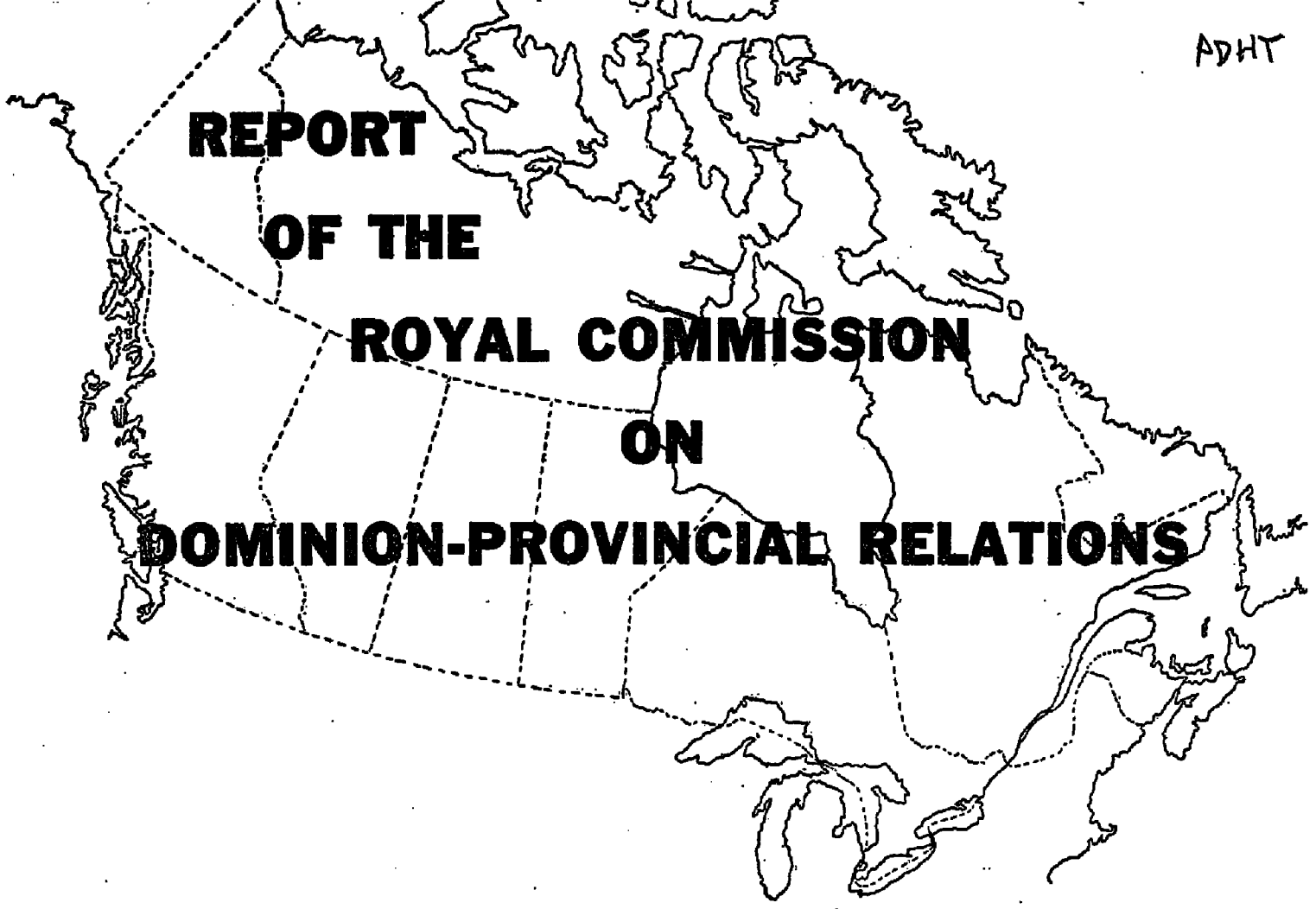


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**REPORT
OF THE
ROYAL COMMISSION
ON
DOMINION-PROVINCIAL RELATIONS**

BOOK II

RECOMMENDATIONS

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

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ERRATA

P. 43, Col. 2. line 1, "judicial officers" should read "judges of the superior courts."
P. 93, Col. 2. line 37, insert p. 82.

CITATIONS

For brevity in footnotes references to Exhibits filed with the Commission are cited *Ex.* with the number of the exhibit following, (see Book III, p. 209, for list of Exhibits); references to *Report of Proceedings* are cited *Ev.*; and Provincial Briefs are usually referred to as *Brief* with the name of the Province following.

INTRODUCTION

For convenience we have kept our practical recommendations and the immediate reasons for them separate from the extensive historical survey which our instructions directed us to make. The historical survey, together with analysis of the present economic, public finance and constitutional situation is set out in Book I. The general situation disclosed in the first book makes necessary, in our opinion, the recommendations concerning the reallocation of the burdens of government between the Dominion and the provinces which we make in the present volume (Book II). These recommendations are made with a view to adapting the Canadian federal system to meet the stresses and strains that have developed during the seventy years which have elapsed since it was devised and so enabling national unity to be maintained. Book III includes relevant documents, summaries of the finances of all Canadian governments, and statistical statements illustrating in detail the financial recommendations made in Book II. But it must be emphasized that all three volumes, though bound separately for purposes of convenience, are closely inter-related parts of a single report.

In the course of our work we have come to appreciate as never before the achievements of the Fathers of Confederation. Not only did they devise an instrument of government which has successfully withstood the test of seventy years of rapid and in large part quite unpredictable change, but they secured assent to the adoption of this instrument under circumstances which, in the minds of some, have given it the same sort of sanctity that the most solemn treaty might possess. By their achievements they laid the foundations of national unity and of the federal system, both of which our instructions enjoin us to respect. It is our hope, and we venture to say our confident expectation, that they accomplished these great things without laying on future generations the dead hand of the past, and that they transmitted to us a constitution capable of development, not only through judicial interpretation but through amendment as well to meet the new situations and problems which were bound to arise incidental to the vast and unforeseeable changes which lay before the people of Canada seventy years ago.

Canadians are so proudly conscious of the national unity which they have achieved, and so

respectful of the federal system that has made this unity possible that there may be some danger of their thinking of national unity and of the federal system in the abstract, as having some special merits which make them desirable in themselves. We have endeavoured to keep before us at all times the goal of human welfare which should determine the character both of political and economic systems. We are fully alive to the importance of maintaining, and of expanding as rapidly as possible, the national income¹ which is woefully inadequate for the standards of well-being which Canadians have come to adopt. It is this need for a larger national income which has governed us in the recommendations which we have made for simplifying our financial system, for carrying as economically as possible the great burden of public debt, for co-operation in the direction of future governmental investment through borrowing, and for eliminating those features of our fiscal system which involve a high cost of tax compliance or which have a marked tendency to check investment and so to reduce employment.

But it is not merely an expansion of the national income which is needed. If welfare is to be achieved the national income must be better distributed and a greater measure of social and economic security must be provided for those in low income groups. We have not, of course, attempted to lay down a pattern for social legislation in Canada, but we have, in accordance with our instructions endeavoured to clear the way for the sort of legislation which seems probable in the future by making recommendations concerning the responsibility for enacting or withholding it.

The problem of the prevention of unemployment, and in so far as it cannot be prevented, of the relief of its victims, is of outstanding importance both as regards the size of the national income and as regards its distribution. In seeking the highest possible national income we must seek conditions under which full employment of the whole labour force of the nation will occur, and the

¹The national income of Canada means the sum of the individual incomes of Canadians. It must equal the wealth produced in Canada in a given period, plus payments received from abroad, minus payments made outside Canada. Both the magnitude and the regional distribution of the Canadian national income have been carefully estimated in a study made for this Commission, and published as Appendix 4.

distribution of the national income is most satisfactory when the incomes of the able-bodied take the form of adequate wages for work done.

There is a second aspect of the distribution of the national income which is of great importance in a federal system, and of particular importance in Canada. The unequal distribution of the national income as between the people of different regions may excite feelings quite as dangerous to national unity as those aroused by gross inequalities between different income groups. The provision of a national minimum standard of social services in Canada cannot (without complete centralization of all social services) be divorced from the assurance to every government of Canada of the revenues necessary for the adequate performance of its recognized functions. This assurance, which the Fathers of Confederation were able to give by means of a system of subsidies and debt allowances financed by taxation that was national in character, is infinitely harder to give now that the recognized functions of provincial governments have become far larger than they were in 1867. We have attempted to compute what the financial balance of each provincial government (and its municipalities) would be with taxation at the national average and after making provision for services of at least national average quality.

In giving this special prominence to economic aims we have not been forgetful that any nation worthy of the name will have other and, in a sense, higher aims as well. Economic aims have of course a moral aspect, and crusading zeal to assail evil social conditions, high rates of sickness and death, poverty, illiteracy and bad housing, cannot be considered as crudely materialistic. But these higher aims are in no danger of conflicting with economic aims unless, of course, they are pursued with a reckless disregard for the necessity of maintaining the national income which is in the long run essential for their achievement.

But there are other aims less closely intertwined with economic well-being. In Canada, whether we speak of personal freedom and democracy, or of preserving the healthy mean between too great liberty for the individual and too great authority for the state, we reach much the same conclusions as to one of the higher aims of the Canadian people. None of these higher aims are, in our opinion, inconsistent with the economic aims which we have discussed. We believe that the proposals

which we make in this Report respect economic and moral aims alike. We make important recommendations for adjustments in the distribution of governmental burdens, and in sources of revenue necessary to meet them, but these adjustments will leave untouched the arrangements which during the last seventy years have preserved complete provincial liberty of action in spheres which are primarily cultural and social. Indeed this liberty of action will be assured even better than it is today, as the provinces will be freed from the pressure which is apt to be exerted upon them by demands for this or that social service which, it is said, can be financed only with assistance from the Dominion that would of necessity involve some supervision by the Dominion.

Some of the recommendations which we make throughout the Report may require amendments to the British North America Act for their implementation. Others might not, although amendment of the Act might be the most satisfactory method of implementing them. We make no attempt to deal with the question of how amendment to the British North America Act should be brought about nor do we attempt to draft amendments, for we feel that once the general will to seek amendment exists these matters can be dealt with more effectively by others than by us.

We realize that at first sight our proposals as a whole may appear to involve bold departures from former practices. We have asked ourselves anxiously whether our proposals are politically impossible. If we are hopeful that they are not politically impossible it is because we think that when our Report is considered as a whole the people of Canada will see that any lesser departure might lead to disastrous consequences. The present peril is serious and cannot be allowed to grow worse.

We plead most earnestly that our proposals should not be considered one by one in isolation, although we have done our best so to frame them as to withstand even this test. But we have attempted to integrate them in a comprehensive plan of a constructive character, dependent for its harmony on the observance of the general principles which we have set out, and designed to enable Canada to withstand the stresses and strains of today and tomorrow without undue peril either to reasonable national unity or to legitimate provincial autonomy.

SECTION A
THE ALLOCATION OF JURISDICTION

CHAPTER

- I. The Social Services
- II. Labour Legislation
- III. Education
- IV. The Regulation of Certain Economic Activities
- V. Facilities for Dominion-Provincial Co-operation

SECTION A THE ALLOCATION OF JURISDICTION

In this section of the Report the Commission makes certain recommendations with respect to the allocation of jurisdiction between the Dominion and the provinces with a view to promoting economy and efficiency in government. The Commission has constantly kept in mind throughout this section the qualification embodied in its terms of reference that its opinion on these matters should be expressed "subject to the retention of the distribution of legislative powers essential to a proper carrying out of the federal system in harmony with national needs and the promotion of national unity". It has also kept in mind the necessity for "a balanced relationship between the financial powers and the obligations and functions of each governing body". Its recommendations in the present section and those in the financial section which follows are thus intimately related. But the Commission believes that its recommendations on the allocation of jurisdiction are justified on their merits; that they will tend to provide efficiency and economy in government; that they are in harmony with national needs and the promotion of national unity; and that they will tend to make the federal system work with less friction.

The Commission does not consider it necessary or desirable to review the whole field of legislative jurisdiction as distributed by the British North America Act. It has confined its attention to those matters in which the present allocation of jurisdiction appeared, either from its own researches or from its public hearings, to be unsatisfactory. The topics which call for discussion are surprisingly few when it is considered that the present distribution of legislative powers was made over seventy years ago when British North America was still in the pre-industrial stage of development and when the prevailing views of the functions of the state were far different from those of today. The topics which call for discussion are the great spending functions of social services and education and certain powers having to do with the regulation of economic activities. In certain cases, despite dissatisfaction voiced in the Commission's hearings about the existing allocation of jurisdiction, the Commission concludes that there are compelling reasons for leaving the present situation undisturbed, the more so if the Commission's financial proposals are implemented. In other matters the Commission

concludes that there are stronger reasons for a change in jurisdiction. In the present section it has been found convenient to bring together all recommendations relating to jurisdiction (other than in the matter of taxation) whether a change in jurisdiction or the continuance of the present jurisdiction is recommended.¹

In devising the most appropriate allocation of jurisdiction in the light of present conditions and probable future developments, the Commission has been guided by the following considerations:—

- (a) the presumption that existing constitutional arrangements should not be disturbed except for compelling reasons;
- (b) existence of pronounced differences in social philosophy between different regions in Canada;
- (c) the need for economy and efficiency in administration;
- (d) the suitability of different jurisdictions for carrying the financial burdens involved.

In applying these considerations we shall have to recommend that certain functions now under the jurisdiction of the provinces should be allocated to the Dominion on grounds of the need for uniformity throughout Canada, or of the economy incidental to unified administration, or of the unequal financial ability of provinces to perform them. But in so doing we carefully respect the federal system. We aim throughout to safeguard the autonomy of the provinces, and to ensure to each province the ability to decide issues of peculiar importance to itself. We emphasize throughout this whole section the importance of limiting the transfer of jurisdiction to the Dominion to what is strictly necessary.²

But it should be noted here that, although it may be possible to divide clearly the field of legislative power between the Dominion and the provinces, this does not of itself promote harmony between them or efficiency of administration. The division of legislative power may in fact mean division of responsibility for the performance of a governmental function inherently unitary in

¹ For recommendations on taxation see Section B, Ch. III.

² Attention of the Commission has been drawn to the legitimate apprehension of Quebec that the allocation of new powers to the Dominion might carry with them ancillary power likely to trench upon rights defined by the Quebec Civil Code. In so far as our recommendations are implemented by legislation, it will be the duty of the draftsmen to guard against this possibility.

character.³ The growing complexity of our society, and the growing demands for governmental action to promote social welfare and control economic life, are compelling both the provinces and the Dominion to assume functions for the efficient performance of which they may have very inadequate jurisdiction. Control of marketing is an example. In such instances two courses are theoretically possible: either constitutional amendment to place full responsibility for the new function on one authority, or co-operation between the province and the Dominion to cover the new function by joint efforts. But the rigidity of the division of powers in a federal system is notorious, and especially so in Canada. The difficulty of amendment is often increased by the fact that the demand for undertaking the new function is likely to differ greatly as between provinces,—a fact which itself points to the need for greater flexibility in the federal system. Co-operation between the governments of a federal system may be no less difficult to achieve than constitutional amendment. But co-operation is becoming increasingly desirable, especially in those functions which tend to straddle the division of powers between the Dominion and the provinces, if provincial autonomy is to be preserved and efficiency in government at the same time achieved. We have, therefore, felt it necessary to include as a final chapter to this section discussion of certain devices to promote flexibility in the federal system and to facilitate co-operation between governments.

* * * *

The Civil Service and the Reallocation of Functions.—The Commission is fully alive to the fact that there are some interests which will be affected by any substantial reallocation of the functions of government. Important among these interests are those of members of the Dominion and provincial civil services whose present position and future prospects may be jeopardized. For instance, a change in the responsibility for the administration

³This is the situation in the administration of justice. Provincial courts are constituted and their procedure in civil matters is regulated by the province; judges are appointed and paid by the Dominion, and the Dominion Parliament regulates criminal procedure and has constituted a high court of appeal (the Supreme Court of Canada) from provincial courts.

of unemployment relief, a change in the machinery for imposing or collecting certain tax revenues, or the transfer of the responsibility for performing any of the functions of government, would affect the position of the civil servants who now administer these functions. While the personal fortunes or ambitions of civil servants should not be allowed to stand in the way of desirable changes we feel that every effort should be made to find suitable positions for efficient servants of the state who may be deprived of their present employment by the changes which we recommend. There may occasionally be a reduction in the number of civil servants who are required, but in most cases the same or similar functions will continue to be performed by one or other unit of government and we feel that in protecting the legitimate interests of efficient civil servants each unit of government will be promoting its own interests as well as securing the services of able and experienced men and women.

We do not wish to leave our treatment of this question in general terms. In cases in which a function is transferred from the province to the Dominion we recommend that the rules of the Dominion Civil Service Commission as to qualifications and examinations should (subject, perhaps, to certain necessary exceptions) be so modified as to facilitate the absorption of provincial officials into the federal service. This recommendation is particularly important in respect to provincial officials of the Province of Quebec. The performance of functions of the Dominion Government in Quebec should always be in the hands of officials with knowledge both of the French language and of local conditions and customs in the Province; and if any functions now performed by a province are taken over by the Dominion common sense dictates that generally speaking the men who perform them now should continue to do so.

It seems to us obvious that the selection for the performance of Dominion functions of officials who are familiar with the language and local conditions and customs of the groups of citizens with whom they have to deal is important both for efficiency of service and for fostering a national viewpoint.

CHAPTER I

THE SOCIAL SERVICES¹

In 1937 the total expenditures of all governments in Canada on social welfare, exclusive of education and war pensions and after-care, exceeded \$250 million. This was more than one-fourth of the total expenditures of all governments (Dominion, provincial and municipal) on current account. In 1867 the total welfare expenditures of all governments was about \$1 million, and even as late as 1921 the total was little more than \$36 million. Although the total reached \$83 million in 1930, the greatest increase occurred in the next five years when the expenditure was tripled; it has remained around this level ever since.² This enormous increase in expenditures for functions hitherto regarded as almost wholly the responsibility of the provinces (and their municipalities) has been primarily responsible for the breakdown in the fiscal independence of many municipalities and certain provinces during the past decade. Nor can the breakdown be considered merely a temporary phenomenon. Although "relief" costs may be cut with the return of "better times", the rise of other welfare expenditures and their probable increase in the near future, and the contingency of recurring crises in employment, has rendered precarious the fiscal position of many municipalities and all provinces. A redistribution of the burdens of social welfare has thus become of paramount importance.

We shall first examine the factors which have made the present division of social welfare functions and responsibilities untenable, and then set forth our recommendations.

1. THE DISPARITY BETWEEN JURISDICTION AND FINANCIAL RESOURCES

The Existing Division of Jurisdiction.—The British North America Act does not impose any obligations to provide welfare services either upon the provinces or upon the Dominion; it merely

divides the field of legislative power. With an exception for the criminal law (which falls within the legislative jurisdiction of the Dominion but is administered by the provinces) the underlying assumption of the Act is that legislative jurisdiction carries with it complete discretion as to policy, complete financial responsibility, and complete control of administration. But the Act is far from clear in the matter of jurisdiction over social welfare, and judicial interpretation has failed to remove obscurities. In the main it has been assumed that social welfare functions fall to the province by implication from its express and exclusive jurisdiction over "Asylums, Charities, and Eleemosynary Institutions in and for the Province", "Property and Civil Rights in the Province", "Municipal Institutions in the Province", and "Generally all Matters of a merely local or private Nature in the Province". On the other hand, it has been assumed that the Dominion's exclusive jurisdiction over Indians, militia and defence, and over certain phases of public health (which will be discussed later), and its concurrent jurisdiction with the provinces over immigration, imply a limited jurisdiction for welfare purposes over the special groups involved. But in general, provincial jurisdiction over social welfare and hence responsibility for policy and finance, has been deemed a basic feature of the Act, and any Dominion jurisdiction merely an exception to the general rule of provincial responsibility.

Social Changes 1867-1930.—The discrepancy between this division of jurisdiction and the fiscal capacity of the provinces was not apparent at Confederation. The British North America Act was framed in an era when social welfare was a relatively minor function of government. In 1867 over 80 per cent of the population was rural, living in farm-village communities. In such a society mass unemployment and mass destitution were unknown; welfare problems consisted in caring for weak or unfortunate individuals rather than for large dependent groups. The care of the individual was a function of the family, which, because of its economic self-sufficiency, was ordinarily competent to carry the load, as well as to meet the

¹The term "social service" has a broad and varied connotation, but for the purposes of this chapter it comprises those government activities which provide for persons unable (either because of lack of opportunity or want of capacity) to earn some or all of their recognized needs. In a broad sense, public education may also be considered a social service, but the subject is dealt with in another chapter, see p. 50.

²See Book III, Tables 12 and 16. For an extended discussion of relief expenditures and effect on public finance, see Book I, Ch. VI, Section on "Public Finance."

economic vicissitudes of the family group as a whole. When the immediate family group failed, relatives, neighbours, private charity, or religious organizations, could be relied on for assistance. The welfare activities of the state were limited to occasional assistance in the form of poor relief by municipal or local authorities, and to regulation of private charitable organizations.

The self-sufficiency of the family gradually declined with the progress of the industrial revolution, which had already begun in 1867, and with the development of an integrated, national economy. But the continent was undergoing an expansion unparalleled in history. The opening of the American West after the Civil War, the industrial expansion of the East, and later of the Great Lakes States, made the United States a magnet for young Canadians for sixty years after federation. The opening of the Canadian West, and the remarkable period of expansion which set in after the turn of the century, were no less important in draining off surplus population from older Canada, especially from its rural areas. The immigrants who poured into Canada during this period were predominantly young and able-bodied, accustomed for the most part to a low and precarious standard of living and expecting no assistance from the state. Thus, despite the widespread decline in family self-sufficiency, the need for state social services did not become apparent before the Great War. Public health services had been considerably expanded but the problem of indigency was still almost wholly a problem of caring for isolated individuals (the aged, the orphan, the dependent widow, the temporary unemployed). Private charitable organizations, often with religious affiliations, had developed extensively and were assuming much of the burden of carrying unemployables hitherto borne by the family. This was especially the case in Quebec where the Church has long played an important role in welfare services.³ Municipal or county poor relief services had become general in the old provinces but they were still not costly. In an expanding economy with free land suitable for settlement and an open door for emigrants to the United States, mass unemployment was still unknown.

But by 1913 the economy had developed some serious weaknesses. The cessation of railway

expansion about 1913 threatened a mass unemployment problem for the first time, especially in the over-expanded construction industry, the new steel industry, and other industries geared to railway expansion. The slack, however, was quickly taken up by the War both through enlistment and the industrial boom consequent on the War. Moreover, the agriculture which had developed in the Prairie West was of a quite different type from that of Eastern Canada; it was dependent almost wholly on external markets, and it was one-crop agriculture, subject to the whims of nature. It lacked the self-sufficiency of eastern agriculture resulting from diversification and the receipt of a large income in kind. Compared to the rural areas of the older provinces, the family and rural community of the Prairie West were far less self-reliant, far less able to care for the economically dependent in time of economic distress.

The Great War precipitated the assumption by the state of many new social functions. Widespread community efforts, both public and private, developed for the care of dependents of members of the armed forces. Mothers' allowances also began during the period. The problem of re-employment of over half a million former soldiers led to the development of provincial employment agencies, and Dominion efforts to co-ordinate these by a system of grants-in-aid. A sharp but short depression following the post-War boom created a problem of mass unemployment for the first time in Canada. The inability of local authorities to cope with it, and the fact that many of the unemployed were returned soldiers, led the Dominion to assist municipalities by small grants-in-aid. A brief interest in municipal housing, assisted by senior governments, developed. But mass unemployment was regarded as a temporary phenomenon, and no steps were taken to set up any permanent organization (other than co-ordination of provincial employment offices) for dealing with it. The Dominion also embarked on costly services for pensions, and for the rehabilitation, medical after-care of former members of the armed forces. Finally, for the first time the Dominion became interested in the provision of public health services hitherto regarded as exclusively a provincial (and municipal) matter. A Dominion Department of Health was established primarily to co-ordinate provincial health activities, and a system of grants-in-aid to the provinces for

³ For the social welfare role of the Church in Quebec see Appendix 5—Esdras Minville, *Labour Legislation and Social Services in the Province of Quebec*.

the suppression of venereal diseases was established.⁴

The expansion of the 1920's increased the vulnerability of the social structure, but at the same time hid the social changes. Industrialization proceeded apace, with its attendant specialization, growth of one-industry towns, and increasing numbers of wage-earners. Urbanization was increasing rapidly, and especially the growth of large metropolitan areas with their "dormitory" suburbs. Wheat production in Western Canada expanded in response to renewed European demands for wheat and the absence of Russia from the export market. Meantime provincial and municipal budgets were expanding rapidly, especially to provide motor highways and streets and greater educational facilities.

Social welfare, however, was becoming a highly significant item of public expenditure, especially in municipal and provincial budgets. As is evident from the following table the cost doubled between 1921 and 1930, the largest increases being in provincial and municipal expenditures:—

EXPENDITURES ON SOCIAL WELFARE BY ALL GOVERNMENTS
(Excluding relief and military pensions and after-care)
(Thousands of Dollars)

—	1913	1921	1926	1930
Municipalities.....	8,161	18,786	20,686	28,285
Provinces.....	4,343	12,133	18,520	27,256
Dominion.....	2,617	4,411	5,093	7,598
OLD AGE PENSIONS				
Provinces.....	—	—	—	6,132
Dominion.....	—	—	—	5,668
Total (excluding refunds).	15,121	35,218	43,294	72,129*

* See Book III, Table 16.

Apart from old age pensions the principal increases in provincial expenditures between 1921 and 1930 occurred in public health and hospitals, mothers' allowances, provincial institutions, and charity, the last of which more than doubled in cost between 1921 and 1930.

⁴ For growth of social services in greater detail see Appendix 5—Minville, *op. cit.*; Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*; J. A. Corry, *Growth of Government Activities Since Confederation*, (Mimeographed), Ch. VII.

With one significant exception, old age pensions, the traditional division of responsibility for public welfare was not seriously challenged during this period. The proportion of old people in the nation had increased because of a falling birth rate, the slowing down of immigration, the continuous emigration of able-bodied workers to the United States, and increased life expectancy.⁵ Meantime self-sufficiency of the family group was declining. Combined with this was the indirect influence of the War. The death and permanent injury during the War of so many young able-bodied workers tended in the years following to leave to the state an increasing number of needy aged who would otherwise have been supported by their sons. The result was to increase steadily the burden of the municipalities and local governments for supporting the needy aged. Demands for old age pensions had been heard before the War, and they were renewed afterwards. The provinces with their limited tax resources hesitated, however, to embark on such a costly service. An urgent need had to be met and there had been no attempt to work out a contributory plan by which the younger people would provide for their own old age. Nor (owing to migration from province to province) could any one province have conveniently managed such a system. In 1927 the Dominion accordingly came to the aid of the provinces by offering to pay half the costs of pensions for needy aged up to a fixed maximum, the provinces to supply, and pay for, administration. The Western Provinces and Ontario quickly accepted the offer. In 1930 the Dominion's share was increased to 75 per cent to meet the case of the poorer provinces. The Maritime Provinces and Quebec shortly came under the scheme. Thus, without acquiring additional jurisdiction, the Dominion assumed heavy financial responsibilities for a costly function regarded by the Dominion and the provinces alike as a provincial responsibility. But indirectly old age pensions were a boon to municipalities since they lifted an important indigent group from municipal budgets.

5 CHANGES IN UPPER AGE GROUPS 1871-1931

—	1871	1911	1931
Number of persons 70 and over per 1,000 population.....	21.2	23.3	33.2
Number of persons 65 and over per 1,000 population.....	36.4	46.6	55.5

The end of the boom of the 1920's found a society profoundly altered from what it had been sixty years before. In 1871 over 80 per cent of the population was rural, but in 1931 scarcely more than 46 per cent; in 1871, 42 per cent lived on farms, but in 1931 only 26 per cent, and over one-third of those engaged in agriculture lived on the short grass plains of Western Canada where they were more vulnerable to climatic fluctuations and price changes than Eastern agriculture had ever been. In 1871 there had been only one city of 100,000 population or more and it included only 3.5 per cent of the population; in 1931, there were eight cities over 100,000 population and they included over 28 per cent of the population. While for 1871 the number of wage-earners is not known, by 1931 there were over 2,500,000, or almost two-thirds of all gainfully employed in Canada. But despite these and similar changes which indicated the development of a society highly sensitive to economic disturbances, Canada had not embarked upon an extensive program of social security similar to that of many European countries.

The economic collapse was followed immediately by mass unemployment and destitution on a scale unparalleled in Canadian history. The wage-earner thrown out of work had few reserves and no alternative source of income to cushion the shock of loss of cash income as had the village craftsman or farmer of 1867. Moreover, the United States was suddenly closed to immigration, while almost unnoticed the supply of free land suitable for agriculture had run out. The social problem was three-fold: mass unemployment of industrial workers; mass destitution in the wheat area of Western Canada due to crop failure combined with low prices; and a greatly increased number of unemployables becoming public charges because of the sudden inability of their relatives to care for them.

A detailed account of various relief measures is here unnecessary. It will be sufficient for our purposes to note the principal characteristics of the system, or lack of system, which developed for handling the relief problem.⁶

At the outset the problem was regarded as a municipal responsibility, and this assumption has coloured the whole system ever since. The burden was first undertaken by the ancient municipal machinery of poor relief, assisted by private charity. But unemployment relief and agricultural relief in Western Canada were quite different

problems both in origin and in magnitude from municipal poor relief, and the machinery quickly broke down. Senior governments came to the aid of municipal and local governments by a system of short-term grants-in-aid, but the municipalities were left the responsibility of administration, including costs. All governments, however, regarded the situation as an emergency, and financial and administrative arrangements were hastily made on this assumption. Makeshift arrangements expected to be temporary have tended in the course of a decade to become permanent.

Effect of Relief on Municipal Finances.—The utter inability of the municipalities to carry the relief burden is evident from the fact that out of a grand total of expenditures of all governments on relief from 1930 to 1937 of some \$965 million, the municipalities carried only some \$154 million, or less than one-sixth, despite the persistent pressure upon them by senior governments. Moreover, the burden was very unevenly distributed. Unemployment was concentrated in metropolitan communities and one-industry towns, while agricultural relief was concentrated in the three Prairie Provinces, especially Saskatchewan. In 1935, for example, 53 per cent of the number on relief were concentrated in urban and metropolitan communities comprising some 32 per cent of the population, and the total direct relief costs in these communities were 75 per cent of the total for all Canada. In the same year 20.8 per cent of the total relief expenditures were incurred in the metropolitan area of Montreal which had only 9.6 per cent of the total population of Canada; 19.18 per cent were spent in the metropolitan area of Toronto which had 7.6 per cent of the total population; and 15.5 per cent in eight other Ontario urban areas with 7 per cent of the total population. The burden also often fell very unequally on different municipalities in the same region, and even within the same metropolitan community. Exclusive residential suburban municipalities escaped with virtually no additional relief burdens. Working-class municipalities, on the other hand, in many cases became completely bankrupt because of the huge load which suddenly fell upon them at the same time that real property values were shrinking and taxes on real estate were becoming increasingly difficult to collect.⁷ Many rural municipalities escaped any additional burdens.

⁶ For extended account see Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*.

⁷ *E.g.*, Ex. 21, Brief, Rural Municipality of St. James, Man.; Ex. 22, Brief, Rural Municipality of East Kildonan, Man.; Ex. 23, Brief, Rural Municipality of West Kildonan, Man.

On the other hand, many of the rural municipalities of Saskatchewan at times had close to 100 per cent of their total population on relief.⁸ Between 1931 and 1937 many municipalities, especially in Western Canada, were quite unable to carry their allotted shares of the load and senior governments were compelled to come to their aid by making the terms of grants easier, or by means of loans, or in both ways.

Even in cases where municipalities were able to carry their share of relief, it was often at the expense of upkeep of public works, education, and other services. Despite Dominion grants-in-aid for relief works, municipal capital expenditures fell far below normal, thereby increasing unemployment. Moreover, an undue load was frequently thrown on real property, the principal source of municipal revenues, at a time when income from real property had seriously declined and property values had been shattered. In an effort to collect back taxes many municipalities became loaded up with real property. In all municipalities where the tax burden on real estate had become unduly heavy, new construction and private enterprise were further handicapped, thereby tending to retard recovery.⁹

Effect of Relief Expenditures on Provincial Finances.—The impact of relief upon provincial finances has been dealt with in Book I, and only the more obvious effects need be pointed out here. Without Dominion aid probably no province could have financed relief. Dominion aid, however, was apportioned largely on the basis of a percentage of costs, and substantial though Dominion contributions were, this system could not prevent great differences in the relief burden as between provinces and violent fluctuations of provincial costs from year to year.

PER CAPITA COST OF TOTAL RELIEF EXPENDITURES

	1931	1932	1933	1934	1935	1936	1937
Prince Edward Island.....	3.63	2.71	0.68	4.64	10.55	6.72	6.20
Nova Scotia.....	4.99	7.37	6.16	4.55	5.77	5.05	4.72
New Brunswick.....	6.29	1.21	4.51	3.16	5.61	5.68	3.35
Quebec.....	6.00	6.47	7.49	10.55	8.67	11.44	9.83
Ontario.....	6.22	9.60	9.08	16.71	14.83	10.44	7.59
Manitoba.....	12.26	10.40	9.95	10.53	13.81	17.14	13.65
Saskatchewan.....	26.04	14.15	11.00	22.61	19.99	24.35	66.35
Alberta.....	9.13	7.92	6.54	7.93	9.21	11.89	9.83
British Columbia.....	12.11	12.63	11.33	13.67	15.40	13.39	12.00

⁸ Ev. p. 1308.

⁹ For discussion of taxation of real property see Section B, Ch. VIII.

The staggering load, and the sharp variations as between provinces and from year to year are clearly illustrated by the following table which shows all relief expenditures made through provincial and municipal agencies as percentages of the joint provincial-municipal current revenues for the peak year 1930:—

RELIEF EXPENDITURES BY PROVINCIAL AND MUNICIPAL GOVERNMENTS AS A PERCENTAGE OF CURRENT REVENUE FOR 1930

	1931	1932	1933	1934	1935	1936	1937
	%	%	%	%	%	%	%
Prince Edward Island.....	20.2	15.2	38.6	26.1	59.4	39.1	36.5
Nova Scotia.....	16.8	25.1	21.1	15.7	20.0	17.8	16.8
New Brunswick.....	21.3	4.2	15.7	11.2	20.0	20.5	12.2
Quebec.....	15.0	16.4	19.3	27.7	23.1	30.8	26.8
Ontario.....	11.1	17.4	16.9	31.6	28.4	20.1	14.7
Manitoba.....	24.8	21.4	20.5	21.7	28.4	35.3	28.3
Saskatchewan.....	57.9	31.9	24.7	50.8	44.9	54.7	150.2
Alberta.....	18.1	15.9	13.3	16.2	19.1	24.9	20.7
British Columbia.....	17.9	19.0	17.2	21.1	24.2	21.4	19.2

All relief expenditures through provincial and municipal agencies, including Dominion grants-in-aid (direct relief, relief works, and agricultural aid) are included, but relief expenditures made directly by the Dominion are not.

Efforts were made by all provinces to pare expenditures, and most noticeably in the case of the Western Provinces where other services such as education, road maintenance and conservation suffered seriously. All provinces made vigorous efforts to maintain and increase revenues by new or increased rates of taxation. Some provinces resorted to wage taxes, some to disguised forms of retail sales taxes, all increased gasoline taxes, and all increased taxes on corporations. But it was not until 1935 that total provincial tax revenues reached the level of those of 1929. Thus the provincial burden of relief during the worst years of the depression had to be met out of depleted revenues. The inevitable result was to compel the provinces to resort to deficit financing on a scale unparalleled in the history of the Dominion. During the years 1930-37 total provincial deficits on current account exceeded \$300 million. The provincial share of relief during this period excluding charges to capital account of \$200 million for provincial relief works, colonization and land settlement schemes, and relief advances to municipalities, amounted to more than \$280 million or approximately 92 per cent of total provincial deficits on current account. The portion of provincial debt directly chargeable to relief mounted rapidly.

The combined pressure of relief and depleted revenues destroyed, temporarily at least, the credit of the four Western Provinces and they were all unable for a time to meet their respective shares of the relief burden either out of current revenues or by borrowing. In consequence, loans had to be extended by the Dominion to the provinces concerned.* In certain instances the provinces also were compelled to borrow from the Dominion the municipal share of relief and re-loan to the municipalities. This was particularly so in the case of Saskatchewan. Substantial loans and bank guarantees were also made from time to time to the Prairie Provinces to finance seed grain advances. The total of Dominion loans for relief purposes to the four Western Provinces from 1931 to 1937 was \$125 million.† Large inter-governmental loans of this sort can scarcely be conducive to sound public finance either on the part of the Dominion or of the provinces concerned, however necessary they may have been under the circumstances. Repayment of inter-governmental loans in a federal system is always liable to give rise to political difficulties and serious friction, and especially so if prior collection from electors or subordinate bodies such as municipalities has to be made by the borrowing government.

The position of the Maritime Provinces and of Quebec in the later years of the depression should also be noted. These provinces, partly to provide work for unemployed, embarked upon extensive road construction programs during the later years of the period. Quebec also undertook an expensive land settlement scheme for the purpose of settling unemployed congregated in the cities. While these programs undoubtedly alleviated the problem of unemployment, the cost to the provinces concerned

(*) DOMINION LOANS TO PROVINCES FOR RELIEF PURPOSES (\$000)

	1931	1932	1933	1934	1935	1936	1937
Manitoba.....	1,600	3,228	803	4,053	4,682	4,621	2,959
Saskatchewan.....	7,000	1,734	11,314	10,141	14,245	5,978	11,604
Alberta.....	956	1,902	2,082	3,895	7,669	805	193
British Columbia.....	1,554	2,237	1,884	4,040	6,596	4,043	2,914
TOTAL.....	11,110	9,101	16,083	22,129	33,192	15,447	17,670
							124,732

† Not including advances of some \$29 million (net) during the same period to meet maturing obligations and interest.

was very great and it tended to exhaust the credit resources of these provinces. It is impossible to assess the amount of these expenditures incurred for bona fide relief purposes as distinct from that for ordinary capital expenditures, but it is clear that the lessened credit reserves of all four Eastern Provinces have made it much more difficult for them to carry their present portions of the relief burden in the event of unemployment developing after their present capital programs on public works had been completed, or in the event of a recurrence of widespread unemployment from other causes.

It is thus clear that the burden of relief has seriously strained the credit reserves of at least eight of the nine provinces, and it would appear doubtful whether they can carry indefinitely even their present shares of relief burdens.

Increased Costs of Other Welfare Services.—Moreover, while relief was by far the largest item of welfare expenditures, the costs of other social services mounted rapidly, as is indicated by the following table:—

EXPENDITURES ON SOCIAL WELFARE BY ALL GOVERNMENTS¹⁰

(Excluding relief and military pensions and after-care)

(Thousands of Dollars)

	1926	1930	1937	1939
Municipalities.....	20,686	28,285	35,615	?
Provinces.....	18,520	27,256	35,569	40,976
Dominion.....	5,093	7,598	15,169	7,258

OLD AGE PENSIONS

Provinces.....	—	6,132	10,213	10,975
Dominion.....	—	5,668	28,666	30,587
Total (excluding refunds)...	43,294	72,129	124,383	?

The primary reason for this increase, which (apart from old age pensions) fell mainly on the provinces and the municipalities, was the decline in the capacity of the family to care for its weaker, or unfortunate members. This was especially noticeable where unemployment was most wide-

¹⁰ Note: This table in part overlaps with the table on p. 17, but is so framed for the convenience of the reader.

spread and prolonged, the depletion of family reserves tending to throw the costs of medical attention, and support of widows, orphans, and the aged on the state. The result was to increase substantially the already over-burdened financial structures of the provinces and the municipalities.

*Municipal Administration of Relief.*¹¹—Municipal administration of relief was far from satisfactory. Short-sighted economy and lack of experience by the municipalities in many cases led to the entrusting of administration to an inadequate and untrained personnel with the result that inspection of relief rolls was skimped, and efficiency of administration suffered. It was, indeed, a common practice to choose part of the administrative staff from the municipality's own relief rolls. In cases where relief rolls became unduly large, political pressure on local authorities often tended to cause laxity in granting relief. Hard-pressed municipalities everywhere tended to lump together employables and unemployables and to charge senior governments with contributions for the relief of both classes. In urban areas unemployment relief thus became a "catch-all" for every type of indigent which had formerly been the sole responsibility of the municipality, and the same scales of relief rates as those available for the bona fide unemployed came to be applied to unemployable groups.

One serious defect has been the complete lack of uniform relief standards. Municipalities generally have set their own standards in the amount of food, shelter, clothing, and medical care that should be allowed, and unless these appeared to be too high, the province has rarely intervened. Many smaller municipalities refused to pay relief at all, even when there was real need. Such standards as have gradually developed have emphasized immediate economy rather than adequacy, with complete disregard of long-range costs, such as the probable increase of deficiency diseases (e.g. tuberculosis), or the breakdown of the morale of the able-bodied unemployed. Standards have tended to be those of poor relief, rather than for the maintenance of the efficiency of employables.

Under municipal administration non-residents, transients, and migratory workers were neglected and their care inevitably created serious problems.

In order to keep down relief costs municipalities endeavoured to avoid all responsibility for these groups. Residence qualifications were stiffened and destitute families unable to qualify for residence in a municipality were virtually left to starve except as assisted by private charity, or were shipped back to their former place of residence. The transient and the migrant in search of employment were generally treated as vagrants in the first years of the depression, and despite a change in policy whereby the Dominion has assumed a larger proportion of costs of relief for these groups, the practice everywhere has been to force them to move on. The treatment of transients, non-residents, and migrant workers throughout the period has indeed been far from humane, and has tended to reduce many able-bodied workers to a condition of unemployability. Moreover, there has been a marked tendency toward municipal protectionism in the matter of labour, as well as in relief, and toward the immobilization of labour,—tendencies likely to have serious effects on the national economy which has always depended on the free movement of labour to wherever work was available within the Dominion.

Grants-in-aid.—From the Dominion's point of view, the system of grants-in-aid has been far from satisfactory. Since the municipalities are creatures of the province, the Dominion has had perforce to deal with the province rather than directly with the municipalities. Having no direct control over municipal administration, it has been compelled to rely on advance agreements with the provinces and a post-audit of provincial expenditures. Both have been recurring sources of friction, the latter between Dominion and provincial officials, the former between governments. On the assumption that the need for relief was temporary, the Dominion has generally followed a system of short term (one or three months) agreements with the provinces. This system inevitably led to haggling over amounts and terms, and especially so when, as happened on occasion, the views of the Dominion and the provincial government differed as to policy. On the other hand, the practice of reimbursing the provinces (and through them the municipalities) for a fixed percentage of costs incurred without fixing maximum totals in advance, obviously opens the door to various abuses.¹²

¹¹ For description and criticism of administration of relief see *Final Report of The National Employment Commission*, p. 27ff; Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*. See also description in Commission's evidence of relief services in various provinces: e.g., pp. 2238ff. (Sask.); pp. 5480-82 (B.C.).

¹² For discussion of grants-in-aid as a device for financing unemployment relief see Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*, Ch. II; Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction*, Ch. VI; Luella Gettya, *The Administration of Canadian Conditional Grants*, Ch. VIII.

The experience of the past decade seems to lead inevitably to the conclusion that Dominion grants-in-aid are a thoroughly unsuitable method of dealing with the problem of unemployment relief, and of agricultural relief on a wide scale. The variability of the load from time to time, and from municipality to municipality, makes exceedingly difficult, if not impossible, a system of grants which will be politically acceptable and at the same time fair to the municipalities and provinces concerned. Grants based on dollar costs are not an equitable measure of assistance because the load varies so profoundly as between municipalities and as between provinces. On the other hand, grants in accordance with need are exceedingly difficult to estimate because of the lack of objective standards of measuring need. Further, they leave the door open to various abuses, since the greater the proportion of costs borne by the Dominion the less the incentive for the province or the municipality to keep down costs. Despite the magnitude of the sums involved, the Dominion has been unable to obtain sufficient control over administration to assure the efficient expenditure of its own funds. The difficulty has been enhanced by the fact that municipal administration can only be controlled by the Dominion indirectly through the province. Moreover, so greatly do the needs vary from province to province, and year to year in the same province, and so wide is the discretion necessary in estimating grants, that political considerations may easily enter, either in awarding or requesting grants, and the temptation to make political capital out of a grant or out of the refusal or reduction of a grant is always present.

The Failure of Remedial Action.—Perhaps the most serious indictment of the whole system of handling relief is that it has prevented the concentration of responsibility for remedial policies. The underlying assumptions were that, in the first place, relief was essentially a municipal and, in the second place, a provincial responsibility, and that the Dominion was assisting other governments only as a matter of grace. Yet it was obvious that the municipalities were quite unable to take effective remedial action because of limited resources and lack of control of economic activities. When they did attempt remedial action it was frequently short-sighted and often economically unsound as, for example, in restricting the use of machinery on public works. The provinces were little more able to take effective action. Virtually the only methods available to them were those of public works and land settlement. Yet both types of policy were highly costly and neither policy, nor

both together, could take care of large numbers of the unemployed. Those provinces which attempted either policy on an extensive scale soon found their credit resources badly strained. While in the latter years of the depression the Dominion did attempt to encourage remedial action along various lines such as re-training of unemployed, youth training, assistance to the provinces and municipalities for public works and housing, cheap credit for home improvement and private construction in housing, and reduction of taxation on capital improvements of industry, it cannot be said that these policies effectively alleviated the burden of relief. Much less can it be said that they cured unemployment. The principal difficulty has been that many Dominion schemes required co-operation from the provinces and municipalities, and usually proportionate contributions from them. On occasion the views of provincial governments as to the proper remedial policies differed from those of the Dominion, and co-operation was not forthcoming. In all cases where Dominion remedial policies required contributions from the provinces or municipalities the effect was to increase their immediate financial burden, a condition which frequently deterred them from co-operation. Thus co-operation between the Dominion and other governments was often absent and frequently the Dominion and the provinces worked at cross purposes.

Economic and Financial Consequences of Divided Responsibility.—We shall later discuss the problem of jurisdiction in the field of the social services generally, but it is desirable here to point to the main conclusion to be drawn from experience with relief during the past decade, and to discuss this conclusion in the light of broad economic considerations.

Nothing in the history of Canadian government has contributed more to the breakdown of our system of public finance or has been productive of greater waste in the economy than the attempt to hold local governments primarily responsible for unemployment, as well as other, relief. All the provinces and many municipalities have accumulated debts which in most cases their revenue systems cannot efficiently support, and the credit of many municipalities and of certain provinces was completely destroyed. The manner in which the Dominion assisted the local governments has given rise to large inter-governmental debts, arbitrary transfers and difficult problems of administration which have seriously disrupted the harmony of Dominion-provincial relations.

Mass unemployment in Canada, as in the past ten years, is largely the result of depression or economic changes abroad which are communicated to this country through the fall in export prices and demand. In the integrated and interdependent Canadian economy, the volume of capital investment largely depends on the anticipation of an export market, and the export income determines the size of the internal market for manufactured goods. A rapid decline in export incomes produces a sharp contraction in construction activity and in industrial output thus creating a nation-wide problem of unemployment.

As is more fully described in Book I of this Report, the various factors in the Canadian economy are today closely inter-related. The high degree of interdependence between country and town, between the primary and secondary occupations, between the exporting and domestic industries, is one of the most significant facts of our economic life. The economic opportunities and the real income of the wheat farmer, the miner, the fisherman and the lumberman who sell their products abroad, are in large measure determined by the tariff, transportation, developmental and monetary policies which are formulated on a national basis for the achievement of national purposes. Foremost among these national purposes is the maintenance and development of an industrial and a commercial community. Under the influence of these policies, the factory labourer in an Ontario city, the worker on a transcontinental railway, the clerk in a head office in an eastern metropolitan centre, and the investor in a national business enterprise, have come to be ultimately dependent upon the purchasing power of the exporters in every province of the Dominion. At the time of Confederation, local self-sufficiency and regional economic isolation and independence were the most noteworthy features of the new political union. Today the self-contained existence has disappeared and the income of Canadians is derived from an intricate and closely-knit economic organization which is transcontinental in scope. Now that the economic structure of the country is fundamentally national with respect to the attainment of economic welfare and opportunities for employment, it can no longer be compartmentalized for the purposes of meeting the costs of widespread destitution and unemployment—except at the price of financial chaos and enormous waste.

The extent of the unemployment in any industry or area has virtually no relation to purely local

conditions. The local municipality or province can do practically nothing to ameliorate the problem nor to hasten its disappearance. Nor is the province or the municipality a convenient authority for spreading the risks of unemployment over a term of years, by insurance methods or otherwise. All it can do is to try to meet the costs of relief until its revenues are exhausted and its credit gone, in which event it loses its financial independence and becomes a ward of the senior government. A system of federal grants-in-aid or inter-governmental loans which merely prolongs this process is no solution.

Under the conditions of local responsibility the appearance of a serious problem of unemployment or destitution in any province means that large additional expenditures have to be met out of sharply falling revenues. The taxation powers of the provinces and municipalities are limited by the constitution, and in many cases they are unable to use effectively such powers as they have because of the tendency of the national surpluses or large net incomes to concentrate in certain areas. These governments are virtually forced to make all manner of imposts on consumption, on costs of production and on small incomes; imposts which are detrimental to business, discourage investment and render even worse the situation which they are trying to meet. If they fall back on continuous borrowing, their credit is soon destroyed. And they lack sufficient power over economic activities to enable them successfully to alleviate the burden or to promote recovery.

The Dominion is the only government which can meet, in an equitable and efficient manner, the large fluctuating expenditures due to unemployment. Its unlimited powers of taxation give it access to all the incomes which are produced on a national basis regardless of where they may happen to appear, and it can obtain the needed revenues therefrom in a manner which is the least harmful to welfare and productive enterprises. With its control over the monetary system the Dominion is able to finance the temporary deficits that may arise from sudden increases in expenditure without suffering such a drastic weakening of credit as occurs when the budgets of local governments get seriously out of balance. The monetary and taxation powers of the Dominion would enable it to follow a planned budgetary policy of deficits during depressions, and surpluses and debt repayment during prosperity,—a policy which is generally impracticable for provinces and municipalities.

Perhaps even more important than the heavy burden which arises from expenditures on unemployment relief and the difficulties connected with the division of the cost between the various levels of government, is the tremendous wastage which results from the enforced idleness of resources and men. The wastages which arise out of inefficient administration, the destruction of the credit of local governments, and forms of taxation needlessly harmful to business enterprise, are serious, but they are relatively small compared to the decline in national income and the permanent impairment of the efficiency and morale of labour which results from widespread and protracted unemployment. It is not suggested that it is within the powers of government to do away with depressions, particularly in a country like Canada which is so largely dependent upon foreign markets, but governments can do a great deal to minimize the huge losses in national income. The planning of public works and developmental expenditures, an intelligent and co-ordinated use of credit, foreign exchange, trade, transportation and taxation policies are powerful instruments with which to combat unemployment and to reduce fluctuations in income. The Dominion is the only government which can use these instruments effectively. So long as the responsibility for unemployment rests with the nine provinces (and their creatures, the municipalities) which may follow different and conflicting budgetary, taxation, development, and public works policies, Canada will be unable to eliminate the avoidable economic wastes and social consequences of mass unemployment.

2. THE REALLOCATION OF RESPONSIBILITY IN THE SOCIAL SERVICES

We have already discussed the historic developments which brought about the present administrative and financial chaos in the social services. The experience of the past decade has emphasized the supreme importance both of a clear division of responsibility between the Dominion and the provinces, and of adequate revenues for each to enable it to fulfil its responsibilities. We deal elsewhere with the transfer of debt burdens and the redistribution of revenues. It will be obvious that our proposals in this connection are intimately related to those which follow about the reallocation of responsibilities in the field of social welfare. We now proceed to lay down the principle of division which seems to us to allot to each authority its most appropriate functions. We shall later discuss the application of this principle to certain services and the ways and means of

handling other services which for one reason or another cannot be allotted exclusively to either authority.

In proposing a clear division of responsibility we have been guided by the principles enumerated in the introduction to this section of the Report: "The presumption that existing constitutional arrangements should not be disturbed except for compelling reasons"; a recognition of the "differences in social philosophy between different regions in Canada"; the necessity for "economy and efficiency in government"; "the suitability of different jurisdictions for carrying the financial burdens involved," and we have been careful in recommending transfer of jurisdiction to the Dominion to limit our proposals to what we consider absolutely necessary.

The experience of the past decade is conclusive evidence that unemployment relief should be a Dominion function. By unemployment relief we mean relief or aid for unemployed employables as distinct from unemployables. Provincial responsibility for other welfare services should continue, and the provinces should be enabled financially to perform these services adequately. Provincial responsibility for social welfare should be deemed basic and general; Dominion responsibility, on the other hand, should be deemed an exception to the general rule, and as such should be strictly defined. But the Dominion should be given adequate jurisdiction to perform efficiently whatever responsibilities are entrusted to it.

PREVENTION AND RELIEF OF UNEMPLOYMENT

The assumption of responsibility by the Dominion for relief or aid of unemployed employables would entail: (1) complete financial responsibility; (2) full control of administration. For efficient administration it would also be essential:

- (a) That the Dominion define employability for purposes of administering unemployment aid;¹³

¹³ We adopt the terminology recommended by the National Employment Commission (p. 33):

"1. 'Aid' to designate moneys granted by the Dominion to alleviate conditions of persons in need, whether because of unemployment, loss of gainful occupation, or agricultural distress, classified respectively as 'Unemployment Aid', 'Occupational Aid', and 'Agricultural Aid'.

2. 'Assistance' to designate payments made under regularized statutory provisions on a definite basis to meet continuing social need, whether the same be paid wholly by the Provinces and/or Municipalities, as in the case of Mothers' Allowances, or jointly on a Dominion-Provincial contributory basis, as in the case of Old Age Pensions.

3. 'Relief' to designate payments made by the Municipalities for the relief of destitute or indigent individuals. Such relief is subdivided into 'outdoor relief' where accorded to the person living in his ordinary place of abode, and into 'indoor relief' where custodial or institutional care is in question.

4. 'Voluntary Aid' to designate help accorded distressed individuals by services under voluntary operation and supported mainly by voluntary contributions."

- (b) That the Dominion have full control of administration of unemployment aid;
- (c) That a national employment service be established and administered by the Dominion without prejudice to the right of the province to continue or develop an employment service of its own;¹⁴
- (d) That the Dominion be empowered to establish a system of compulsory unemployment insurance.

The first three of these essentials might or might not require constitutional amendments, but unemployment insurance is quite another matter in view of the recent decision of the Judicial Committee of the Privy Council.¹⁵ While the desirability of unemployment insurance as a means of alleviating the burden of unemployment is debatable—and we discuss this later¹⁶—it is highly unlikely that any province would institute a scheme of insurance for a group for which the Dominion had assumed financial responsibility. Further, it is important that the Dominion should be able, if it deems desirable, to institute an insurance scheme as part of its general method for handling unemployment relief. We recommend, therefore:—

- (1) that all doubts should be removed as to the power of the Dominion to pay and administer unemployment aid, and to establish a national employment service; and
- (2) that the Dominion Parliament be given jurisdiction to establish unemployment insurance.

Jurisdiction in these matters might be made *concurrent* (as in the case of immigration and agriculture) or the Dominion might be given *exclusive* jurisdiction over relief for unemployed employables, the establishment of employment offices for this class,* and unemployment insurance. If the latter

¹⁴ *Prima facie* such a provincial service would be essential to deal with those unemployed not in receipt of aid from the Dominion (e.g. partially employables) but as suggested elsewhere the Dominion might undertake such services for any province by arrangement, presumably for reimbursement for costs of services rendered.

¹⁵ Reference *re Unemployment and Social Insurance Act*, [1937] A.C. 355; [1937] 1 D.L.R., 684. This decision did not deal expressly with the establishment of employment offices by the Dominion which was also provided for by the Act in question. The Board held that the Act was "in pith and substance . . . an insurance Act," and that the other features were "so inextricably mixed up with the insurance provisions", that it was impossible to sever them.

¹⁶ For extended discussion of social insurance in general as well as of unemployment insurance, see p. 35 ff.

* *I.e.*, a province should still be entitled to establish or authorize employment offices for other groups as envisaged by para. (c) and footnote 14 above.

course is adopted the extent of jurisdiction transferred to the Dominion should, however, be clearly and precisely defined.¹⁷

Definition of Employability and Eligibility for Unemployment Aid.—Our proposal is that a clear line should be drawn between employables and unemployables and that the Dominion should assume responsibility for employables only. In order to secure uniformity in the definition of employability, and hence equality of benefit for all provinces and municipalities, it would be essential that the definitions of employability and of eligibility for Dominion aid be made by the Dominion.¹⁸ Any definition for legal or administrative purposes is bound to be somewhat arbitrary, but it is basic to our scheme that the province (and its municipalities) should be responsible for public assistance for all groups and individuals who do not come under the Dominion's definition.

But a clear definition will not alone solve all difficulties. A wide discretion in applying the definition will have to be left to officials on the spot. While theoretically an individual declared unemployable by the Dominion service would *ipso facto* be a provincial (and municipal) responsibility, hardship might easily result from the reluctance of local authorities to accept the ruling of a local representative of a Dominion service. Moreover, the charge of unfairness by Dominion officials might well give rise to friction between the Dominion and a province. We think it is essential, therefore, that local appeal boards, on which both the Dominion and the province (or the municipality) would be represented, should be established to hear appeals of individuals or the municipality against the ruling of the local office of the Dominion service as to the employability (and, hence, the eligibility for unemployment aid) of any particular individual. Presumably a local judge or magistrate might sit as chairman of such a board. Such a board could not, of course, alter the definition of employability as laid down by the Dominion Parliament; its

¹⁷ Attention of the Commission has been drawn to the legitimate apprehension of Quebec that the allocation of new powers to the Dominion might carry with them ancillary power likely to trench upon rights defined by the Quebec Civil Code. In so far as our recommendations are implemented by legislation it will be the duty of the draftsman to guard against this possibility.

¹⁸ Both the definition of employability and that of eligibility for unemployment aid would no doubt change from time to time. They would include such matters as: minimum and maximum ages both of male and female workers eligible for aid; mental and physical capacity to earn an adequate wage not less than the provincial minimum; willingness to work; provision for a means test; eligibility for aid for unemployment due to illness; responsibility of family or relatives; eligibility of dependents of unemployed employable for aid; etc.

duty would simply be to interpret and apply the rule in particular cases brought to it by way of appeal. But it would be inherent in the scheme that should an appeal by a municipality against the ruling of a Dominion relief official result in confirming the employability of the worker concerned, the municipality would be entitled to a refund from the Dominion for sums spent on his relief for the period during which the board deemed him employable. A board with such powers would be of value in assuring both applicants for Dominion aid, as well as municipal authorities, of the fairness of Dominion administration, and should greatly reduce the reluctance of municipalities to provide interim care in cases which it believed to be properly a Dominion responsibility.

The Employment Service.—A national employment service under Dominion control is a vital link in our proposals. We thoroughly agree with the findings and recommendations of the National Employment Commission on this point:—

“Early in the Commission’s investigations it became evident that the first and most vital step necessary to the successful handling of employment, re-employment and Aid administration problems is the development of more efficient Employment Services throughout Canada. The present Provincial Employment Services are in practice unfitted to meet the exigencies of the situation. Divided responsibilities and diversity of aims between different Provinces; unequal development as regards numbers, types and functions of local offices; unsuitable locations of premises; defects in Provincial boundaries when used as economic administrative units, etc., have all tended to result in the Provincial Employment Services not being utilized fully either by employer or by employee.

The provision of a proper link between employer and employee; of local advisory councils supplementary to local Employment Service offices in order to provide focal points for attacks on local problems; of means for gauging the relative degree of employability of those in receipt of Aid, are of pre-eminent importance if any real progress is to be achieved in handling unemployment problems. Indeed this is the experience of other countries also.

Bearing in mind the desirability of uniformity of practice where financial Aid for the Dominion is in question; of freedom from local pressure in administration; of a Dominion source of local information independent of Province or Municipality in respect to unemployment assistance, etc., the Commission recommended in August, 1936, that the Employment Service be administered nationally. In any case the situation requires increased and improved service which will cost more, but it is recognized that national administration in itself would not add anything to the total cost to the country as a whole. The Commission, however, believes the extra cost to the Dominion

government of the transfer from the Provinces would be more than offset by efficiencies and, therefore, economies which would result.”¹⁹

Opinions expressed in our hearings in general agree with the views of the Employment Commission that the employment service is more appropriately a Dominion service.²⁰

Administration of Unemployment Aid.—The functions of a national employment service would not only be those of redistributing labour in accordance with the opportunities for work; we think that at the outset at least it could conveniently form the core of the administrative service for administration of unemployment aid, and of unemployment insurance if this were established. It is thus essential that an efficient and adequately staffed service be instituted. The assumption of administration of unemployment aid should not involve the establishing of a great many more offices than now exist under the provincial employment services. Unemployment during the past decade has been concentrated in industrial areas, in most of which provincial employment offices now exist. The division of the staff dealing with relief could be expanded or contracted in these centres as employment fell or rose, as in the case at present in municipal administration of relief. As for aid for employables in rural or village communities remote from industrial centres, this, we think is relatively a minor problem, and might be dealt with by using local or municipal institutions dealing with unemployed as agencies for relief for employables. We think that an inspection and audit system could be devised to afford adequate protection for the Dominion’s interests in communities where the problem of relief for employables was not sufficiently large to warrant a local office of the Dominion service.

To assure adequate coverage of the field on the one hand, and to prevent duplication of relief services on the other, close co-operation would be essential between Dominion officials concerned with employment and local officials or private associations engaged in welfare activities. But we do not think this should be difficult to attain, especially as social service administration develops a professional tradition. Close co-operation in provincial welfare policies and federal policies for alleviating unemployment will also be necessary. For example,

¹⁹ Interim Report, pp. 17-18.

²⁰ Ex. 16, Memo. Manitoba Dept. of Labour; Ex. 214, Canadian Ass’n of Social Workers, B.C. Mainland Branch; Ex. 380B, Canadian Welfare Council; Ex. 383, United Church of Canada.

employment offices should be in close touch with municipal and provincial public works activities. Federal employment offices could also be made available for placing in employment wherever possible those who might not be recognized as employables by Dominion regulations, as for example, physically handicapped persons, or part-time workers. Additional expenses might be incurred by the Dominion for this service but reimbursement or purchase of the service by the province should be possible. Federal regulations on many points would also have to be integrated with provincial regulations. While unemployment aid would aim primarily to maintain the employability of the worker, minimum going wages in the community should be maintained above this rate.

In conclusion, the Commission recognizes that its proposals leave unsolved many important problems of definition and administration, among them: To what extent should aid for unemployed employables include relief for their dependents? Should unemployment aid be entirely cash relief or partially in kind? Should aid vary in accordance with local costs and standards of living? To what extent should unemployment aid scales differ from insurance benefits, assuming an unemployment insurance system is adopted? Under what conditions would an employable become an unemployable and thus the responsibility of the province (or the municipality)? Under what conditions should an unemployable become an employable? But these are details of policy and administration which the Commission feels are beyond its duty to advise upon; in any case, many of them can only be decided wisely in the light of experience. The Commission's function is to recommend the appropriate division of responsibility in principle, rather than to elaborate a complete scheme of definition and administration.

The Prevention of Unemployment.—If the Dominion assumes full responsibility for relief of employables, it should have much stronger incentive than under the present system of divided financial responsibilities to adopt vigorous remedial policies and policies to prevent unemployment from arising. As has been pointed out above, the Dominion has control of various economic weapons—monetary, credit and trade policies, etc.—with which it can combat unemployment. It is not our function to map out a program for controlling employment, but such a policy to be at all effective would demand close co-operation at many points between Dominion, provincial and municipal governments, and it is with these inter-governmental

relations that we are here concerned. Two methods for influencing the volume of employment call for special consideration in this connection, viz., the timing of public works, and the use of relief works in periods of unemployment.²¹

By the "timing of public works" is meant the postponement of works which are necessary, but not urgently needed, until private enterprise has ceased to provide reasonably high employment in the construction industry. Public expenditures are thus held in reserve and are used to offset inactivity which the construction industries experience in the early stages of depression. It is essential for the success of such a plan that the governments concerned should build up surpluses (or retire debt) in prosperous years, and it is highly desirable that their construction programs at the onset of a depression should be co-ordinated. Timing of public works, in this sense, is a cautious and conservative policy.

The extent to which a policy of timing public works can be used without undue waste must depend on the circumstances of the day, on acquired experience, and on systematic planning. The experience can best be acquired and planning is most likely to be wise if the whole problem of unemployment is brought under the single control of the Federal Government, which will have every inducement to work out a long-time policy rather than the hand-to-mouth policy which all governments in Canada have hitherto pursued, and to enlist the help of provinces and municipalities in implementing it.

The National Employment Commission thus describes the types of works which might with advantage be included in such a policy:—

"A program looking toward the expansion of public expenditure might include public works, the needs for which have been surveyed in advance and the engineering details of which have been fixed during the initial period of the depression. A preference may well be given to those works employing proportionately large amounts of direct and unskilled labour, and to those which can be curtailed readily as the volume of private expenditure rises during the recovery period. A relatively small place should be given to public buildings, which require in the main highly skilled trades, that is unless a supply of skilled labour is available. In the selection, timing, and location of public works, the greatest care should be exercised that public works do not compete with private employers for workers, this in view of the relatively high proportion which private expenditures must always bear to governmental expenditures.

²¹ Both these policies are discussed in the *Report of the National Employment Commission*, pp. 31-32; 34-37.

Works undertaken in such programs should be those which have a definite value in promoting the competitive strength of Canadian industry, and in improving the conditions of life in the Dominion. They may properly include:

- Building of highways to permit the development of mining, tourist and other resources;
- Development and preservation of tourist regions;
- Projects for the improvement and protection of public health and safety (such as provision of Municipal pure water supply and sewage disposal projects, elimination of railway and highway grade crossings, etc.);
- Slum clearance and low rental housing schemes in urban areas;
- Forestry plans for extending and preserving forests;
- Reclamation and conservation projects;
- Land clearance and settlement projects where the conditions are clearly favourable to successful settlement.

It is important that the projects should be such as can be planned thoroughly in advance, as are capable of postponement, and as do not increase public expenditures *permanently* through heavy maintenance charges."²²

While the Dominion can plan its own public works (railways, canals, harbour improvements, etc.) in accordance with the business cycle, the largest expenditures on public works now normally fall within the provincial-municipal field (highways, power development, street improvements, sanitation, etc.). Direct control of the public works policies of municipalities is, of course, a provincial and not a Dominion matter. Likewise, the Dominion has no direct control over provincial public works expenditures, so long as they are financed out of revenues or on the sole credit of the province. There appears, however, to be scope for close co-operation between the provinces and the Dominion in stabilizing employment, if the former are willing to postpone the less urgent provincial and municipal public works in times of prosperity. The Dominion, which would have to bear the burden of unemployment would have an interest in helping to finance these public works in times of adversity. A policy of timing public works presumably would include Dominion works and capital expenditures on railways, both public and private, as well as provincial and municipal works. Such a policy, co-ordinated with credit, monetary and taxation policies, would largely determine the volume of public works expenditures and would have considerable influence on the volume of employment.

²² P. 35.

In view of the great desirability of timing public works generally and of the role which Dominion credit and monetary and taxation policies may play in such a program, especially if our financial recommendations are implemented, it is of great importance that there be constant consultation and co-operation between the provinces and the Dominion in this field. It is probable that a permanent committee or council on which the Dominion and the provinces were represented would be useful for this purpose. Such a council or committee might be formed as an adjunct of regular Dominion-Provincial Conferences, or as an independent body with its own technical staff.

While we have condemned grants-in-aid as a means of financing unemployment relief we do not think the same considerations apply with respect to grants-in-aid for "timed" public works. In the case of public works it would appear that the Dominion's interest can be adequately protected by restricting aid to works approved in advance, and by objective engineering standards, as well as proper accounting practices, which can be applied both during construction and after completion of the work.

In contrast with these policies which aim at giving employment to special categories of labour in their normal occupations, special or "relief works" may be provided on which those who would otherwise receive unemployment aid may be employed. It is usually a local or provincial authority which is in a position to formulate such projects. Hitherto these authorities have been in a position to employ people to whom they would otherwise have had to pay relief. The National Employment Commission proposed that the Dominion, if it pays unemployment aid, should encourage the local authorities to undertake projects of this kind on which persons in receipt of unemployment aid from the Dominion would be required to work for the time necessary to earn their relief.²³ The local authority would thus be able to get useful work done at small cost.

An alternative course of action would be for the Dominion to encourage relief projects by local authorities by means of grants-in-aid, provided work were given only to those on the Dominion's employment rolls and in receipt of unemployment aid.

Yet certain limitations and dangers to a policy of relief works should be noted. The cost of relief works frequently is out of all proportion to

²³ Pp. 30-31.

the savings in expenditures for direct relief, and in any case it is extremely difficult to employ a large proportion of the unemployed in the event of widespread depression.²⁴ Despite obvious advantages in morale of providing work instead of relief, relief works may in fact be highly uneconomic if, for example, they are unneeded by the community, or if manual labour is unduly favoured over machines. Relief works may also compete with private industry, and wage scales on relief works may compete with the wage scales in private industry. It may be difficult to employ workers of highly specialized skills without detriment to their efficiency, and it may also be difficult to secure bona fide work from labour. Finally, political factors may enter unduly in the selection of projects, and even in the selection of labour—a possible danger for “timed” public works as well. But we call attention to these difficulties and dangers of a works relief policy merely to indicate its limitations.

RELIEF TO PRIMARY INDUSTRIES

Assistance for the victim of natural forces—the farmer whose crop has been hailed out, the fisherman whose nets have been swept away—has traditionally been a local responsibility. Generally speaking, the circumstances and the appropriate forms of assistance vary so greatly between individual cases that only local administration can meet the needs promptly and efficiently. It also appears appropriate that the financial liability should be local; it is in effect a flexible form of group insurance against the natural risks characteristic of the community industry, and a proper expense of that industry.

It is not easy to distinguish clearly between distress due to some natural disaster, and distress due to unfavourable marketing conditions, inflated costs, and other economic factors. Where the former is the case, and only the occasional individual is affected, the community can easily bear the financial responsibility of his relief; where the latter is the case, the whole community is likely to become impoverished. In the diversified and largely self-sufficient agricultural areas the economic factors are not so important, and minimum subsistence standards at least can be maintained from local resources, but in the more specialized cash-crop areas the whole basis is much more vulnerable.

Either failure of the cash crop, or low prices and restricted markets will likely make necessary substantial cash assistance—which in an impoverished industrial area might have its counterpart in increased tariff protection. In serious cases the local community's financial resources and credit will quickly be exhausted.

The Canadian wheat industry is the outstanding case of the dependence of a large area, and a large sector of the whole national economy, on the profitable production of one product. When an unprecedented series of crop failures coincided with record low prices, provincial and then Dominion governmental assistance was necessary to prevent complete collapse of the industry. In such circumstances there could be no question of adhering to the traditional allocation of responsibility, and the Commission does not suggest that an attempt should have been made to have done so in the past, or should be made if similar conditions should again develop.

But it does seem clear that very serious abuses and wastes occurred as a result of the breakdown of local responsibility and the confusion which ensued. Farmers who were completely destitute needed, in addition to subsistence for themselves and their families, seed grain, feed for their stock, tractor fuel and repairs, binder twine; in short, all the operating expenses of the industry. Particularly in the case of Saskatchewan, which was both the hardest hit, and the most lacking in alternative resources, supplying the operating costs proved greatly beyond the financial capacity of joint provincial and municipal governments. Very large sums were then advanced by the Dominion, and they ultimately, through provincial and municipal agencies, reached the farmer. Provincial and municipal governments, however, could not be expected to undertake the unpopular task of collecting these debts to reimburse the Dominion as actively and aggressively as if it had been their own funds which were involved. An even more serious abuse than the financial losses due to lax collection, was the premium put on appeals to the government for assistance even when the individual could have met some or all of his own needs. A man would very naturally hesitate to risk his own money when his neighbours were being financed by the government, and it was natural also that a man who had saved his money would feel very bitter if forced to carry himself while less provident neighbours borrowed from the government and were

²⁴ Thus in March, 1934, despite a large number of relief works under way, only 150,000 relief recipients were thus employed out of a total relief roll of over 1,500,000. See Appendix C—A. E. Grauer, *Public Assistance and Social Insurance*, Ch. II.

then permitted to evade repayment. The practices which were encouraged under this system did incalculable damage to the general morale.

The Commission consequently recommends that, in the event of repetition of the need for the Dominion advancing the operating costs of a primary industry, the Dominion should make the advances and collections directly. This need will only arise if the Commission's financial recommendations are not implemented. If these recommendations are implemented, a province of course would not have to borrow from the Dominion, but would be able, on establishing its need, to obtain an emergency grant,²⁶ or to borrow from other sources, since the increased service on its debt would be met by an increased National Adjustment Grant.

But whether or not its financial proposals are adopted, the Commission recommends that the Dominion should furnish directly operating cost advances, if these have to be made, whenever it undertakes the regulation of a primary industry, including control of the marketing of the product and setting its price. The Commission believes that the result would be greater efficiency in collections, substantial savings of public funds, and equity and fairness as between individuals in the industry, since the Dominion, through its monopoly control of the product, could reimburse itself directly. In such cases, and in accordance with the general principle underlying the Commission's financial recommendations that the provinces and municipalities should be provided with as stable revenues as possible, local and provincial tax levies should be given priority over recovery of these advances. This recommendation would appear to require no constitutional change, and would apply only to those cases in which the Dominion already had, as a matter of fact, recognized the need for national aid to and responsibility for an industry. Nor would the general principle of the Commission's recommendations that the province (and its municipalities) should be responsible for relief of destitution arising from causes other than unemployment be affected. Relief of destitution among farmers or other primary producers would still remain the responsibility of the province, even if the Dominion had come forward to relieve the industry by advancing operating costs, unless the Dominion had expressly extended its definition of eligibility for unemployment aid to include such groups. But we do not recommend that it should do so.

PROVINCIAL WELFARE FUNCTIONS

It is fundamental to our recommendations that the residual responsibility for social welfare functions should remain with the provinces, and that Dominion functions should be deemed exceptions to the general rule of provincial responsibility. We have recommended that the Dominion should assume responsibility for the prevention and relief of unemployment. We shall later discuss the special problems of non-contributory old age pensions, public health and social insurance. But it is basic that the provinces should be deemed responsible for providing for cases of need not actually covered by Dominion services. We shall now examine very briefly the main services which will remain with the provinces.

Indigency or "Poor Relief".—This is the residual category of the social services and under our recommendations it covers those in need who are not qualified for inclusion on the unemployment aid rolls of the Federal Government or provided for by other specific social services. "Poor relief" has been the traditional responsibility of the provinces and municipalities, and in our opinion it should so remain. Those to be provided for by this service will include many who are totally and even permanently unemployable, many who are partially employable but who cannot become fully self-supporting and, at any given time, men and women who are not without some claim to be employable but who, for one reason or another, may be refused a place on the employment rolls of the Dominion. It is an essential part of our proposal that there should be no possible doubt as to the exclusive responsibility of the provinces for these groups. The Dominion may extend the scope of its services from time to time but, for all needy persons who at any one time are not given necessary care by the Dominion through any of its several specific schemes, provision of such care should automatically be a responsibility of the province, and no one should be exposed to refusal or delay of necessary assistance on the ground that the Dominion ought to have provided for him.

There will inevitably be many points at which Dominion and provincial services interlock, and to avoid serious hardship to some individuals the principle of residual responsibility of the provinces should be rigidly observed. Thus if the Dominion in providing unemployment aid makes no provision for medical services to recipients, and their dependents, the responsibility for providing such services should rest without question on the provinces.

²⁶ For details of financial recommendations see Section B.

Medical aid to unemployed employables could be classified either with unemployment aid (which we have recommended should be provided by the Dominion) or with public health services (which we have recommended should be provincial). In the former case it may result that two services—one provincial and one Dominion—are providing the same type of service to different groups in the community and even to the same man on different days; in the latter, the same individual may look to different authorities for different services. We believe that the dangers of waste and overlapping in a situation where both Dominion and provincial health services are established would be so great that this service should be left exclusively to the provinces.

Although poor relief and medical aid are properly provincial functions, and although they may ordinarily be best administered by local or municipal authorities, the complete fiscal burdens of medical aid and poor relief within the area cannot be fairly imposed on every municipal authority. Fiscal justice demands that the burden imposed on the inhabitants of an area should not be out of proportion to the wealth and taxing powers of the area. Yet this would be the case if, in a large metropolitan area, two suburban municipalities were separately incorporated, one containing low, the other high, income groups. Our financial recommendations, if adopted, should make it possible for the province to bear a greater proportion of the load of poor relief and medical services than in the past. But in any event there is a strong case for the equalization of the costs of these services as between municipalities in the same province.

The assumption by the Dominion of responsibility for unemployment aid would, as has been pointed out, solve many of the present problems of transiency and non-residence, both as between provinces and as between municipalities in the same province. These problems would, however, remain in respect of the provincial services of poor relief and medical care. It is our hope that the provinces will be in a position to deal with these evils within the province, as some have already done, either by uniform residence rules or by assuming the cost themselves. By improving the provision for the destitute in the poorer municipalities within the province, the drift of dependent classes to the centres of population might be arrested. As between provinces the remaining problem of transiency and non-residence are matters which could, appropriately be dealt with by inter-

provincial agreement or at Dominion-Provincial Conferences.

Widows' Pensions, Mothers' Allowances, Child Welfare.—These services are, we think, of peculiar interest to the province since they involve questions of social policy with respect to the preservation of the family unit, and the care and upbringing of children. Moreover, their administration involves detailed supervision which in many cases must be highly personal and discretionary in character. On both grounds, therefore, we think that they are primarily provincial services.

It is possible that all these services might be financed in part by social insurance. If such a scheme were developed under Dominion jurisdiction—a subject we discuss later²⁷—the effect would be to lessen the costs of these services to the province since widows in receipt of annuities from the Dominion would stand less in need of provincial assistance. Nevertheless there would undoubtedly still remain a residue of widows, deserted mothers, and orphans to be provided for. These would remain a provincial responsibility.

Old Age Pensions.—On the division of responsibility which we have recommended, viz., that the Dominion should assume financial and administrative responsibility for unemployed employables, and the province continue to be responsible for other groups of dependents,—old age pensions would logically fall to the responsibility of the province. The needy aged have long been a special group assisted by the municipalities under the general head of "poor relief". Moreover, generally speaking, the needy aged are a stationary rather than a migratory group of dependents and, unlike able-bodied labour, there is no economic reason why they should be enabled to move about from one municipality to another, or one province to another. But the problem of the needy aged has now become so large that in general the municipalities would be quite unable to support them in decency without substantial assistance, and the same holds true for some of the provinces. The financial inability of provinces and municipalities together to provide adequately for this group was a reason given for the Dominion assuming part of the burden by a system of grants-in-aid for approved provincial schemes beginning in 1927.

At present old age pensions are paid under an arrangement between the Federal Government and each province, terminable on ten years' notice. The Federal Government bears 75 per cent of the cost (not including the cost of administration)

²⁷ See p. 35 ff.

provided that the province enacts, as each has now done, legislation which conforms to certain conditions. The general effect of this legislation is to pay pensions to persons over the age of 70 without requiring any prior contributions from the recipients. But payments are confined to those who have no incomes or very small incomes and the maximum pension is fixed in terms of dollars.

The Old Age Pensions Act was amended in 1937 to provide for the payment of pensions to blind persons who had reached the age of forty and who satisfied the conditions of the Act and its regulations. The Dominion pays 75 per cent of the cost of these pensions.

The present cost of old age pensions is heavy and is likely to rise through an increase in the proportion of the Canadian population over seventy years of age. In the year ending March 31, 1938, the total cost of old age pensions in Canada was over \$38 million and it has been estimated that the cost will be \$46 million in 1941, \$62 million in 1951, \$82 million in 1961 and over \$92 million in 1971 on the assumption that the present basis for pensions remains, and on the assumption that the proportion of people who provide for their old age is not increased.²⁸ This estimate takes no account of the likelihood of a successful demand for reducing the age at which old age pensions are payable or for increasing the rate. Such changes would obviously increase their cost substantially, but the cost to the state of other social services, such as relief, might be somewhat reduced.

There are admitted defects in the present arrangements. The Dominion, although it pays 75 per cent of the pensions, has not been able to exercise effective control over provincial administration. Its principal method is that of a post-audit, which cannot very well go behind vouchers and examine the accuracy of the means test which the province is required to apply before granting a pension and from time to time while continuing it. It is doubtful whether the proportion paid by the province (25 per cent of pensions plus administrative costs) is sufficiently heavy to induce careful

scrutiny of all applications. Nor can the Dominion inquire into the general efficiency of provincial administration of the scheme. On the other hand, it is generally admitted that some abuses have been removed as provincial schemes have got under way and as a result of conferences between administrative officials of the provinces and the Dominion. At any rate, the system seems to be working with considerably less friction between Dominion and provincial administrators than formerly.

Were the Dominion to withdraw from the scheme, the fiscal needs of every province would be substantially increased, and (assuming the adoption of our financial plan) adjustment grants to most of the provinces would have to be proportionately increased. The cost to the Dominion treasury would not likely be greatly decreased. Moreover, there is less theoretical objection to grants-in-aid for a service such as old age pensions where the amount fluctuates little from year to year, and where at least certain objective tests, such as age and lack of property of applicants, are possible, than for a service such as unemployment relief where the numbers on relief rolls may fluctuate greatly from year to year, and even from month to month. While certain provinces now find their share of old age pensions a heavy burden, our financial proposals for adjustment grants will take care of this, as they do of the costs of other provincial social services. We, therefore, see no good reason for recommending any change in responsibility for non-contributory old age pensions.

If our recommendation elsewhere for a general clause in the British North America Act permitting of delegation of jurisdiction by a province to the Dominion, or vice versa, is adopted, there would, of course, be nothing to prevent any province from delegating exclusive jurisdiction for old age pensions to the Dominion with the latter's consent.²⁹

3. STATE MEDICINE AND PUBLIC HEALTH³⁰

In 1867 the administration of public health was still in a very primitive stage, the assumption being that health was a private matter and state assist-

²⁸ For a statistical summary of old age pensions in Canada as at March 31, 1938, showing the number of pensions, the average monthly pension, the proportion of those over 70 receiving pensions and the Dominion contribution for old age pensions in each province, see Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*, p. 41.

²⁹ See p. 72.

³⁰ Public health might be considered as a function of government quite distinct from social services, since many activities of public health administration are concerned with the health of all in the community and not merely dependent groups or individuals. But in view of its close relation to other public welfare activities of government we treat it for purposes of convenience under "Social Services". For survey of public health activities in Canada see studies prepared for the Commission: A. E. Grauer, *Public Health* (Mimeographed) and Appendix 5—Esdras Minville, *Labour Legislation and Social Services in the Province of Quebec*, pp. 88ff.

Most provincial briefs contain statistical information on expenditures on health. At the request of the Commission the Dominion Dept. of Pensions and National Health and departments concerned with health in most of the provinces submitted memoranda describing their particular services and organization—see for Man., Ex. 13, Ev. pp. 728-36; Sask., Ex. 77; N.S., Ex. 148, Ev. pp. 4131-43; P.E.I., Ev. pp. 4474ff.; B.C., Exs. 191 and 223, Ev. pp. 5204-17, 5446ff.; N.B., Ex. 360, Ev. pp. 8656-85; Ont., Exs. 319 and 320, Ev. pp. 7890ff.; Ex. 137 (Dominion Dept.) Ev. pp. 3820-34. See also Ex. 246, College of Physicians and Surgeons of Alberta; Ex. 238, Cities of Alberta; Ex. 242, The Alberta Ass'n of Municipal Districts; Ex. 375, Union of N.B. Municipalities; Ex. 154, Union of N.S. Municipalities; Ex. 281, Ont. Municipal Ass'n; Ex. 104, Canadian Hospital Council; Ex. 117, Canadian Tuberculosis Ass'n; Ex. 331, Canadian Nurses' Ass'n; Ex. 388, Victorian Order of Nurses for Canada; Ex. 382, Health League of Canada.

ance to protect or improve the health of the citizen was highly exceptional and tolerable only in emergencies such as epidemics, or for purposes of ensuring elementary sanitation in urban communities. Such public health activities as the state did undertake were almost wholly a function of local and municipal governments. It is not strange, therefore, that the British North America Act does not expressly allocate jurisdiction in public health, except that marine hospitals and quarantine (presumably ship quarantine) were assigned to the Dominion, while the province was given jurisdiction over other hospitals, asylums, charities and eleemosynary institutions. But the province was assigned jurisdiction over "generally all matters of a merely local or private nature in the Province", and it is probable that this power was deemed to cover health matters, while the power over "municipal institutions" provided a convenient means for dealing with such matters.

But the economic and social changes of the past seventy years, which have been briefly outlined at the beginning of this section of the Report, have made necessary state activities and state expenditures on health matters to an extent undreamed of by the Fathers. The mobility of modern society due to the speed and ease of travel; the growth of urban and metropolitan communities; the interdependence for food and water supplies between widely separated geographical areas; the occupational diseases and physical hazards of high-speed, industrialized production; the loss in self-sufficiency of the family incident to the trend toward a wage-earning society; these and many other social changes have compelled governments at all levels to be concerned with the health of their citizens. It may be confidently predicted that the health activities of governments are indeed only beginning, and that expenditures in this field are likely to increase rapidly in Canada, especially in the field of preventive medicine, and medical aid for the lower income groups (either in the form of state medicine and hospitalization, or health insurance, or both).

The municipality has always been, and still is, the basic unit in public health administration. But municipal health activities vary profoundly, urban municipalities, as is to be expected, having wider powers and normally undertaking more activities than rural municipalities. Urban municipalities are ordinarily concerned with such matters as local sanitation, local control of infectious diseases, local inspection of food offered for sale and of hotels and restaurants, local provision of hospitals (many

hospitals are, of course, provided by private associations such as religious bodies), and health inspection of school children. The functions of rural municipalities vary from all those of urban municipalities to virtually none at all. Free medical services and hospitalization have long been provided on a very limited scale for those unable to pay by private and municipal hospitals and by the medical profession. But rising costs, especially since 1930, have compelled direct municipal, and even provincial, assistance. The municipality is, however, far from satisfactory as a unit of public health administration, largely because of the great variation in size, population, and wealth between municipalities. Certain provinces, and notably Quebec, have taken steps to establish public health units distinct from municipal areas, especially in rural districts.

For many years all the provinces have provided institutional care for incurable insane and dangerously insane, and all now take a considerable responsibility for providing hospitalization for tuberculosis, and assisting the municipalities in a limited way for general hospitalization of the destitute. All assume some responsibility for controlling epidemic diseases. But even today, the province's functions are largely those of controlling and directing the municipalities. The health expenditures, and hence the health activities, of provincial governments, moreover, vary considerably, the highest per capita expenditure being that of British Columbia (which stood at \$3.28 in 1936), and the lowest being that of New Brunswick (which stood at 76 cents in the same year).³¹ The primary

³¹
PROVINCIAL EXPENDITURES ON PUBLIC HEALTH, 1936

	Total	Per Capita
	000	\$
British Columbia.....	2,461	3.28
Alberta.....	1,719	2.22
Saskatchewan.....	1,870	2.01
Manitoba.....	1,571	2.20
Ontario.....	6,012	1.63
Quebec (*).....	3,890	1.26
New Brunswick.....	329	0.76
Nova Scotia.....	458	0.85
Prince Edward Island.....	154	1.67
All Provinces.....	18,464	1.68

See A. E. Grauer, *Public Health*, (Mimeographed) p. 75.

* It should be noted that the proportion of Public Health expenditures by municipalities varies from province to province and that in Quebec a large share of the cost is borne by hospitals under control of religious orders.

reason for these variations is the difference in the fiscal positions of the provinces. The result is, however, that there are grave differences in health conditions, and notably in the death rate from such diseases as tuberculosis and from infant and maternal mortality.

Dominion jurisdiction over health matters is largely, if not wholly, ancillary to express jurisdiction over other subjects, such as immigration; navigation and shipping; the regulation of trade and commerce; Indians; railways, steamships and public works under Dominion jurisdiction; militia and defence. In 1919 a Dominion Department of Health was established for the purpose of consolidating the administration of various statutes relating to public health (e.g. the Food and Drugs Act, the Opium and Narcotic Drugs Act, the Quarantine Act, the Leprosy Act, the Proprietary or Patent Medicine Act, the Public Works Act). It was intended also that it should facilitate the co-ordination of provincial activities in public health, and with this in view provision was made for a Dominion Council of Health which should include among its members the Dominion Deputy Minister of Health as Chairman, and the chief executive officer of every Provincial Department of Health. It was also intended that the Department should supply services to assist the provinces and supplement their activities. Subsequently, branches were established providing for such matters as venereal disease control, child welfare, publicity and statistics, public health engineering, etc. In 1919 the Dominion also provided for grants-in-aid to the provinces for the control of venereal diseases, the grant continuing yearly until 1932 when it was discontinued as part of a drastic economy program.

This brief survey of the health activities of the municipalities, the provinces and the Dominion indicates that despite the chaotic situation as regards jurisdiction, each level of government is performing functions consistent with its proper role in the government of the nation. Jurisdiction may overlap, but there is in fact little overlapping of functional activities. Indeed, we were impressed by the inadequacy of health services, considering the need, rather than by the existence of duplication.

We cannot see that it would be practicable to assign public health exclusively either to the Dominion or to the province. Much of the actual

administration must be left to local or municipal authorities, and so long as the province has general jurisdiction over the municipalities the Dominion could not satisfactorily direct or control local health authorities. Moreover, the educational phase of public health must be closely linked with public education. It is no less important that local public health administration be closely linked to public welfare services, which like education are mainly local and provincial functions. While certain specialized services, such as hospitalization for tuberculosis, might be provided by the Dominion as efficiently as by the provinces, this is not of itself a reason for any shift in jurisdiction. Finally, there are pronounced regional differences in Canada in social philosophy which are bound to affect public health legislation. Centralization of jurisdiction might not, therefore, conduce to progressive action in public health, or to national unity in general. On the other hand, certain health services, such as health inspection of prospective immigrants, or prevention of import or interprovincial trade in dangerous drugs or impure foods, or medical care of the armed forces, could scarcely be provided efficiently by the provinces individually.

We think, therefore, that the present jurisdictional situation should not be disturbed, and that the public must rely on the good sense of public health officials and of political authorities concerned to effect co-operation and to work out an efficient and economical division of functions between the Dominion and the provinces. This division of function should no doubt be changed from time to time in accordance with social needs, but we think it our duty to suggest certain principles which should govern this division.

*Division of Functions in Public Health.*³³—Provincial responsibilities in health matters should be considered basic and residual. Dominion activities on the other hand, should be considered exceptions to the general rule of provincial responsibility, and should be justified in each case on the merit of their performance by the Dominion rather than by the province. Mere importance of a service does not justify its assumption by the Dominion.

The province should accept responsibility for,—

(a) "Field" activities of public health, generally, which will be mainly carried out by municipal or local authorities under provincial direction.

³³ For proposals made to the Commission on this point see: Ex. 223, Memo. on Distribution of Health Functions between the Dominion and the Provinces, (B.C.); Ex. 103, Canadian Medical Ass'n; Ex. 330, Canadian Dental Ass'n.

(b) Institutional care (except for special groups, such as the armed forces, which are the responsibility of the Dominion).

(c) Policy as to the method (e.g. whether by health insurance, or by state medicine and state hospitalization) of providing state medical services (including dental and nursing services, hospitalization) for indigents or low income groups.

(d) Health education.

(e) Preventive medicine.

(f) Research into local conditions affecting public health, or on diseases of peculiar importance to the province, or as a function of medical education in the universities.

(g) Professional qualifications for the practice of medicine and quasi-medical vocations.³⁴

The Dominion's activities should be confined to,—

(a) Enforcement of health measures which are ancillary to its defined legislative powers, and measures which cannot be satisfactorily administered by the provinces (e.g. the Food and Drugs Act).

(b) Services for groups who are in the position of wards of the Dominion (e.g. Indians, and members or former members of the armed forces). It is, however, suggested that the Dominion should consider carefully the possibility even in these cases of buying provincial services rather than establishing its own medical services.³⁵

(c) Leadership in establishing uniform standards where these are desirable (e.g. standards for trained personnel, definition of medical terms, compilation of statistics, standardization of drugs).

(d) Leadership in effecting co-operation between the provinces and co-ordination between services of the various provinces in order to avoid overlapping and deficiencies in health services. The Dominion Health Council on which all Provincial Departments of Health and the Dominion Department are represented, seems to be an entirely suitable means to these ends.

(e) The provision of auxiliary services for aiding the provinces (e.g. publication of suitable

public health literature; provision of expert advisory services for such matters as sanitary engineering, epidemic diseases).

(f) Scientific research in medicine and public health generally. In this connection the establishment of a special medical research division of the National Research Council is to be commended. But it should be emphasized that centralization is no more necessary or desirable in medical research than in scientific research, and that the Dominion's function in promoting medical research may in some cases be best performed by assisting medical research in the universities.

4. SOCIAL INSURANCE AND CONTRIBUTORY SOCIAL SERVICES

The cost of modern social services is very high,³⁶ and a substantial charge on the general taxpayer. There seems to be every reason to suppose that the cost of Canadian social services will increase fairly rapidly³⁷ and it, therefore, seems probable that in Canada, as in other countries, an attempt will be made to relieve the taxpayers by assessing part at least of the cost of social services against those most likely to benefit from them and against those from whom a direct contribution can conveniently and equitably be exacted.

But, although relief to the general taxpayer may be one of the reasons for resorting to social insurance, this relief may be illusory rather than real. If contributions are exacted from individuals by way of premiums, the capacity of these individuals to pay taxes is reduced accordingly and it is likely that they will have to be relieved of some of the taxes which at present fall most heavily on low income groups (e.g. wage taxes, some forms of sales tax and some excise taxes). The resulting deficiency in the general revenue will then have to be made good by increasing those taxes which fall on higher income groups. If contributions are exacted from employers of labour, these contributions are distinguishable from a tax on the employer's wages bill only if it can be shown that the payment which he is called on to make is one which ought to be (though it is not now) part of his costs. It is on this ground that employers have been required to contribute to the cost of work-

³⁴ Certain aspects of medical practice come within Dominion jurisdiction over the criminal law.

³⁵ It is suggested that this method should be followed so far as possible in providing services for the health of Indians. Submissions were made to us indicating that in certain provinces Indian reservations were serious focal points of infection for tuberculosis and other communicable diseases, and that the province could do little to protect itself against this menace so long as medical services for Indians were under the control of the Dominion. A single public health control over the whole area of the province would appear to be highly desirable. (See Ex. 117, Brief of The Canadian Tuberculosis Association. Ev. pp. 732; 5461; 9640.)

³⁶ As has been pointed out at the beginning of this chapter, the total cost in 1936 was more than one-fourth of all governmental expenditures on current account.

³⁷ In spite of the careful wording of our terms of reference many of the briefs presented to us advocated increased expenditure for one or another of the social services, while none advocated that any existing service should be eliminated.

men's compensation. Before they were required to do so part of the cost of providing for the victims of industrial accidents fell on the general taxpayer, part was borne by the victims, part only was paid for by the employer either because of his actual negligence or in accordance with statutory provisions. It may be contended that the employer should be compelled to treat the cost—or part of the cost—of the unemployment incidental to his industry as one of its costs, just as he must treat the cost of keeping his plant idle. It may be argued that the minimum wage in industry should be one which will maintain the worker, on the average, in sickness and in health, for the duration of his life, out of the earnings of his working years and that an employer's contribution to health insurance or to old age pensions may constitute the most practical means of insuring that his employee's wages are adequate for this purpose and that (by this means and by his individual contribution) they are actually made to accomplish it.

It follows from what has been said that both the contributions of individuals and those of their employers are liable to be—in greater or lesser part—pure taxation, equivalent in the former case to an income tax on low incomes, in the latter to a tax on wage costs. This is true of the individual's contribution in so far as it exceeds the actuarial value of the risk of which he is relieved (e.g. compulsory insurance against unemployment is frequently instituted at substantial premiums in occupations in which the risk of unemployment is low, and more frequently still in the case of highly efficient employees whose individual risk of unemployment is very low). It is also true that the employer's contribution, if it makes his wage costs excessive, is to that extent a tax.³⁸

Even if contributions can be equitably imposed the effect may be serious in the case of a marginal industry which is fighting for its life in an export market against competitors whose costs would not be increased by Canadian legislation, or in competition with Canadian competitors whose wages bill forms a lower proportion of their costs because of their extensive use of machinery. These effects may, it is true, be in the long run beneficial to society, though detrimental to a marginal industry, by guiding productive effort into more

effective channels. But in elaborating plans for contributory social services, account must be taken of them. It is not unusual to find these consequences of social insurance mitigated to some extent by making some contribution from general taxation to the cost of the service. And they can also be mitigated by reducing taxes which are particularly burdensome to the industries affected.

But social insurance presents other aspects which are not primarily fiscal. It may be thought desirable that the beneficiaries of social services should feel that they are paying their own way and that they are not the recipients of public charity. It may be considered that some such feeling will act as a deterrent to demands for exorbitant social services. And it may be felt (as has been intimated above) that employers' contributions are a convenient supplement to minimum wage laws.

What has been said so far has been designed to show that the choice between contributory and non-contributory systems is neither simple nor easy. This consideration must be kept in mind in considering whether it is the Dominion Government or the provincial governments which should enjoy the power to make this choice. What has been said will also serve to show that if the choice is made in favour of contributory services the balance of advantage lies in some degree of uniformity throughout Canada and, therefore, in the collection of contributions by the Dominion, though these advantages differ as between different services. The principal reason for this uniformity lies in the readiness of industry in one province to complain if it is taxed for social services which are provided out of general taxation in other provinces or are not provided at all in other provinces. Even if there are offsetting advantages by way of the better health of employees, or their freedom from anxiety, and even if in the long run the employer's contribution may in the course of wage bargaining come to fall on the employees, the employer is quick to complain, and with all sincerity, that he is being placed in a position of competitive disadvantage in comparison with employers in provinces where there are not contributory social services. If competitive disadvantages in any province became sufficiently serious, its industries might migrate to sheltered provinces. A second reason why uniformity is desirable lies in the probability of some migration from one province to another. If one province had compulsory insurance and another did not, a migrant might be exposed to losing the benefit of

³⁸ This test is admittedly vague. Many employers do in fact contribute to the superannuation of their employees or to their insurance against medical costs. Others, perhaps, do the same thing by higher than average wages. A percentage contribution imposed on the former would not increase their present wage costs. The same contribution imposed on the latter would then be inequitable.

payments made prior to migration. Finally, if one authority, the Dominion, is making some deductions from wages and imposing some levies on wage bills it is administratively simpler and cheaper than it should make all such deductions and impose all such levies. Before proceeding to apply these general considerations to the individual services, it will be convenient to examine briefly American experience.

Social Insurance Aspects of the American Social Security Program.—The problem of developing effective social insurance measures under a federal system is not peculiar to Canada. The United States faces a similar problem. American experience, limited though it is in point of time since the national social insurance scheme is just getting properly under way, is enlightening for Canada.

The American Social Security Act provides for a comprehensive and detailed attack upon the problems of dependency and social welfare by a combination of insurance and non-insurance methods.³⁹ With the exception of contributory old age pensions the financial method adopted is that of federal assistance to the states by means of grants-in-aid measured in certain respects by fiscal need. Federal grants-in-aid are provided for various specific state assistance schemes, such as mothers' allowances, infant and maternal care, assistance for needy aged and partially dependent blind, public health services, etc. Insurance methods are provided for in two instances,—unemployment, and contributory old age pensions. It is with these last two services that we are primarily concerned here.

The United States in the establishment of unemployment insurance faced the same difficulty as Canada in that the matter appeared to fall under the jurisdiction of the states rather than of the United States. Had the states been left to themselves, progress in adopting insurance would probably have been slow because of the reluctance of a state to handicap its own industries in competition with those of other states. Further, uniformity of state systems would have been extremely difficult to secure. Hence Congress, by an ingenious use of the taxing power, attempted to bring about comparative uniformity of state systems, and to assure the initiation of unemployment insurance over the whole nation at about the same time.

Unlike the British unemployment insurance scheme which provides for contributions from both employers and employees on a flat rate irrespective of wages, the American Social Security Act of 1935 provided for a tax on payrolls (1 per cent for 1936, 2 per cent for 1937 and 3 per cent thereafter) of all industries with more than eight employees, with certain specified exceptions. But it provided for a rebate to the employer up to 90 per cent of the tax due to the national government for sums paid into approved state insurance schemes. In addition to prescribing conditions (in some respects alternative) which state schemes had to meet before deductions in federal payroll taxes were allowed, Congress also provided for grants-in-aid to the states for purposes of administration of their schemes. All states and certain territories took advantage of the situation, with the result that today there are 51 different schemes in operation, each separately administered.

Certain grave difficulties quickly appeared. Several state schemes became bankrupt, or virtually so, before they got into effective operation, because of lack of diversification of industry in the state which made it impossible to spread the risk sufficiently, or because the state's industries were peculiarly vulnerable to depression factors, or because the state scheme took in too many workers in very low income groups or provided for too short periods of employment before benefits were available, or for other reasons. Other serious difficulties have also appeared, among them: the problem of the transient or migratory worker who moves across state boundaries; the multiple tax returns required from firms operating in more than one state; inequalities in the burdens on industry, and on labour, as between different states; the multiplicity of administrative personnel, and hence relatively high administrative costs, owing to the large number of systems and partial duplication of federal with state officials.

Unlike unemployment insurance the contributory old age pension scheme (or old age insurance) is national, contributions being paid directly to the national government which also administers the scheme and pays benefits directly. The reasons for making contributory old age pensions a national rather than a state-subsidized system appear to have been primarily two-fold: first, the greater difficulty than in the case of unemployment insurance of using federal powers to bring all states into line at virtually the same time and, second, the administrative difficulties likely to arise under a collection of state schemes, especially in a labour

³⁹ For description and criticism of the American Social Security Act and its operation see: Millis and Montgomery, *Labour Risks and Social Insurance*, (New York, 1938); P. H. Douglas, *The Federal Social Security Act*, (New York, 1936); Bryce Stewart, *Planning and Administration of Unemployment Compensation in the United States*, (New York, 1938).

market where labour is free to move across state boundaries. For example, the administrative difficulties of adjusting accounts between states on behalf of an individual who, during his working life might have lived in many states, appeared to be insuperable. Consequently, despite constitutional doubts, a federal scheme was put into operation. It has since been upheld by the courts.

Unlike the British scheme which is based on flat rate contributions by employer, employee and the state irrespective of the wages received by the employee, the American scheme provides for contributions based on a percentage of wages. The scheme provided for contributions assessed against payrolls and wages equally, beginning at 1 per cent on each in 1937 and rising by stages to 3 per cent on each in 1949 (or 6 per cent of wages in all). The employer acts as collector for the employee's share. No provision was made at the outset for contributions by the government, but it is expected that ultimately, as the number of beneficiaries receiving annuities increases, contributions by government will be required. Annuities begin at the age of 65 and are paid out of the individual reserve credited to the annuitant.

The scheme will not, however, provide for all the aged or even all the needy aged. For many years to come annuitants will not have built up sufficient reserves to cover their needs after the age of 65; many low wage groups of workers and part-time workers will probably never accumulate sufficient reserves to carry themselves in old age even when the scheme is operating in full, and in general owner-workers are exempted from the contributory scheme. Thus, although the scheme covers about one-third of the nation and, therefore, spreads widely the promise of some measure of security in old age, it has not removed the necessity for non-contributory pensions, or for contributions by the federal government to the annuities of those with small reserves and in need. At present non-contributory pensions are provided, after a means test, by the states assisted by grants-in-aid from the federal government. Steps are, however, being taken to "liberalize" the federal contributory system in order to give larger annuities to needy aged directly, rather than indirectly through state non-contributory systems.

With the merits or the demerits of the scheme, or with its economic or financial consequences, we are not here concerned. For our purposes the sole point is that Congress decided that separate state schemes for contributory old age pensions were quite unworkable. The Supreme Court has upheld

the Act largely on this ground. Said the Court: "The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. . . . A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all."⁴⁰

American experience with social insurance is not conclusive evidence for Canada, but it cannot be safely ignored by Canada. Unemployment insurance on a state basis, even when in operation in all states has proven far from satisfactory. One competent authority after an exhaustive survey of the subject concludes: "It may be predicted that complete reconstruction on a national basis will come, either by the evolutionary process or by drastic revision in time of stress."⁴¹ The federal contributory old age pension scheme, on the other hand, has not been seriously challenged on the ground that it is in the wrong jurisdiction from the point of view of public finance or administration. Nor has it shown any tendency to drift towards state control.

UNEMPLOYMENT INSURANCE

We have recommended that provision for the employable unemployed should become the responsibility of the Dominion. It is almost ancillary to this recommendation that the Dominion should have power to enact a measure of unemployment insurance in order to reduce the burden to its general taxpayers. It would be out of place for us to go into the multitudinous details which have to be settled in any comprehensive scheme of unemployment insurance. But there are some general observations which can be made. In the first place no system of unemployment insurance will take care of all the unemployed at all times. There will always be some occupations which cannot conveniently be brought under an insurance plan, always some unemployed who have never been employed before (e.g. the very young), and always some unemployed who have exhausted the benefits to which they are entitled. So long as an unemployment insurance plan is kept on an actuarially sound basis (as contrasted with a plan which

⁴⁰ *Helvering, Commissioner of Internal Revenue et al v. Davis*, 301 U. S. 619 (1937) at p. 644.

⁴¹ Bryce Stewart, *op. cit.*, p. 550.

although called "insurance" is really a device for transmitting money raised by general taxation or by borrowing) there are bound to be many categories of labour which will remain outside its scope.⁴² In the second place, there will always be unemployment insurance premiums which in essence tax those in safe employment for the benefit of those in exposed positions, and yet exempt other and richer groups from contribution to this purpose. The problem of seasonal labour raises peculiar difficulty in this respect for any unemployment insurance program for Canada. It is probably a counsel of perfection to suggest that each industry should pay its premiums at a rate proportionate to the hazard of unemployment in it. Yet otherwise "safe industries" are taxed to help exposed industries. Here, if anywhere, in the field of social insurance we find security financed by taxes on production disguised as premiums. But, in spite of all these considerations, there is probably a balance of advantage in favour of unemployment insurance and we may expect the Dominion to make some experiments in this field. Even if our main recommendation, that the care of employables who are unemployed should be a Dominion function, should not be implemented we recommend that the Dominion alone should have jurisdiction over unemployment insurance, for there are few provinces with sufficient diversification of industry to embark on such an enterprise with any confidence and it would be a great hindrance to the mobility of labour if men out of work were deterred from leaving a province in search of work because in so doing they would lose their insurance benefits.

It is not surprising, therefore, that it has been generally recognized that if unemployment insurance is to be successful in Canada it must be on a national basis. The National Employment Commission emphasized that "there are great, indeed decisive, advantages in a national, in contrast to a Provincial, system"⁴³ of unemployment insurance. The Commission des Assurances

Sociales de Québec, as early as 1933,⁴⁴ pointed out that, although it is possible for member states in a federation to have schemes of their own, "nevertheless elementary prudence urges us to give a federal character to insurance against unemployment". In a memorandum submitted to the Executive Council of the Province of Quebec in February, 1939, by the Confédération des Travailleurs Catholiques du Canada, Inc.,⁴⁵ the following paragraph appears "La C.T.C.C. tient à redire au gouvernement fédéral qu'elle est en faveur d'un système d'assurance-chômage à base contributoire... notamment, en faveur d'une assurance-chômage contributoire, établie sur le plan national, suivant les recommandations de la Commission des Assurances sociales." After careful examination we are convinced that a system of unemployment insurance can be established which will in no way interfere with the provisions of the Quebec Civil Code concerning labour contracts and contracts of hiring. In our public hearings representations from most provinces and from many public bodies supported the view that unemployment insurance should be within the jurisdiction of the Dominion Parliament.⁴⁶ We have no hesitation in so recommending. We think, however, that the nature and extent of the federal power over unemployment insurance should be

⁴⁴ "Est-il possible de concevoir l'organisation de l'assurance-chômage sur une base provinciale dans un Etat fédératif comme le nôtre? Oui, et l'exemple du Queensland (Australie) et des Cantons suisses est là pour nous dire que cette possibilité existe. Toutefois, la prudence élémentaire conseille de donner un caractère fédéral à l'assurance-chômage. Il est urgent d'étendre les charges sociales sur l'ensemble d'un pays. Autrement, les provinces participantes se trouvent dans un état d'infériorité injuste par rapport aux non-participantes. Il ne faut pas oublier que les charges sociales doivent être incorporées dans le prix de revient de la production. Les provinces ne jouissant pas du privilège de la protection tarifaire, les industriels établis dans les limites de celle-ci ou de celle-là doivent nécessairement viser à la péréquation des charges sociales, s'ils ne veulent pas se faire les uns aux autres une concurrence intenable et, dans l'occurrence, déloyale.

D'ailleurs, on comprend facilement que l'établissement exclusif de l'assurance-chômage dans une province constituerait, pour les chômeurs des autres provinces, un puissant foyer d'appel et que bien vite cette mesure sociale deviendrait une faille complète. Il faut tenir compte de l'absence de frontières entre les provinces et des facilités naturelles de migration à l'intérieur d'un même pays." *Statième Rapport, Commission des Assurances Sociales de Québec*, p. 203.

⁴⁵ Mémoire de la Confédération des Travailleurs Catholiques du Canada, Inc., 1er février, 1939. A similar recommendation was made by the same association to the Federal Cabinet in a memorandum dated 15th December, 1938.

⁴⁶ Ex. 7, Brief of Man., Pt. VII, pp. 64-65; Ex. 140, Brief of N.S., p. 43, Ev. p. 3926ff.; Ex. 101, Brief of P.E.I., p. 46; Ex. 34, Brief of Sask., p. 277; Ex. 172, Brief of B.C., p. 352; Ex. 236, Brief of Edmonton Chamber of Commerce; Ex. 89, Brief of Canadian Manufacturers' Ass'n; Ex. 106, Brief of Trades and Labor Congress; Ex. 380B, Brief of Canadian Welfare Council; Ex. 401, Brief of Central Committee, Communist Party of Canada; Ex. 206, Brief of B.C. Council of Women; Ex. 205, Brief of Greater Vancouver and New Westminster Youth Council; Ex. 209, Brief of Vancouver Young Liberal Ass'n; Ex. 214, Brief of Canadian Ass'n of Social Workers, B.C. Branch; Ex. 28, Brief of Greater Winnipeg Youth Council; Ex. 350, Montreal Branch of Canadian Ass'n of Social Workers; Ex. 66, Brief of Regina Board of Trade.

⁴² At the request of the Commission a study was made by the National Registration Branch of the Dominion Department of Labour to estimate, on the basis of the returns of the national register of persons on aid, the probable effects of unemployment insurance in dealing with the problems of relief. On the basis of an operating insurance scheme similar to that provided in the Employment and Social Insurance Act of 1935, and by an examination of the register of persons on aid in ten selected Canadian cities—Halifax, Montreal, Quebec, Hamilton, Toronto, Windsor, Winnipeg, Vancouver, Regina and Calgary—which covered between 60 and 65 per cent of the total in receipt of aid in the months under review, it was estimated that in September, 1937, 14 per cent of all persons in receipt of aid in these cities would have been cared for by insurance benefits, and in September, 1938, 18.1 per cent would have been so cared for.

⁴³ Final Report, p. 29.

defined with care and accuracy to prevent its extension under the theory of ancillary powers.

So long as cash payments only are provided there is no reason why insurance against unemployment resulting from illness should not be dealt with along with other unemployment, and we recommend that the Dominion should have the necessary power to do this.

CONTRIBUTORY OLD AGE PENSIONS

The increasing cost of the present non-contributory old age pensions system, both to the Dominion and to the provinces has already been pointed out.⁴⁷ Costs are likely to double within the next thirty years, apart from the possible lowering of the age limit or of other restrictions, or any increase in pension rates. Most countries which have adopted non-contributory old age pension schemes have sooner or later endeavoured to lower the cost to the general taxpayer by establishing pensions on a compulsory contributory or insurance basis. The probability of a demand for such action in Canada at an early date must, therefore, be taken into account.⁴⁸

There can be little doubt that a compulsory contributory scheme of old age pensions would at present fall under provincial jurisdiction. In order to visualize the jurisdictional problem it will be of advantage to discuss some general features of contributory systems.

A compulsory contributory scheme may be devised to provide either flat-rate annuities, as does the British scheme, or annuities on different scales based on graded contributions as does the American system.⁴⁹ The former has the advantage of greater simplicity of administration, but if it is to be self-supporting, or nearly so, it must be based on premiums low enough to be paid by the lowest wage groups and in this case the annuities are likely to be small. The British scheme is based largely on this principle and the annuities paid are at a bare subsistence level. The American scheme, which is a modification of that followed by most

continental European countries, provides for premiums based on a percentage of wages and salaries. This type of scheme involves more book-keeping, but it has the great social advantage of keeping some relationship between earnings before retirement and annuities afterwards so that the annuitant who has worked at good wages is not reduced to a bare subsistence level immediately he retires from employment.

Either type of annuity is costly, though obviously the graduated type much more so. Hence no country assesses the employees for the full contribution necessary. The most usual method is that of a three-way contribution—from the employee, the employer and the state—in various proportions.⁵⁰ In any case the contributions assessed on employer and employee are likely to be considerable. The French system appears to exact about 4 per cent of wages, half paid by employer and half paid by employee; the German about 5 per cent similarly distributed between employer and employee; the American system when in full operation will levy about 6 per cent on wages, half likewise paid by employer and half by employee.⁵¹

The possibility of a Canadian province embarking on a contributory system is indeed remote. A province is scarcely likely to introduce a system which would tend, by increasing labour costs, to impair the competitive position of its industries vis-à-vis those of other provinces, and which at the same time is not likely to be popular with wage-earners or merchants. It is less likely to do so while non-contributory pensions, of which the Dominion pays three-quarters, are available for the needy aged. Theoretically, of course, the present system of non-contributory pensions might come to an end by ten years' notice of repudiation of present agreements by the Dominion. But it is patent to all that there is little, if any, possibility of the Dominion repudiating these agreements unless it can offer a more acceptable alternative.

But assuming that one or more or all provinces were prepared to establish contributory schemes, the administrative difficulties involved would be very great. At the outset there would be the difficulty of getting a common system adopted, or systems sufficiently close to one another to provide

⁴⁷ See p. 32.

⁴⁸ Various submissions were made to the Commission urging compulsory contributory old age pensions, *e.g.*, Ex. 23, Greater Winnipeg Youth Council, p. 3; Ex. 206, B.C. Council of Women, p. 2; Ex. 285, Toronto Property Owners' Ass'n; Ex. 350, Montreal Branch of Canadian Ass'n of Social Workers (Ev. p. 8440); Ex. 89, Canadian Manufacturers' Ass'n, pp. 1-2; Ex. 380B, Canadian Welfare Council, p. 13; Ex. 383, United Church of Canada, p. 4. Also the following provinces: B.C. (Ev. p. 5553); N.S. (Ev. p. 4130); Ont. (Ev. pp. 7698-99); Brief of Sask., p. 332.

⁴⁹ Many variations may, of course, be provided for, *e.g.* pensions only may be paid or provision may be made to repay the estate of the contributor if he dies before reaching pensionable age; pensions may be equal, but contributions unequal and based on a percentage of wages, etc. But for the sake of clearness we have discussed only the two main types in their simplest forms.

⁵⁰ The state's contribution may consist in paying slightly higher interest rates on annuity reserves than on long-term bonds, and in assisting the lowest income groups unable to pay their full premiums by providing non-contributory pensions, or by making up the difference in a pension between the amount bought by the annuitant and the minimum pension recognized as required.

⁵¹ *More Security for Old Age* (Report by Twentieth Century Fund, Inc., New York, 1937), pp. 46-47.

for equality of burdens on industry and on employees in different provinces. It would also be difficult to keep provincial systems on common standards after their introduction. Assuming the Dominion had jurisdiction over unemployment insurance, there is the further difficulty that the Dominion and the provinces might very well be levying similar contributions on payrolls and wages for different social insurance schemes. Co-ordination of provincial levies for social insurance with that of the Dominion, and with the Dominion tax system in order to prevent inequities to certain groups of taxpayers would be extremely difficult to attain and to preserve. There would be great difficulty in adjusting accounts for employees who moved across provincial boundaries during their working life, and without such adjustments provincial schemes would almost inevitably tend to immobilize labour.

It thus appears that if compulsory contributory old age annuities are to be established in Canada, the matter cannot be left to the provinces. They are scarcely likely to have very strong incentives to establish their own systems; it would be undesirable if they did establish them. It is clear that only the Dominion could institute a compulsory system which would be administratively simple, which would not interfere with the free movement of labour, which could impose burdens on industry equally irrespective of provincial boundaries (and likewise on labour), and which could be integrated with the tax system as a whole so as to prevent imposing unfair taxation on either industry or labour.

We recommend, therefore, that the Dominion be given jurisdiction to institute a compulsory system of old age annuities.⁵² In so recommending, it must not be assumed that we are recommending the immediate adoption of such a system. As we point out elsewhere, the present tax system bears heavily on costs of production and on consumption.⁵³ A contributory old age pension scheme would increase this tendency, unless the scheme were preceded or accompanied by appropriate changes in the general tax system. Given the adoption of the Financial Plan which we recommend in the next section of this Report, a general reorganization of the present tax structure to shift the emphasis from taxes on costs to taxes on income should be possible. It is our hope that

this course will be followed. In such an event a contributory old age pension system could be fitted into the general tax structure more equitably to workers and employers alike and with less danger of adversely affecting the national income.

We further recommend that the Dominion should be empowered to include in a compulsory contributory system provision for pensions for widows and orphans of annuitants and provision for pension on retirement from industry due to invalidity or permanent disability. Whether or not such provisions should be included are, of course, matters of policy, but we think it highly desirable that the Dominion should be enabled to do so. Such additional features to a contributory old age pensions system are important for promoting social security for dependents of workers, and have been widely adopted in other countries. We do not think they would in any way impair provincial autonomy in other social welfare matters, since they would simply provide cash benefits to dependants (or the annuitant in case of permanent disability). Indeed, such provisions in a contributory old age pension scheme would tend to relieve provincial budgets from their present burdens for mothers' allowances and the maintenance of orphan children.

But it is clear that a contributory system would not entirely supersede the need for non-contributory pensions. For many years to come no one would have accumulated enough to his credit to pay for the minimum pension, and this would have to be supplemented. There will always be some who, owing to irregularity of employment, will not accumulate enough to buy the minimum pension at the retiring age; and some who are never wage-earners at all and from whom it is impracticable to exact contributions (at double rates since they have no employer) by other means.

While it might be simpler from an administrative point of view to have all old age pensions—contributory and non-contributory—administered by a single authority, we see no strong objection to the continuance of provincial administration of non-contributory pensions, even if a contributory system were established by the Dominion. The dual system should not involve much duplication of staff, since non-contributory pensions are paid on the basis of a means test, and contributory on the basis of quasi-contractual rights. The number of pensioners on provincial rolls would, of course, decrease with the increase of those receiving annuities under the Dominion system, and it might well be that a province would find it desirable and

⁵² It is possible that a compulsory old age pension (or annuity) system might be grafted on to the present system of Dominion Government annuities under which an annuity may be purchased on very favourable terms.

⁵³ See Sect. B, Chap. VIII.

economical to withdraw from the administration of non-contributory pensions. Our recommendations later for a general constitutional provision permitting delegation of power by a province to the Dominion, or vice versa, would facilitate this change in the event of any province desiring to withdraw from the field and the Dominion being willing to accept the responsibility.

In this treatment of contributory pensions we have deliberately omitted discussion of many practical questions, as for example, whether reserves should be established, or premiums paid into general revenues, the state accepting the obligation to pay annuities when due; whether annuities should be available at ages lower than non-contributory pensions at the option of the annuitant; whether annuitants who had contributed less than the amount required to pay annuities equal to pensions under the non-contributory scheme should be paid something more than the amount of non-contributory pensions; and so on. But these are questions of policy. Our purpose has been simply to examine the problem of jurisdiction. Assuming the adoption of our recommendation as to jurisdiction, policy is entirely within the discretion of Parliament.

HEALTH INSURANCE

We have indicated elsewhere that since social and economic conditions and social outlook differ so greatly from province to province, we consider it essential that with certain exceptions responsibility for providing medical and hospital services and the choice of means should be left to the provinces.⁵⁴ Among possible means is that of health insurance.⁵⁵ The desirability of co-ordinating all medical services within the province under provincial control is a strong argument against the establishment of any scheme which would remove any large group within the province from provincial responsibility, as a Dominion health insurance scheme would do. Any health insurance scheme should be closely co-ordinated with other medical services, especially with those services providing medical assistance for low income groups.

Health insurance differs profoundly from unemployment insurance and contributory old age

pensions (sometimes called old age insurance). Unlike unemployment insurance, health insurance is not subject to wide variations in demand; the risks are more easily estimated, and more constant. It is not subject to cyclical fluctuations, or sudden emergencies making widespread and prolonged drains on reserve funds, except that, in the event of widespread unemployment, premiums may be difficult or impossible to collect. Unlike contributory old age pensions, health insurance is not a compulsory savings scheme requiring individual accounts covering many working years. It is more nearly insurance properly so called—in the sense that it covers a contingent risk for a short term, and is terminable on a fixed date or on fixed conditions. No serious problems of reserves or of bookkeeping for a migratory labour force are thus likely to arise. We see, therefore, no insuperable obstacle to the establishment of health insurance by a province.

Ordinarily health insurance contributions are assessed against employers and employees though the state may contribute part of the cost. If income groups whose incomes are too low to enable them to pay part or all of their contributions are included in the scheme, the state may contribute the necessary additional amounts for these groups, or heavier contributions may be exacted from higher income groups. One method is that of exacting contributions from workers in proportion to earnings rather than on a per capita basis. Such a system has the merit of simplicity of collection and administration, but in so far as the contribution exacted from higher wage groups exceeds their benefits it is in effect an income tax on low incomes rather than an insurance premium.⁵⁶

In the event of a province instituting a scheme for health insurance providing for taxes on wages and wage bills it might be found convenient to entrust the Dominion with the collection. If the Dominion were also levying taxes on wages and wage bills for other social insurance schemes (unemployment insurance and/or contributory old age pensions) it would appear to be highly desirable in the interests of economies in tax collections and tax compliance that collection be made by a single authority, and the Dominion is obviously the appropriate authority.

⁵⁴ See p. 32.

⁵⁵ For discussion see Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*, pp. 73ff. Cf Ex. 103, Canadian Medical Ass'n, Ev. pp. 3006-31; Ex. 206, Provincial Council of Women, British Columbia; Ex. 223, Memo. on Distribution of Health Functions between the Dominion and the Provinces (B.C.); Ex. 246, College of Physicians and Surgeons of Alta.; Ev. (Sask.), pp. 1412-14.

⁵⁶ We later recommend that the provinces should withdraw from the income tax field. But for the purposes of social insurance within the competence of the provinces (including health insurance) we have made it clear that our recommendation for the renunciation by the provinces of the right to levy income taxes does not include premiums for social insurance even if levied as a proportionate tax on wages.

In recommending provincial jurisdiction over health insurance we are aware of the possibility incidental to any social insurance scheme put into effect province by province that it may result in inequalities of taxes on industry as between provinces. We think, however, that regional differences in Canada militate against an acceptable national scheme. But experience with provincial social welfare legislation in the past has been that once an important reform is instituted in one province it has been adopted relatively quickly by others. This was the case with workmen's compensation; it might well be the case with health insurance and, if so, any inequalities of tax burdens as between provinces resulting therefrom would soon be evened out. There is also the possibility that if certain provinces should desire a uniform scheme, administered by the Dominion, they could delegate to the Dominion the authority to institute such a scheme provided that our recommendation for general power of delegation, which we deal with elsewhere, is implemented.

It must not, of course, be assumed that the Commission is in any way recommending the adoption of health insurance by the provinces. This is clearly a matter of provincial policy in which the province should have full discretion. The Commission is simply concerned with pointing out that, if a province should desire to adopt health insurance, the financial proposals made elsewhere in this Report are not a hindrance. Indeed, the Commission's Financial Plan, by improving the position of all provinces on current account, should make more possible than heretofore provincial expenditures on health insurance or other welfare measures.

Workmen's Compensation.—Workmen's compensation is already covered by insurance under provincial legislation, and there seems to be no valid reason for disturbing this arrangement unless it is found that reasons of expediency (e.g. ease of collecting all insurance premiums *en bloc*) make it convenient to do so. We recommend, therefore, that the Dominion should have power to take over this service in respect of any province if requested by that province to do so, but that in the absence of such request, the present provincial jurisdiction should be continued. It was suggested to us by the Chairman of the Workmen's Compensation Board for Manitoba that provincial legislation establishing boards under provincial compensation acts might be invalid as infringing the exclusive

Dominion power to appoint judicial officers.⁵⁷ In view of the large sums under administration by these boards, and in view of the established value of the system of workmen's compensation which has been developed by the Canadian provinces, we think that provincial jurisdiction to create such boards should be clearly confirmed.

JURISDICTION IN SOCIAL INSURANCE —CONCLUSIONS⁵⁸

We have concluded that two types of social insurance—unemployment insurance and contributory old age pensions—are inherently of a national character, but health insurance and workmen's compensation are not, and that in view of Canadian conditions, these can be financed and efficiently administered by the provinces. It is not improbable that in the course of time it may be desirable to finance other social services by social insurance methods, or that conditions would warrant national health insurance, or a national system of workmen's compensation. It would, therefore, seem desirable that rigidity in the matter of jurisdiction should be avoided. The simplest method would appear to be to provide for concurrent jurisdiction in social insurance. This would enable the Dominion and the provinces to adjust their respective responsibilities over social insurance from time to time in accordance with changing conditions. In view of the cost of social insurance programs, duplication of provincial and Dominion services would not likely result even if there were concurrent jurisdiction.

But it may well be that the simplest solution theoretically is not politically possible, though this is not for us to judge. In the event of concurrent jurisdiction over social insurance proving impossible of attainment, we recommend that the Dominion be given exclusive jurisdiction over the two services, unemployment insurance and contributory old age pensions. The general provision for a power of delegation by the Dominion to the provinces, or vice versa; which we recommend later,⁵⁹ should provide some measure of elasticity in jurisdiction over social insurance, should conditions warrant changes later.

⁵⁷ Ev. pp. 721-25.

⁵⁸ For an interesting proposal that the division of jurisdiction between the Dominion and the provinces should be social insurance or contributory services for the Dominion, leaving the rest to the provinces, see Ex. 380A, 380B, Brief of Canadian Welfare Council, Ev. pp. 9172-9227.

⁵⁹ See p. 72.

5. THE FINANCING OF PROVINCIAL AND MUNICIPAL SOCIAL SERVICES

In the services which will remain exclusively to the province and its municipalities such as mothers' allowances, child welfare, and poor relief, we foresee expansion and hence rising expenditures. Further, under the division of function in the public health field which we have recommended, expansion in provincial and municipal expenditures is likely to be proportionately much greater than in those of the Dominion. Hitherto there have been wide differences in the financial ability of the provinces to supply welfare services. Moreover, in some provinces, and notably Quebec, religious organizations and private charitable associations have provided services which, in other provinces, were wholly or almost wholly state functions. For these and other reasons there have been wide differences in provincial expenditures, in the proportion of expenditures which the provinces compelled the municipalities to carry, and in the quality of state services. In the interests of national unity it is highly desirable that every province should be able to provide these services in accordance with average Canadian standards. Fiscal justice also demands that the municipalities should not be required to carry an undue proportion of the load. These desirable conditions might be attained in either of two ways: the provinces might be assisted by Dominion grants-in-aid (apportioned in accordance with provincial needs) for particular provincial services, or every province might be put in a fiscal position to determine its own policies and to finance its own services in accordance with its own peculiar needs. It is assumed that in either case the provinces would pass on some of the benefits to the municipalities. In view of the wide differences in social philosophy and economic and social conditions among the provinces, and in view of the fact that local, detailed, and highly personal administration is often

required in the services which we have recommended should be left to the provinces, we think that the second method is highly preferable.

Our financial recommendations aim to place every province in a position to finance its own social welfare program in accordance with average Canadian standards, and to make such adjustments with its municipalities in the financing of this program as seems to it reasonable. Moreover, provision for periodical revision of adjustment grants and for emergency grants should enable each province not only to protect its standards in social services, but also to improve them at the average pace maintained by the provinces as a whole. This method we believe will insure to the provinces not only the capacity to provide reasonable welfare services for their people, but complete autonomy in the formulation of their social welfare policies, in the choice between alternative services and between alternative methods, and in the administration of their services.

This does not rule out the possibility of Dominion assistance by grants-in-aid for particular services (e.g. mothers' allowances or special health measures) should the Dominion so decide. It is indeed possible that Dominion assistance of this sort might be a means of improving, or co-ordinating, or equalizing particular provincial services, and it is possible that the national interest might on occasion justify such a step. Provided provinces are not thereby tempted to forgo or starve other needed services, we can see no serious objection to small grants-in-aid for particular provincial services, and especially for specialized health services where scientific standards for measuring efficiency are relatively easy to apply. But it should be noted that such grants-in-aid would to some extent be an alternative to the adjustment grants recommended in the Commission's financial plan, and to increases in them.

CHAPTER II

LABOUR LEGISLATION *

Labour legislation is a convenient term covering such subjects as minimum age for employment; hours of work; the regulation of wages, and provision for minimum wages; trade unions and their status; conditions of work in factories, mines and elsewhere; employment offices; conciliation and arbitration in industrial disputes; technical education, apprenticeship, and youth training; workmen's compensation; a weekly day of rest. Some of these matters have been dealt with elsewhere because of their close relation to the problems of unemployment and of education.¹

Labour legislation as such is not mentioned in the British North America Act and at present jurisdiction over these matters is divided between the federal and the provincial legislatures on lines that are not very practical. Roughly speaking the federal jurisdiction is ancillary to jurisdiction in other matters, e.g. railways, criminal law, and the implementation of treaties under section 132² of the British North America Act. Provincial control over labour matters rests largely on provincial jurisdiction over "property and civil rights".

The result of this division of authority has been concisely stated in a research study prepared for this Commission by Professor A. E. Grauer:—

"The comparative survey of labour legislation in Canada . . . reveals the following general facts. First, there is a marked lack of uniformity in legislation as between the provinces. Second, no single international convention has been implemented by all the provinces, technically or in substance; and no province has put into effect the standards of a substantial number of international conventions. Third, no technique has been worked out for co-operation in bringing about more uniform standards of labour legislation or in implementing international conventions. There is nothing in the Canadian field to resemble the International Labour Organization in the international field. The device adopted by British Columbia in 1921 of passing legislation but stipulating that it should not come in force until other provinces had enacted similar legislation, has not been successful."³

* For a comprehensive survey of labour legislation (Dominion and Provincial) see A. E. Grauer, *Labour Legislation* (mimeographed), and Appendix 5—Esdras Minville, *Labour Legislation and Social Services in the Province of Quebec*.

¹ See as to unemployment p. 24, and as to education, p. 50.

² This section gives power to the Dominion Parliament to perform the obligations arising under treaties between the Empire and foreign countries.

³ A. E. Grauer, *Labour Legislation*, p. 174. (Mimeographed.)

Professor Grauer's opinion is that, upon the basis of the number of conventions of the International Labour Organization which have been ratified by various governments, Canada is relatively a backward country. He points out, however, that Canadian workers in fact enjoy better conditions than workers in many countries such as China and Japan whose records in the implementation of international labour conventions are better than that of Canada. From this he concludes that the enactment of legislation to implement labour conventions is hampered in Canada not by unwillingness to improve working conditions, but by constitutional difficulties arising from the present division of legislative power. The Dominion Parliament has, on occasion, been willing to act but powerless to do so, while individual provinces have been reluctant to take any action which might place their industries at a disadvantage in comparison with industries in other provinces.

It was contended before this Commission that the jurisdiction of the Dominion Parliament over labour legislation should be considerably enlarged.⁴ One reason is the desire for uniformity in these matters throughout Canada, and another is the circumstance already noted that labour legislation which imposes a burden on industry can often be delayed in any one province by the argument that its adoption would place that province at a competitive disadvantage in comparison with other provinces. Yet those who were most anxious that the Dominion Parliament should have power to establish minimum standards below which no province might fall, were also desirous that any province which wished to establish higher standards and felt that it was economically in a position to do so, should not be prevented from acting.⁵

Provincial control over many phases of labour legislation is desirable for several reasons. The

⁴ *E.g.* Ex. 106, Brief of Trades and Labor Congress of Canada, p. 17; Ex. 394, Brief of Canadian Chamber of Commerce, p. 8.

⁵ Evidence by representative of Trades and Labor Congress, p. 3131; Ex. 99 Brief of League for Social Reconstruction, p. 33, Ev. p. 2840. The Government of B.C. took a similar view (Ex. 172, p. 352, Ev. p. 5475; Ex. 192, Memo. B.C. Dept. of Labour, pp. 3-4). So also did the Government of N.S. (Ex. 140, p. 43, Ev. pp. 4190-91); the Ont. Minister of Labour (Ev. p. 7882) and the Man. Deputy Minister of Labour (Ex. 16, Memo. Man. Dept. of Labour). The Governments of Sask. and P.E.I. favoured Dominion jurisdiction over labour legislation (Ev. pp. 4518-19, Ex. 34, pp. 332-34). Numerous private organizations made similar recommendations.

relations of employer and employee, and notably such matters as apprenticeship, should conform to the general social outlook of the region. Further, situations may arise in labour matters in which prompt action may be needed and it may often be the provincial government which is the better able to act promptly and effectively. Men with a sense of grievance are naturally insistent on meeting with those in whose power it lies to take effective action to redress the grievance. In practice this may mean ministers rather than officials. There are many industries in which workers and employers find it more convenient to approach the provincial government than Dominion ministers in Ottawa.⁶ Some of the industrial standards acts recently enacted by certain provinces require elaborate administrative machinery. An intimate knowledge of local conditions is requisite if detailed regulations are to be applied intelligently and modified both intelligently and promptly to meet unforeseen contingencies. This point has been well illustrated in the case of legislation providing for workmen's compensation and for precautions against industrial accidents which has long been administered by the provinces. Even if the possibility once existed of securing more economical administration of these types of legislation by greater centralization, economies could now be effected only at the cost of upsetting a considerable volume of provincial legislation.

Yet in other matters uniformity is desirable. Theoretically, uniformity could be achieved by agreement between the provinces implemented by joint legislation. But the difficulties of securing agreement between nine provinces and of effecting uniform changes in legislation enacted in this way are obvious. In labour matters where uniformity is desirable there is thus a strong case for jurisdiction by the Dominion Parliament.

WAGES; HOURS OF LABOUR; AGE OF EMPLOYMENT

On three subjects in particular, minimum wages, maximum hours, and age of employment, basic

⁶The evidence of the late Hon. M. M. MacBride, Minister of Labour for Ontario, on this point was (Ev. pp. 7883-84): "Dealing specifically with the question of industrial disputes may I express this opinion, that both the representatives of the employees and the employers invariably want to meet someone in authority. While the Minister might not be quite as capable as some of his officials—and I am quite frank enough to say that—they do want to see the Minister. He has to spend a good deal of his time in meeting delegations, small and large, and paving the way to a result that will finally be brought about by an official under his direction. Therefore, I question very much if we had an industrial dispute in British Columbia whether they could get that personal contact with the official at Ottawa, no matter how capable and sincere he may be—I think they would want to deal with the Minister in British Columbia, and I think they would want to deal with the Minister in Ontario, and so in the other provinces. That is our experience."

uniformity of legislation throughout Canada would be highly desirable. In the first place, so long as there are wide differences between provincial laws on these subjects, there are strong incentives for a province with high standards on these matters to discriminate against the products of other provinces with lower standards in order to protect both capital and labour within the province from unfair competition from without. Legislation of this sort almost inevitably leads to retaliation, and in any case tends to impair freedom of trade between provinces. In the second place, federal jurisdiction over maximum hours, minimum wages, and age of employment, while not absolutely essential for administration of unemployment relief by the Dominion would facilitate effective and systematic action. Neither in the case of protecting internal freedom of trade, nor for purposes of handling unemployment relief, would complete and exclusive jurisdiction over these matters be required. It would be sufficient if the Dominion had authority to establish basic minimum standards in each case, leaving to each province the power to impose such higher standards as it desired. The power of the Dominion Parliament in these respects should, however, be precisely delimited because, as we have pointed out in our discussions of the social services, there is real danger to provincial autonomy if much latitude is left to the courts in deciding what legislative power is to be regarded as ancillary to a defined federal power.

The relationship between minimum wages and relief is especially close. If wages are lower, or little higher than relief rates, workers will be tempted to leave their employment and claim relief. This may be especially so in the case of men with large families, since their incomes from relief may be much higher than their wages if employed. Indeed, the test of willingness to work is meaningless, except in relation to a wage scale. On the other hand, when there is a labour surplus, employers may be tempted to pay wages below relief rates, leaving the state to make up the difference in relief. As was pointed out in hearings, this situation is especially liable to develop in the case of part-time employment.⁹ If the Dominion assumes responsibility for relief of employables it would follow that it ought to have power to establish basic minimum wages in order to protect the taxpayer against abuses of relief by employee or employer.

⁹ Ev. pp. 7377ff.

ENFORCEMENT OF LABOUR LEGISLATION

Labour legislation requires vigilant enforcement, and in matters in which interprovincial friction may arise any suspicion that legislation is not being adequately enforced may lead to ill-feeling. In many cases the province is in a far stronger position than the Dominion for securing thorough observance of the law. For instance, the enforcement and modification of rules of safety in factories and mines can conveniently be combined with workmen's compensation. On the other hand the enforcement of minimum wage legislation could probably be very efficiently combined with any system of social insurance under which premiums were collected which were fixed as a percentage of wages. But, in a general way, enforcement seems to be appropriately a provincial problem.

STATUS OF LABOUR UNIONS AND JURISDICTION IN INDUSTRIAL DISPUTES

Our discussion of the status of labour unions and of conciliation and arbitration must be in very general terms. These topics are not as closely allied to financial problems as are other phases of labour legislation, and we have had very little evidence concerning them.¹⁰ Such limitations as are imposed on the activities of unions of employers or employees by the criminal law are matters of federal jurisdiction, and the power of the Federal Parliament to give labour unions a certain status and capacity and to regulate the internal rights of their members is analogous to its implied power to incorporate companies with Dominion objects. On the other hand, the civil rights and liabilities of labour unions are, in general, determined by the provinces.¹¹ Some degree of uniformity in provincial legislation is highly desirable, but its attainment must be by agreement between the provinces as transfer of jurisdiction on such a subject to the Federal Parliament would present insuperable difficulties. We later propose regular Dominion-provincial labour conferences and these might be a convenient means of facilitating uniformity of provincial legislation in the matter of civil rights and liabilities of labour unions.

¹⁰ They are considered in our research studies: for status of labour unions see A. E. Grauer, *Labour Legislation* (Mimeographed), Ch. V.; and Appendix 5—Esdras Minville, *Labour Legislation and Social Services in the Province of Quebec*, Ch. IX; and for conciliation and arbitration, see Grauer, Ch. IX, and Minville, Ch. IX.

¹¹ *Ibid.*

Since some industrial disputes are matters of merely local concern while others extend to two or more provinces the allocation of jurisdiction over arbitration and conciliation in such disputes presents great difficulties in the Canadian as in other federal systems. But these difficulties were not apparent in 1867 and were not foreseen when the British North America Act was drafted. The Dominion in 1907 attempted, in the Industrial Disputes Act, to exercise a wider jurisdiction than is possible under the British North America Act by purporting to deal with a number of public utilities only some of which were under federal jurisdiction. Although as a result of litigation in 1925¹² this Act was amended and its scope restricted, it cannot be said that it had caused serious inconvenience to the provinces while it had been believed to be law. All the provinces, except Prince Edward Island, subsequently passed enabling legislation (as to the constitutionality of which there appears to be some doubt) applying the amended Act to disputes within exclusive provincial jurisdiction. British Columbia has since repealed this legislation. But each province has its own legislation as well and, therefore, in some provinces there are two methods by which the same dispute may be dealt with: one under the federal Act as extended to the province, the other under provincial legislation.¹³

This overlapping of jurisdiction is apt to lead to dissatisfaction among employers and employees and to friction between governments. One side to a dispute may wish to call in the Dominion service, the other the provincial. It has even happened that both have been called in.¹⁴ Even if both sides have accepted the same service, the side dissatisfied with the final result may be inclined to feel that it would have been better off if the other conciliation service had been employed. In different disputes in somewhat similar industries, decisions based on different principles may be reached because the same conciliation service is not used.

¹² *Toronto Electric Commissioners v. Snider* [1925], A.C. 396.

¹³ In point of fact the overwhelming majority of disputes are dealt with by provincial conciliation. See the *Labour Gazette* for March, 1938, where at p. 253 there is a detailed list of the 278 strikes and lockouts in Canada in 1937. Of these only 8 appear to have been settled under the Dominion Industrial Disputes Investigation Act, while over 60 appear to have been settled by the use of provincial machinery, the balance being settled in some other manner.

¹⁴ The strike of coal miners in Minto, N.B., in 1937 illustrates these two points. The provincial conciliation service dealt with the situation for some time but its actions were not agreeable to the United Mine Workers who asked the Dominion Department of Labour to appoint a conciliation board under the Industrial Disputes Investigation Act. This request was granted, an action that was a "great disappointment" to the Attorney-General of New Brunswick. (See *The Gazette*, Montreal, Dec. 17, 1937.)

In some cases (other than those within the legislative competence of the Dominion as defined in the Snider case) a Dominion conciliation service can achieve beneficial results which would not be possible for a provincial service. Dominion officers with some knowledge of conditions in all provinces may be in the best position to handle disputes in industries which are found in two or more provinces. Such industries may have an interprovincial character resulting from the existence of labour unions, employers' associations, or controlling financial interests organized on a national scale. Consumers in one province may be seriously affected by the prolongation of an industrial dispute in another province. There are, therefore, possibilities that different action by different provincial services, especially if a dispute is in progress at the same time in two or more provinces, may prolong industrial unrest and attendant economic dislocation.

We fully recognize that circumstances in some provinces will tend to make the range of disputes over which authority can conveniently be transferred to the Dominion smaller than in others. We recommend, therefore, that it should be made possible for any province to transfer to the Dominion jurisdiction over conciliation and arbitration in any category of industrial dispute. Should a transfer be made it will be important that any such category should be clearly defined in order that no possibility of dual jurisdiction should exist.

INTERNATIONAL LABOUR CONVENTIONS

In one very important respect the situation with regard to labour legislation has changed completely since Confederation. For the last twenty years Canada has been a member of the League of Nations and of the International Labour Organization. Labour conventions of an international character are adopted from time to time and member-states of the International Labour Organization are invited to ratify them. Canada among other nations has ratified a number of these conventions. To give effect to their provisions, which are designed to establish uniform labour standards throughout the world, requires legislation which it is not within the competence of the Parliament of Canada to enact,¹⁵ and which the provinces are under no legal obligation to enact. It might have been supposed that on joining an

international organization a state would at once alter its constitution to conform to the new relationship so that it could play its part effectively in the activities which it recognized as desirable. But no such action was taken by Canada. This situation is entirely unsatisfactory and we recommend that the Dominion and the provinces together should decide how International Labour Conventions should be implemented. It seems that the best method would be for the provinces to give to the Parliament of Canada power to implement such international labour conventions as the Government of Canada has ratified, or may ratify in the future.¹⁶

These labour conventions are the work of representatives of many countries, and it is inconceivable that an international convention could be formulated as part of a colourable attempt by the Dominion to encroach upon provincial jurisdiction. We do not feel, therefore, that (if the Dominion is given full power to implement these international labour conventions) there is any legitimate cause for fear that this method will be used for the purpose of invading provincial rights. It is true that existing provincial jurisdiction may be curtailed to some extent, but only in cases in which a large number of sovereign states have agreed to accept uniform labour standards, which they consider should prevail throughout the whole world.

The same considerations do not apply to the power to implement treaties which may be concluded between Canada and some other single country, and what we have said about the jurisdiction to implement international labour conventions must not be taken to apply to the more general issue of legislative competence to implement Canadian treaties, which we consider is outside our terms of reference. A number of submissions made to the Commission argued that the recent accession of Canada to the status of a fully self-governing nation required that the Dominion Parliament should have power to implement such treaties as Canada's international status enabled her to conclude.¹⁷ In these submissions the inability to implement international labour conventions was quoted as a striking example of the difficulties arising from the absence of such a power. Our

¹⁶ This might be done by constitutional amendment, or, if our general recommendation providing for delegation of power by a province to the Dominion or *vice versa* is adopted, by delegation.

¹⁷ Ex. 100, League of Nations Society; Ex. 106, Trades and Labor Congress, p. 17; Ex. 386, Canadian Legion, p. 4; Ex. 99, League for Social Reconstruction, p. 33; Ex. 257, Alberta C.C.F. Clubs, p. 13; Ex. 205, Greater Vancouver and New Westminster Youth Council, p. 2; Ex. 209, Vancouver Young Liberal Ass'n; Ex. 210, C.C.F. (B.C. Section); Ex. 28, Greater Winnipeg Youth Council, p. 2; see also brief of Sask., p. 330, Ev. pp. 2279-81.

¹⁵ See decision of the Privy Council, *Attorney-General for Canada v. Attorney-General for Ontario*, [1937], A.C. 326.

proposal that the Dominion Parliament should have power to implement these conventions will meet this particular difficulty, but it does not touch the more general issue raised in these submissions.

DOMINION-PROVINCIAL LABOUR CONFERENCES

We have already referred to the lack of uniformity in labour standards among the provinces, and have pointed out the undesirability of undue centralization of jurisdiction as a means of effecting uniformity. The alternative method is co-operation and agreement among the provinces on labour standards, but heretofore there has been no particular means for facilitating co-operation, and it has, therefore, been lacking. There is also lack of co-operation between the Dominion and the provinces in labour matters generally. As we point out elsewhere a similar situation has hitherto existed in the matter of Company Law, but this condition seems to have been remedied by co-operation between companies branches of provincial governments and the Dominion Secretary of State's Department to work out a uniform Companies Act. We think that much could be done to promote uniformity in labour legislation in a similar way by co-operation among the Departments of Labour of various governments. Moreover, there are many other labour matters in which all governments, including the Dominion, have a common interest, as, for example, the administration of labour legislation, investigation and research in labour problems, and the preparation of statistics in labour matters.

The situation appears to call for regular conferences of representatives of Labour Departments. A conference of this sort did indeed meet in May, 1938, and appears to have been highly successful.¹⁸

¹⁸ In May, 1938, the first conference of the Canadian Association of Administrators of Labour Legislation was held in Ottawa. The Association is made up of the officials of the various Labour Departments in Canada. Its objects are "to serve as a medium for the exchange of information and encourage co-operation among its members; to promote the highest possible standards of law

We commend this step, and we think that annual conferences, either of officials of Labour Departments meeting in a separate conference, or as part of a general and regular Dominion-Provincial Conference should be carefully considered by the appropriate authorities. Such a conference should go far to facilitate uniformity in labour legislation and to promote a better understanding among governments of their respective labour problems.

CONCLUSIONS

It will be convenient to summarize here our conclusions and recommendations:—

1. In order to protect the principle of freedom of trade between provinces and to facilitate the handling of relief for employables by the Dominion, the Dominion Parliament should have jurisdiction to establish basic minimum wages and maximum hours of labour, and to fix the age of employment, leaving to any province jurisdiction to raise minimum wages, lower hours of labour, or raise the age of employment if it so desires. But, as noted previously, the powers of Parliament should be precisely defined in order to protect the autonomy of the provinces.

2. In the case of industrial disputes, provinces should be empowered to delegate jurisdiction to the Dominion over any category of industrial disputes now within provincial jurisdiction.

3. The Dominion should be empowered to implement any labour conventions of the International Labour Organization. It should be understood, however, that we do not here make any recommendations with respect to treaties in general.

4. Frequent and regular conferences should be held between Dominion and provincial Departments of Labour.

enforcement and administration; and to attain uniformity of legislation and regulations thereunder." It is possible that this Association may bring about more uniform legislation as between the provinces and better enforcement. A. E. Grauer, *Labour Legislation* (mimeographed), p. 174.

CHAPTER III

EDUCATION

Education calls for separate treatment from other social services both because of the nature of the subject and because it was expressly assigned (subject to certain controls in section 93 of the British North America Act) exclusively to provincial jurisdiction in 1867. But the expansion in the concept of education since 1867 has been as unexpected as the expansion in social services generally. In effect education is no longer thought of as concerned entirely with the instruction of the young during the highly formative period of life—instruction which is of decisive importance as regards religious training and the preservation of language and culture. Training for adolescents and adults is given today on a scale hardly anticipated in 1867, and the development of the radio and of organized research has brought new techniques into educational activities. Thus education, like the social services, has developed aspects which have led to action by the Dominion and which have been the grounds for many representations to this Commission by organizations in addition to the representations of provincial governments.¹

There are some Dominion functions such as military training, agricultural training, and radio programs which indirectly invite excursions into the educational field. At the same time, financial considerations have led the provinces to welcome help from the Dominion in matters such as technical education and youth training. In other

directions cultural activities of the Dominion (art collections, museums, libraries) have an educational aspect.

The recommendation which we have made elsewhere that the Parliament of Canada should have full power to provide unemployment aid for those recognized as employable by an employment service under Dominion control, would, if it were acted on and if the Parliament of Canada proceeded to deal with unemployment aid, make the training of unemployed youth a matter of even greater federal concern than at present. While the Dominion has a particular interest in technical education and in youth training, it is the function of the provinces to help in forestalling unemployment by providing an ordinary education of such a character as to turn out young men and women likely to secure employment.

Since the Dominion would delimit from time to time the extent of the liability which it was prepared to assume in granting unemployment aid (e.g. the age at which it would accept youths as "employable") it might make its help contingent on reasonable co-operation by the provinces. It is safe to assume that the provinces will be willing and ready to offer their full co-operation both in providing a suitable education for all and in contributing to the training of those who, at the age of recognition as employable, may be found to stand in need of further training. The needs of the provinces for vocational and technical training are, of course, part of their general fiscal need.

We have already said that the instruction of the young during their formative years is a matter which the provinces must continue to control (subject, of course, to the safeguard for religious minorities provided in the British North America Act and amendments). A free hand in something so important to the social and cultural life of the people seems to us to be vital to any provincial autonomy worthy of the name, and it is obvious that any attempts to alter the existing arrangements would meet with powerful opposition and would provoke profound resentment. But it has been suggested to us that in upholding the freedom of choice of a territorial unit viz., the province, we may be disregarding the freedom of choice of

¹ Ex. 24, School District of Winnipeg No. 1; Ex. 25, Man. School Trustees' Ass'n; Ex. 26, Man. Teachers' Federation; Ex. 29, Catholic Minority of Man.; Ex. 61, Sask. School Trustees' Ass'n; Ex. 62, Sask. Teachers' Federation; Ex. 97, Canadian Teachers' Federation; Ex. 101, Canadian Association for Adult Education; Ex. 183, B.C. School Trustees' Ass'n; Ex. 184, Report on School Finance in B.C.; Ex. 208, Catholic Minority of B.C.; Ex. 244, Alta. School Trustees' Ass'n; Ex. 245, Alta. Teachers' Ass'n; Ex. 289, Ont. School Trustees' and Ratepayers' Ass'n; Ex. 291, Ont. Teachers' Council; Ex. 344, Mémoire de la Société Saint-Jean-Baptiste de Montréal endorsed and approved by La Société Saint-Jean-Baptiste des Trois-Rivières, L'Association générale des étudiants de l'Université de Montréal, Les Chevaliers de Carillon, L'Association Canado-Américaine, Les Patriotes de Rosemont, L'Association des hôteliers de la campagne de la province de Québec, and L'Union des vétérans canadiens; Ex. 347, Provincial Association of Protestant Teachers of Que.; Ex. 351, Comité permanent des Congrès de la langue française; Ex. 352, Les Acadiens et les Canadiens-français des provinces Maritimes; Ex. 353, Les Canadiens-français du Manitoba; Ex. 354, Les Canadiens-français de la Saskatchewan; Ex. 355, Les Canadiens-français de l'Alberta; Ex. 379, N.B. Teachers' Ass'n; Ex. 400, Roman Catholic Separate School Trustees' Ass'n of Ont.

individuals, viz., the parents. It has been urged upon us that the existing safeguards for religious minorities should be extended so that Roman Catholic minorities in every province may be free to insist that their taxes for education be used for the upkeep of separate schools.³ It was further urged that adequate time should be provided in the school curriculum for religious instruction during school hours. These representations indicate the existence in several provinces of a sense of grievance which may well contribute to national disunity as well as to lack of harmony within the province concerned. But we are compelled to say that it does not fall within our terms of reference to advise the provinces as to what course they should pursue. Representations by persons and organizations interested should be made to the individual province concerned, which alone, except as provided by section 93 of the British North America Act, has jurisdiction over matters of education.

Many representations have been made to us that financial help should be extended by the Dominion to the provinces for various purposes, such as scholarships,⁴ technical training,⁵ grants to be used for general educational purposes provided that the provinces did not reduce their own expenditure on education.⁶ These representations appear to have been inspired largely by consternation at the reductions in educational expenditure which certain provinces, under the stress of the depression, have felt compelled to make. It has even been contended that the Dominion is bound to see that there is equal educational opportunity (as far as is practicable) for every Canadian child.⁷ We

have the deepest sympathy for these views which have been advanced by many of the organizations most closely associated with education in Canada, and we share to the full the regret that, especially in recent years, education has been terribly neglected in many of the poorer parts of the country and that wholly disproportionate sacrifices have been imposed on those who have devoted their lives to this important public service.⁸ But the representations appear to us to go too far in denying the right of each province to decide the relative importance of expenditure on education and expenditure on other competing services. It is our hope that provision can be made for the fiscal needs of all provinces, including within those needs provision for the education of the young. Our financial proposals aim at placing every province in a position to discharge its responsibilities for education (on a scale that is within the means of the people of Canada) if it chooses to do so. Once this position is established it seems to us best that education, like every other form of welfare service in a democratic community, should have to fight for its life, and that a generous provision for the education of the children of the nation should depend, not on any arbitrary constitutional provision, but on the persistent conviction of the mass of the people that they must be ready to deny themselves some of the good things of life in order to deal fairly by their children. Hence we do not think that it would be wise or appropriate for the Dominion to make grants to the provinces ear-marked for the support of general education.

A second type of representation has been concerned with the use of relatively small grants from the Dominion to safeguard and stabilize certain phases of education which are believed to be of peculiar national importance. We have expressed our objection to grants for elementary and secondary education where any suspicion of Dominion interference would seem to us dangerous; but it may be of use to outline the sort of thing which might be accomplished by such methods in other directions where the same objection does not apply. The best illustration seems to us to be found in the field of university education, with which we are all personally familiar. But, precisely because

³ Ex. 29, Catholic Minority of Man.; Ex. 208, Catholic Minority of B.C.; Ex. 344, La Société Saint-Jean-Baptiste de Montréal; Ex. 351, Comité permanent des Congrès de la langue française; Ex. 352, Les Acadiens et les Canadiens-français des provinces Maritimes; Ex. 353, Les Canadiens-français du Manitoba; Ex. 354, Les Canadiens-français de la Saskatchewan; Ex. 355, Les Canadiens-français de l'Alberta; Ex. 400, Roman Catholic Separate School Trustees' Association of Ont. It was also suggested in evidence by the representative of the Roman Catholic Separate School Trustees' Association of Ontario that any Dominion assistance for education should be apportioned between Protestant and Roman Catholic schools (Ev. pp. 9712-14). As we are not recommending any such grant, this issue does not arise.

⁴ Eg. Ex. 87, Brief of Canadian Teachers' Federation, p. 16, Ev. pp. 2713-19. See also Brief, *State Scholarships in Canada* by Canadian Student Assembly.

⁵ Eg. Ex. 172, Brief of B.C., p. 352; Ex. 8, Brief of Man., Pt. VIII, p. 56; Ex. 140, Brief of N.S., pp. 134-37.

⁶ Ex. 97, Brief of Canadian Teachers' Federation, pp. 11-14; Ex. 245, Brief of Alberta Teachers' Ass'n, p. 5; Ex. 347, Brief of Protestant Teachers of Que., Ev. p. 8367. See also Ex. 161, Brief of P.E.I., and Ev. pp. 4464-67, p. 4471. Compare evidence (Ont.), p. 7687.

⁷ Ex. 97, Brief of Canadian Teachers' Federation, p. 3; Ex. 357, Brief of N.B., pp. 37, 39, Ev. pp. 8648-51; Ex. 62, Brief of Saskatchewan Teachers' Ass'n, pp. 4-6; Ex. 28, Brief of Greater Winnipeg Youth Council, pp. 2-3; Ex. 257, Brief of Alberta Youth Congress, p. 2; etc.

⁸ In Saskatchewan the reduction in teachers' salaries was most severe. The total paid in salaries to teachers was reduced from \$8 million in 1930 to less than \$4 million in 1934 (Ex. 34, Brief of Sask. p. 52). The total salary paid to rural teachers in Saskatchewan declined from \$4,537,000 in 1929 to \$1,939,000 in 1934 (Ex. 62, Brief of Saskatchewan Teachers' Federation, p. 9).

of our own close connections with Canadian universities, we are refraining from making a recommendation on this subject.

Successful university administration requires some assurance of a moderately stable budget over a reasonable period of time. One reason is that important contractual commitments have to be made for a fairly long period in advance, and that reasonable security of tenure is as necessary for good university instructors as it is for good civil servants. Academic freedom itself, which is an important ingredient in the democratic structure of our country, requires that in institutions supported by the state no appointment should be directly or indirectly at the mercy of political pressure. The efficient functioning of universities in all regions of Canada (and, therefore, in all provinces of Canada) is essential if some equality of influence in the national life is to be maintained as between these regions. The extinction of a provincial university would strike a heavy blow at the importance of that province in the next generation of Canadian history.

It is this last consideration which explains why the Western Provinces have undertaken to maintain universities at a time when their own revenues were far from assured, and when it was barely practicable to endow such an institution with the assured income necessary for its efficient functioning. It explains why, all things considered, almost astonishing efforts have been made to preserve these institutions during the depression even when masses of people were at the verge of destitution.

It is worth remembering that it was to the thoughtful generosity of a foreign endowment that the four universities of Western Canada were indebted for help during three critical years which enabled them to survive this period without complete loss of initiative.

In these circumstances it is conceivable that even the provinces might welcome a small Dominion grant to their universities made contingent on the maintenance over a period of some years of the provincial grants to the same institution and on the preservation of high academic standards. If this is the case, a relatively small Dominion annual

grant divided among the provinces in rough proportion to their population for the benefit of institutions which receive help from the state might play a peculiarly useful part in our national life. The additional funds, while preferably to be spent at the discretion of the university, would make it possible (wherever this appeared to academic authorities the most useful course) to provide scholarships and bursaries which would bring its opportunities within the reach of poor but able students.

The next point which we have to make is illustrative of the importance of universities in the national life of Canada. Among the activities of the Dominion government which possess an educational character is the organization of scientific research in the physical sciences under the National Research Council. It is unnecessary to expatiate on the excellent work which the Council has been doing in close co-operation with Canadian universities upon whom it is largely dependent for its personnel. It has been represented to us that analogous research work in the social sciences might be organized, and that, in addition to the Dominion Bureau of Statistics, we might have a Social Science Research Council which would co-ordinate and in some degree direct the research work in these sciences which is being done in Canadian universities and elsewhere.⁹ There is a real need for some such institution in Canada and it could serve a most useful purpose in analysing the social problems with which current legislation is designed to deal.

Attention has also been called to the great need for a national library in Canada.¹⁰ While we are in sympathy with such a project we feel that it is a matter of policy on which it would not be appropriate for us to make a positive recommendation. But we wish to point out that this is another example of an educational or cultural activity which, if judged expedient, could be appropriately undertaken by the Dominion government.

⁹ Ex. 231, Memo. on Research in the Social Services, Ev. pp. 5358-64.

¹⁰ Ex. 211, Brief of B.C. Library Ass'n; Ex. 294, Brief of Ont. Library Ass'n.

CHAPTER IV

THE REGULATION OF CERTAIN ECONOMIC ACTIVITIES

The British North America Act, 1867, divides the field of economic regulation like that of social welfare between the Dominion and the provinces. On the one hand, the Dominion has extensive regulatory power over economic activities through its jurisdiction to regulate "trade and commerce", and such matters as "interest", "banking", "weights and measures", "bills of exchange and promissory notes". On the other, the provinces have the proprietary right over natural resources, and have as well considerable regulatory power over economic activities through their exclusive power over "property and civil rights within the province", "the incorporation of companies with provincial objects", "generally all matters of a merely local or private nature within the province", and the right to issue licences. This division of jurisdiction over economic life has occasioned considerable friction between the provinces and the Dominion; in some cases it has induced overlapping of services between governments; in some it has greatly hindered effective governmental action in dealing with economic problems.

Ideally, we should, perhaps, have begun with an examination of the whole field of economic life under modern conditions, and have based our recommendations as to jurisdiction on this examination, ignoring the settlement of 1867. But we have considered that a more practical approach would be to concentrate our attention on certain specific problems of jurisdiction brought to our notice in our public hearings. We feel that, in particular, five problems in this field demand examination; the marketing of natural products; the regulation and incorporation of companies; fisheries; the regulation of insurance; and the problem of freedom of trade between the provinces. As in the case of the social services, we have assumed that we should not recommend any change in jurisdiction except for strong and compelling reasons. In certain instances we recommend a new method of approach by delegation of powers.

1. MARKETING OF NATURAL PRODUCTS

The term "marketing" is an economic or commercial, rather than a legal concept, and describes a process which may involve many steps and transactions. This process does not fall easily

under any head of jurisdiction in section 91 or section 92 of the British North America Act. It straddles the line between provincial and federal fields and falls in certain aspects under several of the enumerated powers in both sections 91 and 92. Some phases of marketing fall within the Dominion jurisdiction over "trade and commerce", "copyright", "patents of invention and discovery", "weights and measures", "the criminal law", and probably also under the Dominion taxing power. In certain aspects marketing also falls under the provincial jurisdiction over "property and civil rights within the province", "matters of a merely local or private nature in the province", "direct taxation within the province", and "shop... and other licences".

In the broad meaning of the term, "marketing" might include buying and selling, organization of buyers or sellers, prices, grades and standards, market and other commercial practices, etc. While we are fully aware of these broader implications of the word and of recent developments in Canada and elsewhere of a trend toward fuller commercial regulation, we have, none the less, limited our discussion of marketing to the field of natural products. We do this both because virtually no other phase of the subject was raised in our public hearings, and because a wide variety of other problems engaged our time and attention. But in thus limiting our discussion we do not mean to imply that there are no other phases which may require attention or that changes in jurisdiction over certain other aspects of marketing (such as the regulation of prices) may not be needed in the future. We have merely concentrated on pressing problems.

We have already made reference to the fact that demands for social legislation have been made on governments which were not contemplated in 1867. In commercial matters there has likewise been a growing demand for governmental interference, which, though not requiring the same governmental expenditures as the social services, may profoundly affect the national income. These demands could not have been foreseen at the time of Confederation. In 1867 most trade within Canada was on a small scale and the buyer and seller stood in positions of comparative equality. But as the

Canadian economy became more complex and the volume of sales and the distances to markets increased, the old equality of bargaining position between buyer and seller was disturbed to the disadvantage particularly of the small producer of natural products. Likewise in foreign trade there was little need in 1867 for standardization of products because foreign trade consisted largely of staples in bulk, but as competition in foreign markets increased and modern systems of merchandising through organized exchanges developed, the need arose for grading and standardization of products. Early governmental activities were directed toward the encouragement and assistance of producers of natural products in the use of better methods in order to increase and improve production.¹ Later legislation sought to establish grades of quality, standard packages, and a system of accurate marking for a variety of natural products, including live stock, fruits, vegetables, fish, and dairy products. In more recent years there has been a demand that the state should seek to assure minimum prices to producers by organizing and controlling the production and marketing of natural products, and both the Dominion and the provinces have attempted to do this by legislation. State interference of this character is quite foreign to the laissez faire theories which dominated in 1867 and which undoubtedly influenced the Fathers in their distribution of powers between the Dominion and the provinces. It is therefore not surprising that it should have encountered constitutional difficulties.

Under the provisions of the British North America Act, which have already been quoted, the provinces had exclusive legislative power over "property and civil rights" and local matters within the province, and, therefore, alone could deal with many phases of marketing which were intra-provincial in their scope. The supply of milk to large cities is an example of this type of marketing regulation. The provinces, however, had no power to legislate concerning interprovincial and foreign trade, but in this trade the need for uniformity of standards and accuracy of grading may be even more essential than in local trade. Various attempts were made by the Dominion to establish standards and grades but with little success except for wheat. The prime difficulty encountered by both provincial and Dominion legislation arose from the fact that grading of many products to be effective must take place when the

¹ See J. A. Corry, *Growth of Government Activities Since Confederation*. (Mimeographed.)

individual producer first sells his produce, but that then it is often impossible to say whether the particular articles will remain in local trade or will pass into interprovincial or export trade. A similar constitutional difficulty was encountered in recent legislation designed to aid producers by enabling them to establish marketing boards financed by the imposition of licence fees. Dominion legislation of this type was held invalid because of its interference with local trade.² Provincial legislation of this type has been held to be valid³ but it is applicable to commodities whose chief market is local and would probably be inapplicable to commodities entering largely into interprovincial or foreign trade; it might even be possible that provincial legislation which was originally valid would become invalid if the commodity concerned ceased to be merely the subject of local trade and came to be widely sold in foreign markets.

It is unnecessary to examine the lengthy series of legal decisions which have held invalid various attempts to enact marketing legislation. Dominion statutes have, in general, been held invalid because they interfered with local trade; provincial statutes have been invalidated because their provisions purported to interfere with interprovincial and foreign trade. A number of devices have been employed in an attempt to circumvent these constitutional difficulties. Of these the most important was the device of enabling legislation. The Dominion would pass a statute in general terms and the provinces would pass enabling acts which provided that any provisions of the Dominion act which might be ultra vires were declared to have the force of law in the province.⁴ The validity of the device of enabling legislation has not been decided by the Supreme Court of Canada or the Privy Council, but it has been determined in three decisions of provincial appeal courts⁵ that the provincial enabling acts did not remedy the defects in the Dominion statute. The basis of these decisions appears to have been that the provincial legislatures cannot by a subsequent act give validity to a Dominion statute which was invalid when it was enacted, and that delegation of legislative power to Parliament was beyond the provincial power.⁶

² *Re Natural Products Marketing Act* [1937], A.C. 377.

³ *Re British Columbia Natural Products Marketing Act* [1937], 4 D.L.R. 298; *Shannon v. Lower Mainland Dairy Products Board* [1938], A.C. 708.

⁴ See Ex. 252, Brief of Canadian Chamber of Agriculture, for details of various enabling statutes.

⁵ *Re v. Zaslavsky* [1935], 3 D.L.R. 788; *Re v. Thorsby Traders* [1936], 1 D.L.R. 592; *Re v. Brodsky* [1936] 1 D.L.R. 578.

⁶ See Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction*.

Doubts as to the constitutionality of enabling legislation have led to its virtual abandonment. In its place a new device which might be termed "conjoint legislation" has appeared. The provincial legislation, dealing solely with transactions within the province, provides for the Lieutenant-Governor in Council setting up grades and standards and appointing inspectors to administer the act. In practice the grades and standards adopted conform to those of the Dominion, and the inspectors appointed to administer the provincial statute are Dominion inspectors. Although there has been little or no experience of the working of "conjoint legislation" a number of difficulties would seem likely to arise. It will not be easy to preserve uniformity, which is so desirable, where changes in the statute must be enacted both by Parliament and by each provincial legislature as well. There will also be danger of confusion in having the same set of officials responsible to two different authorities, and difficulties would seem to be inevitable where conflicting instructions are given to these officials. Possibilities of unnecessary duplication in administration and serious friction between the Dominion and the provinces would seem to be inherent in the device.⁷

The present position of marketing legislation was, in our opinion, accurately summarized in one of the briefs presented to the Commission when it was said: "It would appear, therefore, that the position after almost 20 years of legislating and referring the constitutionality of various acts of Parliament and of the legislative assemblies to the Courts, finds us exactly where we began, namely, no one knows how to draft workable legislation dealing with the regulation of grading, packing, storing and marketing of agricultural products, which will come squarely within the respective jurisdictions of the Dominion and the Provinces without the exercise of almost incredible caution."⁸

There are a number of reasons why complete and exclusive jurisdiction over marketing legislation cannot appropriately be vested in either the Dominion or the provinces. Exclusive provincial jurisdiction to regulate trade in all commodities including articles entering into inter-provincial and foreign trade would tend to destroy the uniformity necessary for foreign trade, and to create barriers to interprovincial trade that would be highly undesirable and contrary to the spirit, if not the letter, of section 121 of the British North

America Act. Exclusive Dominion jurisdiction would involve the regulation of local sales of certain commodities, such as milk and vegetables, which it would be highly inconvenient for the Dominion to do. Moreover, it is possible that public opinion on economic and social policy in one province may be different from that which prevails in another province. The desire to have more comprehensive marketing legislation in one province should not be compelled to await the development of a similar desire in all provinces. With regard to the compulsory control of production there has been little practical experience, and it is far from easy to decide between the legitimate control of production for the purpose of ensuring a reasonable living to producers, and the prevention of combinations which tend to enhance prices to consumers. In such a matter a certain amount of regional experimentation is desirable.

Submissions made in our public hearings were almost unanimous in protesting against the present jurisdiction over marketing legislation and in urging that some change was desirable, but they were not unanimous in suggesting the form that this change should take. But in general the submissions urged that the Dominion and the provinces should share the jurisdiction over marketing, either by creating a concurrent jurisdiction analogous to that over agriculture and immigration in section 95 of the British North America Act,⁹ or by creating a power for the Dominion and a province to delegate full authority one to the other to legislate concerning certain phases of marketing.¹⁰

We believe that either method would accomplish the desired result which is to provide for uniformity where the circumstances demand it, allow for local experimentation where it can be carried on without confusion and difficulty and, above all, to provide for certainty, and at the same time flexibility, of jurisdiction. We think it is desirable that the regulation of local marketing, such as the supply of milk for local consumption, should, in practice, be left to the provinces. But the marketing of commodities entering largely into interprovincial and foreign trade should be governed by Dominion legislation, which should be valid notwithstanding the fact that it may also regulate intra-provincial trade in these products.

⁹ *E.g.* Ev. (Director, Dominion Marketing Service), pp. 4813-14; Ex. 99, Brief of League for Social Reconstruction, pp. 25-26, Ev. p. 2810; Ex. 172, Brief of B.C. pp. 353-54; Ex. 206, Brief of Provincial Council of Women, B.C.; Ex. 210, Brief of C.C.F. (B.C. Section); Ex. 140, Brief of N.S., pp. 26-32 and Ev. pp. 3900, 4185-86; Ev. (Ont. Minister of Agriculture), p. 7876.

¹⁰ Ex. 252, Brief of Canadian Chamber of Agriculture; Ex. 140, Brief of N.S., p. 24; Ex. 34, Brief of Sask., p. 335.

⁷ For detailed discussion of these difficulties see J. A. Corry, *Ibid.*

⁸ Ex. 252, Brief of Canadian Chamber of Agriculture, p. 13.

The creation of concurrent jurisdiction over grading and marketing, analogous to that over agriculture and immigration in section 95 of the British North America Act, would provide a solution of most of the difficulties which have been encountered in attempts to regulate the marketing of natural products. In practice the Dominion would probably legislate concerning only those phases of marketing which had importance for inter-provincial and foreign trade, and the provinces would regulate marketing in its local aspects. There are, however, certain difficulties which it would be necessary to guard against if such concurrent jurisdiction were created. The terms "grading" and "marketing" are not of such precise meaning that they could, without further definition, be inserted in a constitutional amendment, and, as they involve economic rather than legal concepts, it might be extremely difficult to give definitions which would avoid legal controversy. Moreover, the term "natural products" is vague and difficult of definition, and it might be found desirable in the future to legislate for manufactured and semi-manufactured products which would not fall within any definition of natural products.¹¹

We think that the happiest solution might be to provide specifically for concurrent jurisdiction (analogous to that in section 95 of the British North America Act) over the grading and marketing of a list of defined products, and to provide for the provinces adding other products to the list from time to time. There appears to be no reason why some of the provinces should not add designated products without waiting for the action of all provinces. The designation might be in perpetuity, or a province might be allowed to concede concurrent jurisdiction over the grading and marketing of added products for a defined period. The exact procedure for designating added products should be defined, and we think that the provision need not be restricted to "natural products" but that manufactured or semi-manufactured products might be similarly dealt with by the Dominion and provinces if it should seem desirable to do so.¹² The

¹¹ Thus in the "Natural Products Marketing Act", *Statutes of Canada* (1934) 24-25 Geo. V. c. 57, "marketing" was defined to include "buying and selling, shipping for sale or storage and offering for sale." In the same Act "natural products" were declared to include "animals, meats, eggs, wool, dairy products, grains, seeds, fruit and fruit products, vegetables and vegetable products, maple products, honey, tobacco, lumber, and such other natural products of agriculture and of the forest, sea, lake or river, and any article of food or drink wholly or partly manufactured or derived from any such product that may be designated by the Governor in Council, in accordance with the provisions of this Act."

¹² It may be noted that for manufactured and semi-manufactured products the principal need is standardization rather than grading, but the procedure we suggest would be applicable for such a purpose.

whole problem of regulation of marketing would, of course, be greatly simplified if our general recommendation, made elsewhere, providing for delegation of power by a province to the Dominion, or vice versa, were implemented.¹³

2. COMPANY INCORPORATION AND REGULATION

A number of representations were made at our public hearings concerning companies and their regulation. The nature and allocation of corporation taxes may be more conveniently discussed in connection with our financial proposals,¹⁴ and certain of the special problems of insurance companies will be discussed separately.¹⁵ Other representations concerning company matters may be grouped under three headings, namely, problems of company incorporation, the regulation of the issue and sale of corporate securities, and the difficulties from lack of uniformity in legislation requiring company returns.

Incorporation of Companies

By section 92, subsection 11 of the British North America Act the provinces were given power to make laws in relation to the incorporation of companies with provincial objects. In section 91 there is no specific Dominion power, but the incorporation of companies by the Dominion rests upon the residuary clause of section 91 which gives jurisdiction to the Dominion in relation to all matters not coming within the exclusive jurisdiction of the provinces. Under these respective powers the Dominion and all nine provinces have enacted Companies Acts which have undergone frequent amendment and have increased in length and complexity. Not only are there substantial differences between the ten statutes, but the provisions for incorporation follow one or other of two widely divergent models. In British Columbia, Alberta, Saskatchewan and Nova Scotia, the Companies' Acts follow the English method of incorporation by means of a memorandum of association; in the statutes of the Dominion and the other five provinces the incorporation is achieved by the issue of letters patent from the Crown. Although the powers of both types of company are similar, this fundamental difference in the method of incorporation creates a substantial obstacle to the attainment of uniformity in the ten statutes.

Uniformity could, of course, be achieved automatically if sole jurisdiction to incorporate companies were transferred to the Dominion. But,

¹³ See p. 72.

¹⁴ See Sect. B, Chap. III, 2.

if this took place, it seems probable that the Dominion would be required to establish local administrative centres for the public convenience, and that the cost of these would be as great or greater than the present cost of the companies' branches maintained by the provincial governments.¹⁶ In the absence of such centres it seems likely that delay and inconvenience in the incorporation of companies would be unavoidable. Moreover, there appears to be a proper field for provincial incorporation of companies. For certain enterprises whose operations do not extend beyond the boundaries of a single province the advantages of local incorporation are obvious; for certain other enterprises it may be convenient that companies having power to operate in the province of incorporation should have capacity to receive additional powers from other jurisdictions. The present system of provincial incorporation of such companies in general is operating satisfactorily and with convenience to the public, and should not, in our opinion, be disturbed. It is noteworthy that the Dominion officials in the Department of the Secretary of State seek to discourage Dominion incorporation of companies whose sphere of operation appears to be merely local, and we believe this to be a proper attitude.¹⁷

Although we do not recommend that exclusive jurisdiction to incorporate companies should be vested in the Dominion, we believe that the advantages of substantial uniformity in the ten Companies Acts would be very great. These advantages were generally recognized by provincial governments and public organizations which made representations to us.¹⁸ We believe that the desirable uniformity in Companies Acts can be achieved by Dominion-provincial collaboration without any reallocation of legislative power, and we are informed that steps have already been taken in this direction. At the Dominion-Provincial Conference in 1935 a sub-committee on company matters, composed of representatives of the Dominion and all provinces, was appointed. This committee has met several times and a draft uniform Act has been prepared and circulated. We believe that this is the most practicable method of dealing with this matter and urge upon all parties

the desirability of achieving, as speedily as possible, substantial uniformity of company law in all jurisdictions.

The Sale of Securities

Although the provincial legislatures may not impair the corporate powers of a Dominion company, they may compel such a company to comply with laws of general application. In this way they have obtained a large and effective measure of control over the sale of securities issued not only by provincial companies but also by Dominion companies. The Dominion Under-Secretary of State gave as his opinion that there is great advantage in having statutes designed to prevent frauds in the sale of corporate securities administered by people who have local knowledge rather than by a central board, and with this opinion we fully agree. But the same official stated that "a great deal might be done to lessen the inconvenience and expense to companies in respect of licensing and the preparation and filing of returns."¹⁹ It seems to us that there is a useless duplication of labour and expense in having substantially the same information supplied in different forms to the various jurisdictions in which a company desires to sell securities. Either agreement should be reached by the provinces and the Dominion that the investigation and licensing of one jurisdiction should be accepted by all, or else they should agree that identical applications for permission to issue and sell securities should be accepted by all jurisdictions. In this matter also steps have been taken in the direction of achieving uniformity through the work of the Dominion-Provincial Committee to which we have already referred, and we urge that this work should be pushed forward rapidly to a successful conclusion. An important advance in Dominion-provincial co-operation was taken when the provinces requested the Dominion to establish a clearing house for information as to company promotions and stock salesmen, and we understand that this request is about to be implemented by the Dominion.

Uniformity in Company Returns

Complaint from business organizations was made to us at our hearings in all parts of Canada, concerning the unnecessary complexity and lack of uniformity of returns required from corporations doing business in several provinces of Canada. It was said that governmental costs were increased by

¹⁶ See evidence of Dominion Under-Secretary of State, p. 3467, and Ex. 14, Memo. of Manitoba Companies' Branch.

¹⁷ Ev. p. 3443.

¹⁸ Ev. (B.C.), pp. 5540-41; Ev. (N.B.), p. 9106; Ev. (N.S.), p. 4088; Ev. (Ont.), p. 7851; Ex. 394, Canadian Chamber of Commerce; Ex. 159, Halifax Board of Trade; Ex. 17, Winnipeg Board of Trade; Ex. 342, Montreal Board of Trade; Ex. 188, Associated Boards of Trade of British Columbia.

¹⁹ Ev. p. 3449.

the duplication of the work of examining and checking these returns, and that the cost of compliance by the companies with a number of differing statutes, all demanding substantially the same information, was large and quite unnecessary. Complaint was also made of the annoyance of investigations and audits by officials representing several jurisdictions.²⁰ If the recommendations which we make elsewhere²¹ as to the jurisdiction to impose and collect corporation taxes are implemented the duplication of corporation tax returns should be largely eliminated. But, in any event, it is only elementary common sense that this type of unnecessary duplication and waste should be eliminated as far as possible. The ideal arrangement, from the point of view of business, would be a common form of return on which all information requested by any government concerned could be tabulated. The purposes for which information is needed are likely, however, to differ as between different governments, even if those governments are not taxing authorities. We recognize, therefore, that there are great difficulties involved in devising a common form for all corporation returns which would not be entirely eliminated even if corporation taxes were paid to a single jurisdiction. But the information requested by various governments for the same purpose (e.g. licensing) is likely to be similar, and in such matters a common form of return would appear to be both practicable and desirable. It should also be possible to eliminate much of the duplication in inspection and audit of company affairs by reciprocal agreements between governments to accept each other's audits wherever possible. Every effort should be made by all governments to reduce and to keep at a minimum the nuisance to business of compliance with governmental demands for returns of information.

3. FISHERIES

The respective jurisdictions of the Dominion and the provinces over fisheries have been the subject of a number of complicated and elaborate legal decisions. We do not propose to enter upon a detailed discussion of those decisions but, for the purposes of the present chapter, the legal situation may be summarized in the words of the Dominion Deputy Minister of Fisheries:—

“ . . . The exclusive power to regulate fisheries, no matter where these fisheries may lie, is a federal

²⁰ *E.g.* Ex. 88, Brief of Canadian Manufacturers' Association; Ex. 95, Brief of Dominion Mortgage and Investments Association. For discussion of cost of tax compliance arising from preparation of governmental returns, see Sect. B, Chap. III, 2.

²¹ *Ibid.*

function. The administrative jurisdiction of all tidal fisheries and, under the decisions, in Quebec of all fisheries in waters that are navigable from the sea, is a federal function.

In the non-tidal waters, broadly speaking, and in Quebec in those waters that are not navigable from the sea, ownership in the fisheries is vested in the riparian owners, and in most of the provinces it means that the ownership of practically all the fisheries is therefore vested in the province. So that at the present time the administration of the fisheries in the different provinces that have non-tidal waters is carried on by the departments of the provincial governments concerned.

The Federal Government is regulating the fisheries in these provinces, and it administers as well as regulates the fisheries in all tidal waters with the exception of those in Quebec and, again, with the exception of those about the Magdalen Islands, where since 1921 there has been an agreement whereby the province carries on the administration in the tidal waters there with the exception of those about Quebec. . . .”²²

From this division of jurisdiction over fisheries a number of administrative difficulties have arisen. For fisheries in tidal waters the Dominion both makes and administers regulations subject, however, to a special arrangement in Quebec which ignores the constitutional division and provides for provincial administration. Although the Dominion administration of fisheries in tidal waters may not be completely satisfactory to the provinces concerned, it was not suggested to us that this function should be transferred from the Dominion to the provinces. But it was suggested that the Dominion should decentralize its administration by appointing resident directors of fisheries²³ and that there might be more co-operation between the Dominion and provincial departments.²⁴

For fisheries in non-tidal waters the Dominion is responsible for making all regulations, but their actual administration falls within the powers of the provinces. While the evidence suggests that no actual overlapping occurs,²⁵ it was said that this division of jurisdiction was highly unsatisfactory. The principal objection was based mainly upon the difficulties of remote control.²⁶ In the case of provinces which administer non-tidal fisheries the practice is for the provincial department concerned to decide on appropriate regulations and recom-

²² *Ev. pp. 3506-07.* See also Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction.*

²³ Ex. 140, Brief of N.S., p. 139, *Ev. pp. 4080-81*; Ex. 161, Brief of P.E.I., p. 42, *Ev. pp. 4506-07.*

²⁴ *Ev. (B.C.), p. 5441*; Ex. 190, Memo. B.C. Dept. of Fisheries.

²⁵ Ex. 120, Memo. Dominion Dept. of Fisheries; Ex. 190, Memo. B.C. Dept. of Fisheries.

²⁶ Ex. 15, Memo. Man. Dept. of Natural Resources; *Ev. pp. 755-65.*

mend them to the Dominion Department which then passes them on to the Governor General in Council for approval.²⁷ At best this cumbersome system may give rise to annoying delays. In provinces with no tidal fisheries there would seem to be no reason why fisheries regulations could not be handled by the provinces with more efficiency and less Dominion-provincial friction than at present. But in provinces with both tidal and non-tidal fisheries certain types of fish resort to non-tidal waters for reproduction, and regulation by the federal authorities in non-tidal waters may be essential to their regulation of fisheries in tidal waters.

In our opinion the regulation of fisheries in Canada comprises not one, but several problems. The problems of the Maritime fisheries are different from those of the Prairie Provinces, and different again from those of British Columbia. It is probably impossible to draw a clear-cut line of demarcation between federal and provincial responsibilities which will be suitable for all provinces.

Two solutions of this difficulty suggest themselves. A power of concurrent jurisdiction over fisheries (analogous to that over agriculture and immigration in section 95 of the British North America Act) might be created.²⁸ This would permit the Dominion to pass regulations in connection with matters of national or international importance, and leave to the provinces regulation of fisheries in their local aspects. There is, however, a possible disadvantage in such a method in that it might create resentment if the Dominion, whose power to regulate would be necessarily paramount, entered into a field already occupied, possibly at some expense, by the province. Another method of dealing with the difficulty would be to give the Dominion power to delegate its right of regulation to any province which desired to take over this function. Proper conditions could be attached at the time of such delegation to safeguard legitimate Dominion interests, and the delegation might be limited to certain types or aspects of fisheries. We recommend elsewhere²⁹ that there should be a general power conferred on the Dominion and the province to delegate legislative powers one to the other. If this suggestion were implemented it would, of course, be applicable to

the Dominion power to regulate fisheries, but in any event a specific power might be created to enable the Dominion to delegate jurisdiction to make fisheries regulations to such provinces as could perform this function more conveniently.

We think that either suggestion—concurrent power or power of delegation—would eliminate the difficulties experienced in the exercise of the existing jurisdiction over fisheries. If neither is adopted we think that substantial improvement might result if the Dominion decentralized its administration so that resident officials in the provinces could make changes in regulations, subject to the power of veto in the Minister at Ottawa.

4. INSURANCE

The business of insurance in Canada in 1867 was on a comparatively small scale and such regulation as was attempted was of a very simple nature. It is not, therefore, remarkable that no specific mention of the subject of insurance appears in the British North America Act.³⁰ But in the last seventy years the business of insurance has grown enormously and governmental regulation has grown with it in extent and variety. This regulation has been of three types, namely, imposition of conditions on incorporation, regulation of the terms and incidents of insurance contracts, and supervision designed to secure the solvency of insurers.

As there was no specific provision in the British North America Act legislative authority for such regulation had to be sought in the general powers appearing in sections 91 and 92. Legislation on insurance by the Dominion and the provinces began almost contemporaneously, and an early conflict over jurisdiction developed and was intensified as the business grew in importance. In 1868 the earliest post-Confederation Dominion statute³¹ provided that all insurance companies, except provincial companies doing business in only one province, should secure a licence from the Minister of Finance, make deposits and file annual statements. In 1875 the Dominion established the office of Superintendent of Insurance to examine the annual statements and investigate the financial position of insurers.³²

²⁷ Ev. (Dominion Deputy Minister of Fisheries), p. 3507.

²⁸ It is interesting that in the Quebec Resolutions (Nos. 29 and 38) it was proposed that jurisdiction over sea-coast and inland fisheries should be conferred on both the general Parliament and the local governments. For suggestions as to concurrent power of regulation of natural resources see Ex. 387, Brief of Federation of Ontario Naturalists.

²⁹ See p. 72.

³⁰ It was apparently discussed at the Quebec Conference and reference to it in the Resolutions was dropped, see Pope, *Confederation Documents*, pp. 30, 88.

³¹ *Statutes of Canada* (1868), 31 Vict. c. 48. For survey of legislation on insurance, see J. A. Corry, *Growth of Government Activities Since Confederation*. (Mimeographed.)

³² *Statutes of Canada* (1875), 38 Vict. c. 20.

The Dominion has never attempted to regulate provincially-incorporated companies doing business only within the province, and it was with such companies that the earliest provincial legislation was concerned. In 1876 the Ontario Legislature provided that all companies without a Dominion licence should secure one from the Provincial Treasurer, make deposits, file annual reports and submit to inspection.³³ In the same year an Ontario statute required all fire insurance companies doing business in the Province to insert in their policies certain prescribed terms and conditions,³⁴ and in later years similar legislation was enacted by other provinces and concerning other types of insurance. By 1879 Ontario had an inspector of insurance, and by 1914³⁵ a provincial insurance department, headed by a superintendent, had been established and regulatory machinery very similar to that of the Dominion had been set up.

Dominion legislation was directed at the beginning chiefly to the questions of solvency and financial responsibility of the companies to which it applied. Provincial legislation dealt with the solvency of local provincial companies and with the requirement of fair and equitable terms in insurance contracts. But in providing for the requirements for a Dominion licence it was easy to include conditions as to the manner in which the licensee should do business, and in the provincial attempt to regulate the business methods of insurers a local licence could be used effectively. In the absence of a clear definition of jurisdiction disputes arose and produced a lengthy series of legal cases.

The provincial power to legislate respecting conditions of insurance contracts was established in an early case,³⁶ and the Dominion has not since attempted to prescribe such conditions directly. But it attempted to deal with certain phases of insurance contracts and to require insurers to obtain a Dominion licence.³⁷ It was held by the Privy Council that such legislation was invalid and could not be supported under the Dominion's powers to legislate for the peace, order and good government of Canada, or for the regulation of trade and commerce.³⁸ Following this decision the Dominion passed new statutes permitting the issue of licences

to insurers and requiring the inclusion of certain provisions in insurance contracts as a condition of obtaining a licence. By amendments to the Criminal Code it was made an offence to carry on the business of insurance without a licence.³⁹ This attempt to support legislation under Dominion jurisdiction over criminal law, aliens, and immigration was also unsuccessful.⁴⁰ Another attempt to require insurers to take out a Dominion licence was made by imposing an additional tax on unlicensed insurers. This attempt to regulate insurance by the use of the taxing power was also held to be invalid in 1932.⁴¹ Following this last decision of the Privy Council new legislation was passed by the Dominion Parliament, based evidently on its power over bankruptcy and insolvency.⁴² The validity of this most recent legislation has not yet been challenged in the courts, and the uncertainty as to the Dominion's legislative power still persists.

This survey of legislation, and of litigation arising therefrom, indicates that there has been little doubt about jurisdiction over certain portions of the field of insurance. Thus, for example, there has never been any serious question of the power of the provincial legislature to regulate the terms of the contract or to licence insurance agents and brokers. But over some portions of the field there is still grave uncertainty. This uncertainty has led to administrative difficulties and has encouraged attempts to expand jurisdiction which would probably not have been made had jurisdiction been clearly defined.

Apart altogether from the decisions of the courts, there appears to be no inherent reason for a single unified administration over all phases of the insurance business, and no reason why the division of regulative power over insurance should lead to administrative inefficiency, provided the jurisdiction is clearly defined and provided different authorities do not attempt to duplicate each other's functions. It would seem possible not only to divide the field of insurance regulation according to function, but according to the type of company as well.

We are of the opinion that the jurisdiction to regulate the incidents and conditions of insurance contracts should remain with the provincial legislature, which has hitherto performed this function satisfactorily. We are strengthened in this conclusion by the consideration that in Quebec the rights

³³ *Statutes of Ontario*, 1876, c. 23.

³⁴ *Ibid.*, c. 24.

³⁵ *Revised Statutes of Ontario*, 1914, c. 183.

³⁶ *Citizens Insurance Co. of Canada v. Parsons* (1881), 7 App. Cas. 96.

³⁷ *Statutes of Canada* (1910), 9-10 Ed. VII, c. 32.

³⁸ *Attorney-General of Canada v. Attorney-General of Alberta* [1916], 1 A.C. 588.

³⁹ *Statutes of Canada* (1917), 7-8 Geo. V, c. 26 and c. 29.

⁴⁰ *Attorney-General of Ontario v. Reciprocal Insurers et al.* [1924], A.C. 328.

⁴¹ *In re Insurance Act of Canada* [1932], A.C. 41.

⁴² *Statutes of Canada* (1932), 22-23 Geo. V, c. 46 and c. 47.

which are the subject matter of insurance contracts are defined by the Civil Code, and, in our opinion, it would be inappropriate to separate legislative power over civil rights and over insurance contracts. We were impressed also by the argument addressed to us by provincial Superintendents of Insurance⁴³ that the annual conference of the "Association of Superintendents of Insurance of the Provinces of Canada" affords a useful forum for the discussion of the form of insurance contracts and prevents hasty or unwise changes in the law. Through the efforts of this Association uniformity of law has been achieved in the common law provinces, and we feel that this provincial jurisdiction should not be disturbed.

The provincial legislatures already provide for licences of many kinds, and provincial officials are accustomed to the administrative details of licensing regulation. The licensing of insurance agents, brokers and adjusters, is a matter in which detailed administration and particular local knowledge are necessary, and we are of the opinion that the provincial jurisdiction in this regard is satisfactory and should continue.

It was represented to us that there are in certain provinces, especially Ontario and Quebec, a large number of provincially-incorporated companies, usually of a mutual type.⁴⁴ These companies, dealing mainly in fire and weather insurance, provide protection at low cost, and because of the local nature of their business can be supervised most economically and efficiently by the provincial departments of insurance. We recommend, therefore, that all provincially-incorporated insurance companies doing business only in the province of their incorporation should be subject for all purposes to the exclusive legislative jurisdiction of the province concerned. We think, however, that the Dominion Department of Insurance should have power to undertake the supervision of provincially-incorporated companies when requested to do so by the province. Such a system has been used in Nova Scotia with, we believe, great success.⁴⁵

In regard to companies doing business in more than one province, duplication and overlapping exist in the matter of licences to do business, annual returns, and statistical reports. The memorandum of the Ontario Superintendent of Insurance⁴⁶

discloses that the functions in Ontario of the Dominion and provincial insurance departments are in many respects identical so far as they relate to licensing of insurers, administration of deposits, examination for solvency, filing of annual and statistical returns, annual reports and related matters. There is, therefore, duplication, or possible duplication, of governmental activity, and also a field within which friction between the two departments may arise. Insurance companies are forced to undertake an expensive and useless duplication of effort which presumably results in increased insurance costs to policyholders. It is true that in most, if not all provinces, Dominion licensees are entitled to provincial licences on compliance with merely formal requirements, and when a deposit is made with the Dominion, the provinces do not demand a deposit. Nevertheless, uncertainty is created by the mere existence of the power to impose additional requirements for licence and deposit, and duplication exists in the compilation of annual and statistical returns to the Dominion and provincial departments which often require calculations on different bases.⁴⁷

Is it not obvious that where an insurer is doing business in more than one province, there should, in the interests of efficiency and economy, be only one supervision of that insurer concerning matters of solvency? In view of the difficulty of otherwise determining jurisdiction, and in view of the Dominion's experience in such matters which has been built up over many years, we recommend that the Dominion Superintendent of Insurance should be charged exclusively with the duty of examining as to solvency all insurance companies, other than provincially-incorporated companies doing business only in the province of incorporation. Subject to the same exception, the Dominion should have exclusive power to license all insurance companies, provide for such deposits as may be necessary, inspect for solvency, and require annual and statistical returns. It should be open to the provinces to inspect and obtain copies of such returns, and in fixing the form of statistical returns the wishes of the provinces for information should be ascertained and respected. But an insurance company licensed by the Dominion should be entitled to commence business in any province of Canada without question, and should be able to continue business subject only to the financial supervision of the Dominion Department of Insurance. In recommending a single jurisdiction for the financial

⁴³ Ex. 321, Memo. Ont. Supt. of Insurance, p. 18; Ex. 79, Memo. Sask. Supt. of Insurance pp. 15-18.

⁴⁴ Ex. 321, Memo. Ont. Supt. of Insurance, p. 14; Ex. 290, Brief of Mutual Fire Underwriters' Association of Ontario, Ev. p. 7300.

⁴⁵ Ex. 118, Memo. Dominion Supt. of Insurance, p. 7.

⁴⁶ Ex. 321, pp. 2-4.

⁴⁷ Ex. 94, Brief All-Canada Insurance Federation, p. 5; Ex. 321, Memo. Ont. Supt. of Insurance, p. 8.

supervision of insurance companies (except provincially-incorporated companies doing business only in the province of incorporation) we aim to avoid not only unnecessary costs to the insurance companies and the public, which we have already mentioned, but also the increased governmental costs arising from duplication of governmental machinery by the Dominion and the provinces for the inspection and supervision of insurance companies.

SUMMARY OF CONCLUSIONS

Our recommendations thus involve a clear-cut division of functions throughout the whole field of insurance law. The provincial legislatures should have exclusive jurisdiction to prescribe the statutory conditions and incidents of insurance contracts, and exclusive jurisdiction to license insurance agents, brokers and adjusters. They should also have power to supervise the financial affairs of all insurance companies incorporated and operating solely within the province of incorporation; but a province should be enabled to delegate this function to the Dominion if it so desires. The Dominion should have the exclusive jurisdiction and responsibility for licensing all other companies, requiring deposits from them, prescribing annual and statistical insurance returns, conducting financial inspections and supervision, and publishing annual reports concerning such companies. This division of jurisdiction should be expressed with the greatest possible definiteness and clarity since vagueness in definition of powers would permit attempts by both the Dominion and the provinces to extend jurisdiction to ancillary matters, and would thus tend to continue the long series of constitutional battles over insurance jurisdiction which should be brought to an end.

In the event that these recommendations are not carried out we think it essential that the respective jurisdictions now exercised by the Dominion and the provinces should be defined beyond question. The evident desire of the larger insurance companies to have Dominion supervision,⁴⁸ and the obvious advantages of Dominion supervision to certain of such companies in their foreign business, suggest the advisability of establishing the present exercise of function on a sound constitutional basis. Duplication and possible inefficiency of administrative control, resulting from uncertainty over the constitutional position, should not be allowed to continue.

⁴⁸ Ex. 94, Brief All-Canada Insurance Federation, p. 12; Ex. 92, Brief Canadian Life Insurance Officers' Ass'n, p. 16.

5. PREVENTION OF INTERFERENCE WITH INTERPROVINCIAL TRADE

One aspect of the regulation of trade and commerce which gives rise to more or less serious difficulty in every federal system is that of safeguarding the freedom of interstate or interprovincial trade which national unity requires. The member states of a federation at the outset are likely to be states which have imposed tariff barriers and, perhaps, other obstacles as well, to their trade with one another. These states or provinces after federation are apt to reach a stage of development at which there is bound to be political pressure in favour of some form of local protectionism. The desire to maintain and to augment the provincial revenue, to develop new industries, to ensure employment during a period of depression, to protect wage levels and working conditions against "unfair competition" or "social dumping", may all, at one time or another, contribute to this demand for local protectionism, which may appear even in municipal politics.

A federation usually starts off with good intentions and the most obvious forms of undesirable discrimination are usually prohibited. Thus, in Canada, the Federal Parliament alone was authorized to impose customs and excise taxes and indirect taxation generally; the Federal Parliament was given "exclusive" power to legislate concerning trade and commerce; the Federal Government was equipped with power to disallow provincial legislation; and the provinces were required to admit each other's produce freely.⁴⁹ While these provisions of the constitution discountenanced barriers to interprovincial trade they did not preclude them altogether and, under the stress of political pressure, various expedients have recently been devised which, in one way or another, afford some degree of provincial protectionism. Various briefs presented to the Commission contained protests against one or another form of this regional protectionism.⁵⁰ Research studies undertaken on behalf of the Commission show the magnitude and complexity of the problem. All

⁴⁹ "All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces." Section 121, B.N.A. Act.

⁵⁰ Ex. 17, Winnipeg Board of Trade commented on the tendency "more noticeable than ever, to restrict freedom of interprovincial trade by devices which have the same ultimate effect as imposition of tariffs upon business between provinces." Also Ex. 159, Halifax Board of Trade; Ex. 268, Toronto Board of Trade; Ex. 33, Native Sons of Canada; Ex. 394, Canadian Chamber of Commerce. The Canadian Chamber of Commerce protested against laws and regulations hampering the conduct of business and the "free movement of trade from Vancouver to Halifax".

forms of local protectionism are not necessarily objectionable; but it is not possible to segregate completely the good from the bad. While we have no panacea to offer it seems desirable to review the situation briefly and to indicate various remedial possibilities.

Examples of Provincial Protectionism

An exhaustive examination is not here attempted but some examples may be noted to indicate the nature of the methods, legislative and administrative, by which provincial protectionism is being advanced.⁵¹ Certain taxes which in 1867 would have been considered essentially indirect at least by economists, and within the exclusive power of the Dominion, can now be so framed as to be deemed direct by the courts and, therefore, within the jurisdiction of the province. They can then be applied in such a way as to weigh more heavily on "outside" products than on local products.⁵² It was fear of an extension of this type of taxation which inspired much of the successful resistance to the proposal to amend the British North America Act so as to enable the provinces to impose certain taxes on retail sales,⁵³ and to remove doubts as to the constitutionality of legislation which has already been enacted. Further, the regulation of retail selling and the control of prices by the provinces may be applied in a discriminatory manner, and might also lead to "interprovincial dumping" (e.g. if price cutting is prohibited in one province, a dealer's stock might be exported to another province for sale there at sacrifice prices).⁵⁴ Inspection and grading laws can be applied so as to hamper interprovincial trade. So also can licensing provisions. Provincial governments, as liquor vendors, can give substantial preferences to local products either by the prices which they charge to the public, or by their purchasing policies, or in both these ways.⁵⁵

⁵¹ For an extensive study into these measures see Appendix 8—L. M. Gouin and Brooke Claxton, *Legislative Expedients and Devices Adopted by the Dominion and the Provinces*.

⁵² Thus the taxation of fuel-oil in B.C. (*Revised Statutes of British Columbia*, 1936, c. 278) is protective of coal which is a chief product of the Province.

⁵³ See *Debates, House of Commons*, May 14, 1936 at p. 2806 (Cahan); *Debates of the Senate*, May 19, 1936 at p. 317 (Meighen); June 10, 1936, at p. 464 (Meighen).

⁵⁴ Cf., *Closing-out Sales Act*, (*Statutes of British Columbia*, 1937, c. 7.) By this legislation a licence is required for a closing-out sale.

⁵⁵ Manitoba has by the Government's Liquor Control Act fixed the price of beer sold but not brewed in the Province above that of beer locally brewed under authority conferred by an act of the Legislature.

Provincial legislation which aims at fixing local prices has possibilities of serious interference with interprovincial trade.⁵⁶ The less objectionable but still questionable methods by which provinces (and sometimes municipalities which the province creates) may "encourage" local industries by bounties or by exemptions from particular forms of taxation should also be noted.⁵⁷ Finally, propaganda in favour of buying provincial products is a form of provincial protectionism.⁵⁸

The case for and against Provincial Protection

The growing demand for provincial protectionism must not be under-rated. This demand found expression in submissions made to the Commission. The Government of New Brunswick suggested the possibility of regional tariffs being applied for the purpose of protecting local interests. This suggestion was two-sided. It envisaged the possibility of tariffs of this character imposed by the Dominion to encourage certain industries or certain business conditions in a particular area; and as well the practicability of the imposition by New Brunswick of tariffs against the rest of Canada or against individual provinces, though the counsel of the province agreed that "it was doubtful whether this could be done."⁵⁹ Suggestions somewhat similar

⁵⁶ By the Commodities Retail Sales Act, 1937, c. 9, B.C. provides that commodities shall not be sold by retail in the Province at a price less than the cost of manufacture and sale.

⁵⁷ *D.g.* Bounties on iron and steel in N.S., B.C., Que., and Ont., and fixed assessments granted by municipalities to certain industries.

⁵⁸ It is not merely in matters of trade and commerce that one government may be accused of violating the spirit of the constitution to the prejudice of other governments while observing its letter. Elsewhere the abuses which have arisen from the imposition of provincial inheritance taxes in respect of both the domicile of the decedent and the situs of his property have been discussed. In the course of the Commission's hearings the Dominion Government was not infrequently reproached in provincial submissions and in evidence given by representatives of the provinces with having imposed a substantial tax on incomes without due consideration for the needs of the provinces and with having unduly enlarged its field of direct taxation. As for instance Mr. Pattullo, Premier of B.C. (Ev. p. 5263): "Every question which is asked here really gets back to the basic principle of the Dominion Government being an ogre—I am not saying that offensively—coming into our pantry where we have a full larder, everything in wonderful shape, then the government comes in and entirely pushes us out of our own pantry; that is the difficulty." See also Ex. 180, Brief of Argument of B.C., p. 4; Ex. 297, Brief of Ont., Pt. II, p. 20; Evidence of Hon. Mr. Conant, Attorney-General of Ont., pp. 7967-69.

⁵⁹ W. P. Jones, Ev. pp. 8739ff: "I had in mind the great advantage that would accrue to this province if it had been enabled to set up a tariff against the provinces of Ontario and Quebec." And "We could make agreements with the United States, we could make an agreement with Great Britain which would surely give us a better market than the markets of Ontario and Quebec."

in import were also submitted to the Commission by the Saint John Board of Trade⁶⁰ and by the British Columbia Chamber of Agriculture.⁶¹

It is beyond dispute that, as was emphasized in briefs submitted to us, already noted, local protectionism does tend to hamper national economic life and thus to reduce the income of the people of Canada upon which the prosperity of the whole Dominion rests. It is probable that there is no single province so situated as to gain on balance by the existence of local protectionism in Canada. In each case the desired objective is sought with such immediacy that the longer view, taking account of secondary results and ultimate consequences, is excluded from consideration. It is obvious that if one province can invoke these expedients to serve or protect a local interest, other provinces can do likewise; and that if a protective provincial tariff can be imposed for the advantage of a particular interest, other interests in the same province will exact the same advantage by the employment of political pressure. With the expansion of these experiments in provincial self-sufficiency, it would be speedily found that the local market obtained at such a cost would be a poor substitute for the lost freedom of trade throughout the Dominion. The damage done by local protectionism takes many forms: among them, the artificial location of industries within the national economy; the wastes of uneconomic competition; the financial burdens involved in supporting uneconomic industries; the uncertainty

⁶⁰ This submission (Ex. 369) outlined a scheme for imposing equalizing taxation upon manufactured goods or agricultural produce brought into the Province from outside and offered for sale at a price lower than those asked in the local markets. All shipments into the Province, it was suggested, should be accompanied by an invoice showing the price, attested by oath. This invoice would accompany the bill of lading and where it crosses the border, the customs authority would take it and clear the package. An enlargement of the customs staff to supply the necessary personnel was assumed.

⁶¹ In an argument supporting its brief (Ex. 204) the Chamber proposed that the powers of the Dominion with respect to trade and commerce should be transferred to the provinces so far as they apply to the marketing of agricultural products. It was suggested that the province might be given exclusive powers with respect to trade and commerce in any agricultural product produced within the province, irrespective of whether the trade or commerce so carried on with respect to such agricultural product has its beginning and end wholly within the province or not." The following interchange of views took place between the first Chairman of the Commission, Hon. N. W. Rowell, and Mr. W. E. Haskins who represented the B.C. Chamber of Agriculture (Ev. p. 5602): "The Chairman: The logic of your position is this: That each province could prohibit goods going out and coming in from the other province. You destroy the very basis of inter-provincial trade and commerce in Canada.

Mr. Haskins: With the over-riding power of the Dominion, where the matter was one of general concern, to deal with the matter.

The Chairman: Which the over-riding power of the Dominion to-day prevents. It is not intended we should have nine watertight compartments. This is one country—Canada, and these provincial boundaries are matters historical or for convenience of administration. As far as trade and commerce is concerned, it is intended to flow freely throughout Canada."

to business everywhere if markets in other provinces are in danger of being shut off by protectionist devices; the emphasis laid on rivalry and jealousy between the provinces. The short-turn gains that appear in the guise of increasing employment within the province (by diminishing employment in other provinces), or of increasing the revenue resources of the province (by decreasing those of other provinces), or of building up a self-contained community within provincial boundaries, will lose much of their importance if our main recommendations regarding unemployment relief and adjustment grants are implemented.

Interprovincial discrimination in Canada appears to be considerably less dangerous than interstate discrimination in the United States.⁶² But it has already become serious, and American experience shows that it may become much worse. It is, therefore, a matter of which any thorough examination of Dominion-provincial relations must take account. For these reasons it is important to consider the practicability of remedial action. The strength and weakness of a number of alternative methods will be briefly reviewed.

The heart of the problem lies in the fact that the simplest requirements of provincial autonomy in legislation for the control of everyday life, and in matters of taxation, involve the use of powers which are capable of abuse, in the sense that they may be used to establish some sort of provincial protection. No doubt our proposals that corporation taxes should be levied by the Dominion alone

⁶² The wider powers of taxation possessed by the States has enabled them to apply measures of state protection which are exciting widespread apprehension in the United States. See for instance "Shove Thy Neighbor" by J. T. Flynn, *Colliers*, April 30, 1938, and "Death by Tariff" by R. L. Buell, *Fortune*, August, 1938.

In March, 1939 the U.S. Dept. of Agriculture published a report embodying the findings of an inquiry which the Bureau of Agricultural Economics had been conducting for two years into the growth of barriers erected by state legislatures against interstate trade. In a comment on the report, Henry Wallace, Secretary for Agriculture, said that "to-day we cannot say that we have free trade between the states." The *New York Herald-Tribune* of March 7, 1939, reviewing this report, said: "Our internal tariffs, controls and quota systems are not called by those names, but the effect is frequently quite the same as if they were. A dozen states lay excise taxes on all margarine except that manufactured from certain domestic ingredients—which amounts to a tariff on the foreign margarine. A number of states adjust their liquor licence requirements in such a way as to tax dealers in out-state beer or wine more heavily than dispensers of the domestic product; Michigan for a time had a frank tariff of 25 cents a barrel on out-state beer, and similar legislation has been proposed elsewhere. Various states and cities, including New York, apply their milk-inspection laws in such a way as to discriminate in favor of the neighboring farmer and against the 'alien' producers of Wisconsin, Vermont or similar foreign parts. Grading and labelling laws can be discriminatory as well as helpful to the consumer; plant quarantines may serve the interests of domestic producers as well as those of defence against infection. Automotive licence laws frequently penalize the interstate truckers by comparison with the domestic competitor, sometimes to the grave detriment of domestic shippers. And a system of regular ports of entry, at which trucks must check into and out of the state, is spreading a net of what almost amount to custom houses widely through the West."

will, if implemented, remove one source of discrimination.⁶³ There can, however, be no question of depriving provinces of all powers that are capable of abuse. The problem is to preclude or restrict abuses without interfering with legitimate and even necessary powers.

Possible Methods of Prevention

The device which naturally suggests itself to those familiar with the constitutional practice of the United States is to prohibit in the constitution the abuse of legislative power and to rely on the courts to determine how far provincial legislation does purport to interfere with interprovincial trade, and to declare the legislation, to that extent, invalid. But in practice it is a matter of extreme difficulty to disentangle legitimate measures designed to promote purely provincial objectives from those measures, the indirect effects of which may be undue discrimination against the products of other provinces, or against the activities of citizens of other provinces, or which may prejudice the revenues of other provinces. The elaboration, by a court, of strict and binding rules on such matters as these might in practice prevent the enactment of useful provincial legislation and might in destroying one type of abuse create shelter for other and even worse abuses. And it is doubtful whether the personnel best suited for purely judicial functions is likely to be the personnel best suited for dealing with somewhat technical questions of economics and business.

A second method would consist in relying on the Dominion to use the power of disallowance (a power which is always available to the Dominion in its discretion) to protect one province against undue discrimination incidental to the legislation of another province; or in giving to the Parliament of Canada a special head of legislative power enabling it to pass legislation to correct the discriminatory effects of provincial legislation. But this method is open to several objections. There is controversy concerning the appropriate use of disallowance. Any action which is discretionary, whether it be action of the Federal Government or of the Parliament of Canada, is political action and is open to the suspicion of being used with greater regard for one province than for another. Finally, interference by the Dominion is not likely to improve Dominion-provincial relations; and even inaction by the Dominion, when it had undoubted

power to act, might embitter opinion in a province which felt itself aggrieved because of injuries received from protective measures enforced by another province.

A third method would be to allow a government aggrieved by the action of another to bring its complaint before the proposed Dominion-Provincial Conference. While such action is always possible and might in some cases lead to settlement of an issue by mutual consent, it has certain obvious weaknesses. The Conference will be a political rather than a judicial body; it will not readily act on a majority decision; in arguing a case before it a provincial premier might feel some repugnance to admitting that action which he had staked his reputation on defending in his own legislature was an infringement of "interprovincial comity"; and the disapproval of a majority could not be conveniently made public as a guide to popular opinion. Again, there is bound to be considerable reluctance on the part of a provincial government to censure the act of another provincial government or legislature lest by so doing it prejudice its own freedom of action.

A fourth method would consist in frank recognition that the proper working of the federal system and national unity alike require that both provincial and Dominion legislatures should abstain from some types of legislation which are unquestionably within their constitutional powers; that the spirit as well as the letter of the constitution must be observed; and that constant goodwill is essential if good relations are to be maintained. This method runs the risk of being little better than a pious admonition addressed by men exposed to no temptation to act with bias to others whose political careers may be at the mercy of political pressure with the full force of local interests behind it. In practice it is probable that the Premier of a province, or the Prime Minister of the Dominion, with a parliamentary majority in thorough agreement with his policy, would have very little difficulty in persuading that majority that the policy of which it approved was in full accord with the spirit as with the letter of the constitution.

If, therefore, this fourth method is to be made effective it must be possible to oblige a government (whether provincial or federal) to defend the propriety of its legislation, just as it may now be compelled to defend its constitutionality, before an impartial tribunal. Similar considerations apply if it is not the propriety of legislation which is in dispute but the propriety of administrative practice. An appropriate tribunal would have to include

⁶³ See recommendations *re* corporation taxes, Section B, Ch. III, 2.

both a judicial element and an element familiar with economics and with business. There are several possibilities. If one province complained of the legislation of another, but admitted either absolutely or for the purposes of the discussion, the constitutionality of the legislation, it might be entitled to have the fairness of the legislation judged by a tribunal consisting of the chief justice of the province which had enacted it together with, perhaps, one assessor nominated by that province and one nominated by the complainant province. The strong point of this tribunal is that a province might feel more confidence in its own chief justice than in an outside authority. The weak point of this sort of tribunal would be that it would be differently composed in different cases and that conceivably two identical provincial acts might be differently dealt with in different provinces. Furthermore, the employment of assessors nominated by the parties would be apt to tend to dissenting opinions and to dissatisfaction with any decision which was not unanimous. A second possibility would be that the decision as to the propriety of provincial legislation might rest with the Chief Justice (or some other judge) of the Supreme Court of Canada together with assessors, either designated for each case or chosen permanently for all cases. A third possibility would be the creation of a special tribunal. The drawback to this course, which might have the advantage of securing the best possible personnel for a difficult task, would be that the tribunal might have too little work to justify its cost—for the mere fact that an appeal from provincial enactment was possible might serve to discourage the more provocative forms of local protectionism.

The need for decisions which take account of all the circumstances of the case is imperative. Some minor interference with interprovincial trade may be involved in legislation which is in all good faith concerned with the adjustment of a local matter which could not be effectively dealt with except by measures which incidentally involve this interference. Of two enactments, which are indistinguishable as regards their form, one may interfere substantially and the other very little with interprovincial trade. A measure which, at the time of its enactment, inflicts no injury whatever on the citizens of other provinces may, as conditions change, become discriminatory in its operation, and it may be a matter of very delicate judgment to decide at what moment of time it becomes desirable that it should be amended to take account of extra-provincial interests. Our suggestions are

based on the assumption that governments will, on the whole, not object to being told if and when their legislation or their administrative practice becomes unfair; and that they will realize that hard and fast rules would be inappropriate and even dangerous.

It is probably not desirable that the decision of such a tribunal should be mandatory in the sense of invalidating legislation found to be unduly discriminatory. The decision might be declaratory in character. Ultimately a province could probably be relied on not to offend against "interprovincial comity" by insisting on legislation which had thus been declared unfair to other provinces. The effect of the decision of the tribunal would be that a province would not be the sole judge if its legislation was unfair to others. The very existence of the tribunal would derive from recognition of the simple fact that a provincial legislature is not a good or reliable judge of such a question. It by no means follows that it cannot be relied on to correct abuses, once these have been authoritatively pointed out.

A fifth method would consist in direct agreement between provinces not to obstruct the trade of each other's citizens. This method might take the form of an interprovincial conference behind closed doors in which protests could be made and conceivably threats of retaliation. But this sort of bargaining would tend to give each province a *quid pro quo* in the form of concessions by other provinces for abandoning local protectionism, while our hope is that the advantages conferred on the weaker provinces by our main financial recommendations might be such as to induce them in return to agree to renounce such measures.

A sixth method would consist in formal agreements entered into by two or more provinces. Such agreements might deal with a wide range of matters in which some degree of uniformity was desired and might include engagements with regard to "protectionist" measures. Their use is exposed to some dangers. They might build up *blocs* which would be protectionist as against the rest of Canada and might thus intensify the very evil we are seeking to eradicate. Finally, enforcement presents difficulties as an agreement would have the nature of a treaty between the provinces concerned and hence would not be enforceable by ordinary legal processes.

In many instances, of course, it is municipalities, or other bodies on which the province has conferred powers, rather than provinces themselves, which are the immediate offenders in the matter of

economic discrimination, and the local protectionism of municipalities may be exercised to the detriment of other municipalities in the same province.⁶⁴ This matter lies beyond the purview of the Commission except in so far as interprovincial discrimination results from municipal action or from that of other bodies such as professional organizations. In this case the province, which creates a municipality or organization and confers powers on it, is completely responsible for the action of that municipality or organization and owes it to other provinces that it should retain and, when occasion arises, exercise adequate administrative powers of control.

Conclusions

We have purposely left our discussion of this important question vague because, in our opinion, it is essential that all the legislatures concerned should agree wholeheartedly to some review of their legislation, and because it is probably a Dominion-Provincial Conference which can best agree on the

type of review which would be most acceptable to them. There seems to be every reason why they should agree, for while it is easy to slip into measures which others will think unfair, and difficult to recede from a position which has once been assumed, it is easy to express readiness to abstain from unfair or discriminatory use of legislative power provided that other provinces give the same undertaking. There is also a distinct advantage in separating the question of the constitutionality of legislation from that of its general merits. If, as at present, only the former question can be reviewed by the courts, the latter is almost certain to become involved in the debate. It is notorious that "hard cases make bad law".

There are not the same reasons for our being vague as to the principles which should be observed in giving effect to what we have termed the spirit of the constitution. There should, we think, be complete freedom of trade and commerce throughout Canada; complete freedom of investment; complete freedom of movement and freedom from arbitrary restrictions (as distinct from a bona fide test of vocational qualifications) in the practice of a trade or profession; and complete freedom from discriminatory taxation. If there are to be exceptions to these general principles they should be authoritatively and unambiguously declared.

⁶⁴ See Appendix 8—L. M. Gouin & Brooke Claxton, *Legislative Expedients and Devices Adopted by the Dominion and the Provinces*, p. 53: "There is also municipal taxation, particularly in Quebec, which, if allowed to develop, would divide Canada into walled towns. Though hardly of national importance in itself, this municipal legislation is important as indicating what might happen if narrow-minded local feeling forced economic nationalism to its ultimate conclusion."

CHAPTER V

FACILITIES FOR DOMINION-PROVINCIAL CO-OPERATION

Despite the undoubted advantages of a federal system of government it is liable to have certain inherent defects. Two of these are rigidity and inelasticity in the division of powers between the central and provincial (or state) authorities, and lack of means of co-operation between autonomous governments in matters of common interest. In this section we make certain suggestions which we think, if implemented, would largely overcome these defects in the Canadian federal system. We think that thereby national unity and efficiency of government would be promoted without in any way impairing the autonomy of the provinces.

1. DOMINION-PROVINCIAL CONFERENCES

The basic principle of a federal system of government is the division of powers between central and local authorities. In a relatively simple society where the functions of government are few and simple, such as at the time of federation, this division of power may not be a hindrance to efficiency and economy in government. But in the highly interdependent and complex society of today, with the great expansion of governmental functions which has become necessary, efficiency and economy in government cannot be obtained merely by a division of powers between governments. Co-operation in the pursuit of common objects and in the solution of common problems is no less essential. But co-operation between autonomous governments is difficult to achieve. Administrative authorities responsible to different legislatures are not always interested in co-operation; indeed, non-co-operation may on occasion better serve their immediate interests. Autonomous governments may thus tend to become rival centres of power rather than agencies for the co-operative pursuit of the public weal. This has too often been the case in the Canadian as in other federal systems.¹ It is imperative that means be found for overcoming this tendency and for promoting co-operation between the provinces and between the Dominion and the provinces which is so essential to efficiency and economy in administration under modern conditions.

¹ See Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction*, pp. 7-10.

There have been attempts going back over fifty years to meet this deficiency in our federal system by occasional conferences, interprovincial² or Dominion-provincial³ in character, called for the consideration of matters upon which common action was thought desirable. This expedient was first resorted to by the provinces in 1887 when an interprovincial conference met in Quebec at the instance of the Quebec Government, with five of the seven provinces represented.⁴ The Dominion Government, though invited, sent no representatives to this conference. The conference occupied itself exclusively with Dominion-provincial relations, seeking extensive modifications in the constitution and asking for a new schedule providing increased subsidies for the provinces. The purpose of the conference, it was declared, was to improve relations between the federal and provincial governments.⁵

Fifteen years passed before another conference was called; again it was an interprovincial conference, which was held in Ottawa at the instance of the Government of Quebec, as before. This conference limited its consideration to the question of subsidies; it revised the proposals of the 1887 conference and submitted its results to the Dominion Government which, though taking no part, was favourable to the holding of the conference, according to a statement made to the conference by the Premier of Quebec.

The first Dominion-provincial conference was convened by the Prime Minister of Canada in 1906. It adopted in substance the recommendations of the interprovincial conference of 1902 which were

² The term "interprovincial conference" is used to mean those conferences between provincial representatives in which the Dominion Government either did not participate at all or did so only upon invitation.

³ The term "Dominion-provincial conference" is used to mean those conferences summoned by the Dominion Government or in which that Government took an active part.

⁴ The unrepresented provinces were Prince Edward Island and British Columbia.

⁵ "The government which has taken the initiative in connection with this conference deems it its duty to declare at once that the conference must not be considered in the light of a possible move against the Federal authorities but that its sole object is to endeavour to solve, in the general interests of the whole of Canada, such difficulties as experience has shown to exist in the relations between the general and provincial governments." (Statement by the Premier of Quebec at the opening of the conference.)

made effective by Dominion and Imperial legislation. With this as a precedent the Dominion Government has in the intervening years called the provincial governments into conference with it on seven occasions: in 1910, to consider the question of company law; in 1918, to discuss a wide range of questions: the return of their natural resources to the Prairie Provinces, applications by other provinces for increased subsidies, taxation, unemployment, housing and other problems arising at the close of the War; in 1927, to deal with an agenda covering many questions in which the Dominion and the provinces were jointly interested; in April 1931, for the purpose (as set out in the letter calling the conference from the Prime Minister of Canada to the Premiers of the Provinces), "of affording the provinces an opportunity of presenting any views they might desire to express with reference to the changes that are involved in the proposed statute of Westminster"; in 1933, to consider the question of road and rail transport; in 1934 to deal with unemployment relief and kindred questions, and company law.

The most elaborately organized of the Dominion-provincial conferences was the last one held, that of December, 1935.⁶ The whole field of Dominion-provincial relations in which there was uncertainty and friction was included in the agenda; all nine provinces were represented; the delegations were almost identical with the personnel of each government; and each government was attended by its senior administrative officials. The agenda included seven questions: (1) relating to the procedure that should be followed in amending the British North America Act; (2) relating to the financial relations between provinces and Dominion; (3) relating to unemployment and relief; (4) relating to responsibility for and co-ordination of social services; (5) relating to mining development and taxation; (6) relating to agriculture and marketing; (7) relating to tourist traffic development. All these questions were referred to special committees which made reports to a plenary session of the conference.

During this period of thirty-three years representatives of the provinces met in conference upon several occasions to consider matters of special concern to them: in 1910, an abortive meeting to consider the attitude of the other provinces toward the proposal that the representation in Parliament of the Maritime Provinces should be irreducible notwithstanding population changes; in 1913, for consideration (again inconclusive) of the question of Maritime representation, enlarged subsidies, and

minor matters; in 1926, eight provincial governments met in conference to consider questions of double taxation, jurisdiction in insurance matters, and special relief for provinces where prosperity lagged.⁷

It will thus be seen that within a period of twenty-nine years there were eleven conferences, including both types, while in the period from 1926 to 1935 there were six, or roughly one for every year and a half. The range and scope of the questions discussed, as briefly indicated in this summary, make it quite clear that all the governments in Canada have recognized the need for conferences of this character and have admitted their usefulness in clarifying issues about which there is a conflict of interest or opinion.

The Government of Nova Scotia in its submission to the Commission made the definite proposal that these conferences should become an essential part of the Canadian federal system. Its recommendation was in these terms:—

"That provision ought to be made, by way of amendment to the British North America Act or otherwise, for annual conferences to be held at a fixed time between representatives of the Provinces and representatives of the Dominion."

In the Province's printed submission and in oral argument by Premier A. L. Macdonald, this proposal was explained and elaborated. "The conferences" it was stated in the brief "have proved to be very valuable and have produced results beneficial not only to the provinces but to the Dominion as a whole", despite the fact that in the past conferences have been called, often on short notice, at times when it was inconvenient for one or more province to attend and with no preliminary consideration of the agenda.

The criticisms of Nova Scotia regarding the sporadic character of the conferences, the lack of careful preparation by the government making itself responsible for the meeting, the shortness of notice to the participants, the briefness of the time allotted for consideration of the questions submitted, appear to be justified by such examination into the history of these gatherings as has been possible.

The Government of Nova Scotia made certain concrete proposals for improving the conferences. Much more, it was contended, could be accomplished if provision were made, either in the British

⁷ The information given in the preceding paragraphs was compiled by the research staff of the Commission from departmental records and press reports. The official records of many of the earlier conferences are very incomplete; and for the inter-provincial conference of 1926 held in Ottawa no record is available beyond the contemporary reports in the press.

⁶ *Dominion-Provincial Conference, 1935: Record of Proceedings.*

North America Act, or by established practice, to hold a conference each year at a fixed time. All governments could plan in advance to attend, and a small permanent secretariat could collect statistical and other data, compile the agenda and otherwise ensure continuity between conferences. Two points were emphasized in the argument by Nova Scotia. It was said, first, that such a scheme for regular conferences would allow not only formal discussion of items on the agenda, but also informal discussion of difficulties that had arisen either between the Dominion and a province, or between one province and another. The conference, it was said, would be "an informal round table where the problems or the difficulties of any province could be brought out and aired informally." Trade regulation and similar practices by provinces, considered unfair by other provinces, could be discussed. The conference would supply an "opportunity for discussion and for creating a spirit and an attitude of co-operation among the provinces and the Dominion, and a willingness based upon sympathy and understanding, on the part of one section of the Dominion to assist in so far as possible in correcting the difficulties of another section." In the second place it was argued that "attendance should not be made to depend upon whether the provinces have particular issues to bring before the conference, but should be regular and as a matter of course."⁸

The proposal for annual conferences made by Nova Scotia was supported, with minor qualifications, by the Governments of Prince Edward Island and New Brunswick.⁹ The advantages of having permanent and continuous conference machinery were also stressed in several briefs by private organizations.¹⁰ Apart from the suggestion by the Premier of British Columbia¹¹ that annual conferences were, perhaps, too frequent (but he made plain his willingness to consent if the other provinces wished to have a conference each year), no objection to the proposal was made in any of our public hearings.

These proposals of Nova Scotia appear to correspond with the views of the Dominion Government. In opening the conference of 1935, Prime Minister W. L. Mackenzie King said:—

"At the present conference we can examine the basic principles underlying the [Dominion-provincial]

⁸ Brief of N.S., pp. 38-42. See also evidence of Premier A. L. Macdonald, p. 4061.

⁹ Brief of P.E.I., p. 54; Ev. (N.B.), p. 8498.

¹⁰ Ex. 267, Citizens' Research Institute, pp. 67-68; Ex. 113, Canadian Federation of Mayors and Municipalities, p. 66.

¹¹ Ev. pp. 5538-39.

questions, and provide machinery for their continued study and treatment. In this manner, their final, satisfactory disposition can be ensured at subsequent conferences.

This arrangement of continuity and permanence is necessary, because co-operation between the Dominion and the provinces is too vital a matter to be left entirely for intermittent conferences and to correspondence between governments.

Our secretarial arrangement and our proposed organization are based upon this desire—to have permanence and continuity."¹²

Some kind of organization for regular, instead of intermittent, conferences was here clearly suggested—a suggestion to which effect has not yet been given.

The need for such regular conferences to promote co-operation between Dominion and provincial governments is obvious. The complexities of our social, political and commercial organization have now reached a point where the earlier view, once widely held, that all Dominion-provincial difficulties arising from disputes over jurisdiction could be settled by a strict demarcation of powers and responsibilities must be finally abandoned. A clear demarcation of legal power is still theoretically possible, but the functions of government in the modern state cannot be divided sharply between central and local authorities as can legislative power. Many functions inherently unitary in character are in fact divided between the Dominion and the provinces by the present division of legislative power. Public health, the regulation of marketing, the control of business, are conspicuous examples. In such matters there will inevitably be gaps and inefficiency in governmental control without at least a measure of co-operation and uniformity of method between different governments. This intermeshing of duties, powers and responsibilities between the Dominion and the provinces demands sympathetic, constant and efficient co-operation between these governments. Moreover, it is in the interests of the provinces themselves that efficient methods of co-operation be devised. The tendency in most federal states has been toward centralization at the expense of the provinces (or states). In so far as matters requiring uniformity of treatment, or concerted action can be dealt with by co-operation among the provinces, or between the Dominion and the provinces, the case for additional centralization to promote efficiency or uniformity will not arise.

¹² *Dominion-Provincial Conference, 1935: Record of Proceedings*, p. 9.

Mr. King, in the speech to the conference from which we have already quoted, is explicit in his avowal of this need of co-operation.¹³

The Commission, in the light of these facts, is of the opinion that Dominion-provincial conferences at regular intervals with a permanent secretariat, as suggested, would conduce to the more efficient working of the federal system. It, therefore, recommends the adoption of the proposal submitted by the Government of Nova Scotia.

The cost of providing the secretariat should be borne by the Dominion Government and provision should be made for an adequate staff to collect information on Dominion-provincial relations and make it available to all governments. If our recommendation for the creation of a Dominion-Provincial Finance Commission is adopted, the secretariat which will be required might well be also employed as the secretariat of Dominion-provincial conferences as its work will be wholly in the field of Dominion-provincial relations. Or, as an alternative, the secretariat might be provided by the Department of the Secretary of State. Under the supervision of such a secretariat full records of Dominion-provincial conferences could be kept. A technique of procedure at such conferences could be evolved to afford opportunity for full consideration of matters which might otherwise produce friction or lack of harmony either between the Dominion and one or more provinces, or between two provinces, as well as to promote co-operation on matters of common interest. To suit the convenience of all governments concerned, provided it was clearly understood that no great delay should intervene between conferences, a certain latitude could be allowed in arranging the time when a conference should be held.

In recent years the practice has developed of holding frequent conferences of administrative officials in similar departments of Dominion and provincial governments. The work of the Dominion Council of Health and of the special inter-governmental committee on uniformity of company law may be cited as examples of the value of this type of conference. We suggest that special co-operative activities of this kind should be continued and related to the work of the general Dominion-

provincial conferences. Such conferences of administrative officials on particular problems might well be held either at the same time as, or immediately before or after, the general conference.

If provision is made for adequate machinery for Dominion-provincial conferences it will, in the judgment of the Commission, supply a serious lack in the Canadian federal system. In the past the spirit of open diplomacy has sometimes been lacking in the relations between the Dominion and the provinces. In the result it has happened that a province suffering from some peculiar disability or having some special claim on the Dominion has been able to conclude a bi-lateral agreement with the Dominion which aroused the envy or resentment of other provinces. It is desirable, except in very special circumstances, that arrangements between the Dominion and a province should be open for discussion at a conference where all the provinces have the opportunity of being represented. Such conferences might also be used to facilitate arrangements between two or more individual provinces.

Another suggestion of machinery for closer co-operation between the Dominion and the provinces was made by New Brunswick¹⁴ which advocated the establishment of a Department of Secretary of State for the Provinces at Ottawa and a Department of Federal Relations in each province. Immediately after Confederation a member of the Dominion cabinet held the portfolio of Secretary of State for the Provinces. In 1873¹⁵ this Department was abolished because of insufficient work to justify a separate department, and its functions transferred to the Department of the Secretary of State.

The suggestion of the New Brunswick Government contemplated the use of new departments for the conduct of inter-governmental communications.¹⁶ At the present time, except in formal matters, a department of a provincial government usually communicates directly with the department of the Federal Government which is concerned with the matter under discussion, without any record being kept in any central office in either the provincial or Dominion governments. In formal matters, the Dominion Secretary of State communicates on behalf of the Federal Government with the Lieutenant-Governor of the province. There may be certain disadvantages in not having a single department in each government charged with the

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¹⁶ *Ev.* pp. 8546-47.

responsibility for inter-governmental communications. Each province must, of course, decide for itself the expediency of establishing such a department, but the Commission is inclined to think that the delay and inconvenience of having the voluminous correspondence, which is today necessary between governments, conducted by one department would make the suggested innovation undesirable. The existing machinery of communication appears to have developed along satisfactory lines but there is obviously room for improvement. Complaints are voiced from time to time by some of the provinces about the difficulty of getting information in the form most suitable to their uses, as for example, statistics. We think that the establishment of a permanent secretariat for Dominion-provincial conferences could be highly useful in meeting this need since it could serve as a bureau of information to all the provinces.

2. DELEGATION OF POWERS

One of the difficulties inherent in any federal system is the rigidity which marks the division of jurisdiction between the central and local governments. For obvious reasons constitutional amendments in a federal state are made more difficult than is usual in unitary states.

Under our terms of reference we do not feel called upon to make any recommendations as to methods by which the British North America Act should be amended. Our instructions obviously contemplated the suitability of a reallocation of powers which would require constitutional amendments, and we are reporting as to what in our opinion will "conduce to a more efficient, independent and economical discharge of governmental responsibilities in Canada". Where necessary or desirable in the light of our investigations, we have recommended that changes in the British North America Act should be made, our only restriction being the duty to respect a "distribution of legislative powers essential to a proper carrying out of the federal system". While we have recommended that constitutional changes should be made, we feel that it should be left to the Dominion and the provinces to work out the method whereby acceptable changes should be brought about. We desire merely to emphasize the necessity that some procedure for constitutional change should be evolved.

We think that the introduction of a measure of flexibility in the Canadian federal system should be considered. A number of provinces may on occasion be willing and may even actively desire

the Dominion to assume responsibility for a function which is beyond its constitutional powers. The Dominion may itself be willing to assume the function but be unable to do so until public opinion has developed to the extent of permitting a constitutional amendment to be made. On the other hand, the Dominion may be alone entitled to perform functions which, under modern conditions, it may be more appropriate for the provinces to perform and certain of the provinces may be anxious to assume such responsibility. In several submissions to us,¹⁷ it was suggested that it would be desirable to allow a province to delegate power over a subject to the Dominion, provided that the Dominion was willing to accept the delegation, and conversely that there might be delegation of power by the Dominion to a province. The effect of such delegation would be that the delegating authority would divest itself, at least for a limited period, of the power as completely as if it had been assigned to the other authority in the British North America Act.

At the present time, although the law is not entirely clear, it seems that delegation of legislative power either by the Dominion to a province, or by a province to the Dominion is invalid.¹⁸ To establish definitely a power of delegation which is sufficiently wide, amendment of the British North America Act would be required. Such an amendment should cover both the power to delegate jurisdiction and the power to receive jurisdiction by delegation. Such a power of delegation should apply to the whole field of legislative power for both the province and the Dominion including any legislative power received by way of amendment or delegation. It should also be provided that the act of delegation would only be operative if the legislative unit to which delegation was made signified its willingness to accept it. Provision should also be made permitting delegation to be either in perpetuity or for a definite time limit. The Dominion, for example, might be unwilling to accept the delegation of certain functions involving extensive organization (such as non-contributory old age pensions) unless it were assured that the delegation would operate in perpetuity. For other functions (such as the grading of natural products) it might be sufficient if there were assurance that

¹⁷ Ex. 140, Brief of N.S., pp. 22-24; Ex. 34, Brief of Sask., p. 335; Ex. 252, Brief of Canadian Chamber of Agriculture.

¹⁸ *Canadian Pacific Railway Co. v. Notre Dame de Bonsecours* [1889], A.C. 367. *See v. Zaslavsky* [1935], 3 D.L.R. 788; *Re v. Thorby Traders* [1936], 1 D.L.R. 592; *Re v. Brodsky* [1936], 1 D.L.R. 578. Delegation should be distinguished from legislation by reference and conditional legislation, both of which may be constitutionally valid. See Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction*, p. 37 ff.

the delegation would not be revoked for a stipulated period of ten or fifteen years. It should also be provided that although an agreement of delegation could not be revoked by the unilateral action of either legislature during the life-time of the agreement, it might be terminated earlier with the consent of both parties expressed by appropriate legislation.

Subject to such restrictions, we can see no reason why a mutual power of delegation between the Dominion and a province should not be permitted on a temporary as well as a permanent basis. It was suggested to us¹⁹ that the failure of attempts which have been made to introduce an element of flexibility into federal constitutions has been largely due to the fact that changes were required to be permanent. It was said that there should be provision for temporary delegation of functions wherever such a device could be appropriately applied. In the British North America Act provision for change in the respective jurisdictions of the Dominion and the provinces appears in section 94. The Dominion was given power to make provision for uniformity of laws relating to property and civil rights in the three common law provinces, but any federal act designed to do this required adoption by the legislature of a province before it had any operative effect in such province. When the act had been thus adopted the Dominion acquired full legislative power in perpetuity to deal with its subject matter. It is conceivable that the irrevocable consequences of action under section 94 prevented it from ever being used.²⁰ Moreover, there is considerable doubt whether the section applies to provinces other than Ontario, Nova Scotia and New Brunswick,²¹ and there is no provision for transfer of jurisdiction from the Dominion to a province if such should be desired.²²

Elsewhere in this Report in dealing with certain specific problems of Dominion-provincial relations we have suggested that these problems might be solved in each instance by delegation of jurisdiction.²³ We think that a general power of delegation such as we have discussed, which would allow the transfer of jurisdiction from the Dominion to a province, or from a province to the Dominion subject to the conditions mentioned, would cover all these instances, as well as others. With such a power desirable changes in the constitutional allocation of powers could be effected in respect of one province without the necessity of waiting for such a development of public opinion as would permit of a nation-wide constitutional amendment. A change in jurisdiction might be effected on a temporary basis for one province, which, if it proved successful, might induce other provinces to make similar arrangements, and if unsuccessful need not be a permanent arrangement as would be a constitutional amendment.

The power of delegation would also permit of minor changes in the allocation of functions between the Dominion and certain provinces to suit the peculiar conditions of these provinces. In a federation such as Canada where some provinces are much larger and financially much stronger than others this may be highly desirable. As we have pointed out in the chapter on overlapping services, the Dominion has already been driven to perform certain services for the smaller provinces which the larger provinces do not need.²⁴ A general power of delegation would facilitate arrangements of this sort in keeping with the nature of the Canadian economy and the unequal size and strength of Canadian provinces. In short, a general power of delegation for both the Dominion and the provinces should provide a measure of flexibility which is much needed in our federal system.

¹⁹ Ex. 140, Brief of N.S., p. 23.

²⁰ Ev. p. 3875 (Attorney-General, J. H. MacQuarrie of N.S. re sec. 94 of the B.N.A. Act): "It is suggested that the reason the section has not been used may be found in the words 'and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted'; and because no provision was made by which a Province could get back a subject of legislation that under this section had been given to the Dominion. From which it would appear that once the Dominion were permitted under this section to encroach upon a provincial field, the matter dealt with would become exclusively and for all time one for the Dominion."

²¹ See, however, the opinion of Mr. F. R. Scott, Ev. p. 2781.

²² In the Australian constitution the Commonwealth Parliament was given jurisdiction to make laws with respect to "matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law." (*Commonwealth of Australia Constitution Act*, Section 51.) (See also Section 105A.) This section has never received any application in Australia but it was suggested to us that if it had been more restricted and had provided for reference of legislation under defined conditions, it would have received considerable use. See Ex. 140, Brief of N.S., p. 23.

²³ See particularly p. 59 re fisheries, p. 58 re marketing, p. 32 re old age pensions.

²⁴ See Sect. A, Chapt. II.