase of lands now held by large proprietors;

That in consideration of the transfer to the Parliament of Canada of the powers of taxation, the following sums shall be paid yearly by Canada to Prince Edward Island, for the support of its Government and Legislature, that is to say, thirty thousand dollars, and an annual grant equal to eighty cents per head of its population, as shown by the Census returns of 1871, viz., 94,021, both by half-yearly payments in advance - such grant of eighty cents per head to be augmented in proportion to the increase of population of the Island as may be shown by each subsequent decennial Census, until the population amounts to four hundred thousand, at which rate such grant shall thereafter remain it being understood that the next Census shall be taken in the year 1881;

That the Dominion Government shall assume and defray all the charges for the following services, viz: --

The salary of the Lieutenant Governor;
The salaries of the Judges of the Superior Court and of the District or County Courts when established;
The charges in respect of the Department of Customs;
The Postal Department;
The protection of the Fisheries;
The provision for the Militia;
The Lighthouses, Shipwrecked Crews, Quarantine and Marine Hospitals;
The Geological Survey;

The Penitentiary;

Efficient Steam Service for the conveyance of mails and passengers, to be established and maintained between the Island and the mainland of the Dominion, Winter and Summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion;

The maintenance of telegraphic communication between the Island and the mainland of the Dominion;

And such other charges as may be incident to, and connected with, the services which by the "*British North America Act*, 1867," appertain to the General Government, and as are or may be allowed to the other Provinces;

That the railways under contract and in course of construction for the Governemnt of the Island, shall be the property of Canada;

That the new building in which are held the Law Courts, Registry Office, etc., shall be transferred to Canada, on the payment of sixty-nine thousand dollars. The purchase to include the land on which the building stands, and a suitable space of ground in addition, for yard room, &c.;

That the Steam Dredge Boat in course of construction, shall be taken by the Dominion, at a cost not exceeding twenty-two thousand dollars;

That the Steam Ferry Boat owned by the Government of the Island, and used as such, shall remain the property of the Island;

That the population of Prince Edward Island having been increased by fifteen thousand or upwards since the year 1861, the Island shall be represented in the House of Commons of Canada by six Members; the representation to be readjusted, from time to time, under the provisions of the "*British North America Act*, 1867;"

That the constitution of the Executive Authority and of the Legislature of Prince Edward Island, shall, subject to the provisions of the "*British North America Act*, 1867," continue, as at the time of the Union, until altered under the authority of the said Act, and the House of Assembly of Prince Edward Island existing at the date of the Union shall, unless sooner dissolved, continue for the period for which it was elected;

That the Provisions in the "*British North America Act*, 1867," shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be especially applicable to, and only to affect one and not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by these resolutions, be applicable to Prince Edward Island, in the same way and to the same extent as they apply to the other Provinces of the Dominion, and as if the Colony of Prince Edward Island had been one of the Provinces originally united by the said Act.

That the Union shall take place on such day as Her Majesty may direct by Order in Council, on Addresses to that effect from the Houses of the Parliament of Canada and of the Legislature of the Colony of Prince Edward Island, under the one hundred and forty-sixth section of the "*British North America Act*, 1867," and that the Electoral Districts for which, the time within which, and the laws and provisions under which, the first Election of Members to serve in the House of Commons of Canada for such Electoral Districts shall be held, shall be such as the said Houses of the Legislature of the said Colony of Prince Edward Island may specify in their said Addresses.

We, therefore, humbly pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honorable Privy Council, under the provisions of the one hundred and forty-sixth section of the "*British North America Act*, 1867," to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions hereinbefore set forth.

(Signed) James Cockburn, Speaker.
House of Commons, 20th May 1873.

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Senate of the Dominion of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing: --

That on the sixteenth day of May, instant, His Excellency the Governor General transmitted

for our information a copy of the minutes of a Conference between a Committee of the Privy Council of Canada and certain Delegates from the Colony of Prince Edward Island, on the subject of the Union of the said Colony with the Dominion of Canada, and of the Resolutions adopted by them, as the basis of such Union, which are in the following words, that is to say: --

That Canada shall be liable for the debts and liabilities of Prince Edward Island, at the time of the Union;

That in consideration of the large expenditure authorized by the Parliament of Canada, for the construction of railways and canals, and in view of the possibility of a re-adjustment of the financial arrangements between Canada and the several Provinces now embraced in the Dominion, as well as the isolated and exceptional condition of Prince Edward Island, that Colony shall, on entering the Union, be entitled to incur a debt equal to fifty dollars per head of its population, as shown by the Census Returns of 1871, that is to say: four millions seven hundred and one thousand and fifty dollars;

That Prince Edward Island, not having incurred debts equal to the sum mentioned in the next preceding Resolution, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, interest at the rate of five per cent. per annum on the difference, from time to time, between the actual amount of its indebtedness and the amount of indebtedness authorized as aforesaid, viz.: four millions seven hundred and one thousand and fifty dollars;

That Prince Edward Island shall be liable to Canada for the amount (if any) by which its public debt and liabilities at the date of the Union, may exceed four millions seven hundred and one thousand and fifty dollars, and shall be chargeable with interest at the rate of five per cent. per annum on such excess;

That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay, by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per cent. per annum, upon any sum not exceeding eight hundred thousand dollars which the Dominion Government may advance to the Prince Edward Island Government for the

purchase of lands now held by large proprietors;

That in consideration of the transfer to the Parliament of Canada of the powers of taxation, the following sums shall be paid yearly by Canada to Prince Edward Island for the support of its Government and Legislature - that is to say: thirty thousand dollars, and an annual grant equal to eighty cents per head of its population as shown by the Census returns of 1871, viz., 94,021, both by half-yearly payments in advance,Csuch grant of eighty cents per head to be augmented in proportion to the increase of population of the Island, as may be shown by each subsequent decennial Census, until the population amounts to four hundred thousand, at which rate such grants shall thereafter remain, it being understood that the next Census shall be taken in the year 1881;

That the Dominion Government shall assume and defray all the charges for the following services, viz.: --

The salary of the Lieutenant Governor;

The salaries of the Judges of the Superior Court and of the District or County Courts when established;

The charges in respect of the Department of Customs;

The Postal Department;

The protection of the Fisheries;

The provision for the Militia;

The Geological Survey;

The Penitentiary;

Efficient steam service for the conveyance of mails and passengers, to be established and maintained between the Island and the mainland of the Dominion, winter and summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion;

The maintenance of telegraphic communication between the Island and the mainland of the Dominion;

And such other charges as may be incident to and connected with the services which, by the "*British North America Act*, 1867," appertain to the General Government, and as are or may be allowed to the other Provinces;

That the railways under contract and in course of construction for the Government of the

Island shall be the property of Canada;

That the new building, in which are held the Law Courts, Registry Office, etc., shall be transferred to Canada, on the payment of sixty-nine thousand dollars. The purchase to include the land on which the building stands, and a suitable space of ground in addition, for yard room, c.;

That the Steam Dredge Boat in course of construction shall be taken by the Dominion, at a cost not exceeding twenty-two thousand dollars;

That the Steam Ferry Boat owned by the Government of the Island, and used as such, shall remain the property of the Island;

That the population of Prince Edward Island having been increased by fifteen thousand or upwards since the year 1861, the Island shall be represented in the House of Commons of Canada by six members; the representation to be re-adjusted, from time to time, under the provisions of the "*British North America Act*, 1867;"

That the constitution of the Executive Authority and of the Legislature of Prince Edward Island shall, subject to the provisions of the "*British North America Act*, 1867," continue as at the time of the Union, until altered under the authority of the said Act; and the House of Assembly of Prince Edward Island existing at the date of the Union, shall, unless sooner dissolved, continue for the period for which it was elected;

That the provisions in the "*British North America Act*, 1867," shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to, and only to affect one and not the whole of the Province, now composing the Dominion, and except so far as the same may be varied by these resolutions be applicable to Prince Edward Island in the same way and to the same extent as they apply to the other Provinces of the Dominion, and as if the Colony of Prince Edward Island had been one of the Provinces originally united by the said Act;

That the Union shall take place on such day as Her Majesty may direct by Order in Council on Addresses to that effect from the Houses of the Parliament of Canada and of the Legislature of the Colony of Prince Edward Island, under the one hundred and forty-sixth

section of the "*British North America Act*, 1867," and that the Electoral Districts for which, the time within which, and the laws and provisions under which, the first Election of Members to serve in the House of Commons of Canada for such Electoral Districts shall be held, shall be such as the said Houses of the Legislature of the said Colony of Prince Edward Island may specify in their said Addresses.

The House of Commons having in the present Session of the Parliament of the Dominion passed an Address to your Majesty, praying that your Majesty would be graciously pleased, by and with the advice of your Most Honorable Privy Council, under the provisions of the one hundred and forty-sixth section of the "*British North America Act*, 1867," to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions set forth in the above-mentioned Resolutions.

Wherefore, we, the Senate of Canada, fully concurring in the terms and conditions expressed in the Address of the House of Commons, humbly pray that your Majesty will be pleased, by and with the advice of your Most Honorable Privy Council, under the provisions of the one hundred and forty-sixth section of the "*British North America Act*, 1867," to admit Prince Edward Island into the Dominion of Canada.

(Signed) P. J. O. Chauveau,
Speaker of the Senate.
The Senate, May 21, 1873.

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the Legislative Council of Prince Edward Island, in Parliament assembled, humbly approach your Majesty, and pray that your Majesty will be graciously pleased, by and with the advice of your Majesty's Most Honorable Privy Council, under the provisions of the one hundred and forty-sixth section of the "*British North America Act*, 1867," to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions expressed in certain Resolutions recently passed by Houses of the

Parliament of Canada, and also by the Houses of the Legislature of Prince Edward Island, which said Resolutions are as follows: --

1. That Canada shall be liable for the debts and liabilities of Prince Edward Island at the time of the Union;

2. That in consideration of the large expenditure authorized by the Parliament of Canada for the construction of railways and canals, and in view of the possibility of a re-adjustment of the financial arrangements between Canada and the several Provinces now embraced in the Dominion, as well as the isolated and exceptional condition of Prince Edward Island, that Colony shall, on entering the Union, be entitled to incur a debt equal to fifty dollars per head of its population, as shown by the census returns of 1871, - that is to say: four million seven hundred and one thousand and fifty dollars;

3. That Prince Edward Island, not having incurred debts equal to the sum mentioned in the next preceding Resolution, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, interest at the rate of five per cent. per annum on the difference, from time to time, between the actual amount of its indebtedness and the amount of indebtedness authorized as aforesaidCviz., four million seven hundred and one thousand and fifty dollars;

4. That Prince Edward Island shall be liable to Canada for the amount (if any) by which its public debt and liabilities at the date of the Union, may exceed four millions seven hundred and one thousand and fifty dollars, and shall be chargeable with interest at the rate of five per cent. per annum on such excess;

5. That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay, by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per cent. per annum, upon any sum not exceeding eight hundred thousand dollars, which the Dominion Government may advance to the Prince Edward Island Government for the purchase of lands now held by large proprietors;

6. That in consideration of the transfer to the Parliament of Canada of the powers of taxation,

the following sums shall be paid yearly by Canada to Prince Edward Island, for the support of its Government and Legislature, that is to say: thirty thousand dollars, and an annual grant equal to eighty cents per head of its population, as shown by the Census returns of 1871, viz., 94,021, both by half-yearly payments in advance - such grant of eighty cents per head to be augmented in proportion to the increase of population of the Island as may be shown by each subsequent decennial Census, until the population amounts to four hundred thousand, at which rate such grant shall thereafter remain, it being understood that the next Census shall be taken in the year 1881;

7. That the Dominion Government shall assume and defray all the charges for the following services, viz: --

A. The salary of the Lieutenant Governor;

B. The salaries of the Judges of the Superior Court and of the District or County Courts when established;

C. The Charges in respect of the Department of Customs;

D. The Postal Department;

E. The protection of the Fisheries;

F. The provision for the Militia;

G. The Lighthouses, Shipwrecked Crews, Quarantine and Marine Hospitals;

H. The Geological Survey;

I. The Penitentiary;

J. Efficient Steam Service for the conveyance of Mails and passengers, to be established and maintained between the Island and the mainland of the Dominion, Winter and Summer, thus placing the Island in continuous communication with the Intercolonial Railway and railway system of the Dominion;

K. The maintenance of telegraphic communication between the Island and the mainland of the Dominion. And such other charges as may be incident to and connected with the services which, by the "*British North America Act*, 1867," appertain to the General Government, and as are or may be allowed to the other Provinces;

8. That the Railways under contract and in course of construction for the Government of the Island, shall be the property of Canada;

9. That the new building in which are held the Law Courts, Registry Office, etc., shall be transferred to Canada, on the payment of sixty-nine thousand dollars. The purchase to include the land on which the building stands, and a suitable space of ground in addition, for yard room, &c.;

10. That the Steam Dredge Boat in course of construction, shall be taken by the Dominion, at a cost not exceeding twenty-two thousand dollars;

11. That the Steam Ferry Boat owned by the Government of the Island, and used as such, shall remain the property of the Island;

12. That the population of Prince Edward Island, having been increased by fifteen thousand or upwards since the year 1861, the Island shall be represented in the House of Commons of Canada by six members; the representation to be re-adjusted, from time to time, under the provisions of the "*British North America Act*, 1867;"

13. That the constitution of the Executive Authority and of the Legislature of Prince Edward Island, shall, subject to the provisions of the "*British North America Act*, 1867," continue as at the time of the Union, until altered under the authority of the said Act, and the House of Assembly of Prince Edward Island existing at the date of the Union, shall, unless sooner dissolved, continue for the period for which it was elected;

14. That the provisions in the "*British North America Act*, 1867," shall, except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to, and only to affect one and not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by these Resolutions, be applicable to Prince Edward Island, in the same way and to the same extent as they apply to the other Provinces of the Dominion, and as if the Colony of Prince Edward Island had been one of the Provinces originally united by the said Act;

15. That the Union shall take place on such day as Her Majesty may direct by Order in Council, on Addresses to that effect from the Houses of the Parliament of Canada and of the Legislature of the Colony of Prince Edward Island, under the one hundred and forty-sixth section of the "*British North America Act*, 1867," and that the Electoral Districts for which, the time within which, and the laws and provisions under which, the first Election of Members to

serve in the House of Commons of Canada for such Electoral Districts shall be held, shall be such as the said Houses of the Legislature of the said Colony of Prince Edward Island may specify in their said Addresses;

That for the first election of members to be returned by this Island for the House of Commons of the Dominion of Canada, this Island shall be divided into Electoral Districts as follows: - That "Prince County" shall constitute one district and return two members; that "Queen's County" shall constitute one district, and return two members; that "King's County" shall constitute one district, and return two members; that the first election for members to serve in the House of Commons of Canada, shall take place within three calendar months after this Island shall be admitted, and become part of the Dominion of Canada; and we further humbly pray, that all laws which at the date of the Order in Council, by which the said Island of Prince Edward shall be admitted into the Dominion of Canada, relating to the qualification of any person to be elected to sit or vote as a member of the House of Assembly of the said Island, and relating to the qualifications or disqualifications of voters, and to the oaths to be taken by voters, and to returning officers and poll clerks, and their powers and duties, and relating to polling divisions within the said Island, and relating to the proceedings at elections, and to the period during which such election may be continued, and relating to the trial of controverted elections and the proceedings incident thereto, and relating to the vacating of seats of members, and to the execution of new writs, in case of any seat being vacated otherwise than by a dissolution, and all other matters connected with or incidental to elections of members to serve in the House of Assembly of the said Island, shall apply to elections of members to serve in the House of Commons for the Electoral Districts, situate in the said Island of Prince Edward.

(Signed) DONALD MONTGOMERY,
President.

Committee Room, Legislative Council,
May 28, 1873.

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the House of Assembly of Prince Edward Island in Parliament assembled, humbly approach Your Majesty, and pray that Your Majesty will be graciously pleased, by and with the advice of Your Majesty's Most Honorable Privy Council, under the provisions of the one hundred and forty-sixth section of the "*British North America Act*, 1867," to admit Prince Edward Island into the Union or Dominion of Canada, on the terms and conditions expressed in certain Resolutions recently passed by the Houses of the Parliament of Canada, and also by the Houses of the Legislature of Prince Edward Island, which said Resolutions are as follows:

1. That Canada shall be liable for the debts and liabilities of Prince Edward Island at the time of the Union;

2. That in consideration of the large expenditure authorized by the Parliament of Canada, for the construction of railways and canals, and in view of the possibility of a re-adjustment of the financial arrangements between Canada and the several Provinces now embraced in the Dominion, as well as the isolated and exceptional condition of Prince Edward Island, that colony shall, on entering the Union, be entitled to incur a debt equal to fifty dollars per head of its population, as shown by the Census Returns of 1871, that is to say: four millions seven hundred and one thousand and fifty dollars;

3. That Prince Edward Island not having incurred debts equal to the sum mentioned in the next preceding Resolution, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, interest at the rate of five per cent. per annum on the difference, from time to time, between the actual amount of its indebtedness and the amount of indebtedness authorised as aforesaid, viz.: four millions seven hundred and one thousand and fifty dollars;

4. That Prince Edward Island shall be liable to Canada for the amount (if any) by which its public debt and liabilities at the date of the Union, may exceed four millions seven hundred and one thousand and fifty dollars, and shall be chargeable with interest at the rate of five per cent. per annum on such excess;

5. That as the Government of Prince Edward Island holds no lands from the Crown, and

consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per cent. per annum, upon any sum not exceeding eight hundred thousand dollars, which the Dominion Government may advance to the Prince Edward Island Government for the purchase of lands now held by large proprietors;

6. That in consideration of the transfer to the Parliament of Canada of the powers of taxation, the following sums shall be paid yearly by Canada to Prince Edward Island, for the support of its Government and Legislature, that is to say: thirty thousand dollars, and an annual grant equal to eighty cents per head of its population, as shown by the Census Returns of 1871, viz., 94,021, both by half-yearly payments in advanceCsuch grant of eighty cents per head to be augmented in proportion to the increase of population of the Island, as may be shown by each subsequent decennial Census, until the population amounts to four hundred thousand, at which rate such grant shall thereafter remain, it being understood that the next Census shall be taken in the year 1881;

7. That the Dominion Government shall assume and defray all the charges for the following services, viz.: --

A. The salary of the Lieutenant Governor;

B. The salaries of the Judges of the Superior Courts and of the District or County Courts when established;

C. The charges in respect of the Department of Customs;

D. The Postal Department;

E. The protection of the Fisheries;

F. The provision for the Militia;

G. The Lighthouses, Shipwrecked Crews, Quarantine and Marine Hospitals;

H. The Geological Survey;

I. The Penitentiary;

J. Efficient Steam Service for the conveyance of mails and passengers, to be established and maintained between the Island and the mainland of the Dominion, winter and summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion;

K. The maintenance of telegraphic communication between the Island and the mainland of the Dominion. And such other charges as may be incident to and connected with the services which, by the "*British North America Act*, 1867," appertain to the General Government, and as are or may be allowed to the other Provinces;

8. That the Railways under contract and in course of construction for the Government of the Island, shall be the property of Canada;

9. That the new building in which are held the Law Courts, Registry Office, etc., shall be transferred to Canada, on the payment of sixty-nine thousand dollars. The purchase to include the land on which the building stands, and a suitable space of ground in addition, for yard room, etc.;

10. That the Steam Dredge Boat in course of construction, shall be taken by the Dominion, at a cost not exceeding twenty-two thousand dollars;

11. That the Steam Ferry Boat owned by the Government of the Island, and used as such, shall remain the property of the Island;

12. That the population of Prince Edward Island having been increased by fifteen thousand or upwards since the year 1861, the Island shall be represented in the House of Commons of Canada by six members; the representation to be re-adjusted from time to time under the provisions of the "*British North America Act*, 1867;"

13. That the constitution of the Executive Authority and of the Legislature of Prince Edward Island, shall, subject to the provisions of the "*British North America Act*, 1867," continue as at the time of the Union, until altered under the authority of the said Act, and the House of Assembly of Prince Edward Island existing at the date of the Union, shall, unless sooner dissolved, continue for the period for which it was elected;

14. That the provisions in the "*British North America Act*, 1867," shall, except those parts thereof which are in terms made, or by reasonable intendment may be held, to be specially applicable to, and only to affect one and not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by these resolutions, be applicable to Prince Edward Island, in the same way and to the same extent as they apply to the other

Provinces of the Dominion, and as if the Colony of Prince Edward Island had been one of the Provinces originally united by the said Act;

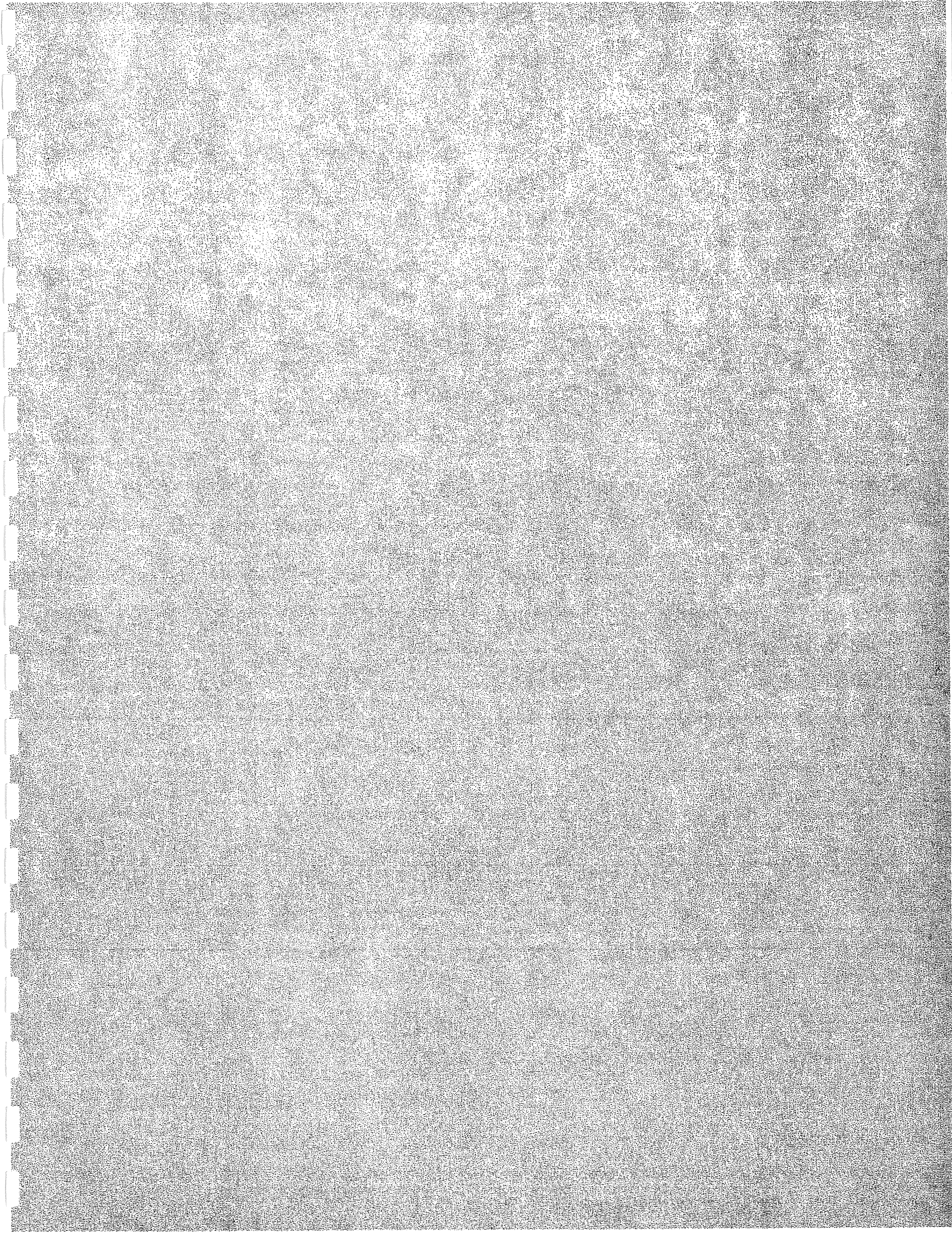
15. That the Union shall take place on such day as Her Majesty may direct by Order in Council, on Addresses to that effect from the Houses of the Parliament of Canada, and of the Legislature of the Colony of Prince Edward Island, under the one hundred and forty-sixth section of the "*British North America Act*, 1867," and that the Electoral Districts for which, the time within which, and the laws and provisions under which, the first election of members to serve in the House of Commons of Canada for such Electoral Districts shall be held, shall be such as the said Houses of the Legislature of the said Colony of Prince Edward Island may specify in their said Addresses.

That for the first election of members to be returned by this Island for the House of Commons of the Dominion of Canada, this Island shall be divided into Electoral Districts as follows: - That "Prince County" shall constitute one district, and return two members; that "Queen's County" shall constitute one district, and return two members; that "King's County" shall constitute one district, and return two members; that the first election for members to serve in the House of Commons of Canada, shall take place within three calendar months after this Island shall be admitted and become part of the Dominion of Canada; and we further humbly pray that all laws which at the date of the Order in Council by which the said Island of Prince Edward shall be admitted into the Dominion of Canada, relating to the qualification of any person to be elected to sit or vote as a member of the House of Assembly of the said Island, and relating to the qualifications or disqualifications of voters, and to the oaths to be taken by voters, and to returning officers and poll clerks, and their powers and duties, and relating to polling divisions within the said Island, and relating to the proceedings at elections, and to the period during which such election may be continued, and relating to the trial of controverted elections and the proceedings incident thereto, and relating to the vacating of seats of members, and to the execution of new writs, in case of any seat being vacated otherwise than by a dissolution, and all other matters connected with or incidental to elections of members to serve in the House of Assembly of the said Island, shall apply to elections of members to serve in the House of Commons for the Electoral Districts, situate in the said island of Prince Edward.

(Signed) Stanislaus F. Perry,

Speaker.

House of Assembly, May 28, 1873.



Appendix D

The Alberta Act

A Copy of Which Was Obtained From
canada.justice.gc.ca/en/ps/const/loireg/index.html

The Alberta Act, 1905, 4-5 Edw. VII, c. 3 (Can.)

An Act to establish and provide for the Government of the Province of Alberta.

[20th July, 1905]

Preamble

WHEREAS in and by *The British North America Act, 1871*, being chapter 28 of the Acts of the Parliament of the United Kingdom passed in the session thereof held in the 34th and 35th years of the reign of Her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order and good government of such province, and for its representation in the said Parliament of Canada;

And whereas it is expedient to establish as a province the territory hereinafter described, and to make provision for the government thereof and the representation thereof in the Parliament of Canada: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:--

Short title

1. This Act may be cited as *The Alberta Act*.

Province of Alberta formed; its boundaries

2. The territory comprised within the following boundaries, that is to say,--commencing at the intersection of the international boundary dividing Canada from the United States of America by the fourth meridian in the system of Dominion lands surveys; thence westerly along the said international boundary to the eastern boundary of the province of British Columbia; thence northerly along the said eastern boundary of the province of British Columbia to the north-east corner of the said province; thence easterly along the parallel of the sixtieth degree of north latitude to the fourth meridian in the system of Dominion lands surveys as the same may be hereafter defined in accordance with the said system; thence southerly along the said fourth meridian to the point of commencement,--is hereby established as a province of the Dominion of Canada, to be called and known as the province of Alberta.

3. The provisions of *The British North America Acts, 1867 to 1886*, shall apply to the province of Alberta in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Alberta had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces.

B. N. A. Acts, 1867 to 1886, to apply

4. The said province shall be represented in the Senate of Canada by four members: provided that such representation may, after the completion of the next decennial census, be from time to time increased to six by the Parliament of Canada.

Representation in the Senate

5. The said province and the province of Saskatchewan shall, until the termination of the Parliament of Canada existing at the time of the first readjustment hereinafter provided for, continue to be represented in the House of Commons as provided by chapter 60 of the statutes of 1903, each of the electoral districts defined in that part of the schedule to the said Act which relates to the North-west Territories, whether such district is wholly in one of the said provinces, or partly in one and partly in the other of them, being represented by one member.

Representation in the House of Commons

6. 1. Upon the completion of the next quinquennial census for the said province, the representation thereof shall forthwith be readjusted by the Parliament of Canada in such manner that there shall be assigned to the said province such a number of members as will bear the same proportion to the number of its population ascertained at such quinquennial census as the number sixty-five bears to the number of the population of Quebec as ascertained at the then last decennial census; and in the computation of the number of members for the said province a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded, and a fractional part exceeding one-half of that number shall be deemed equivalent to the whole number, and such readjustment shall take effect upon the termination of the parliament then existing.

Readjustment after next quinquennial census

2. The representation of the said province shall thereafter be readjusted from time to time according to the provisions of section 51 of *The British North America Act*, 1867.

Subsequent readjustments

7. Until the Parliament of Canada otherwise provides the qualifications of voters for the election of members of the House of Commons and the proceedings at and in

Election of members of House of Commons

connection with elections of such members shall, *mutatis mutandis*, be those prescribed by law at the time this Act comes into force with respect to such elections in the North-west Territories.

8. The Executive Council of the said province shall be composed of such persons, under such designations, as the Lieutenant Governor from time to time thinks fit.

Executive Council

9. Unless and until the Lieutenant Governor in Council of the said province otherwise directs, by proclamation under the Great Seal, the seat of government of the said province shall be at Edmonton.

Seat of Government

10. All powers, authorities and functions which under any law were before the coming into force of this Act vested in or exercisable by the Lieutenant Governor of the North-west Territories, with the advice, or with the advice and consent of the Executive Council thereof, or in conjunction with that Council or with any member or members thereof, or by the said Lieutenant Governor individually, shall, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the said province, be vested in and shall or may be exercised by the Lieutenant Governor of the said province, with the advice or with the advice and consent of, or in conjunction with, the Executive Council of the said province or any member or members thereof, or by the Lieutenant Governor individually, as the case requires, subject nevertheless to be abolished or altered by the Legislature of the said province.

Powers of Lieutenant Governor and Council

11. The Lieutenant Governor in Council shall, as soon as may be after this Act comes into force, adopt and provide a Great Seal of the said province, and may, from time to time, change such seal.

Great Seal

12. There shall be a Legislature for the said province consisting of the Lieutenant Governor and one House to be styled the Legislative Assembly of Alberta.

Legislature

13. Until the said Legislature otherwise provides, the Legislative Assembly shall be composed of twenty-five members, to be elected to represent the electoral divisions defined in the schedule to this Act.

Legislative Assembly

14. Until the said Legislature otherwise determines, all the provisions of the law with regard to the constitution of the Legislative Assembly of the North-west Territories and the election of members thereof shall apply, *mutatis mutandis*, to the Legislative Assembly of the said province and the elections of members thereof respectively.

Election of members of Assembly

Writs for first election

15. The writs for the election of the members of the first Legislative Assembly of the said province shall be issued by the Lieutenant Governor and made returnable within six months after this Act comes into force.

Laws, courts and officers continued

Proviso

16. 1. All laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in this Act, or as to which this Act contains no provision intended as a substitute therefor, and all courts of civil and criminal jurisdiction, and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial, existing immediately before the coming into force of this Act in the territory hereby established as the province of Alberta, shall continue in the said province as if this Act and *The Saskatchewan Act* had not been passed; subject, nevertheless, except with respect to such as are enacted by or existing under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the said province, according to the authority of the Parliament, or of the said Legislature: Provided that all powers, authorities and functions which, under any law, order or regulation were, before the coming into force of this Act, vested in or exercisable by any public officer or functionary of the North-west Territories shall be vested in and exercisable in and for the said province by like public officers and functionaries of the said province when appointed by competent authority.

Province may abolish Supreme Court of N.W.T.

Proviso.

2. The Legislature of the province may, for all purposes affecting or extending to the said province, abolish the Supreme Court of the North-west Territories, and the offices, both judicial and ministerial, thereof, and the jurisdiction, powers and authority belonging or incident to the said court: Provided that, if, upon such abolition, the Legislature constitutes a superior court of criminal jurisdiction, the procedure in criminal matters then obtaining in respect of the Supreme Court of the North-west Territories shall, until otherwise provided by competent authority, continue to apply to such superior court, and that the Governor in Council may at any time and from time to time declare all or any part of such procedure to be inapplicable to such superior court.

As to certain corporations in N.W.T.

3. All societies or associations incorporated by or under the authority of the Legislature of the North-west Territories existing at the time of the coming into force of this Act which include within their objects the regulation of the practice of or the right to

practise any profession or trade in the North-west Territories, such as the legal or the nedical profession, dentistry, pharmaceutical chemistry and the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council, and each of such societies shall have power to arrange for and effect the payment of its debts and liabilities, and the division, disposition or transfer of its property.

As to joint-stock companies

4. Every joint-stock company lawfully incorporated by or under the authority of any ordinance of the North-west Territories shall be subject to the legislative authority of the rovince of Alberta if--

(a.) the head office or the registered office of such company is at the time of the coming into force of this Act situate in the province of Alberta; and

(b.) the powers and objects of such company are such as might be conferred by the Legislature of the said province and not expressly authorized to be executed in any part of the North-west Territories beyond the limits of the said province.

Education

7. Section 93 of *The British North America Act, 1867*, shall apply to the said province, with ıe substitution for paragraph (1) of the said section 93, of the following paragraph:--

"(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to ɘparate schools which any class of persons have at the date of the passing of this Act, nder the terms of chapters 29 and 30 of the Ordinances of the North-west Territories, assed in the year 1901, or with respect to religious instruction in any public or separate chool as provided for in the said ordinances."

2. In the appropriation by the Legislature or distribution by the Government of the province f any moneys for the support of schools organized and carried on in accordance with the aid chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there hall be no discrimination against schools of any class described in the said chapter 29.

3. Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall e held to mean the law as set out in the said chapters 29 and 30, and where the expression ıt the Union" is employed, in the said paragraph 3, it shall be held to mean the date at which ıis Act comes into force.

Subsidy to province.

8. The following amounts shall be allowed as an annual subsidy to the province of Alberta nd shall be paid by the Government of Canada, by half-yearly instalments in advance, to the aid province, that is to say :--

For government.

(a.) for the support of the Government and Legislature, fifty thousand dollars;

In proportion to population

(b.) on an estimated population of two hundred and fifty thousand, at eighty cents per head, vo hundred thousand dollars, subject to be increased as hereinafter mentioned, that is to say --a census of the said province shall be taken in every fifth year, reckoning from the general ensus of one thousand nine hundred and one, and an approximate estimate of the opulation shall be made at equal intervals of time between each quinquennial and decennial ensus ; and whenever the population, by any such census or estimate, exceeds two hundred nd fifty thousand, which shall be the minimum on which the said allowance shall be alculated, the amount of the said allowance shall be increased accordingly, and so on until ıe population has reached eight hundred thousand souls.

Annual payment to province

9. Inasmuch as the said province is not in debt, it shall be entitled to be paid and to receive ·om the Government of Canada, by half-yearly payments in advance, an annual sum of four undred and five thousand three hundred and seventy-five dollars, being the equivalent of ıterest at the rate of five per cent per annum on the sum of eight million one hundred and even thousand five hundred dollars.

Compensation to province for public

:0. 1. Inasmuch as the said province will not have the public land as a source of revenue, ıere shall be paid by Canada to the province by half-yearly payments, in advance, an annual

Property in lands, etc.

21. All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under The North-west Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories.

Division of assets and liabilities between Saskatchewan and Alberta

Arbitration

2. All properties and assets of the North-west Territories shall be divided equally between the said province and the province of Saskatchewan, and the two provinces shall be jointly nd equally responsible for all debts and liabilities of the North-west Territories : Provided that, if any difference arises as to the division and adjustment of such properties, assets, ebts and liabilities, such difference shall be referred to the arbitrament of three arbitrators, one of whom shall be chosen by the Lieutenant Governor in Council of each province, and the third by the Governor in Council. The selection of such arbitrators shall not be made until the Legislatures of the provinces have met, and the arbitrator chosen by Canada shall not be resident of either province.

Rights of H. B. Co.

23. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company as contained in the conditions under which that company surrendered Rupert's Land to the Crown.

Provision as to C.P.R. Co.

4. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to chapter 1 of the statutes 1881, being an Act respecting the Canadian Pacific Railway Company.

Commencement of Act

25. This Act shall come into force on the first day of September, one thousand nine hundred nd five.

Appendix E

The Saskatchewan Act

A Copy of Which Was Obtained From

canada.justice.gc.ca/en/ps/const/loireg/index.html

The Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 (Can.)

An Act to establish and provide for the government of the Province of Saskatchewan.

20th July, 1905]

Preamble.

WHEREAS in and by *The British North America Act*, 1871, being chapter 28 of the Acts of the Parliament of the United Kingdom passed in the session hereof held in the 34th and 35th years of the reign of her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may, at the me of such establishment, make provision for the constitution and dministration of any such province, and for the passing of laws for the peace, rder and good government of such province and for its representation in the aid Parliament of Canada;

And whereas it is expedient to establish as a province the territory hereinafter escribed, and to make provision for the government thereof and the epresentation thereof in the Parliament of Canada: Therefore His Majesty, by nd with the advice and consent of the Senate and House of Commons of anada, enacts as follows:--

Short title.

. This Act may be cited as *The Saskatchewan Act*.

Province of Saskatchewa formed; its boundaries.

. The territory comprised within the following boundaries, that is to say,--commencing t the intersection of the international boundary dividing Canada from the United States f America by the west boundary of the province of Manitoba, thence northerly along e said west boundary of the province of Manitoba to the north-west corner of the said ovince of Manitoba; thence continuing northerly along the centre of the road lowance between the twenty-ninth and thirtieth ranges west of the principal meridian in e system of Dominion lands surveys, as the said road allowance may hereafter be efined in accordance with the said system, to the second meridian in the said system Dominion lands surveys, as the same may hereafter be defined in accordance with e said system; thence northerly along the said second meridian to the sixtieth degree

ıf north latitude; thence westerly along the parallel of the sixtieth degree of north titude to the fourth meridian in the said system of Dominion lands surveys, as the ame may be hereafter defined in accordance with the said system; thence southerly ɔng the said fourth meridian to the said international boundary dividing Canada from ıe United States of America; thence easterly along the said international boundary to ə point of commencement,--is hereby established as a province of the Dominion of :anada, to be called and known as the province of Saskatchewan.

B.N.A. Acts, 1867 to 1886, to apply.

. The provisions of *The British North America Acts, 1867 to 1886*, shall apply to the ɔrovince of Saskatchewan in the same way and to the like extent as they apply to the rovinces heretofore comprised in the Dominion, as if the said province of Saskatchewan had been one of the provinces originally united, except in so far as aried by this Act and except such provisions as are in terms made, or by reasonable ntendment may be held to be, specially applicable to or only to affect one or more and ɔt the whole of the said provinces.

Representation in the Senate.

I. The said province shall be represented in the Senate of Canada by four members: rovided that such representation may, after the completion of the next decennial :ensus, be from time to time increased to six by the Parliament of Canada.

Representation in the House of Commons.

The said province and the province of Alberta shall, until the termination of the Parliament of Canada existing at the time of the first readjustment hereinafter provided r, continue to be represented in the House of Commons as provided by chapter 60 of he statutes of 1903, each of the electoral districts defined in that part of the schedule to e said Act which relates to the North-west Territories, whether such district is wholly ı one of the said provinces, or partly in one and partly in the other of them, being presented by one member.

Readjustment after next quinquennial census.

. 1. Upon the completion of the next quinquennial census for the said province, the presentation thereof shall forthwith be readjusted by the Parliament of Canada in uch manner that there shall be assigned to the said province such a number of embers as will bear the same proportion to the number of its population ascertained t such quinquennial census as the number sixty-five bears to the number of the ıpulation of Quebec as ascertained at the then last decennial census; and in the ɔmputation of the number of members for the said province a fractional part not ceeding one-half of the whole number requisite for entitling the province to a member

shall be disregarded, and a fractional part exceeding one-half of that number shall be deemed equivalent to the whole number, and such readjustment shall take effect upon the termination of the Parliament then existing.

2. The representation of the said province shall thereafter be readjusted from time to time according to the provisions of section 51 of *The British North America Act, 1867.*

Subsequent readjustments.

7. Until the Parliament of Canada otherwise provides, the qualifications of voters for the election of members of the House of Commons and the proceedings at and in connection with elections of such members shall, mutatis mutandis, be those prescribed by law at the time this Act comes into force with respect to such elections in the North-west Territories.

Election of members of House of Commons.

8. The Executive Council of the said province shall be composed of such persons, under such designations, as the Lieutenant Governor from time to time thinks fit.

Executive Council.

9. Unless and until the Lieutenant Governor in Council of the said province otherwise directs, by proclamation under the Great Seal, the seat of government of the said province shall be at Regina.

Seat of Government.

10. All powers, authorities and functions which under any law were before the coming into force of this Act vested in or exercisable by the Lieutenant Governor of the North-west Territories, with the advice, or with the advice and consent, of the Executive Council thereof, or in conjunction with that Council or with any member or members thereof, or by the said Lieutenant Governor individually, shall, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the said province, be vested in and shall or may be exercised by the Lieutenant Governor of the said province, with the advice or with the advice and consent of, or in conjunction with, the Executive Council of the said province or any member or members thereof, or by the Lieutenant Governor individually, as the case requires, subject nevertheless to be abolished or altered by the legislature of the said province.

Powers of Lieutenant Governor and Council.

11. The Lieutenant Governor in Council shall, as soon as may be after this Act comes into force, adopt and provide a Great Seal of the said province, and may, from time to time, change such seal.

Great Seal.

12. There shall be a Legislature for the said province consisting of the Lieutenant Governor and one House, to be styled the Legislative Assembly of Saskatchewan.

Legislature.

3. Until the said Legislature otherwise provides, the Legislative Assembly shall be mposed of twenty-five members, to be elected to represent the electoral divisions efined in the schedule to this Act.

Legislative Assembly.

.. Until the said Legislature otherwise determines, all the provisions of the law with egard to the constitution of the Legislative Assembly of the North-west Territories and e election of members thereof shall apply, *mutatis mutandis*, to the Legislative ssembly of the said province and the election of members thereof respectively.

Election of members of Assembly.

15. The writs for the election of the members of the first Legislative Assembly of the said province shall be issued by the Lieutenant Governor and made returnable within six months after this Act comes into force.

Writs for first election.

16. 1. All laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in this Act, or as to which this Act contains no provision intended as a substitute therefor, and all courts of civil and criminal jurisdiction, and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial, existing immediately before the oming into force of this Act in the territory hereby established as the province of Saskatchewan, shall continue in the said province as if this Act and *The Alberta Act* had ot been passed; subject, nevertheless, except with respect to such as are enacted by or existing under Acts of the Parliament of Great Britain, or of the Parliament of the Inited Kingdom of Great Britain and Ireland, to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the said province, according to the uthority of the Parliament or of the said Legislature:

Laws, courts and officers continued.

Provided that all powers, authorities and functions which under any law, order or egulation were, before the coming into force of this Act, vested in or exercisable by any public officer or functionary of the North-west Territories shall be vested in and xercisable in and for the said province by like public officers and functionaries of the said province when appointed by competent authority.

Proviso.

2. The Legislature of the province may, for all purposes affecting or extending to the said province, abolish the Supreme Court of the North-west Territories, and the offices, oth judicial and ministerial, thereof, and the jurisdiction, powers and authority belonging or incident to the said court: Provided that, if, upon such abolition, the Legislature onstitutes a superior court of criminal jurisdiction, the procedure in criminal matters then

Province may abolish Supreme Court of N.W.T.

obtaining in respect of the Supreme Court of the North-west Territories shall, until otherwise provided by competent authority, continue to apply to such superior court, and that the Governor in Council may at any time and from time to time declare all or any part of such procedure to be inapplicable to such superior court.

Proviso.

3. All societies or associations incorporated by or under the authority of the Legislature of the North-west Territories existing at the time of the coming into force of this Act which include within their objects the regulation of the practice of, or the right to practise, any profession or trade in the North-west Territories, such as the legal or the medical profession, dentistry, pharmaceutical chemistry and the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council, and each of such societies shall have power to arrange for and effect the payment of its debts and liabilities, and the division, disposition or transfer of its property.

As to certain corporations in N.W.T.

4. Every joint-stock company lawfully incorporated by or under the authority of any ordinance of the North-west Territories shall be subject to the legislative authority of the province of Saskatchewan if--

As to joint-stock companies.

(a.) the head office or the registered office of such company is at the time of the coming into force of this Act situate in the province of Saskatchewan; and

(b.) the powers and objects of such company are such as might be conferred by the Legislature of the said province and not expressly authorized to be executed in any part of the North-west Territories beyond the limits of the said province.

17. Section 93 of *The British North America Act, 1867*, shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:-

Education.

"1. Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-west Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances."

2. In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in

substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

3. Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed, in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

Subsidy to province.

18. The following amounts shall be allowed as an annual subsidy to the province of Saskatchewan, and shall be paid by the Government of Canada, by half-yearly instalments in advance, to the said province, that is to say:--

For government.

(a.) for the support of the Government and Legislature, fifty thousand dollars;

In proportion to population.

(b.) on an estimated population of two hundred and fifty thousand, at eighty cents per ead, two hundred thousand dollars, subject to be increased as hereinafter mentioned, :hat is to say:--a census of the said province shall be taken in every fifth year reckoning om the general census of one thousand nine hundred and one, and an approximate estimate of the population shall be made at equal intervals of time between each uinquennial and decennial census; and whenever the population, by any such census or estimate, exceeds two hundred and fifty thousand, which shall be the minimum on hich the said allowance shall be calculated, the amount of the said allowance shall be ncreased accordingly, and so on until the population has reached eight hundred ousand souls.

Annual payment to province.

9. Inasmuch as the said province is not in debt, it shall be entitled to be paid and to ceive from the Government of Canada, by half-yearly payments in advance, an annual um of four hundred and five thousand three hundred and seventy-five dollars, being the quivalent of interest at the rate of five per cent per annum on the sum of eight million ne hundred and seven thousand five hundred dollars.

20. 1. Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:--

Compensation to province for public lands.

The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars;

Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five housand dollars.

2. As an additional allowance in lieu of public lands, there shall be paid by Canada ɔ the province annually by half-yearly payments, in advance, for five years from the me this Act comes into force, to provide for the construction of necessary public uildings, the sum of ninety-three thousand seven hundred and fifty dollars.

Further compensation.

1. All Crown lands, mines and minerals and royalties incident thereto, and the interest f the Crown in the waters within the province under *The North-west Irrigation Act, 898*, shall continue to be vested in the Crown and administered by the Government of anada for the purposes of Canada, subject to the provisions of any Act of the arliament of Canada with respect to road allowances and roads or trails in force nmediately before the coming into force of this Act, which shall apply to the said ovince with the substitution therein of the said province for the North-west- erritories.

Property in lands, etc.

2. All properties and assets of the North-west Territories shall be divided equally etween the said province and the province of Alberta, and the two provinces shall be ntly and equally responsible for all debts and liabilities of the North-west Territories: ovided that, if any difference arises as to the division and adjustment of such operties, assets, debts and liabilities, such difference shall be referred to the bitrament of three arbitrators, one of whom shall be chosen by the Lieutenant overnor in Council of each province, and the third by the Governor in Council. The

Division of assets and liabilities between Alberta and Saskatchewan.

selection of such arbitrators shall not be made until the Legislatures of the provinces ıave met, and the arbitrator chosen by Canada shall not be a resident of either province.

Arbitration.

23. Nothing in this Act shall in any way prejudice or affect the rights or properties of the 'udson's Bay Company as contained in the conditions under which that company surrendered Rupert's Land to the Crown.

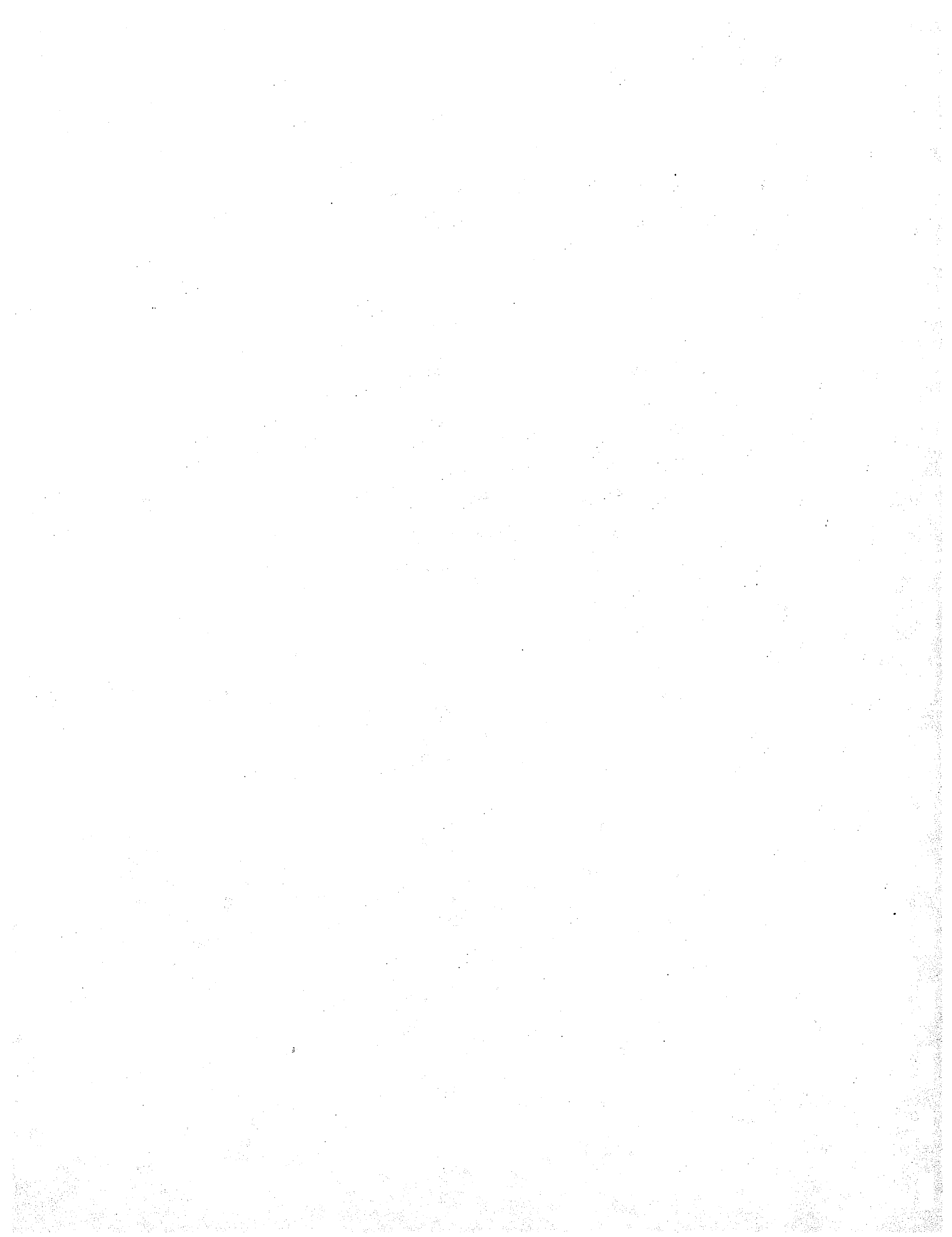
Rights of H. B. Co.

4. The powers hereby granted to the said province shall be exercised subject to the provisions of section 16 of the contract set forth in the schedule to chapter 1 of the atutes of 1881, being an Act respecting the Canadian Pacific Railway Company.

Provision as to C.P.R. Co.

25. This Act shall come into force on the first day of September, one thousand nine ındred and five.

Commencement of Act.



Appendix F

The Northwest Territories Act

A Copy of Which Was Obtained From

canada.justice.gc.ca/en/ps/const/loireg/index.html

An Act respecting the Northwest Territories

SHORT TITLE

This Act may be cited as the Northwest Territories Act.

R.S., c. N-22, s. 1.

INTERPRETATION

2 Definitions

In this Act,

2 "Commissioner"

"Commissioner" means the Commissioner of the Northwest Territories;

2 "Commissioner in Council"

"Commissioner in Council" means the Commissioner acting by and with the advice and consent of the Council;

2 "Council"

"Council" means the Council of the Northwest Territories;

2 "Court"

"Court" means the Supreme Court of the Northwest Territories;

2 "intoxicant"

"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable

liquids, preparations or mixtures capable of human consumption that are intoxicating;

2 "Minister"

"Minister" means the Minister of Indian Affairs and Northern Development;

2 "ordinance"

"ordinance" includes an ordinance of the Territories passed before, on or after April 1, 1955;

2 "public lands"

"public lands" means any land, and any interest in any land, in the Territories that belongs to Her Majesty in right of Canada or of which the Government of Canada has power to dispose;

2 "Territories"

"Territories" means the Northwest Territories, which comprise

(*a*) all that part of Canada north of the sixtieth parallel of north latitude, except the portions thereof that are within the Yukon Territory, the Province of Quebec or the Province of Newfoundland, and

(*b*) the islands in Hudson Bay, James Bay and Ungava Bay, except those islands that are within the Province of Manitoba, the Province of Ontario or the Province of Quebec.

R.S., 1985, c. N-27, s. 2; 1993, c. 41, s. 9.

PART I
GOVERNMENT

Commissioner

3 Appointment

3. The Governor in Council may appoint for the Territories a chief executive officer called the Commissioner of the Northwest Territories.

R.S., c. N-22, s. 3.

4(1) Deputy Commissioner

4. (1) The Governor in Council may appoint a Deputy Commissioner of the Territories.

4(2) Powers of Deputy Commissioner

(2) If the Commissioner is absent, ill or unable to act or the office of Commissioner is vacant, the Deputy Commissioner has and may exercise and perform all the powers and functions of the Commissioner.

R.S., c. N-22, s. 3; 1974, c. 5, s. 8.

5 Administration of government

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

R.S., c. N-22, s. 4.

6 Executive powers

6. The executive powers that were, immediately before September 1, 1905, vested by any laws of Canada in the Lieutenant Governor of the Northwest Territories or in the Lieutenant Governor of the Northwest Territories in Council shall be exercised by the Commissioner so far as they are applicable to and

capable of being exercised in relation to the government of the Territories as it is constituted at the time of the exercise of those powers.

R.S., c. N-22, s. 5.

7 Oaths of office

7. The Commissioner and the Deputy Commissioner shall, before assuming the duties of their respective offices, take and subscribe such oaths of office and allegiance in such manner as the Governor in Council may prescribe.

R.S., c. N-22, s. 6; 1974, c. 5, s. 9.

Seat of Government

8 Location

8. The seat of government of the Territories shall be at such place as may be designated by the Governor in Council.

R.S., c. N-22, s. 7.

Council

9(1) Council established

9. (1) There is hereby established a Council of the Northwest Territories the members of which shall be elected to represent such electoral districts in the Territories as are named and described by the Commissioner in Council.

9(2) Size of Council

(2) The Council consists of fifteen members, but the Commissioner in Council may make ordinances to increase or decrease the membership to a number not less than fifteen nor greater than twenty-five.

9(3) Duration of Council

(3) Every Council shall continue for four years from the date of the return of the writs for the general election and no longer, but the Governor in Council may at any time, after consultation with the Council where the Governor in Council deems consultation to be practicable or, otherwise, after consultation with each of the members of the Council with whom consultation can then be effected, dissolve the Council and cause a new Council to be elected.

9(4) Writs

(4) Writs for the election of members of the Council shall be issued on the instructions of the Commissioner.

R.S., c. N-22, s. 8; R.S., c. 48(1st Supp.), s. 14; 1974, c. 5, s. 10; 1978-79, c. 14, s. 1.

10 Oaths of office

10. Each member of the Council shall, before assuming the duties of his office, take and subscribe before the Commissioner such oaths of office and allegiance as the Governor in Council may prescribe.

R.S., c. N-22, s. 10.

11 Sessions of Council

11. The Commissioner shall convene at least two sessions of the Council in every calendar year so that twelve months shall not intervene between the last sitting of the Council in one session and its first sitting in the next session.

R.S., c. N-22, s. 11; 1984, c. 40, s. 54.

12(1) Speaker

12. (1) The Council shall elect one of its members to be Speaker.

12(2) Speaker to preside

(2) The Speaker shall preside over the Council when it is in session.

R.S., c. N-22, s. 11; 1974, c. 5, s. 12.

13 Quorum

13. A majority of the Council, including the Speaker, constitutes a quorum.

1974, c. 5, s. 12.

14 Qualifications of electors and candidates

14. The Commissioner in Council may prescribe

(*a*) the qualifications of persons as electors and the qualifications of electors to vote at an election of members of the Council;

(*b*) the qualifications of persons as candidates for election as members of the Council; and

(*c*) the reasons for which a member of the Council may be or become disqualified from being or sitting as a member of the Council.

R.S., c. N-22, s. 9; R.S., c. 48(1st Supp.), s. 15; 1974, c. 5, s. 11.

15(1) Sessional indemnity and expenses

15. (1) Subject to subsection (3), each member of the Council shall be paid out of the Northwest Territories Consolidated Revenue Fund such annual indemnity and such travel and living expenses for each session of the Council as the Commissioner in Council may prescribe.

15(2) Indemnities and expenses of committee members

(2) Subject to subsection (3), each member of any committee of the Council shall be paid out of the Northwest Territories Consolidated Revenue Fund, in addition to his annual indemnity, such indemnity and such travel and living expenses as the Commissioner in Council may prescribe.

15(3) Payment of indemnities

(3) The Commissioner in Council may prescribe the terms and conditions on which the indemnities and travel and living expenses prescribed pursuant to subsections (1) and (2) shall be paid to the members of the Council or any committee thereof.

15(4) Part of indemnity not taxable

(4) The first one thousand dollars of the indemnity paid to a member of the Council under subsection (1) in any year is not income for the purposes of the *Income Tax Act*.

R.S., c. N-22, s. 12; R.S., c. 48(1st Supp.), s. 16; 1974, c. 5, s. 13.

Legislative Powers of Commissioner in Council

16 Legislative powers

16. The Commissioner in Council may, subject to this Act and any other Act of Parliament, make ordinances for the government of the Territories in relation to the following classes of subjects:

(*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*) election of members of the Council and 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, jails or lock-ups designated as such by the Commissioner in Council under paragraph 40(*b*), the duties and conduct of persons employed therein or otherwise charged with the custody of prisoners, and all matters pertaining to the maintenance, discipline or conduct of prisoners including their employment outside as well as within a prison, jail or lock-up;

(*k*) the issuing of licences or permits to scientists or explorers to enter the Territories or any part thereof and the prescription of the conditions under which those licences or permits may be issued and used;

(*l*) the levying of a tax on furs or any portions of fur-bearing animals to be shipped or taken from the Territories to any place outside the Territories;

(*m*) the preservation of game in the Territories;

(*n*) education in the Territories, subject to the conditions that any ordinance respecting education shall always provide that

(i) 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 therefor, and

(ii) the minority of the ratepayers in the area referred to in subparagraph (i), whether Protestant or Roman Catholic, may establish separate schools therein, in which case the ratepayers establishing Protestant or Roman Catholic separate schools are liable only to assessments of such rates as they impose on themselves in respect thereof;

(*n*.1) the management and sale of the properties referred to in subsection 44(1) and of the timber and wood thereon;

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

(*p*) intoxicants;

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

(*r*) agriculture;

(*s*) the expenditure of money for territorial purposes;

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

(*u*) the imposition of fines, penalties, imprisonment or other punishments in respect of the contravention of the provisions of any ordinance; and

(*v*) such other matters as may be designated by the Governor in Council.

R.S., 1985, c. N-27, s. 16; 1993, c. 41, s. 10.

17 Restriction on powers

17. Nothing in section 16 shall be construed as giving the Commissioner in Council greater powers with respect to any class of subjects described therein than are given to legislatures of the provinces under sections 92 and 95 of the *Constitution Act, 1867*, with respect to similar subjects therein described.

R.S., c. N-22, s. 14.

18(1) Game ordinances in respect of Indians and Inuit

18. (1) Notwithstanding section 17 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 Inuit.

18(2) Presumption in respect of Indians and Inuit

(2) Any 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 Inuit.

18(3) Hunting for food

(3) Nothing in subsections (1) and (2) shall be construed as authorizing the Commissioner in Council to make ordinances restricting or prohibiting Indians or Inuit 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.

R.S., c. N-22, s. 14; 1984, c. 40, s. 54.

19 Agreements with Government of Canada

19. The Commissioner in Council may make ordinances authorizing the Commissioner to enter into an agreement with the Government of Canada under and for the purposes of any Act of Parliament that authorizes the Government of Canada to enter into agreements with the provinces, but no such agreement shall be entered into by the Commissioner without the approval of the Governor in Council.

R.S., c. N-22, s. 15.

20(1) Borrowing and lending

20. (1) The Commissioner in Council may make ordinances

(*a*) for the borrowing of money by the Commissioner on behalf of the Territories for territorial, municipal or local purposes;

(*b*) for the lending of money by the Commissioner to any person in the Territories; and

(*c*) for the investing by the Commissioner of surplus money standing to the credit of the Northwest Territories Consolidated Revenue Fund.

20(2) Restriction

(2) No money shall be borrowed under the authority of this section without the approval of the Governor in Council.

20(3) Charge on Northwest Territories C.R.F.

(3) The repayment of any money borrowed under the authority of this section, and the payment of interest thereon, is a charge on and payable out of the Northwest Territories Consolidated Revenue Fund.

R.S., c. N-22, s. 24; R.S., c. 48(1st Supp.), s. 21.

21(1) Ordinances to be laid before Parliament

21. (1) A copy of every ordinance made by the Commissioner in Council shall be transmitted to the Governor in Council within thirty days after the passing thereof and shall be laid before both Houses of Parliament as soon as conveniently may be thereafter.

21(2) Disallowance

(2) Any ordinance or any provision of any ordinance may be disallowed by the Governor in Council at any time within one year after its passage.

R.S., c. N-22, s. 16; R.S., c. 48(1st Supp.), s. 18.

Laws Applicable to the Territories

22(1) Laws of England

22. (1) Subject to this Act, the laws of England relating to civil and criminal matters, as such laws existed on July 15, 1870, are in force in the Territories, in so far as they are applicable to the Territories and in so far as they have not been or are not hereafter repealed, altered, varied, modified or affected in respect of

the Territories by any Act of the Parliament of the United Kingdom or of the Parliament of Canada or by any ordinance.

(2) All laws of general application in force in the Territories are, except where otherwise provided, applicable to and in respect of Inuit in the Territories.

R.S., c. N-22, s. 18; 1984, c. 40, s. 54.

23(1) Where no officer in Territories

23. (1) Where in any Act of Parliament or ordinance an officer is designated to perform any duty mentioned therein and there is no such officer in the Territories, the Commissioner may order by what other person or officer the duty shall be performed, and the performance of the duty by that other person or officer pursuant to the order is lawful and valid.

23(2) Transmission of documents

(2) Where in any Act of Parliament or ordinance a document or thing is to be transmitted to an officer, court, territorial division or place and there is then in the Territories no such officer, court, territorial division or place, the Commissioner may order to what officer, court, territorial division or place the transmission shall be made or may dispense with the transmission and the transmission or dispensation of transmission pursuant to the order is lawful and valid.

R.S., c. N-22, s. 19.

Northwest Territories Consolidated Revenue Fund

24(1) Northwest Territories C.R.F.

24. (1) All public moneys and revenue over which the Commissioner in Council has the power of appropriation shall form a fund to be known as the Northwest Territories Consolidated Revenue Fund.

24(2) Establishment of bank accounts

(2) The Commissioner shall establish, in the name of the government of the Territories, accounts with such banks as the Commissioner designates for the deposit of public moneys and revenue.

R.S., c. N-22, s. 20.

25 Recommendation of Commissioner

25. It is not lawful for the Council to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue of the Territories, or of any tax or impost, to any purpose that has not been first recommended to the Council by message of the Commissioner, in the session in which the vote, resolution, address or bill is proposed.

R.S., c. N-22, s. 21.

26 Appropriation of moneys granted by Parliament

26. When a sum of money is granted to Her Majesty by Parliament to defray expenses for a specified public service in the Territories, the power of appropriation by the Commissioner in Council over that sum is subject to the specified purpose for which it is granted.

R.S., c. N-22, s. 22.

Territorial Accounts

27 Submission of Territorial Accounts to Council

27. A report for each fiscal year of the Territories, called the Territorial Accounts, shall be laid before the Council by the Commissioner on or before such day

following the termination of the fiscal year as the Council may fix, and the Council shall consider the report.

R.S., c. N-22, s. 23; R.S., c. 48(1st Supp.), s. 20.

28 Form and contents

28. The Territorial Accounts shall be in such form as the Commissioner may direct and shall include

(*a*) a report on the financial transactions of the fiscal year;

(*b*) a statement, certified by the Auditor General of Canada, of the expenditures and revenues of the Territories for the fiscal year;

(*c*) a statement, certified by the Auditor General of Canada, of assets and liabilities as at the termination of the fiscal year; and

(*d*) such other information or statements as are required in support of the statements referred to in paragraphs (*b*) and (*c*), or as are required by ordinance or by the Minister.

R.S., c. N-22, s. 23.

29 Fiscal year

29. The fiscal year of the Territories is the period beginning on April 1 in one year and ending on March 31 in the next year.

R.S., c. N-22, s. 23.

30(1) Examination and report by Auditor General

30. (1) The accounts and financial transactions of the Territories shall be examined by the Auditor General of Canada who shall report annually to the

Council the result of that examination, and the report shall state whether in his opinion

(*a*) proper books of account have been kept by the Territories;

(*b*) the financial statements of the Territories were prepared on a basis consistent with that of the preceding fiscal year and are in agreement with the books of account;

(*c*) the statement of expenditures and revenues gives a true and fair view of the expenditures and revenues of the Territories for the fiscal year;

(*d*) the statement of assets and liabilities gives a true and fair view of the affairs of the Territories at the end of the fiscal year; and

(*e*) the transactions of the Territories that have come to the notice of the Auditor General have been within the powers of the Territories under this Act and any other Act applicable to the Territories.

30(2) Other matters

(2) The Auditor General of Canada shall call attention to any other matter falling within the scope of the examination made under subsection (1) that in the opinion of the Auditor General should be brought to the attention of the Council.

R.S., c. N-22, s. 23.

31 Powers of Auditor General

31. The Auditor General of Canada has, in connection with the examination of the accounts of the Territories, all the powers that the Auditor General has under the *Auditor General Act* in connection with the examination of the accounts of Canada.

R.S., c. N-22, s. 23; 1976-77, c. 34, s. 27.

PART II
ADMINISTRATION OF JUSTICE

Judicature

32 Appointment of judges

32. The Governor in Council shall appoint the judges of such superior, district or county courts as are now or may hereafter be constituted in the Territories.

R.S., c. 48(1st Supp.), s. 22.

33 Tenure of office of judges

33. The judges of the superior, district and county courts in the Territories shall hold office during good behaviour but are removable by the Governor in Council on address of the Senate and House of Commons and shall cease to hold office on attaining the age of seventy-five years.

R.S., c. 48(1st Supp.), s. 22.

34 Judge of Yukon Supreme Court, *ex officio* judge

34. A judge of the Supreme Court of the Yukon Territory is *ex officio* a judge of the Supreme Court of the Northwest Territories.

R.S., c. N-22, s. 25; SOR/71-369; 1972, c. 17, s. 2.

35(1) Deputy judges

35. (1) The Governor in Council may appoint any person who is or has been a judge of a superior, county or district court of any of the provinces or a barrister

or advocate of at least ten years standing at the bar of any province to be a deputy judge of the Court and fix his remuneration and allowances.

35(2) Duration of appointment

(2) A deputy judge may be appointed pursuant to subsection (1) for any particular case or cases or for any specified period.

35(3) Tenure of office

(3) A deputy judge holds office during good behaviour, but is removable by the Governor General on address of the Senate and House of Commons.

R.S., 1985, c. N-27, s. 35; R.S., 1985, c. 27 (2nd Supp.), s. 8.

36 Residence

36. Unless the Governor in Council, by order, otherwise provides, the judges of the Court, other than *ex officio* judges and deputy judges, shall reside in the city of Yellowknife or within forty kilometres thereof.

R.S., c. N-22, s. 27; SOR/71-369; 1976-77, c. 25, s. 23.

37 Exercise of powers of stipendiary magistrate

37. Where in any Act, ordinance or other law in force in the Territories it is expressed that a power or authority is to be exercised or a thing is to be done by a stipendiary magistrate of the Territories, the power or authority shall be exercised or the thing shall be done by a judge of the Court or, where the power, authority or thing is within the jurisdiction given to him pursuant to this Act, by a police magistrate.

R.S., c. N-22, s. 29; SOR/71-369.

38(1) Jurisdiction to try criminal cases

38. (1) Every judge of the Court, with respect to any criminal offence committed or charged to have been committed within the Territories, has and may exercise and perform, not only within the Territories but also in any place in Canada that is not within the Territories, all the powers, duties and functions of the Court.

38(2) Application of laws

(2) All statutory and other provisions of the law applicable to criminal proceedings within the Territories apply in like manner to proceedings instituted or to be instituted or prosecuted under this section at any place not within the Territories.

38(3) Enforcement of decisions

(3) Any judgment, conviction, sentence or order pronounced or made in any proceedings held outside the Territories under this section may be enforced or executed at the place at which it is pronounced or made or elsewhere, either within or outside the Territories, as the judge of the Court may direct, and the proper officers of the Territories have and may exercise all powers and authority necessary or requisite for the enforcement or execution thereof at the place where it is directed to be enforced or executed, notwithstanding that the place is not within the Territories.

R.S., c. N-22, s. 31.

Court of Appeal

39 Sittings

39. The Court of Appeal of the Territories may sit in the Territories or in the Province of Alberta.

R.S., c. N-22, s. 33; SOR/71-369.

40 Prisons in the Territories

40. The following places in the Territories are prisons, jails or lock-ups for the confinement of persons charged with the commission of any offence under a statute, ordinance or other law in force in the Territories or sentenced thereunder to a term of imprisonment not exceeding two years:

(*a*) every guardhouse, guardroom or other place of confinement that is maintained or managed by the Royal Canadian Mounted Police; and

(*b*) every building or part thereof or other enclosure, other than those referred to in paragraph (*a*), that is designated as a prison, jail or lock-up for the purposes of this section and section 41 by the Commissioner in Council.

R.S., c. N-22, s. 44.

41 Custody of R.C.M.P., where no prison

41. Where it is impossible or inconvenient, by reason of absence or remoteness, to confine a person referred to in section 40 in a prison, jail or lock-up, the person may be sentenced or directed by a judge of the Court, police magistrate or justice of the peace, as the case may be, to be placed and kept in the custody of the Royal Canadian Mounted Police.

R.S., c. N-22, s. 44.

42 Regulations respecting R.C.M.P. confinement places

42. The Governor in Council may make rules and regulations for the management, discipline and policy of guardhouses, guardrooms or other places of confinement referred to in paragraph 40(*a*), for the duties and conduct of persons employed therein or otherwise charged with the custody of prisoners

and for all matters pertaining to the maintenance, discipline or conduct of prisoners including their employment outside as well as within a guardhouse, guardroom or other place of confinement.

R.S., c. N-22, s. 45; 1974, c. 5, s. 15.

Repeal

43 Repeal of this Part

43. The Governor in Council may declare this Part or any provision thereof, except sections 32 and 33, to be repealed on a day or days to be fixed by proclamation.

R.S., c. 48(1st Supp.), s. 23.

PART II.1
OFFICIAL LANGUAGES

43.1 Official Languages Ordinance

43.1 Subject to section 43.2, the ordinance entitled the *Official Languages Act*, made on June 28, 1984 by the Commissioner in Council, as amended on June 26, 1986, may be amended or repealed by the Commissioner in Council only if the amendment or repeal is concurred in by Parliament through an amendment to this Act.

R.S., 1985, c. 31 (4th Supp.), s. 98.

43.2 Additional rights and services

43.2 Nothing in this Part shall be construed as preventing the Commissioner, the Commissioner in Council or the Government of the Territories from granting rights in respect of, or providing services in, English and French or any

languages of the aboriginal peoples of Canada, in addition to the rights and services provided for in the ordinance referred to in section 43.1, whether by amending the ordinance, without the concurrence of Parliament, or by any other means.

R.S., 1985, c. 31 (4th Supp.), s. 98.

43.3 Amendment concurred in

43.3 The ordinance entitled *An Act to amend the Official Languages Act*, made on October 29, 1990 by the Commissioner in Council, is hereby concurred in by Parliament.

1990, c. 48, s. 1.

43.4 Idem

43.4 The ordinance entitled *An Act to amend the Official Languages Act*, made on March 12, 1992 by the Commissioner in Council, is hereby concurred in by Parliament.

1992, c. 6, s. 1.

PART III
GENERAL

Lands

PART III GENERAL
Lands

44(1) Lands vested in Her Majesty

44. (1) The following properties are and remain vested in Her Majesty in right of Canada:

(*a*) lands acquired with territorial funds before, on or after April 1, 1955;

(*b*) public lands, the administration and control of which has before, on or after April 1, 1955 been transferred by the Governor in Council to the Commissioner;

(*c*) all roads, streets, lanes and trails on public lands; and

(*d*) lands acquired by the Commissioner pursuant to tax sale proceedings.

44(2) Administration and control

(2) The Commissioner has the administration and control of the properties referred to in subsection (1) and may use, sell or otherwise dispose of them and retain the proceeds of the use or disposition.

44(3) Transfer to Minister

(3) The Commissioner may, with the approval of the Governor in Council, transfer, either in perpetuity or for any lesser term, the administration and control of the entire or any lesser interest in any property referred to in subsection (1) to any Minister of the Government of Canada.

R.S., 1985, c. N-27, s. 44; 1993, c. 34, s. 99(F), c. 41, s. 11.

44.1 Transfer to Commissioner

44.1 The Governor in Council may transfer, either in perpetuity or for any lesser term, the administration and control of the entire or any lesser interest in any public lands to the Commissioner.

1993, c. 41, s. 12.

Reindeer

45 Regulations respecting reindeer

45. The Governor in Council may make regulations

(*a*) authorizing the Minister to enter into agreements with Indians or Inuit, or persons with Indian or Inuit blood living the life of an Indian or Inuk, for the herding of reindeer that are the property of Her Majesty, which agreements, if deemed advisable by the Minister, shall include provisions for the transfer of such portions of the herds as may be therein specified to the herders on satisfactory completion of the agreements;

(*b*) for the control, management, administration and protection of reindeer in the Territories, whether they are the property of Her Majesty or otherwise;

(*c*) for the sale of reindeer and the slaughter or other disposal of surplus reindeer and the carcasses thereof; and

(*d*) controlling or prohibiting the transfer or shipment by any means of reindeer or their carcasses or parts thereof, whether they are the property of Her Majesty or otherwise, from any place in the Territories to any other place within or outside the Territories.

R.S., c. N-22, s. 47; 1984, c. 40, s. 54.

46 Seizure

46. Where a peace officer or any person who is a game officer under any ordinance believes on reasonable grounds that any reindeer has been killed, that any reindeer or part thereof has been taken, transferred, shipped or had in possession in contravention of the regulations or that any vessel, vehicle, aeroplane, firearm, trap or other article or thing has been used in contravention of

the regulations, he may, in the Territories, without a warrant, effect seizure thereof.

R.S., c. N-22, s. 47.

<u>47 Forfeiture</u>

47. Every seizure made under section 46 shall be reported as soon as practicable to a justice of the peace who may, on satisfying himself that the reindeer or part thereof or the vessel, vehicle, aeroplane, firearm, trap or other article or thing has been taken, dealt with or used in contravention of the regulations, declare it to be forfeited to Her Majesty and, on that declaration, it is forfeited.

R.S., c. N-22, s. 47.

<u>48 Application of the *Game Export Act*</u>

48. The *Game Export Act* applies to reindeer or the carcasses or part thereof and, for that purpose, under that Act

(*a*) "game" shall be deemed to include reindeer, carcasses or part thereof;

(*b*) "killed" shall be deemed to include the taking or capture of or dealing in live reindeer; and

(*c*) "export permit" shall be deemed to include a permit or licence issued under the regulations made pursuant to section 45 of this Act.

R.S., c. N-22, s. 47.

Intoxicants

<u>49(1) Manufacture of intoxicants</u>

49. (1) No intoxicant shall be manufactured, compounded or made in the Territories except by permission of the Commissioner.

49(2) Importation of intoxicants

(2) No intoxicant shall be imported or brought into the Territories from any place outside the Territories, whether it is in Canada or elsewhere, except by permission of the Commissioner or a person authorized by him.

R.S., c. N-22, s. 48.

50 Subject to customs and excise laws

50. Intoxicants manufactured, compounded or made in the Territories or imported or brought into the Territories are subject to the customs and excise laws of Canada.

R.S., c. N-22, s. 48.

51 Seizure

51. Where a peace officer believes on reasonable grounds that any intoxicant has been manufactured, compounded or made in the Territories or imported or brought into the Territories from any place outside the Territories in contravention of this Act or that any vessel, vehicle, aeroplane, appliance, article or thing has been used for any of the above purposes in contravention of this Act, he may, in the Territories, without a warrant, effect seizure thereof.

R.S., c. N-22, s. 48.

52 Forfeiture

52. Every seizure made under section 51 shall be reported as soon as practicable to a justice of the peace who may, on satisfying himself that the

intoxicant or the vessel, vehicle, aeroplane, appliance, article or thing has been manufactured, compounded, made, imported, brought in or dealt with or used in contravention of this Act, declare it to be forfeited to Her Majesty and, on that declaration, it is forfeited.

R.S., c. N-22, s. 48.

53 *Importation of Intoxicating Liquors Act* not applicable

53. The *Importation of Intoxicating Liquors Act* does not apply to the importation, sending, taking or transportation of intoxicating liquor into the Territories.

R.S., c. N-22, s. 48.

Mentally Disordered Persons

54(1) Arrangements for transfer to provincial institutions

54. (1) The Commissioner may, subject to the approval of the Minister, arrange with any province for the admission to mental institutions, asylums or other suitable places in the province of

(*a*) mentally disordered persons, for the purpose of their confinement, care and maintenance until the pleasure of the Commissioner is made known or until they are discharged by law;

(*b*) persons in respect of whom the Court, a police magistrate of the Territories or a justice of the peace in and for the Territories has ordered that a psychiatric examination be made, for the purpose of that examination; and

(*c*) persons in respect of whom the Commissioner has approved psychiatric examination and treatment, for the purpose of that examination and, where necessary, treatment.

54(2) Compensation to province

(2) An arrangement described in subsection (1) may provide for compensation to be paid to the province in respect of the confinement, care, maintenance, examination and treatment of the persons described in that subsection.

54(3) Payment out of Northwest Territories C.R.F.

(3) The compensation paid to a province under subsection (2) shall be paid out of the Northwest Territories Consolidated Revenue Fund.

R.S., c. N-22, s. 49.

55(1) Recapture of escaped mentally disordered persons

55. (1) Where a mentally disordered person has escaped from a mental institution, asylum or other place of confinement, within or outside the Territories, any person employed therein or connected therewith or other person requested by the person in immediate charge or control thereof may, within forty-eight hours after the escape, without a warrant, retake the escaped person and return him to the place from which he escaped, or may, if a warrant is issued to him for that purpose, do so at any time after the escape up to the time specified in the warrant.

55(2) Warrants

(2) A warrant may be issued for the purposes of subsection (1) by the person in immediate charge or control of the mental institution, asylum or other place of confinement from which the escape was made and shall contain the name and description of the escaped mentally disordered person, the name and office, if any, of the person to whom it is issued, the place to which and the person to whom the escaped person is to be returned and the time, not exceeding three months, for which the warrant is valid.

55(3) Custody of recaptured persons

(3) An escaped person who is returned to custody under this section shall remain in custody under the authority by virtue of which he was detained prior to his escape.

R.S., c. N-22, s. 50.

Neglected Children

56(1) Arrangements for care in provincial institutions

56. (1) The Commissioner may, subject to the approval of the Minister, arrange with any province for the removal of neglected children from the Territories to foster homes or suitable institutions in that province, for their care, education and maintenance therein and for the compensation to be paid therefor to that province.

PART III GENERAL
Neglected Children

56(2) Payment out of Northwest Territories C.R.F.

(2) The compensation to be paid to a province under subsection (1) shall be paid out of the Northwest Territories Consolidated Revenue Fund.

R.S., c. N-22, s. 51.

Cultural Sites and Property

57 Regulations

57. The Governor in Council may make regulations for the protection, care and preservation of sites, works, objects and specimens of archaeological,

ethnological or historical importance, interest or significance and explorers' cairns and explorers' documents.

R.S., c. N-22, s. 52.

58 Power to seize

58. Where any peace officer believes on reasonable grounds that any object, specimen or document has been removed, taken, shipped, had in possession or otherwise dealt with contrary to the regulations, he may, in the Territories, without a warrant, effect seizure thereof.

R.S., c. N-22, s. 52.

59 Forfeiture

59. Every seizure made under section 58 shall be reported as soon as practicable to a justice of the peace, who may, on satisfying himself that the object, specimen or document was removed, taken, shipped, had in possession or otherwise dealt with contrary to the regulations, declare it to be forfeited to Her Majesty and on that declaration it is forfeited.

R.S., c. N-22, s. 52.

Offence and Punishment

60 General offence and punishment

60. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both.

R.S., c. N-22, s. 53.

AMENDMENT NOT IN FORCE

Û 1993, c. 28, s. 77:

77. The definition "Territories" in section 2 of the *Northwest Territories Act* is repealed and the following substituted therefor:

"Territories"

"Territories" means the Northwest Territories, which comprise all that part of Canada north of the sixtieth parallel of north latitude and west of the boundary described in Schedule I to the *Nunavut Act* that is not within the Yukon Territory.

Appendix G

The Bourque Report

Comprising Pages 150-209

TABLED DOCUMENT NO. 66 - 12 (2) TABLED ON JUN 2 9 1992

WORKING TOWARD A COMMON FUTURE

COMMISSION FOR
CONSTITUTIONAL DEVELOPMENT

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April 1992

FOREWORD

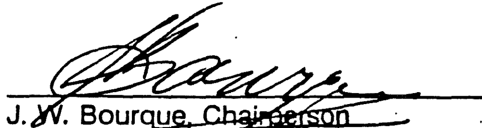
The Committee of Political Leaders of the western Northwest Territories established the Commission in June, 1991 with instructions to complete Phase I before the boundary plebiscite.

This report represents the fulfilment of those instructions. We have examined the constitutional constraints and opportunities that are available in the current Canadian context. We have consulted the public, who will be the citizens of the New Western Territory, in two sets of public hearings, and considered all the information presented to us.

The principles and recommendations in this report are the best effort that we can produce in the time available. The research done for us by legal counsel and consultants was important in arriving at this point but did not influence the report as much as the people who shared their visions for the future with us.

The result of these efforts is a combination of recommendations that is not the ideal that any one of us or the public may wish. It is, however, a valuable starting point for the next phase, which must give serious and detailed attention to the principles and recommendations made here. It is important that the New Western Territory be governed by a workable constitution which ensures that the wealth of our land is shared equitably and that our citizens have opportunities to achieve their full potential.

We thank the members of the Committee of Political Leaders for the confidence they placed in us. We also thank the people who shared their vision of the New Western Territory with us. You have made our work challenging and exciting.



J. W. Bourque, Chairperson

George Braden, Deputy Chairperson

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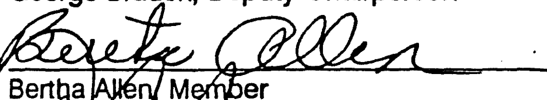

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I INTRODUCTION

1. Creation of the Commission

The people of the Northwest Territories are blessed -- or cursed, as some would have it -- to live in interesting times. Ten years ago a majority of them voted "yes" to dividing the territory.

Eight years ago the Inuvialuit became the first aboriginal group in the territory to conclude a modern land rights agreement with the Government of Canada. Five years ago the leaders of the Inuit of the eastern part of the territory, the Dene, the Metis and the Legislative Assembly signed the Iqaluit Agreement. This agreement was not signed by the Inuvialuit and was rejected by some of the Dene chiefs. Two years ago the Dene/Metis and the government of Canada terminated 20 years of comprehensive claim negotiations.

Most recently the Gwich'in have ratified and signed their own modern land rights agreement which includes an undertaking by the governments of Canada and the Northwest Territories to negotiate self government agreements with them.

In the eastern part of the territory the Inuit have also negotiated a modern land rights agreement. If that agreement is ratified it will lead to the division of the territory into two new territories: Nunavut and the yet unnamed western portion which is referred to as the New Western Territory in this report.

At the national level, discussions on constitutional renewal have created a momentum by which First Peoples may achieve recognition of their inherent right of self government. At the territorial level, this could be expressed in forms of government and decision making which reflect the systems that were in place before the current form of government was imposed on First Peoples.

Political leaders in the western Northwest Territories recognized all of these developments as an opportunity to develop a people-driven process to draft a constitution for the New Western Territory. Representatives from the major aboriginal organizations and from the government of the Northwest Territories came together in an informal group of political leaders known as the Committee of Political Leaders. They established a commission made up of individuals who have the trust and confidence of the distinct elements of society in the New Western Territory.

Members of the Commission for Constitutional Development include individuals nominated by the Inuvialuit Regional Corporation, the Dene Nation, the Metis Nation, the Sahtu Tribal Council, the Government of the Northwest Territories and western members of the Legislative Assembly. All members were endorsed by the

Committee of Political Leaders. The chairperson of the Commission was chosen by consensus of the political leaders.

2. The Work of the Commission in Phase I

One of the Commission's tasks was to give the public basic information about options for constitutional development in a New Western Territory before the May 4, 1992, boundary plebiscite.

To that end, they reviewed the principles and proposals set forth over the years for constitutional development by all groups in the Northwest Territories. They distributed a paper, "How Can We Live Together?", that posed questions and presented ideas for consideration and discussion. To help the public respond, the Commission funded municipal governments, First Peoples' organizations and other public interest groups. Public hearings were held in 12 communities in November and December.

In all, a total of 123 persons appeared before the Commission to express their views in the first round of hearings. The Commission received 39 written submissions in public hearings and six people submitted written briefs that were received by mail.

An interim report, produced in February, 1992, summarized the results of this effort and the work done for the Commission by a team of legal and constitutional advisors. The purpose of that report was to present the views of the people on the principles that should guide constitutional development, and to integrate these views into preliminary statements of principle for public discussion.

The interim report also proposed, as a mechanism to permit the varied governmental structures and responsibilities desired by residents, a new district order of government.

Individual Commission members held information sessions throughout the western Northwest Territories in February and March. Public hearings were held in another nine communities in March and April. The purpose of these meetings was to fill in gaps and to make sure that the Commission had heard people well, and reflected their thinking in the interim report.

Further funding was provided to municipal governments, First Peoples' organizations and other public interest groups, to respond to the Commission's interim report. In all, 75 people made presentations and 44 written submissions were received in this second round of public consultation.

Commission members were deeply impressed by the work that some people put into their presentations, even without funding. They would especially like to thank the many individuals who took the time to make presentations on their own.

The members of the Commission want to make a special acknowledgement of the work done by the Town of Hay River. This municipality conducted an extensive public consultation process on its own. As a result, participation by the residents of Hay River in the Commission's second round of hearings was exceptional. While all of the people of Hay River may not agree on all of the issues, they have embarked upon a dialogue that will lead to a better understanding of those issues.

Many of the people who made presentations to the Commission stressed the importance of understanding the unique history and cultural heritage of the Northwest Territories. The Commission would like to encourage all residents to learn about this history and heritage, by talking to elders in their communities as well as by reading and discussing important source documents in First Peoples, Canadian and Northwest Territories history.

This report cannot provide a detailed examination of all the ideas and recommendations received by the Commission. Those seeking more information are encouraged to consult the Northwest Territories Archives, where copies of all the submissions received by the Commission, as well as transcripts of both rounds of public hearings, are housed.

Public response to the ideas presented in the interim report was generally favourable. This final Phase I report therefore includes principles and ideas similar to those in the interim report, with some refinements. To show people what a constitution for a New Western Territory might look like, a first draft, based on the principles in this report, is included as chapter three.

The members of the Commission have now gone as far as their mandate permits them to go in developing constitutional principles and recommendations in Phase I. It is now up to the Committee of Political Leaders and the people of the New Western Territory to take the next steps.

The principles proposed in this report must be developed into a detailed proposal. This process is described in the Commission's Terms of Reference as Phase II. It is not known at this time whether or when Phase II will proceed, but recommendations for the further development and ratification of a New Western Territory constitution are included in this report. One of the Commission's major recommendations is that further development of a constitution should take place through representative and constituent assemblies over the next two years.

While the Commission's mandate directed that serious consideration be given to recommendations from groups such as the Western Constitutional Forum and technical advice from experts, the main source of their ideas, advice and inspiration has been the people of the New Western Territory.

3. What Is a Constitution and Will It Solve All Our Problems?

Before reviewing what the Commission heard, it is worth stating again what the basic elements of a formal constitution are.

The basic elements of a formal constitution are:

* the name and description of the geographic area to be covered by the constitution;
* a definition of the people to be governed by the constitution, together with a statement of their unique and shared experiences, values, interests and aspirations;
* statements of any special rights and freedoms enjoyed by people governed by the constitution;
* a description of the orders of government, if any, and the ways authority and responsibility are divided among the orders of government;
* the kinds of institutions which will make laws, decisions and settle disputes in these orders of government;
* how people are appointed or elected to serve in these governing institutions; and
* the way a constitution is changed or amended.

It was the Commission's job to provide principles, under each of these headings, to guide the development of a New Western Territory constitution. That is what they have done in this report.

The members of the Commission want to stress that the residents of the New Western Territory are not making their constitution in a vacuum. Everyone is constrained by a variety of present and future legal instruments, which set limits on what they can and cannot do. Among these are Treaties 8 and 11; modern land rights agreements; and the Canadian Constitution itself, which is now in a process of change.

Will a new constitution solve all of the long-standing problems of the western Northwest Territories? Will it bring about an era of respect for all, sharing, caring,

and harmony? Will it lead to a time when people of the New Western Territory will be able to pay their own way?

Unfortunately the answer to all of these questions is no. The Commission has more modest hopes for the document that will be the final product of the process begun a year ago by the Committee of Political Leaders.

The Commission's hearings and community visits gave people a chance to be heard on a wide range of issues, not all of which are constitutional in the formal sense noted above. Some had high expectations for a new constitution. Many expressed hope for a new, different and better way of life in a New Western Territory. The Commission heard the voices of many peoples during community visits and hearings. Representatives of the First Peoples, francophones, black Canadians, and non-aboriginal Canadians of European descent, among others, spoke before the Commission.

First Peoples and francophones want constitutional guarantees of their special collective rights. All peoples want to be respected and recognized as distinct, just as it is the deepest desire of individuals to be respected and loved for themselves within their families and communities.

In the communities they visited, the Commission heard about Treaty First Nations and their chosen governments being ignored and treated as unimportant by other governments. They heard people express the frustration of years of economic inequality between the small communities and the larger ones. They heard from women who are tired of violence and who spoke for others too frightened to speak for themselves.

They heard from youth, the disabled, senior citizens, organized labour, environmentalists, women's groups, chambers of commerce, municipalities, a political party and many individuals. Some of these people wanted to see their individual rights to equal treatment under the law affirmed in the new constitution. What others wanted was not so much equality as equity, or fairness in sharing the wealth of our society.

That means, for example, equality of opportunity, pay equity or affirmative action for disadvantaged groups. It means human rights, and rights for workers. It means regional equalization payments and the responsible use of our land in the creation of wealth.

They also heard strongly felt pleas for a healing process for families and communities to be completed, before these people can govern themselves. Alcoholism and family violence have taken a toll in too many homes in the New Western Territory.

There were contradictory views about many issues. Can a constitution reconcile these conflicting views?

Others suggested that, in a broader sense, the peoples of this territory need to heal the divisions among themselves. Some people felt that some minimum standards for the basic necessities of life should be guaranteed to all citizens.

Finally, there was a wide variety of views on governmental structures, powers and political processes. People wanted everything from exclusive Treaty First Nations governments, to mixed public and aboriginal community governments, to public or aboriginal regional governments, to a strong central government, with everything from municipal to provincial or greater powers. Representation was an especially difficult issue.

Can a constitution make peoples of different governmental traditions live in harmony with each other and the land?

A New Western Territory constitution cannot, and need not, be all things to all people. Some of the guarantees people were seeking are now to be found in the national constitution, in the Canadian Charter of Rights and Freedoms and in existing constitutional protection of aboriginal and treaty rights. Others, such as the First Peoples' inherent aboriginal right of self-government, may soon come about through national constitutional renewal.

The Commission's work served in some cases to raise people's awareness of rights they already have. They recognize that even when people know their rights, going to court to enforce those rights can be difficult and costly. New territorial statutes, improved enforcement of existing laws, and social programs may offer better and more immediate solutions to problems of equity and caring than constitutional proposals.

A law, even the supreme law of a particular land, is only a piece of paper. If the people want a sharing, caring, harmonious and respectful society, it is up to them to practise these values in their daily lives and to demand that their governments live up to them.

The new constitution will not come into effect until 1999 at the earliest, according to the Commission's understanding of the proposed schedule for the creation of Nunavut.

Do the people of the New Western Territory want to wait until 1999, or longer, for human rights legislation, or to begin a healing process?

When the constitutional development process is finished, the people of the New Western Territory will know a little better who they are and who their neighbours in this territory are. The people will have said what they think they can reasonably expect from each other and their governments. The members of the Commission for Constitutional Development believe this process will lead to a workable, and lasting, constitution for the New Western Territory.

In the next phase, they hope to see two different ideas of a constitution come together. One is the idea of a constitution as a written law, covering the topics outlined above. The other is an older vision of a constitution, common to many New Western Territory residents, as a set of customs that cannot be separated from a people's way of life.

II PRINCIPLES FOR A NEW CONSTITUTION

1. Introduction and Definitions

The Commission's Terms of Reference require that their Phase I report recommend principles which should form the foundation of a constitution. The purpose of this chapter is to make a number of recommendations, which are based upon presentations made by members of the public, legal and technical advice, and the views of Commission members. The discussion which follows is organized in the general order of subjects that might appear in a New Western Territory constitution.

The words used to refer to different aboriginal peoples, smaller groups of them, and their governing bodies, are often vague or confusing. The terms used in the remainder of this chapter are defined below.

Readers are asked to note the following definitions:

* "First Peoples" means the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis;
* "Treaty First Nations" means the Indian band governments located in the New Western Territory except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;
* "Metis First Nations" means the Metis Nation-Northwest Territories affiliated locals, except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;
* "Gwich'in First Nations" means Gwich'in First Nation Authorities as defined in Appendix "B" to the Gwich'in Comprehensive Land Claim Agreement;
* "Inuvialuit First Nations" means Inuvialuit community corporations established pursuant to chapter 6 of the Inuvialuit Final Agreement;
* "Aboriginal First Nations" means Treaty First Nations, Metis First Nations, Gwich'in First Nations and Inuvialuit First Nations.

2. Name and Geographic Area for the New Western Territory

The constitution must include a name for the New Western Territory. As is the case with other provinces and territories in Canada, the name of each geographic and political entity is symbolic of its residents and their language, history, environment and future aspirations. In the New Western Territory, all First Peoples have a word or name, such as Denendeh or Nahendeh, describing their homeland.

The Commission recommends that the name for the New Western Territory be taken from a First People's language.

This idea met with universal approval in the second round of hearings. Some people had suggestions for a process to select the name, including a referendum.

The Commission recommends that a selection process for the New Western Territory name be decided upon in Phase II.

The exact geographic area of a New Western Territory may not be known for some time. However, every constitution must state the geographic area over which it applies.

The Commission recommends that the description of the geographic area of the New Western Territory be addressed in Phase II.

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3. Foundations of the New Western Territory

i) The Peoples

One objective of the national constitutional reform process is the development of a Canada Clause that would affirm Canadians' identity and aspirations and convey a sense of how values, traditions, culture and experience are interpreted and reflected in the rules of the Canadian Constitution. Commission members believe that a New Western Territory constitution requires a preamble which captures the spirit and vision of our land and peoples.

Most people at the second round of hearings agreed with the intent and substance of the specimen preamble provided in the Commission's interim report, although many had comments on the wording. This clause is the best place to recognize and celebrate the distinct peoples and unique history of the New Western Territory, as well as stating the values and aspirations we have in common. First Peoples should be recognized in this section as founding peoples of the New Western Territory. All peoples should be celebrated for their unique history, and for their contribution to the rich mixture of cultures that makes up New Western Territory society.

The Commission recommends that description of the peoples of the New Western Territory, similar to the following, be included in a preamble:

> "The New Western Territory is home to many peoples.
>
> "Among these are the First Peoples who have lived and continue to live in harmony with the land and in accordance with their own laws and customs, in societies that have sovereign relations with each other. The First Peoples are recognized as founding peoples of the New Western Territory.
>
> "In addition to the First Peoples, many other groups and individuals have chosen to make the New Western Territory their home. They or their ancestors have come from all parts of the world. These groups and individuals are recognized as an integral part of the society of the New Western Territory."

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ii) Common Values

The Commission's interim report proposed a statement of common values, which remains in the draft constitution in chapter III. Based on what people said in the

second round of hearings, this statement needs a rewrite. The people of the New Western Territory need to recognize the common themes that bring them together. Some proposed themes for the preamble to a constitution are noted below.

The Commission recommends that the following common values of New Western Territories residents be stated in a constitutional preamble:

* recognition of the land itself as the source of our spiritual, emotional, mental and physical well-being;
* a commitment to live in balance with the land;
* the desire to restore good feelings, balance and harmony among all New Western Territories peoples;
* the belief that all authority to govern belongs to the people and flows from them to their institutions of government;
* respect for our distinct cultures, traditions and languages;
* the desire to create a balance between the rights of the individual and the collective rights of peoples.

iii) Fundamental Responsibilities

The Commission also heard reference, in our second round of hearings, to a desire for a statement of responsibilities to balance the constitution's statements of residents' rights.

The Commission recommends that the issue of whether or not to include in the constitution a statement of the basic responsibilities of residents of the New Western Territory be examined in Phase II.

4. Special Rights

i) Fundamental Rights

An important element of any constitution in a modern democratic society is the definition of the fundamental rights and freedoms of all residents. In developing a definition, the Commission noted in its interim report, a balance must be struck between a constitution which is for people as opposed to governments, and the reasonable limits which government can put on the rights and freedoms of individuals.

The Commission summarized the main rights defined in the Canadian Charter of Rights and Freedoms in their interim report. This created more confusion than clarity, in that some groups, such as the disabled, for whom rights are spelled out in the Charter, worried that this summary left them out of a New Western Territory constitution. This was not the Commission's intent. The full text of the Charter has been reproduced as an appendix to this report, and some of the sections which are most relevant to the New Western Territory constitution are quoted in full below.

The Commission received some opposition to reaffirming the Charter, as unnecessary. But the Charter, as part of the Canadian Constitution, is one of the elements of the framework within which a New Western Territory constitution must operate.

The Commission recommends that the New Western Territory constitution should reaffirm the rights and freedoms that are set out in the Canadian Charter of Rights and Freedoms.

The Charter guarantees rights and freedoms "subject only to such reasonable limits as prescribed by law in a free and democratic society." It provides a basic guarantee to all citizens of rights for participation in the democratic process, limits the terms of legislatures and governments, and grants assurances of freedom of speech, religion, assembly and association; rights in relation to criminal processes; and language and interpretation rights, including the rights of minority official language groups to education, and, in some cases, services.

More specifically, s. 2 states: "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association."

Further, s. 15 states, "(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

S.25 of the Charter states that Charter guarantees of rights and freedoms cannot be used to take away any aboriginal, treaty or other rights or freedoms of the aboriginal peoples of Canada. It states: "The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired."

The Charter applies to Parliament and the government of Canada for all matters related to the Northwest Territories, including a New Western Territory Constitution Act passed by Parliament.

ii) New Rights

The Commission has recommended the reaffirmation of the Canadian Charter of Rights and Freedoms in a New Western Territory constitution. Some people in the second round of hearings told the Commission that Charter rights should not only be reaffirmed, but strengthened and added to. What follows is a summary of conclusions in the main subject areas where people wanted the recognition of new rights.

a) Women's Rights

Women's organizations wanted to entrench constitutional protection for women and children against violence. The Commission members believe that a statement of respect for women in the constitution, perhaps in the preamble to a Social Charter, will help to create a climate of opinion in the New Western Territory in which violence against women and children will not be tolerated.

Women also requested recognition of their right to reproductive freedom. Most Commission members believe that this is a matter more appropriately dealt with at the national level.

Control of the birthing process, including the right of midwives to practice, and of women to use their services, on the other hand, can immediately be provided for in territorial statutes.

The Commission recommends that the Northwest Territories government and Legislative Assembly immediately consider creating legislation to ensure the freedom to practise midwifery, and the right to use the services of a midwife.

The Commission has included provisions for safe, non-violent homes and communities in a proposed Social Charter (see below). However, it may be that more than this can and should be done.

The Commission recommends that the matter of additional constitutionally entrenched rights for women be revisited in Phase II.

b) Right to Refuse Medical Treatment

The members of the Commission feel it is important to take into consideration a major recommendation of the Northwest Territories Seniors Society which dealt with one of the most basic individual rights.

The Commission recommends that a New Western Territory constitution should establish the right of a competent person of majority age to refuse medical treatment to prolong life, for themselves or their minor children.

c) Human Rights

A number of groups and individuals proposed that a Human Rights Code be developed and entrenched. Such codes in the provinces and Yukon provide recourse for the violation of individual human rights through investigations, hearings and judgements, usually by a tribunal set up for the purpose.

There is nothing preventing the Northwest Territories Legislative Assembly from enacting such a code now, rather than waiting for the coming into force of the New Western Territory constitution in 1999.

The Commission recommends that the government of the Northwest Territories, in consultation with other leaders, consider the development and enactment of a Human Rights Code prior to the coming into force of the New Western Territory constitution.

The code could be viewed as an experiment, whose suitability for inclusion in the constitution will be judged at a later date.

d) Workers' Rights

The Northwest Territories Federation of Labour proposed a separate and enforceable charter of workers' rights, including: the right to decent working conditions, fair hours and pay, and a safe and healthy workplace; the right to establish and join unions; the right to bargain collectively and to strike; the right to equal pay for work of equal value; and the right of disadvantaged groups to affirmative action.

Commission members agree with the Federation's statement that "we need the jobs, but the people who get the jobs need to be treated fairly," as a statement of principle, and have included it in the preamble to a Social Charter. However, expert legal advice in the field of labour and employment law, including the relation of workers' rights to aboriginal and treaty rights, is needed in order to make more specific recommendations in Phase II.

The Commission recommends that the issue of workers' rights be revisited in the next phase of New Western Territory constitutional development.

e) Environmental Rights

The Commission received strong representations for a separate and enforceable charter of environmental rights. There is nothing that brings all people of the New Western Territory together so much as appreciation for the land. The Commission has recommended a strengthened environmental theme for the proposed preamble of a New Western Territory constitution. (See page 11.)

Despite some interesting proposals, however, a complete environmental charter raises legal and jurisdictional issues that will have to be resolved before more concrete recommendations can be made. Such a charter could give people the right to clean air and water. It could create an obligation to take action to maintain

and enhance the links between human health, the economy and local and territorial ecosystems. Commission members are also aware that an Environmental Bill of Rights already exists at the level of territorial statute.

In the area of environmental rights, the Commission recommends that the issue of a separate and enforceable environmental charter be revisited in Phase II.

Commission members are conscious that the extensive practical knowledge of indigenous people-- aboriginal and non-aboriginal-- has often been ignored by distant governments in framing laws regulating the land, waters, flora and fauna of the north. Yet no-one has more of an interest in conservation and environmental protection than the people who live in a place and derive sustenance from it.

The Commission recommends that traditional indigenous knowledge of the environment and western science be recognized as equally valuable, in a charter of environmental rights or other environmental laws.

f) Social Rights

Constitutions are not just about government institutions and powers, or the rights of individuals. They are also about measures to ensure the individual and collective well-being of the people who make up the human and social fabric of a territory, province or country. The Constitution of Canada, for example, includes a clause which commits federal and provincial governments to promote equal opportunities, reduce regional economic disparities and providing essential services for all Canadians.

The Commission proposes that the New Western Territory constitution should identify in a Social Charter the basic necessities required for the spiritual, emotional, mental, physical and economic well-being of all members of New Western Territory society.

The Commission recommends that a Social Charter be introduced with a statement of social principles. These include:

* respect for the elders of all peoples, and their traditional knowledge;
* respect for women as equal participants in the social, political and economic mainstream of society;
* respect and care for children;
* recognition of the dignity and importance of the family in the nurturance and support of individuals;
* recognition of the dignity and importance of labour, and the obligation of employers to treat workers fairly; and,
* recognition of the right of all people, but especially women, children and elders, to a life free from violence.

They also wish to make it clear that they believe individuals, regardless of whether they reside within a family, are entitled to these necessities of life. Individuals are simply members of the larger "family" of New Western Territory citizens.

The Commission recommends that the Social Charter state that goverments have a responsibility to make sure residents have access to:

* health and social services;
* education and training opportunities;
* child care;
* adequate shelter;
* a safe work place;
* a safe home and community;
* economic equality;
* affirmative action programs to eliminate systemic barriers to education and employment for disadvantaged groups;
* positive programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.

In considering these proposals for a Social Charter, it is important to remember that in some constitutions, such provisions are enforceable by the courts. Commission members originally felt that this should not be the case with the provisions of a Social Charter in the New Western Territory Constitution. Other means could be developed to monitor government's performance in responding to these objectives

and encouraging greater compliance if required. Governments can be encouraged to make fulfilment of basic necessities the first priority for government spending. However, this is a matter that deserves further consideration.

The Commission recommends that the issue of enforceability of a Social Charter be revisited in Phase II of the New Western Territory constitutional development process.

The members of the Commission also do not think it is necessary to wait until the coming into force of this constitution, which may be in 1999 or later, to implement some of the measures called for in this charter. In fact, they believe it is urgent that the recommended positive programs, or healing process, for alcohol abuse and violence get under way immediately if families, communities and districts in the New Western Territory are to govern themselves.

The Commission recommends that the government and Legislative Assembly of the Northwest Territories, in consultation with other leaders, consider funding those communities requesting help for the immediate implementation of a healing process composed of positive programs to combat alcohol and substance abuse, physical and sexual abuse and family violence.

5. First Peoples' Rights

i) Inherent Right of Self-Government

The First Peoples have an inherent right to self-government. Upon the arrival of the Europeans in Canada, First Peoples entered into nation to nation relationships with the newcomers. That the relationship was seen in this manner by the British Crown as well as the First Peoples is shown in the language of the Royal Proclamation of 1763 and of numbered treaties, including Treaties 8 and 11.

The Commission recommends that the New Western Territory constitution recognize, uphold and protect the First Peoples' inherent right of self-government.

First Peoples' languages are now recognized by territorial statute as official languages in the Northwest Territories. The members of the Commission believe that the First Peoples' inherent right to self-government includes the right to use their own languages.

The Commission recommends that the New Western Territory constitution recognize First Peoples' languages as official languages that will be used in public, central, district and aboriginal government institutions.

The First Peoples' inherent right to self-government also means that Aboriginal First Nations have the right to opt out of the New Western Territory constitutional process completely and seek a direct link with the federal government.

The Commission recommends that the New Western Territory constitution recognize that Aboriginal First Nations may opt out of the New Western Territory constitutional process and seek a direct link with the federal government.

The Commission found in the second round of hearings that the inherent right of aboriginal self-government was well-accepted, though some residents would prefer to see it defined. Some people thought the Commission should wait until national constitutional renewal is complete before making statements in this area.

There are a number of outstanding issues in this area, in part because the definition of aboriginal rights is still in process at the national level. These include the application of the Charter of Rights and Freedoms to aboriginal governments, and the obligation of aboriginal governments to defend and protect the rights of non-aboriginal people.

ii) Section 35 of the Canadian Constitution

Section 35 of the Constitution of Canada recognizes and affirms existing aboriginal and treaty rights. This means that Treaties 8 and 11, the Inuvialuit Final Agreement, the Gwich'in Final Agreement and other modern land rights agreements signed in the future will all have protection under the Constitution of Canada. It must be recognized that different First Peoples now have somewhat different rights and aspirations.

A New Western Territory Constitution will have to be consistent with these aboriginal and treaty rights provisions of the Constitution of Canada and should recognize the significance of these agreements to the First Peoples.

The Commission recommends that any provisions respecting aboriginal and treaty rights in the New Western Territory constitution be consistent with the agreements and treaties now protected by s. 35 of the Canadian Constitution.

iii) Rights of Treaty First Nations

A New Western Territory Constitution should also include commitments to Treaty First Nations. Through Treaties 8 (1899) and 11 (1921), the government of Canada recognized the right of Treaty First Nations to their accustomed hunting, fishing and gathering mode of life, their prior use and occupancy of the land, and their status as sovereign self-determining Treaty First Nations with their own governments (chiefs, headmen and councillors). Treaty First Nations want their treaty and aboriginal rights upheld to restore good feelings and balance with non-aboriginal people.

The Commission recommends that the spirit, and the meaning and intent of Treaties 8 and 11 be recognized, upheld and protected.

In considering the spirit, meaning and intent of the treaties, the Commission recommends that the constitution state that:

* the treaties deal with education, housing, health, economic development and state that taxes would not be imposed;
* the treaties guarantee their adherents rights to hunt, fish and trap, as they always have, on their ancestral lands, without interference;
* the treaties, according to Dene oral history, were not land surrenders, but agreements to share the land, air and water, with the consent of Treaty First Nations;
* the treaties established band councils as Treaty First Nations governments, and these governments are recognized as such;
* Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs, laws and institutions; and,
* Treaty First Nations will determine their own membership, that may include non-Dene.

iv) Rights of Metis First Nations

The New Western Territory constitution should also include commitments to Metis First Nations. The government of Canada recognized the aboriginal rights of the Metis in the New Western Territory through the establishment of the Athabasca District Half-breed Commission in 1899 and the Mackenzie River District Half-breed Commission in 1921. These rights were further recognized by the acceptance of the claims of the Metis in the Dene-Metis comprehensive claim negotiation process of the 1973-1991 era.

The Commission recommends that the aboriginal rights of the Metis First Nations and their citizens be recognized, upheld and protected.

In considering the aboriginal rights of Metis First Nations, the Commission recommends that the following interpretation be stated in the New Western Territory constitution:

* citizens of the Metis First Nations will have the same rights to hunt, fish, trap and gather as those of the Treaty First Nations;
* Metis First Nations will have the right to a land base within the New Western Territory and the size of these land bases will be equivalent to the amount of land that was offered under the failed Dene/Metis agreement which means that each Metis First Nation will receive five square miles for each of their citizens;
* each Metis First Nation will have the right to exercise its inherent right of self government on their land base and to provide services to its citizens not living on the land base;
* each Metis First Nation will have the right to set the rules under which citizenship will be granted;
* citizens of the Metis First Nations will be entitled to receive the same program benefits that Indians and Inuit receive from the government of Canada and these program benefits will be administered by the governments of the Metis First Nations.

iv) Rights of Gwich'in First Nations

The Gwich'in ratified a modern land agreement with Canada in 1991. This agreement was officially signed April 22, 1992, and will soon be ratified by the Parliament of Canada. The Gwich'in also retain many rights under Treaty 11.

The objectives of the Gwich'in agreement included the recognition and encouragement of the Gwich'in way of life, which is based on the cultural and economic relationship between the Gwich'in and the land; encouragement of their self-sufficiency and enhancement of their ability to participate fully in all aspects of the economy; and the protection and conservation of the wildlife and environment of the settlement area for present and future generations.

The Commission recommends that the Gwich'in Comprehensive Claim Agreement with Canada, and any future self-government agreements negotiated by Gwich'in First Nations with Canada, be recognized, upheld and protected in the New Western Territory constitution.

In considering the rights of Gwich'in First Nations, the Commission recommends that it be noted that:

* the Comprehensive Claim Agreement does not prejudice the rights of Gwich'in as Canadian citizens nor as aboriginal people within the Canadian constitution;
* Gwich'in shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples, and those deriving from the Constitution applicable to native citizens;
* the Agreement recognizes the right of Gwichin First Nations to negotiate self-government agreements with Canada, which may address, among other matters: the establishment of Gwich'in First Nations Authorities as Gwich'in First Nations governments, establishment of a justice system, and language and culture; and,
* Gwich'in First Nations continue to hold many rights under Treaty 11.

v) Rights of Inuvialuit First Nations

The Inuvialuit (western Arctic Inuit) made a separate land claim agreement or modern treaty with the Canadian government in 1984. The Inuvialuit Final Agreement recognized that the three basic goals of the Inuvialuit Land Rights Settlement are: to preserve the culture and values of the Inuvialuit within a changing northern society; to enable them to be equal and meaningful participants in both the northern and national economy and society; and to protect and preserve the Arctic wildlife, environment and biological productivity.

The Commission recommends that the Inuvialuit Final Agreement and any agreement for self-government the Inuvialuit may reach with Canada will be recognized, upheld and protected in the New Western Territory constitution.

In considering the rights of the Inuvialuit First Nations, the Commission recommends that it be noted that:

* the Final Agreement does not prejudice the rights of Inuvialuit as Canadian citizens nor as aboriginal people within the Canadian constitution;
* Inuvialuit shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples (including federal and territorial programs) and those deriving from the Constitution applicable to native citizens; and,
* the agreement also preserved the right of the Inuvialuit to establish self-government institutions.

vi) Future Rights of Aboriginal First Nations

It is possible that First Peoples, other than the Gwich'in and Inuvialuit, will reach modern land agreements with Canada in the future, or choose to have their governments recognized by Canada through agreements. The members of the Commission believe the New Western Territory constitution should recognize these legitimate aspirations.

The Commission recommends that all future agreements between Aboriginal First Nations and Canada on land and resources and self-government be recognized, upheld and protected in the New Western Territory constitution.

6. Orders of Government

i) Fundamental Principles

The Commission heard many views on how government should be structured. The Commission also heard differing views on which government should exercise which powers in the New Western Territory. Some stressed the need for a strong centr government, while others favoured strong regional and community governments. In their interim report, the Commission proposed the creation of two distinct orders of

government, a district order, and a central order, to meet the need for flexibility in different areas of the New Western Territory.

An inherent right of self-government may be constitutionally entrenched at the national level. The Commission has recommended that the New Western Territory constitution uphold and protect this right. This means that Aboriginal First Nations could exercise the right to establish an exclusive order of government in a New Western Territory. Flexible arrangements will then not be an option, but the only option, if the people of the New Western Territory want to stay together under one government, in one territory.

The Commission has weighed all of these views and is proposing that the following principles form the basis for governments which will be established by the New Western Territory constitution.

While many New Western Territory residents live under and work for a system of government where authority to govern flows down from the federal to the territorial to local levels of government, many believe that the ultimate authority of any government rests with the people.

The Commission recommends that the New Western Territory constitution affirm that all authority to govern belongs to the people, collectively, and flows, collectively, from them to their institutions of government.

This principle has been included in the preamble to the constitution. We want to make it clear that the members of the Commission do not regard this as a "motherhood" statement, but as a principle which does have fundamental implications for the form and process of government in a New Western Territory.

The Commission recommends that the definition and ratification procedure for governing authority flowing from the people be developed in Phase II. This process should make sure the people of the New Western Territory have input into defining the flow of authority and approving what that flow is.

Following from this recommendation, many New Western Territory residents naturally aspire to have more authority vested in governments which are closer to them, and to have the status of these governments recognized and their powers protected in a New Western Territory constitution.

The Commission recommends that a New Western Territory constitution recognize different orders of government and the powers of each of those orders.

An order of government does not exercise powers delegated from a superior level of government. Rather, each order exercises its own powers, which are recognized and enshrined in a constitution, although some, by agreement, may be shared.

The Commission recommends that authorities not identified in the Constitution as being the exclusive responsibility of the central order of government, be assumed to be vested in other orders of government.

Thus, the central government does not delegate powers in this concept, but rather the reverse.

ii) District Order of Government

a) Rationale

The debate over municipal versus band governments, and local versus regional government, has been going on in the New Western Territory for the last two decades. Witnesses told the Commission that while modest attempts have been made to transfer more authority to the local or regional levels, the central government in Yellowknife has continued to grow unchecked.

In order to meet aspirations for more Aboriginal First Nations, community and regional government control and decision-making, the Commission recommends that consideration be given to establishing a district order of government in the New Western Territory Constitution.

The Commission recommends that the New Western Territory constitution establish a district order of government which may be public, exclusively aboriginal or a combination of both.

b) Forms of District Government

The district approach would provide more flexibility in allowing some communities like Yellowknife or Norman Wells to remain municipalities or municipal districts. Others, such as the Inuvialuit communities, may choose to amalgamate into a regional district. A third variation would see Aboriginal First Nations create an exclusive aboriginal district government.

The Commission recommends that the New Western Territory constitution specify that the people of a district shall have a voice in accepting the form of government for the district, that is whether it shall be a public, exclusively aboriginal, or mixed form of government.

c) Geographic Area of Districts

The members of the Commission were well aware that any mention of boundaries for New Western Territory districts is likely to result in lively discussion. The Commission is willing to put forward principles concerning the geographic description of districts in the hope of encouraging just such discussion. A list of possible districts in a New Western Territory follows this recommendation.

The Commission recommends that:

* the geographic area of district governments may include one or more established communities or municipalities within its boundaries;
* district governments should together encompass the entire geographic region of the New Western Territory;
* a district must be a geographically contiguous area;
* communities within the geographically contiguous area of a district can choose:
  - -to opt in to that district
  - -to have their own district government recognized instead; or
  - -in the case of Aboriginal First Nations, to opt out of the New Western Territory constitutional process completely and seek a direct link with the federal government; and
* the right of Aboriginal First Nations to negotiate with the federal government regarding the geographic area of their lands be recognized, and that it not be prejudiced by participation in New Western Territory district governments.

List of Possible Districts in the New Western Territory:

Possible Districts Within the Inuvialuit and Gwich'in Settlement Regions

* All that part of the Inuvialuit Settlement Region lying within the New Western Territory excepting the lands lying within the municipal boundaries of the Hamlet of Aklavik and the Town of Inuvik;
* The Hamlet of Aklavik;
* The Town of Inuvik;
* The remainder of the Gwich'in Settlement Region lying within the New Western Territory.

Possible Districts Within the Sahtu Settlement Region

* All that part of the Fort Good Hope/Colville Lake Group Trapping Area lying within the New Western Territory excepting the lands lying within the Gwich'in Settlement Region;
* the Town of Norman Wells;
* Fort Norman's traditional lands lying within the Sahtu Settlement Region;
* Fort Franklin's traditional lands lying within the Sahtu Settlement Region.

Possible Districts Within the Deh Cho Region

* The Town of Hay River, the Hay River Corridor and Enterprise;
* The Village of Fort Simpson;
* The remainder of the Deh Cho Region lying within the New Western Territory.

Possible Districts Within the North Slave Region

* The City of Yellowknife and the Ingraham Trail area;
* The remainder of the Tli Cho Region lying within the New Western Territory.

Possible Districts Within the South Slave Region

* The Town of Fort Smith;
* The remainder of the Treaty 8 area, including Ndilo and Dettah and unsurrendered lands east of the Treaty 8 area within the New Western Territory.

iii) The Central Order of Government

There was unanimous agreement at the Commission's hearings on the need for a central government, if only on grounds of practicality and economy. Some speakers believe there is also a need for a central government to act as a force for the greater good of all people in the New Western Territory.

The Commission recommends that the New Western Territory Constitution establish a central order of government.

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iv) Distribution of Powers and Responsibilities

The division of powers among the orders of government is at the heart of the Canadian federal system. A meaningful division of powers between orders of government in a New Western Territory offers the best hope of all residents having a common future, in the view of Commission members.

District governments will be responsible for those matters which most directly affect the daily lives of residents. By "responsible," we do not mean that the district government will simply administer programs on behalf of the central government, unless that is the wish of the district's people. Rather, like provinces and the federal government, districts will have their own spheres of influence. They will make and enforce laws and regulations, as well as administer programs.

Aboriginal governments, and mixed aboriginal-public governments, may have a different list of exclusive powers drawn from their special relationship with the federal government, from treaties or modern land agreements. In effect, aboriginal governments could constitute another order of government within Canada. This matter is under discussion in current constitutional talks.

Similarly, some district governments could, because of their location or other factors, negotiate different types of powers than others. For example, the Inuvialuit are interested in the regulation of renewable and non-renewable resources in the Beaufort Sea offshore, which is currently a federal responsibility.

The Commission recommends that the principle of asymmetry, or unequal distribution of powers, be recognized as acceptable among district governments.

Powers for each district government will have to be established before district governments are set up. The members of the Commission have assumed that all the powers of a province will be available to New Western Territory governments, and that special arrangements may also be negotiated between district governments, the central government and Ottawa. Treaty First Nations may wish to exercise exclusive powers that flow from their treaties.

The Commission suggests that the powers available to the district order of government could include, at a minimum:

* culture, recreation and language;
* pre-school, primary and secondary education;
* training and upgrading;
* public housing and housing support programs;
* delivery of health care and social services, including child welfare;
* tribal or municipal infrastructure;
* economic development;
* regulation and management of socio-economic development agreements;
* tribal and municipal administration of justice and delivery of police and corrections services;
* renewable resource management, possibly including some areas now within the federal jurisdiction, including migratory birds and marine mammals;
* ownership of lands, including surface and subsurface title;
* management and administration of lands and waters, the latter now being a federal power;
* ownership and administration of district parks;

* authority to tax property;
* agriculture;
* management of wills and estates;
* regulation of liquor;
* regulation of lotteries;
* official languages, in addition to French and English;
* solemnization of marriages;
* fiscal policy and relations, including direct taxation within the district in order to raise money for district purposes with the exception of income and corporate taxation; and,
* such other matters, including the above, where authority may be shared with the central government, or where no provision has been made for the central government to exercise authority.

As noted, some of these powers in Canada today do not belong to the provincial order of government, but to the federal order. In other words, they are not easily transferable through the type of devolution process the government of the Northwest Territories has undertaken with the federal government.

The Commission recommends that powers, such as inland water management, that now lie with the federal order of government in Canada, but which are desired by district governments in a New Western Territory, be a topic for further study in Phase II.

The Commission suggests that the central order of government be restricted to the following suggested range of responsibilities:

* fiscal policy and relations, including direct taxation within the territory to raise revenue for territorial purposes;
* external intergovernmental relations;
* standards for and regulation of trade within the territory;
* standards for and regulation of transportation infrastructure;
* standards for and regulation of utilities;
* standards for and regulation of labour relations, labour standards and worker safety;
* education standards and post-secondary education facilities;
* health standards and territorial health facilities;
* standards for and regulation of building, construction and fire safety codes;
* regulation of securities and incorporation of companies;
* tribal and territorial police services and administration of justice, including territorial courts;
* standards for correction services and territorial correction facilities;

* standards for and regulation of land use;
* environmental protection standards and regulation;
* forest fire management and suppression;
* standards for wildlife and marine mammal management;
* standards for industrial and non-renewable resource development;
* standards for and regulation of professions;
* regulation of property and civil rights not noted under the powers of district governments
* such other matters, including the above, which require territorial wide standards and regulation or that will be managed jointly with other orders of government.

There are a number of outstanding issues regarding the division of powers. One of the most important is whether or not the central government, as well as the district governments, will be able to own land (apart from roads and airstrips), and have authority to tax land and improvements.

The Commission recommends that, without detracting from the principle of district government ownership of land with surface and subsurface rights, the issue of ownership and jurisdiction over land by the central government be further considered in Phase II.

The main outstanding issue, for many of the people who made submissions to the Commission on the division of powers, is how much authority the central government will have. Given, for example, very strong aboriginal governments with many exclusive powers, the central government might not have a great deal of authority. It is the view of Treaty First Nations governments that they would be the senior governments.

The Commission recommends that the appropriate balance of power between central and district governments be addressed in Phase II.

v) Powers of Taxation

One question which is related to the degree of authority that each order of government shall have is the power of taxation. While district governments, clearly, should be able to tax land and improvements, as municipalities now do, should they

be able to charge a sales tax? an income tax? a tobacco tax? The Commission has so far suggested leaving most such powers of taxation with the central order.

However, Treaty First Nations represented at national constitutional discussions recently recommended that Treaty First Nations have exclusive jurisdiction over taxation, including tax immunity, of Treaty First Nations lands and people.

A number of people who made submissions to the Commission also stressed the issue of accountability. Should the government that spends the money be the one that is responsible, to the extent possible, for raising the revenue?

The Commission recommends that the powers of taxation be given special attention in Phase II.

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vi) Territorial-District Fiscal Relations

All levels of government in the current Northwest Territories are dependent on federal transfer payments, and have limited ability to raise significant revenues in the foreseeable future. Provision will have to be made for the conditions the two new orders of government will face, and for the sharing of financial resources in the future, subject to negotiated agreements.

The Constitution should contain a provision stating that each order of government will be assured an equitable distribution of financial resources in order that they can properly deliver programs and services for which it is responsible.

As noted above, if districts are to have real power, they may require more taxation authority. Conversely, there may need to be limits to their powers to borrow, for example. District and central orders of government will have to harmonize fiscal policy and fiscal relations.

The Commission recommends that fiscal relations be examined in Phase II.

vii) Implementation of District Government

The Commission acknowledges that once the district orders of government have been created, each will move at a different pace in assuming powers that are available to them. It is possible that one district government will have assumed the full range of authorities available to it, while another may take a more cautious approach.

Therefore, it will be important for the New Western Territory constitution to provide the flexibility that will allow districts to gradually assume increased powers while ensuring that the central order of government has the ability to deliver programs and services until the transition is complete.

The Commission recommends that:

* each district government may assume its powers at its own pace;
* provision be made for the temporary assignment of authority to the central government during the transition to district government; and,
* provision be made for the temporary assignment of authority to the central government at any time.

Commission members also anticipate that a lot of experimenting will have to be done for the central and district governments to find the most acceptable and efficient division of powers.

The Commission recommends that in Phase II, provisions to examine, and, if necessary, change the division of powers between the central government and any district at specified intervals (for example, every five years) should be considered.

8. Institutions of Government

i) For District Governments

The Commission noted that residents may choose whether their governments will be exclusive aboriginal governments, public governments or a mixture of both. Commission members are of the view, however, that whatever form such governments take, they will all have to have certain basic institutions of government.

> The Commission recommends that district governments shall have legislative, executive and, if necessary, judicial branches of government.

Districts may well wish to exercise some creativity in the form of these institutions. District assemblies or traditional forms of government may be preferred in some districts. Each district government should set out the particular forms these institutions will take, how people are elected or appointed to office in each of them, and for what time period people serve in each office. Representation of groups in district governments is dealt with in section 9 of this chapter.

> The Commission recommends that each district government set out the form of its institutions, the manner of appointment or election and terms of office, in a charter to be attached as a schedule to the New Western Territory constitution.

ii) For the Central Government

Commission members also believe the central government will have to have all three basic institutions of government. The possibilities are perhaps more limited in this order, both in terms of forms of government and in terms of institutional structures. The central government, for example, is unlikely to be an exclusive aboriginal government. The central government, no matter what its form and institutional structures, will have to reflect a balance among all the cultures of the New Western Territory.

The Commission recommends that:

* the central government of a New Western Territory have legislative, executive and judicial branches; and,
* that models for the structure of these institutions be thoroughly studied and publicly discussed in Phase II.

In the meantime, the Commission has assumed that a Legislative Assembly of some variety will be among the institutions of a New Western Territory. Provisions for such a body, based on the one now in existence, have been included in the draft constitution in chapter III.

The Commission has not precluded the addition of other institutions, such as a senate or council of elders. Nor is the current method of electing MLAs and selecting the government leader and executive the only one possible. For example, it has been suggested that the government leader be elected in a territory-wide vote. It has also been suggested that the government follow a full consensus system, in which all members of the Legislative Assembly are also members of the executive. These are among the many proposals people may wish to examine in depth in Phase II.

iii) The Judiciary

Questions of who appoints the judiciary, where the seats of justice should be located, and whether each order of government should have a corresponding set of judicial institutions, were not dealt with by the Commission in the interim report. The question of who appoints the judiciary is one that has caused some debate at the national level.

The Commission recommends that the people of the New Western Territory have input to appointments to courts and other bodies of a judicial nature, without prejudice to the independence of the judiciary.

A number of Aboriginal First Nations have indicated that they wish to establish thei own judicial systems. The Native Women's Association wants to see a set o aboriginal justice councils set up in each First Peoples community to handle famil law.

However, certain practical constraints suggested themselves to some Commission members. Are the approximately 15 district governments going to have 15 sets of legal registries and 15 law societies?

The Commission recommends that further consideration in Phase II be given to establishing a more relevant and effective judicial system in a New Western Territory.

iv) Chief Executive Officer

There is a matter of some symbolic importance to be decided, among the institutions detailed in a New Western Territory constitution. Does the territory need a "Commissioner"? What are the requirements for this position?

The Commission was not able to make specific recommendations on who appoints this person, how he or she is selected, or what the name of the position should be. The terms "Commissioner" and "Lieutenant Governor" both have a colonial history, rather than one of ownership by New Western Territory residents. A term such as "Grand Chief" in a First People's language may be more appropriate in the New Western Territory. In the draft bill, this position is referred to as the Chief Executive Officer.

The Commission recommends that:

* the issues of whether the New Western Territory must have a "Commissioner" or "Lieutenant Governor," what the requirements of the position are, how the person is selected, and by whom, be decided upon appropriate advice in Phase II; and,
* that the name for a New Western Territory Chief Executive Officer be taken from a First People's language.

v) Ombudsperson

A simple mechanism for monitoring the Social Charter could be a commission or an ombudsperson. The GNWT is now considering creating the latter office along with access to government information legislation. A commission or ombudsperson could also monitor and report to the central legislature on regional disparities. An

ombudsperson, in the view of Commission members, would be a very useful addition to the institutions of government in the central order.

The Commission recommends that the government of the Northwest Territories proceed with the creation of an office of ombudsperson, and that this office continue in a New Western Territory.

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9. The Right to Vote and Stand for Office

i) The Charter Provisions

The Canadian Charter of Rights and Freedoms provides in s.3 that:"Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." It is not known to what extent the desire of some districts to re-establish forms of government which are based on consensus and traditional forms of leadership will be exercised under the Charter s.25, or as an inherent right.

Bearing these facts in mind, the Commission nevertheless recommends that the option for traditional forms of representation remain open at least at the district order.

The Commission recommends that representation in the law-making branches of district governments should be in accordance with the wishes of the residents living within their boundaries.

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ii) Guaranteed Representation in the Central Order

The Commission presented specific recommendations regarding guaranteed representation in the central order of a New Western Territory government in its interim report.

The Commission recommends that:

* the Legislative Assembly of the central government be representative of the residents of the New Western Territory;
* the Legislative Assembly be structured to ensure that First Peoples' representatives and non-aboriginal residents are present as members; and,
* the Legislative Assembly of the central government be representative of men and women.

These proposed principles did not go far enough for some, and were repugnant to others. Much depends on the degree of power that remains with the central government. If a great deal of power remains at that order, some groups will want to see guaranteed representation. If most real power remains with the districts, guaranteed representation, except perhaps, of districts themselves, may not be seen as very necessary.

The term "guaranteed representation" covers two different types of representation. It is possible, for example, for a Legislative Assembly to contain women or First Peoples in the approximate proportion that exists in the general population. However, unless MLAs are specifically appointed or elected to represent female or a First People's interests, these groups may say, perhaps rightly, that they are not "represented."

One scheme considered by the Commission involved having both a man and a woman elected by all the voters in each riding. First Peoples' representation would be guaranteed in the same manner as it is now, by disproportionately representing rural ridings. Such a scheme could be made more attractive by the addition of extra seats for First Peoples if the numbers elected fall below a critical threshhold.

Recall provisions, in which constituents can force an election under certain circumstances, would make legislators more accountable to their constituents.

The Commission recommends that a variety of models to fulfill the goals of guaranteed representation of women and men, and First Peoples and non-aboriginal residents, be further examined in Phase II.

iii) Proportional Representation in the Central Order

Another option for reconciling the one person, one vote tradition with group representation would be a system of proportional representation, with "parties" organized to represent the different groups. For example, there could be a "Metis party," a "women's party" and so on.

The system might work like this:

> Each party would provide a list of candidates, starting with the candidate they most want to see in the House, and going on to the next more preferred candidate and so on. But voters would vote for a party, rather than a particular candidate. The parties would receive seats in roughly the same proportion as their popular vote. Thus, if the "Metis party" picked up 25% of the popular vote, that party would receive 25% of the seats in the Legislative Assembly. They would fill the seats in the order of the list they provided, until they reached their 25%.

This is a common system, used in many world governments. However, it was the view of the Commission that representation is a matter which will require a great deal more public discussion and research. It will be dependent on conclusions reached about structures of government in Phase II.

The Commission recommends that the option of proportional representation in the central order be explored in Phase II.

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10. Amending the New Western Territory Constitution

The procedure for making changes to a constitution is a vital part of constitutional development. As an example of the importance of this topic, it is only necessary to recall the years of protracted debate over an amending formula for the Canadian Constitution. Most of the discussion hinged on a veto for Quebec over any constitutional change affecting matters of special interest to that province.

The current "constitution" of the Northwest Territories, The Northwest Territories Act, is a federal statute. This means that the Parliament of Canada is legally able to change the way residents of the Northwest Territories are governed without their consent, provided the change does not affect Aboriginal First Nations' rights under s.35 of the Canadian Constitution.

The Commission recommends that amending the New Western Territory Constitution be under the exclusive authority of the people of the territory and subject to amending procedures established in their Constitution.

A second important element to consider is how an amendment can be initiated and who can start the process of change. In the provinces, the government and legislature usually start the process; however, public hearings and debate may precede any decision to proceed with an amendment. Section 45 of the Canadian Constitution says that provincial legislatures may exclusively make laws for amending the constitution of the province. This section may not apply to the constitution of the New Western Territory. Therefore, there is some latitude in designing an amending formula for the constitution of the New Western Territory.

Who can initiate amendments, identification of amendments that require the consent of certain bodies, and the level of public involvement are all topics that must be addressed in a New Western Territory constitution.

The Commission recommends that:

* the New Western Territory constitution contain provisions which allow First Nations, the central legislature and District governments to initiate the constitutional amendment process;
* the New Western Territory constitution identify those amendments which will require the consent of Aboriginal First Nations, district governments and the central legislature before an amendment can be approved and enshrined in the constitution;
* the New Western Territory constitution should guarantee a public information and consultation process on all amendments, including a definition of those amendments which will require public support through a referendum or plebiscite before ratification by the central legislature.

The central Legislative Assembly may have exclusive authority in this area, with a series of checks and balances built in. These checks and balances would involve the public, the district governments, First Peoples and the central government.

The Commission recommends that the New Western Territory central legislature should be the final authority for passing laws which amend the New Western Territory constitution, subject to the veto powers of Aboriginal First Nations, district governments and the central government.

Treaty First Nations made it very clear at the Commission's hearings that they believe they must consent to any New Western Territory constitutional amendment. Their process is likely to be as follows, according to Treaty First Nations representatives:

> The Treaty First Nations assemble to agree on a process, that is, to decide on assembly ratification versus band by band ratification. Single bands may have an absolute veto, or their lack of consent may mean only that negotiators go back to the table. All amendments require Treaty First Nations consent.

III DRAFT CONSTITUTION FOR A NEW WESTERN TERRITORY

The draft bill presented in the next few pages is not a law, or even a legislative proposal. The "draft bill" is meant to get people thinking about the fact that the New Western Territory constitution will be a law. Such a law will probably be similar in form if not in exact content, to the example given here.

The Commission has made a large number of recommendations regarding further work in Phase II on outstanding constitutional issues. Readers will note that this specimen constitution does not include all the matters that may be of concern to them. They should not be alarmed. The reason for this is that Phase II work will have to be taken into account when serious constitutional drafting begins. Legal drafting is a complex and time-consuming process.

BILL

AN ACT TO ESTABLISH AND PROVIDE FOR THE GOVERNMENT OF THE NEW WESTERN TERRITORY

5

Whereas the New Western Territory is home to many peoples among whom are the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis, the First Peoples of the New Western Territory, who have lived and continue to live in harmony with the land and in accordance with their laws and customs in societies that had sovereign relationships with each other and are recognized as founding peoples of the New Western Territory; 10

And whereas many other groups and individuals whose ancestors are from all parts of the world and who have chosen to make the New Western Territory their home and are recognized as an integral part of the society of the New Western Territory;

15

And whereas all the previously mentioned peoples share the following common values:

- (a) recognition of the land itself as the source of spiritual, emotional, mental and physical well-being,
- (b) a commitment to live in balance with the land,
- (c) a desire to restore good feelings, balance and harmony among all New Western Territory peoples, 20
- (d) a belief that all authority to govern belongs to the people and flows from them to their institutions of government,
- (e) a respect for our distinct cultures, traditions and languages, and
- (f) a desire to create a balance between the rights of the individual and the collective rights of peoples; 25

And the people of the New Western Territory recognize and affirm the supremacy of the principles enshrined in the *Canadian Charter of Rights and Freedoms*;

30

And it is expedient to provide for the government of the New Western Territory;

And the consent of the Aboriginal First Nations has been given to the enactment of this Act;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact as follows: 35

Interpretation

Definitions

1. In this Act, 40

"Aboriginal First Nations"

"Aboriginal First Nations" means Treaty First Nations, Metis First Nations, Gwich'in First Nations and Inuvialuit First Nations;

"Chief Executive Officer"

"Chief Executive Officer" means the Chief Executive Officer of the New Western Territory; 45

"Chief Executive Officer in Executive Council"

"Chief Executive Officer in Executive Council" means the Chief Executive Officer acting by and with the advice of the Executive Council;

50

"Court"

"Court" means the Supreme Court of the New Western Territory;

"First Peoples"

"First Peoples" means the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis; 55

"Gwich'in First Nations" — "Gwich'in First Nations" means Gwich'in First Nation Authorities as defined in Appendix "B" t the Gwich'in Comprehensive Land Claim Agreement referred to in paragraph 3(1)(d);

"Inuvialuit First Nations" — "Inuvialuit First Nations" means Inuvialuit community corporations established pursuant to chapte 6 of the Inuvialuit Final Agreement referred to in paragraph 3(1)(c);

"Metis First Nations" — "Metis First Nations" means the Metis Nation-Northwest Territories affiliated locals, except thos in Fort McPherson, Arctic Red River, Aklavik and Inuvik;

"Territory" — "Territory" means the New Western Territory which comprises all that part of Canada north of the 60th parallel of north latitude, except the portions thereof that are within Nunavut, the Yukon Territory, the Province of Quebec or the Province of Newfoundland;

"Treaty First Nations" — "Treaty First Nations" means the Indian band governments located in the New Western Territory except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik.

PART I

CLAIMS AGREEMENTS, TREATIES, AND RIGHTS

Interpretation

Interpretation not to affect certain rights

2. For greater certainty, it is hereby declared that nothing in this Act shall be interpreted as affecting

(a) the inherent right of the First Peoples to self-government;
(b) the existing aboriginal rights and treaty rights of the First Peoples;
(c) the agreement between the Committee for Original Peoples' Entitlement, representing the Inuvialuit of the Inuvialuit Settlement Region and the Government of Canada, dated June 5, 1984 and tabled in the House of Commons of Canada on June 19, 1984, and recorded as document number 322-7/20;
(d) the comprehensive claim agreement dated April 22, 1992, between Her Majesty the Queen in Right of Canada and The Gwich'in as represented by The Gwich'in Tribal Council; and
(e) any other agreement of a like nature to the agreements referred to in paragraphs (c) and (d) when approved, given effect to and declared valid by the Parliament of Canada.

Treaties 8 and 11

3. (1) For greater certainty, it is hereby declared that, in interpreting this Act, the spirit, meaning and intent of Treaties 8 and 11 shall be recognized, upheld and protected.

Spirit, meaning and intent of Treaties 8 and 11

(2) In considering the spirit, meaning and intent of Treaties 8 and 11, this Act recognizes that

(a) the Treaties deal with economic development, education, housing and health;
(b) taxes shall not be imposed on the adherents to the Treaties;
(c) the Treaties guarantee Treaty Dene rights to hunt, fish and trap, as they always have, on their ancestral lands;
(d) the Treaties, according to Dene oral history, were not land surrenders but agreements to share the land, air and water with the consent of First Nations;
(e) the Treaties established band councils as First Nations governments and these governments are recognized as such;
(f) Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs, laws and institutions; and
(g) Treaty First Nations may determine their membership that may include persons who are not Dene.

Metis Rights

Metis rights

4. The following aboriginal rights of the Metis First Nations and their citizens are recognized and shall be upheld and protected:

(a) citizens of the Metis First Nations have the same rights to hunt, fish, trap and gather as those of the members of the Treaty First Nations;
(b) Metis First Nations have the right to a land base within the New Western Territory and the size of those land bases shall be equivalent to the amount of land offered under the proposed Dene/Metis agreement, that is, each Metis First Nation will receive five square miles for each of their citizens;
(c) each Metis First Nation has the right to exercise its inherent right of self government on their land base and to provide services to its citizens not living on the base;
(d) each Metis First Nation has the right to set the rules under which Metis citizenship will be granted; and
(e) citizens of the Metis First Nations are entitled to receive the same program benefits that Indians and Inuit receive from the Government of Canada and those program benefits shall be administered by the governments of the Metis First Nations.

Traditions

Declaration re traditions

5. The traditions, cultures, values, customs, laws and institutions of the First Peoples are hereby recognized and the right to practise those customs and enforce those laws is recognized and affirmed.

Medical Treatment

Right to refuse

6. (1) Competent persons who have attained the age of majority have the right to refuse any medical treatment for themselves and their children who have not attained the age of majority

Where right may not be exercised

(2) A person may not refuse treatment for themselves or their children who have not attained the age of majority where the refusal constitutes a danger to public health.

PART II

DISTRICT GOVERNMENT

Establishment of district government

7. (1) An order of government known as district government is hereby established for each of the districts established by subsection (2).

Establishment of districts

(2) Each of the following districts, with boundaries as set out in the Schedule, are hereby established:

(a) within the Inuvialuit and Gwich'in Settlement Regions
 (i) all that part of the Inuvialuit Settlement Region lying within the New Western Territory excepting the lands lying within the municipal boundaries of the Hamlet of Aklavik and the Town of Inuvik,
 (ii) the Hamlet of Aklavik,
 (iii) the Town of Inuvik,
 (iv) the remainder of the Gwich'in Settlement Region lying within the New Western Territory;
(b) within the Sahtu Settlement Region
 (i) all that part of the Fort Good Hope/Colville Lake Group Trapping Area lying within the New Western Territory except those lands lying within the Gwich'in Settlement Region,
 (ii) the Town of Norman Wells,

(iii) Fort Norman's traditional lands lying within the Sahtu Settlement Region,
(iv) Fort Franklin's traditional lands lying within the Sahtu Settlement Region;

(c) within the Deh Cho Region
(i) the Town of Hay River, the Hay River Corridor and Enterprise,
(ii) the Village of Fort Simpson,
(iii) the remainder of the Deh Cho Region lying within the New Western Territory;

(d) within the North Slave Region
(i) the City of Yellowknife and the Ingraham Trail area,
(ii) the remainder of the Tli Cho Region lying within the New Western Territory;

(e) within the South Slave Region
(i) the Town of Fort Smith,
(ii) the remainder of the Treaty 8 area including Ndilo and Dettah and unsurrendered lands East of the Treaty 8 area lying within the New Western Territory.

Form of government

(3) The form of government for each district shall be the form set out in respect of that district in the Schedule.

Legislative powers

(4) In each district, the legislative branch may make laws in relation to matters coming within the following classes of subjects:

(a) culture, recreation and language;
(b) pre-school, primary and secondary education;
(c) training and upgrading;
(d) public housing and housing support programs;
(e) delivery of health care and social services, including child welfare;
(f) tribal or municipal infrastructure;
(g) economic development;
(h) regulation and management of socio-economic development agreements;
(i) tribal and municipal administration of justice and delivery of police and corrections services;
(j) renewable resource management including migratory birds and marine mammals;
(k) ownership of lands, including surface and subsurface title;
(l) management and administration of lands and waters;
(m) ownership and administration of district parks;
(n) taxation of property;
~~(o) agriculture;~~
(p) management of wills and estates;
(q) intoxicants;
(r) lotteries;
(s) official languages, in addition to the English and French languages;
(t) fiscal policy and relations, including direct taxation, other than personal and corporate income tax, within the district in order to raise money for district purposes; and
(u) solemnization of marriage.

Limitation

(5) No law may be made pursuant to paragraph (4)(s) that reduces rights in respect of the English and French languages or reduces services provided in English and French as those rights or services existed on the day this Act comes into force.

Additional authority

(6) In each district, the authority of the legislative branch of district government extends to those classes of subjects that are assigned exclusively to the Legislatures of the Provinces and that are not expressly enumerated as a class within the classes of subjects over which the Legislature of the Territory has exclusive authority and to such other classes of subjects as may be transferred to the legislative branch of disctrict government by the Parliament of Canada.

Transfer of powers

(7) After the establishment of a district government, it may request the Chief Executive Officer in Executive Council to accept a grant of the right to exercise any of the powers set out in subsection (4) to the Government of the New Western Territory or to the Legislature.

Grant of request

(8) Where the Chief Executive Officer in Executive Council receives a request referred to in subsection (7), the Chief Executive Officer in Executive Council shall, by order, grant the request.

Deemed amendment

(9) Where a request is granted under subsection (8), the legislative branch of that district government may no longer make laws under that power in relation to that district until such time as the district government revokes the request referred to in subsection (7). 5

Agreements

8. A district government may enter into agreements with the Government of Canada, the Government of the New Western Territory and another district government for the purpose of better carrying out any of its duties and functions. 10

Seat of Government

Seat of government

9. The seat of government for a district government shall be at such place as is determined by the legislative branch of the district. 15

Amalgamation

Amalgamation

10. (1) Two or more contiguous districts may amalgamate and continue as one district where a majority of the residents in each district proposing to amalgamate approves, in a referendum, the amalgamation. 20

Form of government on amalgamation

(2) Where an amalgamation is proposed and a referendum is to be held, the residents of the districts that may amalgamate shall also be asked to determine the form of government for the district that is to result from the amalgamation. 25

PART III

DIVISION A

30

CENTRAL GOVERNMENT

Chief Executive Officer

Appointment

11. The Governor in Council may appoint for the Territory a Chief Executive Officer. 35

Administrator

12. (1) The Governor in Council may appoint an Administrator of the Territory.

Powers of Administrator

(2) If the Chief Executive Officer is absent, ill or unable to act or the office of the Chief Executive Officer is vacant, the Administrator has and may exercise all the powers and perform all the functions of the Chief Executive Officer. 40

Seat of Government

Location

13. The seat of government of the Territory shall be at the City of Yellowknife. 45

Executive Council

Executive Council

14. The Executive Council of the Territory shall be composed of such persons, and under such designations, as the Chief Executive Officer thinks fit. 50

Legislature

Legislature established

15. There shall be a Legislature for the Territory consisting of the Chief Executive Officer and the Legislative Assembly of the New Western Territory. 55

First members of Legislative Assembly

16. (1) The Legislative Assembly shall be first composed of those members of the Legislative Assembly of the Northwest Territories who represent ridings that are situate within the New Western Territory on the day on which this Act comes into force.

Tenure of first members

(2) The first members of the Legislative Assembly continue in office until the first election of members to represent the electoral divisions into which the Territory may be divided by Act of the Legislature or for one year from the day on which this Act comes into force, whichever is the earlier.

Duration of Assembly

(3) Subject to subsection (2), every Legislative Assembly shall continue for four years from the date of the return of the writs for the general election and no longer, but the Chief Executive Officer may, at any time, after consultation with each of the members of the Legislative Assembly with whom consultation can then be effected, dissolve the Legislative Assembly and cause a new Legislative Assembly to be elected.

Writs

(4) Writs for the election of members of the Legislative Assembly shall be issued on the instructions of the Chief Executive Officer.

Sessions of Assembly

(5) The Chief Executive Officer shall convene at least one session of the Legislative Assembly in every calendar year so that 12 months shall not intervene between the last sitting of the Legislative Assembly in one session and the first sitting of its next session.

Oaths of office

17. Each member of the Legislative Assembly shall, before assuming the duties of his or her office, take and subscribe before the Chief Executive Officer such oaths of office and allegiance as the Chief Executive Officer may prescribe.

Speaker

18. (1) The Legislative Assembly shall elect one of its members to be Speaker.

Speaker to preside

(2) The Speaker shall preside over the Legislative Assembly when it is in session.

Quorum

19. A majority of the Legislative Assembly, including the Speaker, constitutes a quorum.

Qualifications of electors and candidates

20. The Legislature may establish
- (a) the qualifications of persons as electors and the qualifications of electors to vote at an election of members of the Legislative Assembly;
- (b) the qualifications of persons as candidates for election as members of the Legislative Assembly; and
- (c) the reasons for which a member of the Legislative Assembly may be or become disqualified from being or sitting as a member of the Legislative Assembly.

Legislative Powers

Legislative powers

21. (1) Subject to the other provisions of this Act, the Legislature may make laws in relation to matters coming within the following classes of subjects:
- (a) fiscal policy and relations, including direct taxation within the Territory in order to raise revenue for territorial purposes;
- (b) the establishment and tenure of territorial offices and the appointment and payment of territorial officers;
- (c) election of members of the Legislative Assembly and controverted elections;
- (d) annual indemnities of members of the Legislative Assembly and travel and living expenses for each session of the Assembly and for meetings of Committees thereof;
- (e) international, federal, provincial, territorial and First Nations relations;
- (f) standards for and regulation of transportation infrastructure;
- (g) standards for and regulation of utilities;
- (h) labour standards and regulation of labour standards and worker safety;

(i) education standards and post-secondary education facilities;
(j) health standards and territorial health facilities;
(k) standards for and regulation of building, construction and fire safety codes;
(l) regulation of securities and incorporation of companies and societies with territorial objects; 5
(m) tribal and territorial police services and administration of justice including the constitution, maintenance and organization of Territorial Courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts;
(n) the imposition of fines, penalties, imprisonment or other punishments in respect of the contravention of the provisions of any Act; 10
(o) standards for correction services and territorial correction facilities;
(p) standards for and regulation of land use;
(q) environmental protection standards and regulations;
(r) forest management and suppression of forest fires;
(s) standards for wildlife and marine mammal management; 15
(t) standards for industrial and non-renewable resource development;
(u) standards for and regulation of professions;
(v) standards for and regulation of trade within the Territory;
(w) property and civil rights to the extent that they are not included within the powers of district government; and 20
(x) such other matters as require standards and regulation for the entire Territory or that may be managed jointly with another government.

Review of appointments

(2) The Legislative Assembly may review, before an appointment is effective, any appointment to any territorial court and to any administrative or quasi-judicial body established by an Act of the Legislature. 25

Agreements with Government of Canada

22. The Legislature may authorize the Chief Executive Officer to enter into an agreement with the Government of Canada under and for the purposes of any Act of Parliament that authorizes the Government of Canada to enter into agreements with the provinces. 30

Borrowing and lending

23. The Legislature may authorize
(a) the borrowing of money on behalf of the Territory for territorial, district, municipal or local purposes; 35
(b) the lending of money by the Government of the New Western Territory to any person in the Territory; and
(c) the investing by the Government of the New Western Territory of surplus money.

Laws Applicable to the Territory 40

Laws of Northwest Territories

24. Subject to this Act, the laws in force in the Northwest Territories on the day this Act comes into force are in force in the Territory, in so far as they are applicable in the Territory until they are repealed, altered, varied or modified by any Act of the Legislature or of the legislative branch of a district government established under Part II. 45

Offices continued

25. All courts of civil and criminal jurisdiction and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial existing immediately before the coming into force of this Act in the Territory continue as if this Act had not been enacted until repealed, abolished, altered or terminated by Parliament or by or under an Act of the Legislature. 50

Recommendation of Chief Executive Officer

26. It is not lawful for the Legislative Assembly to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue of the Territory, or of any tax or impost, to any purpose that has not been first recommended to the Legislative Assembly by message of the Chief Executive Officer, in the session in which the vote, resolution, address or bill is proposed. 55

Revenues

Distribution of revenues

27. The Government of the New Western Territory shall ensure that revenues received from the Government of Canada and from direct taxation within the Territory are distributed equitably between the government of the Territory and district governments in order that each order of government may deliver the programs and services for which it is responsible.

DIVISION B

ADMINISTRATION OF JUSTICE

Judicature

Appointment of judges

28. The Governor in Council shall appoint the judges of such superior and district courts as are now or may hereafter be constituted in the Territory.

Tenure of office of judges

29. The judges of the superior and district courts in the Territory shall hold office during good behaviour but are removable by the Governor in Council on address of the Senate and House of Commons and shall cease to hold office on attaining the age of seventy-five years.

Supreme Court

Deputy judges

30. (1) The Governor in Council may appoint any person who is or has been a judge of a superior or district court of any of the provinces or a barrister or advocate of at least ten years standing at the bar of any province to be a deputy judge of the Court and fix his or her remuneration and allowances.

Duration of appointment

(2) A deputy judge may be appointed pursuant to subsection (1) for any particular case or cases or for any specified period.

Tenure of office

(3) A deputy judge holds office during good behaviour, but is removable by the Governor General on address of the Senate and House of Commons.

Residence

31. The senior judge of the Court shall reside in the city of Yellowknife or within forty kilometres thereof.

Exercise of powers of stipendiary magistrate

32. Where in any Act of Parliament or other law in force in the Territory it is expressed that a power or authority is to be exercised or a thing is to be done by a stipendiary magistrate of the Territory, the power or authority shall be exercised or the thing shall be done by a judge of the Court or, where the power, authority or thing is within the jurisdiction given to him or her pursuant to this Act, by a police magistrate.

PART IV

SOCIAL CHARTER

Principles

Social Charter

33. The Social Charter set out in section 34 is founded on the following principles:

(a) respect for the elders of all our peoples, and their traditional knowledge;
(b) respect for women as equal participants in the social, political and economic mainstream of society;
(c) respect and care for children;
(d) recognition of the dignity and importance of the family and its role in the nurturing and support of individuals;
(e) recognition of the dignity and importance of labour, and the obligation of employers to

treat workers fairly; and
(f) recognition of the right of all people to a life free from violence.

Responsibilities of Governments

Responsibilities of governments

34. It is the responsibility of governments to make certain that residents of the New Western Territory have access to
(a) health and social services;
(b) education and training opportunities;
(c) child care;
(d) adequate shelter;
(e) a safe work place;
(f) a safe home and community;
(g) economic equality;
(h) affirmative action programs to eliminate systemic barriers to education and employment for disadvantaged groups; and
(i) programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.

Enforcement

Rights not enforceable

35. The responsibilities of governments set out in section 34 may not be enforced by any court.

PART V

AMENDMENT

Constitutional amendment

36. The Legislature of the New Western Territory may exclusively make laws amending the Constitution of the New Western Territory.

Amendment respecting district governments

37. An amendment to the Constitution of the New Western Territory in relation to district governments may only be made where so authorized by resolutions of at least two-thirds of the district governments representing at least fifty per cent of the population of the Territory and by resolution of the Legislative Assembly of the Territory.

Consent of First Nations

38. An amendment referred to in sections 36 and 37 is of no effect until the Aboriginal First Nations have consented to the amendment.

PART VI

CITATION

Constitution Act 1992

39. This Act may be cited as the *Constitution Act, 1992* and the Constitution Acts 1867 to 1982 and this Act may be cited together as the *Constitution Acts, 1867 to 1992.*

SCHEDULE

District	Legal Description (to be completed when determined)	Form of Government

IV DEVELOPING, APPROVING AND ENTRENCHING THE NEW CONSTITUTION

1. The Next Stage

Other sections of this report have reviewed the way in which the Commission completed Phase I of its mandate. The Commission has made a large number of proposals for further work in a second phase. While decisions have yet to be made on an approach to completing and approving the New Western Territory constitution, presentations to the Commission made it clear that residents, organizations and other levels of government in the New Western Territory expect to participate in the process.

A variety of suggestions were made to the Commission involving further consultation, funding ongoing participation by organizations and governments and convening a constituent assembly to write the constitution.

The Commission recommends that:

* the Committee of Political Leaders ensure that New Western Territory constitutional development issues will be addressed at upcoming assemblies of the Aboriginal First Nations and the Legislative Assembly;
* the Committee of Political Leaders seek the agreement of their parent bodies to hold a representative assembly of constitutional stakeholders in the fall of 1992;
* this representative assembly be composed of two representatives from each Aboriginal First Nation (bands, Metis locals and Inuvialuit community corporations), the mayor and one councillor from each tax-based municipality, western MLAs, the public interest organizations recognized and funded to date in this process, Northwest Territories Members of Parliament and observers from the federal government;
* the objectives of the representative assembly should be:
  - -to review this report
  - -to recommend to the Committee of Political Leaders how the process of New Western Territory constitutional development, including a duly mandated constituent assembly, should best continue, and
  - -to reach consensus on certain issues.

As an alternative, a process for finalizing a new constitution could be set out in enabling legislation. The legislation would identify the parties who have the right to

participate, provide a statement of purpose and set out the negotiating process for a constituent assembly.

2. Ratifying a New Western Territory Constitution

Ratification is one of the most fundamental aspects of constitutional change. It is the process by which the people who are to be governed under a constitution signify that they accept the proposed rules.

The problems and possibilities that go along with amending a constitution for the most part apply also to its ratification. For example, the First Peoples' veto, if established for amendment, is also established for ratification.

The Treaty First Nations insist upon such a veto. They foresee attending a constituent assembly after their own ratification process has taken place, followed by a territory-wide plebiscite. The constitution will be a form of treaty, to which all Treaty First Nations are party, and which they will sign as equals with the central government, Ottawa and other Aboriginal First Nations.

The Commission recommends that the ratification process for the New Western Territory constitution provide for the consent of Aboriginal First Nations.

The Commission also received a number of suggestions for public ratification of the New Western Territory constitution by plebiscite or referendum.

The Commission recommends that:

* the ratification process guarantee a public information and consultation process; and,
* the constitution be ratified by New Western Territory residents in a plebiscite or referendum, subject to further development of a ratification process in Phase II.

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3. Entrenchment of the New Western Territory Constitution

The Commission raised the issue of provincial status for the New Western Territory early in its work. Such status was seen as one way in which the New Western

Territory constitution could be protected from unilateral amendment by the federal government.

A review of the legal options showed that the prospects for creating a province out of the New Western Territory are fairly slim. Funding and the federal reponsibilit with respect to First Peoples were two major obstacles noted in the Commission's interim report.

On the matter of entrenching the new constitution, a review of the legal options clearly indicates that this is a matter over which the residents and governments of the New Western Territory have little direct influence or control, especially if provincial approval is required. Nevertheless, the members of the Commission believe that the status of the New Western Territory constitution, and measures which can be taken to protect it from unilateral change by Parliament, are important issues to pursue.

The Commission recommends that territorial jurisdictions and territorial orders of government be recognized and entrenched in the Constitution of Canada, with the New Western Territory constitution becoming a schedule to the Constitution of Canada.

4. Conclusion

The Commission heard consistently that there is an urgent need for constitutional reform in the New Western Territory. They have attempted to show that reform is possible and practical. The proposals made are preliminary and are presented for further discussion.

Throughout the hearings, the Commission heard concerns about the high cost of governments. They did not have the means or the time to look into the cost implications of putting these draft recommendations into effect.

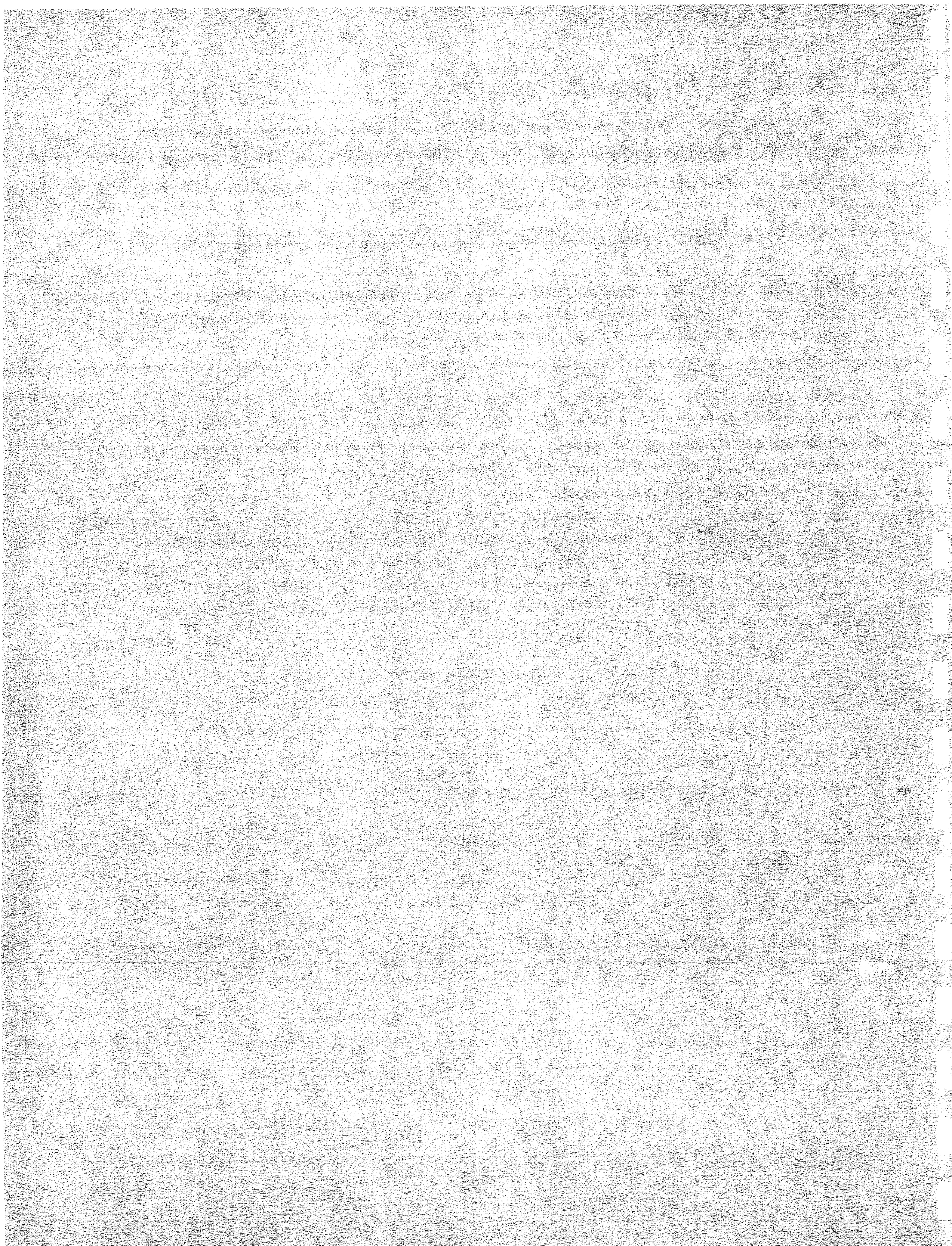
In the Commission's interim report, the government of the Northwest Territories was asked to give the Commission some comments on this issue. The Commission received no comments on this issue from the government of the Northwest Territories. The Commission again encourages the government to come forward with comments on the cost implications of these recommendations.

The Commission strongly recommends that the fiscal implications of New Western Territory constitutional development be examined in depth in Phase II.

The members of the Commission are conscious that their proposals represent the start of what may be the last effort to accommodate public government combined with aboriginal governments in a New Western Territory.

No resident of the present western Northwest Territories should be under any illusions about maintaining the status quo. If something similar to the district government concept cannot be made to work, public government on a territory-wide basis may be a thing of the past. Instead, there may be a set of separate and exclusive aboriginal jurisdictions, with some residual areas administered by the federal and territorial governments.

The members of the Commission are confident, however, that the next phase in the public process of constitutional development, based on the work accomplished so far, will provide the people of the New Western Territory with a workable, affordable and acceptable constitution. They are honoured to have been part of the first phase of this process.



Appendix H

The Legal Personality of the Government of the Northwest Territories

By

Charles F. McGee

The Permission of Mr. McGee to access and utilize this paper is gratefully appreciated. The author asks that it be understood that given the opportunity to revise this paper significant changes might well be indicated.

Comprising Pages 210-234

THE LEGAL PERSONALITY
OF THE
GOVERNMENT OF THE NORTHWEST TERRITORIES

Charles F. McGee
April 15, 1988

Introduction

The purpose of this paper is to examine the legal personality of the Government of the Northwest Territories. It enquires whether that government as presently constituted is properly regarded as merely an instrumentality of the federal government, the "Crown in right of Canada", or alternatively as carrying on the business of government in the Northwest Territories independently and in its own right, the "Crown in right of the Northwest Territories".

The Northwest Territories and Yukon have been referred to as "infant colonies"(l) and "infant provinces".(2) The relationship between the federal government and the two Territories is a direct outgrowth from, and a continuation of, the imperial-colonial relationship, and the Territories have been appropriately characterized as "dependencies" of Canada.(3) Section 146 of the Constitution Act, 1867(4 provided for the eventual admission of Rupert's Land and the North—Western Territory to the Dominion of Canada, and this was accomplished by Imperial Order in Council of June 23, 1870,(5) The Arctic Islands were transferred to Canada, and became part of the North—West Territories, by Imperial Order in Council of July 31, 1880.(6) The Yukon and Northwest Territories of today are the remnants of the old North-West Territories. The Province of Manitoba was carved out at the time of admission in 1870;(7) the Yukon was established as a separate territory in 1898;(8) Alberta and Saskatchewan were established as provinces in 1905;(9) and the boundaries of Quebec, Ontario, and Manitoba were extended northward in1912. (10)

The Parliament of Canada has plenary legislative jurisdiction over the Northwest Territories and Yukon. This was explicitly provided for in section 4 of the Constitution Act, 1871 (11)

> The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

In the exercise of this jurisdiction, Parliament has provided for the government and administration of the Northwest Territories in the Northwest Territories Act(12) That Act creates the office of Commissioner,(13) establishes a Council,(14) and empowers the Commissioner in Council to "make ordinances for the Northwest Territories"(15) in relation to classes of subjects similar to those allocated to provincial legislatures by section 92 of the Constitution Act, 1867.(16 Section 3 of the Northwest Territories Act provides that the Commissioner is the

chief executive officer of the Northwest Territories, appointed by the Governor in Council, Section 5 provides:(17)

> The executive powers that were, immediately before the 1st day of September 1905, vested 1 any laws 9 the Lieutenant Governor of the Northwest Territories or in the Lieutenant of the Northwest. Territories in Council shall be exercised by the Commissioner so far as they are applicable to and capable of being exercised in relation to the government of the Northwest Territories as it is constituted at the time of the exercise of such powers.

The Act thus establishes a structure in which it would appear that legislative power is exercised by the Commissioner in Council, while executive power is exercised by the Commissioner alone. This is modified in its operation, however, by Northwest Territories legislation. The Legislative Assembly and Executive Council Act(18 provides for a Legislative Assembly consisting of 24 elected members(19) and for an Executive Council appointed by the Commissioner on the recommendation of the Legislative Assembly.(20) The Act further provides that the Commissioner may appoint Ministers from among the members of the Executive Council(21) upon the advice of a Government Leader chosen by the Legislative Assembly.(22) Section 56 provides that the Executive Council is responsible for the executive government of the Northwest Territories.(23)

It is this structure, created through the federal Northwest Territories Act and the Territorial Legislative Assembly and Executive Council Act to which the question of legal personality is addressed. Does it have a legal identity of its own or is it merely a part of the federal government, an emanation of the Crown in right of Canada?

Judicial Characterization

The old North-West Territories was referred to in 1885 as an "infant colony".(24) As recently as 1971, however, it has been suggested that the government of the modern Northwest Territories has a status even less than that of a colony, being instead a "mere department" of the federal government. In Royal Bank of Canada v. Scott,(25 Mr. Justice Morrow of the Northwest Territories Territorial Court(26) examined the constitutional history of the Government of the Northwest Territories. He concluded:(27)

> Down to 1905 the general intent would appear to be to administer the Territories pretty much as a colony with the Dominion Government remaining the dominant authority and administering through a Lieutenant—Governor, just as the Imperial Government would govern a colony. After the more populous areas were formed into self—governing provinces the control and directions from Ottawa of the remnant did not diminish. 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.

It is questionable whether this change of the title of office from Lieutenant Governor to Commissioner could by itself so decisively affect legal status, especially when the language of s 5 of the Northwest Territories Act(28 vests in the Commissioner all the executive powers previously held by the Lieutenant Governor or Lieutenant Governor in Council of the old North—West Territories. Department or colony, however, it mattered little to the issue confronting Mr. Justice Morrow; it was sufficient for him to find that the Commissioner acted on behalf of the Crown in right of Canada. A garnishee summons had been served on the Commissioner of the Northwest Territories to attach the salary of the judgment debtor Scott, a teacher employed by the Government of the Northwest Territories. It was argued that the garnishee summons should be set aside, as funds under the control of the Commissioner are funds of the Crown and hence not subject to attachment.(29) Mr. Justice Morrow examined the Northwest Territories Act in particular s.4,(30) and concluded that expenditures made by the Commissioner are "as if made on direct instruction from the Crown in right of the Federal or Canadian government." Moneys under the Commissioner's control "are public funds and funds of Her Majesty" and they could not therefore be attached.(31)

It was not necessary for Mr. Justice Morrow to go so far as to characterize the funds as those of Her Majesty in right of Canada; it would have been sufficient to identify them as Crown funds, in whatever right they might be held. This was noted in a brief submitted on invitation by the Attorney General of Canada:(32)

> It therefore appears clear that Mr. Scott is not the servant of the Commissioner but is a regular salaried public servant and a servant of Her Majesty, since the head of state for the Northwest Territories is unquestionably Her Majesty. It is unnecessary to decide whether Mr. Scott can be aptly described as "a servant of Her Majesty in right of Canada" or in some other way, because if he is a servant of Her Majesty at all, then the principle hereafter discussed is applicable.

It is clear, however, that Mr. Justice Morrow did hold that employees of the public service of the Government of the Northwest Territories were employees of Her Majesty in right of Canada.

This holding was applied by the Canada Labour Relations Board in Government of the Northwest Territories and Public Service Alliance of Canada.(33) The P.S.A.C. applied for certification to represent employees of the Government of the Northwest Territories and of the Northwest Territories Housing Corporation. The application was brought under Part V of the Canada Labour Code(34 which applies to private sector employees of a "federal work, undertaking or business"(35) and to public sector employees of "any corporation established to perform any function or duty on behalf of the Government of Canada".(36) Although the Northwest Territories had by its own legislation provided for public

sector collective bargaining,(37) it was argued that this was in conflict with and hence overridden by the provisions of the Code.(38) The union submitted that the Commissioner and not the Crown was the employer; section 108 would therefore apply in the same way as it had been applied to municipalities in the Northwest Territories by the Supreme Court of Canada in C.L.R.B. and P.S.A.C. v. Yellowknife.(39 Alternatively it was submitted that the Government of the Northwest Territories was analagous to a Crown corporation and section 109 would apply.(40)

The Canada Labour Relations Board noted the doubt surrounding the status of the Northwest Territories, commenting that "there may be a lack of clarity in the precise status of the Government of the Northwest Territories resulting from its history in the Canadian community."(It nonetheless expressed confidence that it had "found the intent of Parliament" in coming to the same conclusion reached by Mr. Justice Morrow in Scott The determination of who was the employer of N.W.T. public service employees offered the "more conclusive answer to the jurisdictional question", for clearly the employer was the Commissioner, but the Commissioner was "merely a paid agent of the Governor in Council whose administration is financed by the federal government" Employees of the Government of the Northwest Territories were therefore employees of Her Majesty in right of Canada, and Part V of the Code did not apply by virtue of s.109(4).(43) The application for certification was therefore dismissed.(44) The Canada Labour Relations Board thus found that the Government of the Northwest Territories was neither analagous to a municipality nor akin to a Crown corporation Rather, as was held in Scott it did not have a separate legal existence and was subsumed as part of the Crown in right of Canada.

A somewhat different result is suggested by a recent case concerning the status of the Government of the Yukon, St. Jean v. R (45) The accused St. Jean appealed from a conviction under the Yukon Motor Vehicles Act on the grounds that the ticket which was issued, the Summary Convictions Act under which it was issued, and the Motor Vehicles Act itself were all invalid as they were printed only in English It was argued that Yukon legislation was required to be printed in both English and French by virtue of s.133 of the Constitution Act, 1867(46 and sections 16, 18 and 20 of the Canadian Charter of Rights and Freedoms.(47 The contention was that the Government of Yukon should be regarded as an "institution of the Parliament and government of Canada" under sections 16 and 20 of the Charter, and that Yukon legislation should be regarded as "Acts of the Parliament of Canada" within the meaning of s.133 of the Constitution Act, 1867

In analyzing these arguments, Mr. Justice Meyer of the Yukon Territory Supreme Court utilized the decisions of the Supreme Court of Canada in Blaikie v. Que.(A.G. ("Blaikie No.1")(48) and Que.(A.G.) v. Blaikie ("Blaikie No.2")(49). He noted that in Blaikie No.1 the Supreme Court held that delegated legislation came within the purview of s.133, while in Blaikie No.2 the Court defined the extent of the delegated legislation which was affected. In the latter decision, the Court considered delegated legislation under four categories: (50)

1. Regulations enacted by the government;

2. Municipal and school by—laws;
3. Other regulations;
4. Court rules of practice.

Meyer J. examined each of these categories to determine which the Yukon government most resembled. In his view:(51)

> [T]he analogy or parallel between laws adopted by the Commissioner in Council and municipal by—laws is far closer than the analogy with any other form of government, legislation or regulation, as set out in Blaikie (No. 2)

Meyer J, distinguished Scott on the basis that the Commissioner "wears two hats"(52) in that he has an administrative function under s.4 of the Yukon Act(53 and a legislative function under s.16.(54) Morrow J., he said, was "dealing with only the administrative functions of the Commissioner, and not his legislative capacity." Meyer J. therefore concluded:(55)

> [W]hile the Commissioner acting in a purely administrative capacity under s.4 of the Yukon Act may possibly be acting as a federal public servant hence may possibly be subject to s.133, or to the provisions of the Charter to be referred to later, he is clearly not acting as such when he acts in his legislative capacity. The provisions of s.133, therefore, do not apply to the Acts of the Yukon legislature (known as the "Commissioner in Council") adopted under s.16 of the Yukon Act.

While Mr. Justice Meyer characterized the Yukon legislature as analagous to a municipal government, it is clear that he did so only for the purpose of applying the decision of the Supreme Court in Blaikie (No.2 to the case before him, and that he recognized the analogy was far from perfect. He noted that while the parallel is "striking and attractive" there are nonetheless "substantial differences"(56) and the Yukon "cannot be clearly pigeon—holed under Blaikie (No.2), The municipal analogy rested primarily on his observation that in Blaikie (No.2 the Supreme Court held that municipal institutions constitute a "distinct, albeit subordinate, order of government, the administration of which is usually in the hands of elected officials."(58) The government of the Yukon Territory was similarly subordinate but distinct, but beyond that Meyer J. recognized that "its legislative powers are much wider than any municipality / within a province".(59) He noted that the term "Commissioner in Council" is analagous to the term "Queen in Parliament", and that "in his legislative mode [Commissioner] is analagous to the Queen or to the Governor—General of Canada, or to the Lieutenant—Governor of a province". Moreover, the legislative powers of the Yukon legislature are "analagous to those conferred on the provincial legislatures by s.92 of the Constitution Act, 1867".(60 Mr. Justice Meyer therefore concluded: (61)

> The Yukon Territory is not a department of the federal Parliament or the federal government. It is, in my view, an "infant province", with most but not all of the attributes of a true province.

While the municipal analogy was sufficient for his purposes it is therefore clear that Meyer J. considered the government of Yukon as something much more than merely a municipality. His judgment suggests that a provincial analogy might be more appropriate, for it recognizes that the Commissioner in Council is of sovereign character.

This suggestion is even more strongly evident in an earlier case regarding the Yukon territory, R. v. Lynn Holdings Ltd..(62) The issue there was the validity of the Yukon Municipal Ordinance(63 and a by—law of the City of Whitehorse passed pursuant to that Ordinance. The accused was charged with an offence under the by—law and raised the defence that the by—law was invalid as the Commissioner in Council did not have authority to delegate legislative powers to municipal bodies:(64)

> The defence claims the commissioner in council has power by way of delegation or mandate and as an agent of the federal crown cannot re-delegate powers unless their [sic] right is specifically provided. He states the principle of delegatus non potest delegare applies.

In addressing the delegation issue, Police Magistrate Varcoe looked first to In re Grey,(65 a 1918 case in which the Supreme Court of Canada upheld the validity of a delegation of legislative power by Parliament under the War Measures Act, 1914 In that case, Duff J. considered by way of comparison the delegation of legislative power to the council of the North—West Territories:(66)

> 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 subjects 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.

Varcoe P.M. then asked to what extent the Commissioner in Council can exercise this power of local self—government, and for an answer he looked to the judgment of the Judicial Committee in Powell v. Apollo Candle Co,,(67 The Judicial Committee there referred to two of its earlier judgments, Reg. v, Burah (1878), 3 App. Cas. 889, and Hodge v, Reg (1883), 9 App. Cas. 117. The latter was a case from Canada "where the question arose whether the Legislature of Ontario had or had not the power of intrusting to a local authority — a board of commissioners — the power of enacting regulations with respect to their Liquor Licence Act of 1877." Their Lordships answered the question affirmatively,

concluding that the British North America Act, 1867 conferred powers on the Province of Ontario, 'not in any sense to be exercised by delegations from or as agents of the Imperial Parliament, but authority as plenary and as ample, within the limits prescribed by sect. 92, as the Imperial Parliament in the plenitude of its power possessed or could bestow."(68) The judgment in Powell concluded:(69)

> These two cases have put an end to a doctrine which appears at one time to have had some currency, that a Colonial Legislature is a delegate of the Imperial Legislature. It is a legislature restricted in the area of its powers, but within that area unrestricted, and not acting as an agent or a delegate

For Police Magistrate Varcoe it was clear that the proper parallel to be drawn when considering the powers of the Yukon Commissioner in Council was to a colonial government, whose legislation was of a sovereign character within the ambit of the legislative jurisdiction granted (70) He concluded that the maxim delegatus non potest delegare had no application to a government such as that of the Yukon (71)

> In my opinion, the Parliament of Canada has established in the Yukon Territory a legislative authority with limited powers and authority. This form of government has the right to exercise the powers and authority given within the confines of the powers and authority granted. The language used expresses powers similar to those given a province under sec. 92 of the B.N.A. Act, 1867 and imply authority to effectively perform the legislative functions defined in the Yukon Act not in the sense of an agent but having "plenary) powers of legislation as large" or the same as those of the parliament of Canada.

Lynn Holdings thus suggests the missing link, the alternative not considered in Scott or G.N.W.T. and P.S.A.C and only hinted at in St Jean that the Government of the Northwest Territories may indeed not be analogous to a municipal government, or a Crown corporation, or a mere department; agent or other emanation of the federal Crown, but that it is rather in the situation of a colonial government and as such is a sovereign government in its own right - the Crown in right of the Northwest Territories.

The Nature of the Crown in Canada

In order to assess the possibility of their being "the Crown in right of the Northwest Territories", it is necessary to first consider the nature of the Crown in Canada generally.

Section 9 of the Constitution Act, 1867 provides:(72)

> The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

The Queen is thus the formal head of state, but acts on the initiative and advice of ministers who are responsible to Parliament.(73) The Crown is therefore only

"a convenient symbol for the state",(74) "an impersonal, legal concept representing the total of all power ... exercised by the executive, i.e. by ministers and their departments — 'the government'."(75) The Queen is represented in Canada by the Governor General who is "aided and advised" by the Queen's Privy Council for Canada.(76) As regards the executive of the provinces, the Constitution Act, 1867 provides for the office of Lieutenant Governor and for an Executive Council, with powers similar to those of the Governor General and Privy Council.(77) Section 58, however, provides that the Lieutenant Governor shall be appointed by the Governor General in Council, and it was at one time argued that this meant there was no direct relationship between the Crown and the provincial governments.

In Liquidators of the Maritime Bank v. Receiver—General of New Brunswick the Attorney General for Canada argued that the Lieutenant Governor was not a representative of the Crown, and that the provinces ranked as no more than "independent municipal institutions This argument was rejected first by the Supreme Court of New Brunswick, then by the Supreme Court of Canada, and ultimately by the Judicial Committee of the Privy Council. Lord Watson, delivering the judgment of the Judicial Committee, said:(79)

> The act of the Governor-General and his Council in making the appointment is, within the meaning of the statute, the act of the Crown; and a Lieutenant—Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor—General himself is for all purposes of Dominion government.

The Queen is therefore also the formal head of state of the provincial governments. While the Queen is but a single individual, however, each province is a legal entity distinct from the other provinces and the federal government. The Queen acting in her capacity as head of state of a particular province must therefore be distinguished from the Queen acting as head of state of Canada. Peter Hogg has observed: (80)

> In order to reflect this strange notion of a single Queen recognized by many separate jurisdictions, it is usual to speak of the Crown "in right of" a particular jurisdiction. Thus, the government of the United Kingdom is described as the Crown in right of the United Kingdom; the federal government of Canada is the Crown in right of Canada (or the Dominion); and each of the provincial governments is the Crown in right of British Columbia or whichever province it may be.

It is thus clear that at the time a province is established, there can be said to exist "the Crown in right of" that province. The question remaining, as regards the Crown in right of the Northwest Territories, is whether that relationship can be said to emerge at some earlier stage of development, and if so, at what point and by what criteria it can be said to exist.

This question was considered by the English Court of Appeal, in relation to the emergence of the Crown in right of Canada as distinct from the Crown in right of

the United Kingdom, as recently as 1982. In R. v. Secretary of State for Foreign and Commonwealth Affairs, Ex parte Indian Association of Alberta (the "Alberta Indians" case), (81) the Court was asked to decide "that treaty obligations entered into by the Crown to the Indian peoples of Canada were still owed by Her Majesty in right of Her Government in the United Kingdom".(82) On the eve of the patriation of the Canadian constitution through the Canada Act 1982(83 then before the United Kingdom Parliament, the Indian peoples sought a declaration to that effect to make the point that they felt their aboriginal rights would be inadequately protected under the terms of the Act. Counsel for the Indian Association argued that the United Kingdom Parliament "should be alive to the fact" that this was "their last chance of preserving their aboriginal rights recognized by the Crown in the Proclamation of 1763."(84) The Secretary of State for Foreign and Commonwealth Affairs had decided that "all treaty obligations entered into by the Crown with the Indian peoples of Canada became the responsibility of the Government of Canada with the attainment of independence, at the latest with the Statute of Westminster 1931."(85) The Indian Association sought judicial review on the basis that this decision was wrong in law and that the United Kingdom Government retained a residual responsibility toward the Indian peoples so long as the power to amend the Canadian constitution still rested with the United Kingdom Parliament. (86)

The case thus raised as a primary issue the point at which the Crown in right of Canada became a separate legal entity on which the responsibilities under the treaties could have devolved from the Crown in right of the United Kingdom. There was, however, also an underlying question as to whether the treaty obligations had been entered into at the outset by the Crown in right of Canada, or in the case of the pre—Confederation treaties by the Crown in right of the colony; that is, whether the Crown in right of the colonial governments already existed as a distinct entity at the time the treaties were made.

Counsel for the Secretary of State argued that while "it is not easy to decide when a colony becomes sufficiently independent for the Crown to be acting in right of that colony", the Maritime treaties were nonetheless made with the Crown in right of the colony and the obligations under them could only be discharged by the government of that colony.(87) Since the Maritime treaties dated from 1693 to 1794,(88) this argument suggests that colonial governments can have a separate legal existence from the imperial government at a very early stage in their development. Counsel for the Government of Canada similarly argued that the question was not one of full sovereignty but rather "whether the degree of internal self-government is sufficient for the Crown to be a separate legal entity."(89) While not specifically arguing for the separate legal existence of the colonial governments at the early dates of the Maritime treaties, they did contend that the four original provinces "each had their separate executive, legislative, and judicial organs" prior to Confederation:(90)

> In re Holmes 2 Johns. & Hem. 527, 543, shows that rights and obligations regarding land in the Province of Upper Canada vested in the Crown were only enforceable in Canada. So by 1861 the

> separation of the Crown in right of a province from the Crown in right of the United Kingdom was clearly recognised.

Lord Denning could not accept these arguments because of the absolute view he took on the question of the divisibility of the Crown. For him, the responsibilities of the Crown in right of the United Kingdom could not have devolved onto the Crown in right of Canada as a distinct and separate entity before the Imperial Conference of 1926, which he said had recognized a change in constitutional law. Not by statute but by constitutional usage and practice, the Crown, hitherto single and indivisible, "became separate and divisible — according to the particular territory in which it was sovereign."(91) Prior to that time, the treaty obligations, including those entered into after 1867, "were obligations of the Crown — the single and indivisible Crown — which was at that time the Crown of the United Kingdom. As a result of the important constitutional change which he felt had occurred, however, "those obligations which were previously binding on the Crown simpliciter are now to be treated as divided" and "none of them is any longer binding on the Crown in respect of the United Kingdom."(93)

With respect, Lord Denning's judgment in this regard ignores the second part of the statement of Viscount Haldane in Theodore v. Duncan(94 which Lord Denning cites as authority for the prior indivisibility of the Crown:(95)

> The Crown is one and indivisible throughout the Empire, and acts in self—governing States on the initiative and advice of its own Ministers in these States.

Even if one accepts the idea of the change in constitutional law from an indivisible to a divisible Crown which Lord Denning posits, it nonetheless appears that there was previously a distinction to be made between the Crown acting on the initiative and advice of one set of ministers in one state on one occasion, and the Crown acting on the advice of another set of ministers in a different self—governing state on another occasion. Lord Denning's treatment of the nature of the Crown does not differentiate between the Crown as meaning the person of the sovereign, and the Crown as an "impersonal legal concept" representing "the totality of all power exercised by the executive" of a particular state.(96)

Lord Denning thus does not consider the idea that the Crown may be "separate but indivisible", in the sense referred to by Hogg as "the strange notion of a single Queen recognized by many separate jurisdictions. Both May L.J. and Kerr L.J. acknowledge this distinction. May L.J. notes:(98)

> Although there is only one person who is the sovereign within the British Commonwealth, it is now a truism that in matters of law and government the Queen of the United Kingdom, for example, is entirely independent and distinct from the Queen of Canada. Further, the Crown is a constitutional monarchy and when one speaks today ... of the Crown "in right of Canada," or of some other territory within the Commonwealth, this is only a short way of referring to the Crown acting through and on the advice of Her

> Ministers in Canada or in that other territory within the Commonwealth.

Kerr L.J. similarly observes:(99)

> It is settled law that, although Her Majesty is the personal sovereign of the peoples inhabiting many of the territories within the commonwealth, all rights and obligations of the Crown - other than those concerning the Queen in her personal capacity - can arise only in relation to a particular government within those territories. The reason is that such rights and obligations can only be exercised and enforced, if at all, through some governmental emanation or representation of the Crown.

All three justices concurred in holding that any treaty obligations still owed by the Crown to the Indian people of Canada are now owed by the Crown in right of Canada and not by the Crown in right of the United Kingdom. This decision was supported by the Appeal Committee of the House of Lords in refusing leave to appeal.(100) The Lords Justice differed, however, as to when these obligations devolved to the Crown in right of Canada and whether some of these obligations were those of the Crown in right of Canada in the first instance. For Lord Denning, all obligations, from the Royal Proclamation of 1763 and the Maritime treaties to the post-Confederation Prairie treaties, were undertaken in the name of the Crown in right of the United Kingdom and devolved to the Crown in right of Canada with the establishment of the divisibility of the Crown "in the last half of this century."(101) For May L.J., any treaty obligations had become the responsibility of the Government of Canada "with the attainment of independence, at the latest with the Statute of Westminster 1931."(102) Moreover, however, with regard to the Prairie treaties and in particular Treaty No. 6 of 1876, "the rights granted to the Alberta Indians ... were granted to them by the Crown in right of Canada and not by the Crown in right of the United Kingdom."(103) Kerr L.J. went even further, holding that the obligations devolved upon the Crown in right of Canada by 1867,(104) and suggesting that even the prior treaties and the Royal Proclamation arose "in respect of the developing governments of the Maritime Provinces and Quebec."(105)

The significance of these judgments for present purposes lies in the criteria which were applied as the basis on which it could be said there existed the Crown in right of Canada as distinct from the Crown in right of the United Kingdom. As was noted earlier, it had been argued that the "degree of internal self-government" was the appropriate test. (106) The self-government theme is reflected in all three judgments.

Lord Denning offered little elaboration, commenting only that following what he regarded as the change in constitutional law concerning the divisibility of the Crown, the Crown "was separate and divisible for each self—governing province or territory" and it did not matter that Canada was not completely independent.(107) May LJ. also noted that it depended on the attainment of self—government to a "greater or less extent", but added that this involved

acquiring "the right to legislate on some and ultimately all matters within and affecting that territory, and thus to raise the finance to enable them to manage their own affairs "(108) He recognized that the legislative power granted did not have to be exclusive to qualify as "self—government", but suggested it did involve at least a principle of non—derogation:(109)

> That the duties and liabilities of the Crown in right of the United Kingdom in respect of another territory or its peoples within the Commonwealth should devolve in this way upon the Crown in right of that territory as the latter attained its own legislature, and with that its own revenue and Consolidated Fund, was itself merely a natural consequence of that progress of self-government and ultimately independence It necessarily followed from the political concept, convention or, in some cases, specific legislation, which realised, P accepted or enacted that Parliament in the United Kingdom would not thereafter interfere with or derogate from laws passed by the legislature in the self-governing territory on any subject which had in truth been left to their jurisdiction. To contemplate any other result would be to contemplate legislative and inter-governmental chaos.

Kerr L.J. also rejected the argument that Crown rights and obligations would remain with the Crown in right of the United Kingdom until such time as Canada attained total independence, saying it was "wholly fallacious":(110)

> Indeed, independence, or the degree of independence, is wholly irrelevant to the issue, because it is clear that right and obligations of the Crown will arise exclusively in right or respect of any government outside the bounds of the United Kingdom as soon as it can be seen that there is an established government of the Crown in the overseas territory in question.

In coming to this conclusion, Kerr L.J. relied on two passages from Halsbury's Laws of England as a "convenient summary" of the principles regarding "the situs of rights and obligations of the Crown", and thus illustrative of what was meant by "an established government of the Crown".

The first of these principles is that:(111)

> ... on the grant of a representative legislature, perhaps even from the setting up of Courts, legislative council, and other such structures of government, Her Majesty's Government in a colony is to be regarded as distinct from Her Majesty's Government in the United Kingdom.

In trying to determine when this point was reached in Canada, Kerr L.J. noted that at the time of the Royal Charter of 1670, granting Rupert's Land to the Hudson Bay Company, there was no established government on behalf of the Crown in the territory so this was clearly a grant in right of the government in the United Kingdom. Thereafter:(112)

> [A]s the overseas territories gradually came to be settled and colonised, there may have been an indeterminate and intermediate stage of constitutional development in many cases, when it was uncertain whether rights and obligations concerning the overseas territory arose in right or respect of the Crown here or of the emerging forms of local administration overseas.

Kerr L.J. noted that this may have been the position at the time of the Royal Proclamation and the Maritime treaties, but it was his opinion that even at that early date any obligations would have arisen "in respect of the developing governments". (113)

It was unnecessary for Kerr L.J. to decide this point, however, as in his view the matter was put beyond doubt by the subsequent constitutional development of Canada. The second principle from Halsbury's Laws is that:(114)

> [T]he liabilities of the Crown in right of, or under the laws of, one of the Crown's territories can be satisfied only out of the revenues, and by the authority of the legislature, of that territory.

Kerr L.J. observed that this principle was illustrated by the case of In re Holmes in 1861, in which Sir William Page—Wood V.—C. held that any rights and obligations of the Crown concerning lands in Upper Canada existed "only in right or respect of the Crown in what was then Upper Canada, and not in right or respect of what was then Great Britain."(115) Any doubt remaining thereafter was removed by the Constitution Act, 1867 which the Privy Council "authoritatively established" had the effect of transferring to Canada "every aspect of legislative and executive power in relation to Canada's internal affairs."(116) Thus for Kerr LJ. the Crown in right of Canada emerged as a legal entity distinct from the Crown in right of the United Kingdom after 1670, perhaps by 1763, probably by 1861, and undisputably by 1867.

<u>The Crown in right of the Northwest Territories</u>

It is to criteria such as these considered by the Lords Justice in the Alberta Indians case that one must look to determine whether it can be said that there exists today the Crown in right of the Northwest Territories as distinct from the Crown in right of Canada. The central issue is whether the Northwest Territories can be considered a "self—governing territory", or as framed by counsel for the Government of Canada in the Alberta Indians case, "whether the degree of internal self—government is sufficient for the Crown to be a separate legal entity."(117)

The Northwest Territories Act clearly grants to the Territorial legislature "the right to legislate on some matters within and affecting that territory"(118) as contemplated by May L.J..(119) This power is equally clearly not exclusive,(120) although there arguably exists the "political concept or convention" of non—derogation to which May L J. referred (121) In suggesting that the Crown in right of the colonial governments of the Maritime provinces and Quebec had emerged as early as 1763, Kerr L.J. was obviously applying that part of the principle from

Halsbury's Laws which states that the distinction arises "perhaps even from the setting up of courts, legislative council, and other such structures of government."(122) Based on these criteria it can be concluded that the Government of the Northwest Territories <u>should</u> properly be regarded as "the Crown in right of the Northwest Territories", and not as merely a department or agency of the Crown in right of Canada, for the relatively minimal degree of internal self-government which they would appear to require can readily be seen to exist.

It is submitted, however, that these criteria are not sufficiently stringent. No territory can properly be called "self-governing" without at least a representative legislature, rather than merely an appointed or partially appointed legislative council. This is suggested by the opening words of the statement from Laws on which Kerr L.J. relied: "... on the grant of a representative legislature ...."(123) It is also implicit in the reference by May L.J. to the attainment by a territory of "its own legislature". (124) Even this, however, ignores that branch of government which it is submitted should be regarded as the most significant to this question - the executive.

It has been noted that the Crown is an "impersonal legal concept representing the total of all power ... exercised by the executive."(125) Similarly, in Theodore v. Duncan Viscount Haldane stated that the Crown "acts in self—governing States on the initiative and advice of its own [Ministers in those States."(126) May L.J. recognized this when he observed (127)

> [T]he Crown is a constitutional monarchy, acting only upon the advice of its relevant ministers. Two hundred years ago, in so far as North America was concerned, these were clearly the ministers of the United Kingdom government. Equally clearly, in 1982, the relevant ministers upon whose advice the Crown acts in relation to those provinces are those of Her Government in the Dominion and those provinces.

It is therefore to the executive that one should look to determine "the degree of internal self-government": upon whose advice does the Crown act in relation to that territory?

If the Crown in right of what was then the Province of Canada had emerged by 1861, it was only because the colony had by that time achieved not only representative but also responsible government. Hogg has defined "responsible government" in the following terms:(128)

> In a system of "responsible government" (or cabinet or parliamentary government, as it may also be called) the formal head of state, whether King (or Queen), Governor General or Lieutenant Governor, must always act under the "advice" (meaning direction) of ministers who are members of the legislative branch and who enjoy the confidence of a majority in the elected house of the legislative branch.

Hogg observes that in the 1830's the colonies of British North America "had achieved representative government, but they had not achieved responsible government", for while the assembly had power to legislate and raise revenue, the executive was not responsible to the assembly:(129)

> Executive power was possessed by the British-appointed governor, who was responsible to the Colonial Office of the United Kingdom government, which had appointed him, instructed him, and continued to supervise his work.

Initially, the position of the Commissioner of the Northwest Territories appears to be similar, as under the Northwest Territories Act the Commissioner prima facie possesses all executive power and acts under instructions from the Minister of Indian Affairs and Northern Development.(130) Hogg goes on to note, however, that responsible government was achieved in the united province of Canada in 1848, when the then Colonial Secretary, Earl Grey, implemented the recommendations of Lord Durham. Following the rebellion in Upper Canada in 1837, Lord Durham had recommended that the Colonial Office should instruct each governor of the British North American colonies "to appoint to his executive council only persons who enjoyed the confidence of a majority of the assembly." This raised a complication:(131)

> How could the governor obey instructions from the Colonial Office in London as well as following the advice of his local executive council? Durham's solution was to distinguish between matters of imperial concern and matters of local concern. The only matters of imperial concern, he submitted, were constitutional arrangements, foreign affairs, external trade, and the disposal of public lands. On these matters, the governor would act on the instructions of the Colonial Office. On all other matters, the governor would act on the advice of his local executive council.

This is virtually identical to the distinction drawn by Meyer J. in St. Jean between the administrative and legislative capacities of the Commissioner of the Yukon.(132)

The question, then, is whether a system of responsible government can be said to have been instituted in the Northwest Territories of the present day. The answer depends in part on the existence of responsible government in the old North-West Territories prior to 1905, due to s.5 of the present Northwest Territories Act which provides that the Commissioner possesses the executive powers that were vested in the Lieutenant Governor of the Northwest Territories or the Lieutenant Governor in Council prior to September 1, 1905.(133) Hogg seems to suggest that responsible government did not exist in what is now Alberta and Saskatchewan until the provinces were created in 1905.(134) If that is indeed the intention, it is surely wrong. Just as the four original provinces had achieved responsible government prior to Confederation, responsible government was similarly achieved in the old North-West Territories prior to the carving out of provinces from that territory.

That this is indeed what happened has been well documented by Lewis Herbert Thomas in The Struggle for Responsible Government in the North-West Territories, 1870-97.(135) Thomas refers to the autonomy movement in the Canadian North-West as a "sober, steady movement whose object was to keep constitutional progress in step with social and economic development."(136) It was a movement which achieved a "notable success" in 1897 with the passage by Parliament of an amendment to the North-West Territories Act establishing the Executive Council of the Northwest Territories as of October 1, 1897.(137) Although the amendment provided that the members of the Council were to be appointed by the Lieutenant Governor, it was "understood that their status and tenure of office would conform to the well-understood principles of responsible government." In the House of Commons, Clifford Sifton, then Minister of the Interior, commented: (138)

> The bill will give the people of the Territories a government which shall not have the full powers of a provincial government, but in so far as they have power to deal with subjects, they shall do it in the same way as the other provinces. They will have Ministers who are responsible to the legislature, and the rules and precedents that apply to the provincial governments will apply to the government of the Territories.

Responsible government was thus clearly achieved in the old North-West Territories prior to 1905. If, however, it was achieved only in 1897, it was achieved at that time by a Parliamentary enactment for which there is at present no direct parallel. The Northwest Territories Act of today does not in terms establish an executive council or even an executive committee. It is submitted, however, that no such statutory establishment is required. Thomas notes:(139)

> In the years since 1892 the North-West Assembly had clothed the Executive Committee with so many of the vestments of a responsible executive that the establishment of the Executive Council seemed to many to be but a change of name - a formal recognition by Parliament of a system which had been developed by the North-West itself.

It would therefore seem that responsible government existed in the Northwest Territories prior to 1897, both in fact and in law. As Hogg observes, the rules which govern responsible government "are almost entirely 'conventional', that is to say, they are not to be found in the ordinary legal sources of statute or decided cases. In the Alberta Indians case, Kerr L.J. made a similar observation based on the decision of the House of Lords in Attorney General v. Great Southern and Western Railway Co. of Ireland:(141)

> The importance of the case for present purposes is that it shows there may be a devolution of rights and obligations of the Crown in respect of the government of Great Britain to another government within the Commonwealth without any express statutory or other transfer, but merely by virtue of the creation of the new government

and of the assignment to it of responsibilities which relate to the rights and obligations in question.

While the Northwest Territories Act does not specifically establish a responsible executive, and prima facie vests executive power in the Commissioner alone, it has earlier been noted that the Legislative Assembly of the Northwest Territories(142) has by its own enactment provided for an Executive Council responsible to the Assembly, and for Ministers appointed by the Commissioner "upon the advice" of the Government Leader.(143) This enactment has received the Commissioner's assent, and has not been disallowed by the Governor in Council under s.16 of the Northwest Territories Act.(144) These facts alone are arguably sufficient to activate the conventional rules of responsible government in the Northwest Territories. It is unnecessary to go even this far, however, for it is submitted that the Northwest Territories Act while not providing for an executive council in explicit terms, nonetheless lays a statutory base for it.

Section 5, as already noted, gives to the Commissioner the executive powers that were vested in the Lieutenant Governor or the Lieutenant Governor in Council prior to September 1, 1905. It does so, however, with the proviso that these powers shall be exercised by the Commissioner "so far as they are applicable to and capable of being exercised in relation to the government of the Northwest Territories as it is constituted at the time of the exercise of those powers."(145) [emphasis added] The section thus provided, at the outset in 1905, for direct control of the remainder of the Northwest Territories from Ottawa, in that it vested in the Commissioner alone powers previously held by a Lieutenant Governor acting on the advice of a responsible Executive Council. Drafted as it was, however, in the context of the recent evolution of the old North-West Territories through responsible government to provincial status, it also allowed for the future evolution of the remainder by providing that the Commissioner should exercise those powers only as appropriate to the government as it was from time to time constituted.

Section 5 of the Northwest Territories Act should, therefore, be read as providing that at such time as the evolution to responsible government occurs, the Commissioner should then exercise his executive powers only as they would have been exercised by the Lieutenant Governor in Council immediately prior to September 1, 1905: that is, upon the "advice" of the Executive Council. It may thus be concluded that the Act makes provision for the evolution of responsible government in the Northwest Territories, an evolution which has occurred and which has been confirmed by the enactment of the Legislative Assembly and Executive Council Act by the territorial legislature.

Conclusion

The Government of the Northwest Territories has been characterized in the Courts as a mere department or agency of the Crown in right of Canada, and as a distinct but subordinate government akin to a municipality. The Northwest Territories has, however, also been characterized as an "infant province" and a colony or dependency of the federal government. It is submitted that the

Government of the Northwest Territories is correctly characterized as a colonial government, and that the structures of that government have evolved to the point where it can now properly be said that it exists as a legal entity distinct from the Government of Canada. The Crown "in right of" a colonial government can be said to exist as a distinct entity when there is in the colony both a representative legislature and a responsible executive. This has existed in the Northwest Territories at least since the promulgation of the Legislative Assembly and Executive Council Act by the territorial legislature in 1985. The Commissioner of the Northwest Territories, like the Lieutenant-Governor of a province, is a direct representative of the Queen, and acts "on the advice" of the members of the Executive Council of the Northwest Territories in matters of local concern. The Government of the Northwest Territories is therefore properly to be regarded as a sovereign government in its own right - the Crown in right of the Northwest Territories.

FOOTNOTES

1. R. v. Connor (1885) 1 Terr. L.R. 4, at 12; Royal Bank of Canada v. Scott [4 W.W.R. 491 (NIW.T. Terr. Ct), at 502

2. St. Jean v. R. [N.W.T.R. 118 (Y.T.S.C.), at 128

3. Thomas, The Struggle for Responsible Government in the North—West Territories, 1870—97 (2nd ed., 1978), p.

4. 30—31 Victoria, c.3 (U.K.)

5. Rupert's Land and North—Western Territory Order 1870 (U.K.); see at R.S.C.1970, Appendix II, No.9

6. Adjacent Territories Order 1880 (U.K.); see at RS.C.1970, Appendix II, No.14

7. Manitoba Act, 1870 33 Victoria, c.3

8. The Yukon Territory Act 1898, 61 Victoria, c.6

9. Alberta Act 1905, 4—5 Edw. VII, c.3 ; Saskatchewan Act

1905, 4—5 Edw. VII, c.42

10. The Ontario Boundaries Extension Act 1912, 2 Geo. V, c.40; The Quebec Boundaries Extension Act 1912, 2 Geo. V, c.45; The Manitoba Boundaries Extension Act 1912, 2 Geo. V, c.32

11. 34—35 Victoria, c.28 (U.K.)

12, RS.C.1970, c.N—22

13. Ibid. s.3

14. Ibid. s.8

15. Ibid. s,13

16. Supra note 4

17. Supra note 12, s.5

18. S.N.W. c.4(2nd)

19. Ibid. s.3

20. Ibid. s.55

21. Ibid. s.58

22. Ibid. s.57

23. Ibid. s.56

24. R, v. Connor, supra note 1

25. Supra note 1

26. Now the Northwest Territories Supreme Court, per s.13(i) of the Northwest Territories Act, supra note 12, and the Judicature Act R.S.N.W.T.1974, c.J—1;

not to be confused with the Territorial Court now established under the Territorial Court Act S.N.W.T.1978, c.16(2nd)

27. Supra note 1, at 496

28. At note 17, supra

29. There was at that time no legislation providing for the attachment of the salary of public servants. Shortly after the judgment in the Scott case the Public Service Garnishee Act R.S.N.W.T.1974, c. P—14, was enacted. Similar federal legislation was not enacted until some years later: Garnishment, Attachment and Pension Diversion Act S.C.1980—81—82—83, c.100.

30. Supra note 12. Section 4 provides: "The Commissioner shall administer the government of the Territories under instructions from time to time given by the Governor in Council or the Minister." "Minister" is defined by s.2 as the Minister of Indian Affairs and Northern Development.

31. Supra note 1, at 502

32. "Memorandum on behalf of the Attorney General of Canada", submitted by D. H. Aylen, June 3, 1971; extracted from the Territorial Court files for the Scott case, supra note 1

33. [1979] 2 Can. L.R.B.R. 521

34. R.S.C.1970, c.L-1

35. Ibid. s.108

36. Ibid. s.109

37. Public Service Act R.S.N.W.T.1974, c.P—13; Northwest Territories Public Service Association Act

R.S.N.W.T.1974, c.N—2

38. Supra note 33, at 533

39. [2 S.C.R. 729

40. Supra note 33, at 535

41. Ibid

42, Ibid. at 534

43. Supra note 34. S.109(4) reads: "Except as provided by this section, this Part does not apply in respect of employment by Her Majesty in right of Canada."

44. The application regarding the Northwest Territories Housing Corporation, created by the Northwest Territories Housing Corporation Act R.S.N.W.T.1974, c.N—1, raised additional issues, but it too was dismissed. Its employees were found to be "servants of a servant of Her Majesty" and hence themselves employees of Her Majesty in right of Canada. The Corporation was held not to

have sufficient employment and collective bargaining authority to bring it within s.109(1) of the Canada Labour Code: supra note 33, at 539, 540

45. Supra note 2

46. Supra note 4. S.133 provides in part: "The Acts of the Parliament of Canada ... shall be printed and published in both those Languages."

47 Constitution Act, 1982 Part I, enacted as Schedule B to Canada Act 1982 (U.K.), 1982, c.11. S.16(1) provides:

"English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada."

48. [1979] 2 S.C.R. 1016, 101 D.L.R. (3d) 394

49. [1981] 1 S.C.R. 312, 123 D.L.R. (3d) 15

50. Referred to in St. Jean, supra note 2, at 122

51. Supra note 2, at 126

52. Ibid. at 126, 127

53. R.S.C.1970, c.Y—2. S.4 is identical to s.4 of the Northwest Territories Act, supra note 12

54. Ibid. S.16 is comparable to s.13 of the Northwest Territories Act, supra note 30

55. Supra note 2, at 129

56. Ibid. at 124

57. Ibid. at 128

58. Ibid. at 123

59. Ibid at 128

60. Ibid. at 127

61. Ibid. at 128

62. (1969), 68 W.W.R. 64 (Y.T. Nag. Ct.)

63. R.0.Y.T.1958, c.79.

64. Supra note 62, at 66, 67

65. [1918] 3 W.W.R. 111, 57 S.C.R. 150

66. Quoted in Lynn Holdings, supra note 62, at 69.

67. (1885) 10 App. Cas. 282, quoted in Lynn Holdings, supra note 62, at 69, 70

68. Supra note 62, at 70

69. Ibid. at 70, 71

70. Regarding the "sovereign character of colonial legislation", see the judgment of Anglin J. in In Grey, supra note 65, quoted in Lynn Holdings, supra note 62, at 68.

71. Supra note 62, at 71.

72. Supra note 4

73. Theodore v. Duncan [1919] A.C. 696 at 706, [1919] 2 W.W.R. 946 (P.C.); Hogg, Constitutional Law of Canada (2nd ed., 1985), p. 191

74. Hogg, ibid. p.216

75. 11 C.E.D. (West. 3rd) Title 42, para. 1

76. Supra note 4, ss.10, 11

77. Ibid, ss. 58—68, 90

78. [1892] A.C. 437 (P.C.), at 440, 441

79. Ibid. at 443

80. Supra note 73, p.

81. [1982] Q.B. 892 (C.A.)

82. Ibid. at 894

83. (U.K.), 1982, c.11; see supra note 47

84. Supra note 81, at 907; per Blom—Cooper Q.C. for the Applicants.

85. Ibid. at 894

86. Ibid. at 896

87. Ibid. at 900

88. Ibid. at 896, 897

89. Ibid. at 906

90. Ibid. at 904

91. Ibid. at 916

92. Ibid

93. Ibid. at 917

94. Supra note 73

95. Supra note 81, at 914

96. Supra note 75

97. Supra note 73, p.

98. Supra note 81, at 928

99. Ibid. at 920, 921

100. Ibid. at 937, 938
101. Ibid. at 916
102. Ibid. at 933
103. Ibid. at 935
104. Ibid. at 927
105. Ibid. at 924
106. Supra at note 89
107. Supra note 81, at 917, 918
108. Ibid. at 928
109. Ibid at 929
110. Ibid. at 927
111. 6 Halsbury's Laws (4th ed., 1974), para. 820, quoted ibid. at 921
112. Supra note 81, at 922
113. Supra note 105
114. Supra note 111, quoted at 922
115. Supra note 81, at 922
116. Ibid. at 925
117. Supra note 89
118. By s.13, supra note 15
119. Supra note 108
120. s.13, supra note 15, grants legislative powers to the Commissioner in Council "subject to this Act and any other Act of the Parliament of Canada."
121. Supra note 109
122. Supra note 111
123. Ibid
124. Supra note 109
125. Supra note 75
126. Supra notes 73, 94, 95
127. Supra note 81, at 935, 936
128. Supra note 73, p.191
129. Ibid. pp.189, 190
130. Supra notes 17, 30

131. Supra note 73, p.190

132. Supra at notes 52 to 55

133. Supra note 17

134. Supra note 73, p.191

135. Supra note 3

136. Ibid. p.263

137. Ibid. p.259 at footnote 104

138. Ibid. quoted at footnote 106

139. Ibid. p.259

140. Supra note 73, p.191

141. [1925] A.C. 754, referred to in the Alberta Indians case, supra note 81, at 922, 923

142. The Northwest Territories Act, supra note 12, does not in terms even provide for a "legislative assembly" but rather only a "council": see ss.2, 8. The term "legislative assembly" has been substituted for "council" and "act" for "ordinance" by territorial legislation: see the Interpretation Act R.S.N.W.T.1974, c.I—3, ss.21(1), 21(12.1)

143. Supra notes 20, 21, 22

144. Supra note 12

145. Supra note 17

Appendix I

Part V of the Canadian Constitution Act 1982

PART V
PROCEDURE FOR AMENDING CONSTITUTION OF CANADA[99]

General procedure for amending Constitution of Canada

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(*a*) resolutions of the Senate and House of Commons; and

(*b*) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of members

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

Expression of dissent

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Revocation of dissent

(4) A resolution of dissent made for the purposes of subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

Restriction on proclamation

39. (1) A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

Idem

(2) A proclamation shall not be issued under subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

Compensation

40. Where an amendment is made under subsection 38(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the

province is entitled to be represented at the time this Part comes into force;

(*c*) subject to section 43, the use of the English or the French language;

(*d*) the composition of the Supreme Court of Canada; and

(*e*) an amendment to this Part.

Amendment by general procedure

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) subject to paragraph 41(*d*), the Supreme Court of Canada;

(*e*) the extension of existing provinces into the territories; and

(*f*) notwithstanding any other law or practice, the establishment of new provinces.

Exception

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

Amendment of provisions

43. An amendment to the Constitution of Canada in relation to

relating to some but not all provinces

any provision that applies to one or more, but not all, provinces, including

(*a*) any alteration to boundaries between provinces, and

(*b*) any amendment to any provision that relates to the use of the English or the French language within a province,

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

Amendments by Parliament

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Amendments by provincial legislatures

45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

Initiation of amendment procedures

46. (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

Revocation of authorization

(2) A resolution of assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Amendments without Senate resolution

47. (1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, 42 or 43 may be made

without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

Computation of period

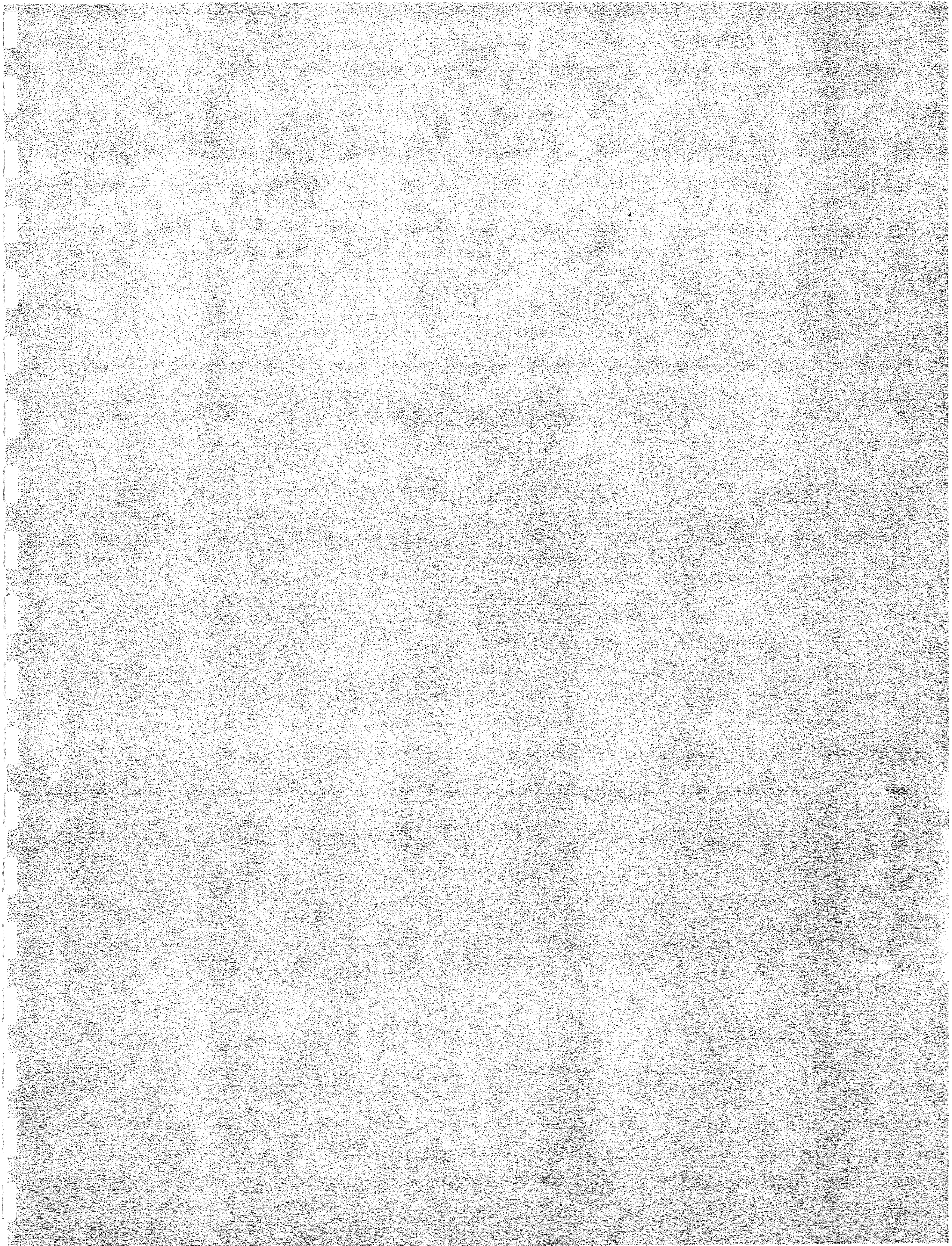
(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

Advice to issue proclamation

48. The Queen's Privy Council for Canada shall advise the Governor General to issue a proclamation under this Part forthwith on the adoption of the resolutions required for an amendment made by proclamation under this Part.

Constitutional conference

49. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part.



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