

SECTION C
ADMINISTRATIVE ECONOMIES

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The Commission believes that its recommendations on public finance and the reallocation of social services will, if implemented, make possible not only economies in government by a reduction of overhead costs but will facilitate as well the adoption of constructive policies which should tend to enlarge the national income and in this way to lessen the proportion of the taxpayers' income exacted by governments. The Commission regarded its inquiries into public finance and the allocation of jurisdiction as of major importance and distributed its time and energies accordingly. But the terms of reference refer specifically to increases in expenditure due to "overlapping and duplication of services as between the Dominion and provincial governments in certain fields of activity". The Commission, therefore, made special inquiries into this phase of Dominion-provincial relations. This section summarizes the results of this examination.

From various submissions made to the Commission and from discussion in the press, it appears evident that there was considerable misapprehension as to the main purposes of the Commission's inquiry. It seems to have been assumed in some quarters that this Commission—like the May Committee on National Expenditure in Great Britain—was charged with examining the public services and public policy in general with a view to recommending detailed reductions in governmental expenditure. But the terms of reference give no such express instructions. In any case it would obviously have been inappropriate for one government in a federal system to appoint a commission to examine into and pass judgment upon the administrative services and public policies of other autonomous governments. The Commission believes that its functions were more fundamental. It thinks that its researches and main recommendations have laid the ground-work for every government in Canada to institute inquiries into its own policies and its own services if it so desires. In particular the Commission wishes to draw attention to its statements of the public finances of the Dominion and of each of the provinces which, by reducing the finances of all governments to a common accounting basis, have provided for every government a yardstick by which it can measure the cost of its services in comparison with those of other governments.

But the taxpayer should be warned that sweeping reduction in governmental expenditures in Canada could not be made without a severe shock to the national economy, and, for the time being at least, a severe setback in the national income to which many governmental expenditures undoubtedly contribute. The bare deadweight cost of government at its various levels forms a surprisingly small proportion of the total governmental expenditure, and even if substantial economies could be effected in it they would correspond to but a small fraction of the annual taxation imposed on the people of Canada. The cost of debt service, for example, can only be reduced if maturities occur when governmental credit is good or if some arrangement can be made for anticipating maturities when interest rates are favourable, unless, of course, a policy of repudiation of contractual obligations is adopted. The cost of social services and of education is almost equally rigid except that in certain contingencies governments in Canada have found it expedient to make certain reductions in the salaries of civil servants and teachers. But the limits within which such a course can ever be desirable, before the "sacrifices all round" involved in general taxation are called for, are very narrow.¹ Substantial reductions in developmental services could only be effected at the expense of the national income which Canada can ill-afford to reduce. Such services may be ill-judged or wasteful, and plans made when prospects were bright may have to be revised. But there are many types of maintenance and developmental services which it is short-sighted economy to discontinue, just as there are conservation services which it has been short-sighted not to institute. From time to time great expenditures also become inevitable because of national emergencies such as war, and in such circumstances economy is likely to seem of minor importance.

¹With reference to reduction in civil service salaries the May Committee Report (cmd 3920, p. 25) quoted with approval the remarks of the Anderson Commission on the Civil Service in Great Britain (Report of July 25, 1923):—

"... employees of the Crown would have a real ground for complaint if their pay were related to wages in industry only in the time of low wages. If they do not get pay relative to the boom they must be spared the severity of the slump.

The State as a model employer offers security, a pension, a dignified service, and a moderate wage in exchange for the excitement and possibilities of private employment."

On the whole it is to expansion of the national income, i.e., of taxpayers' income, rather than to substantial reduction in expenditure that taxpayers must look primarily for relief, for as their income increases taxation at its present level will become a smaller and smaller proportion of that income. In a large measure the expansion of the national income is dependent on external conditions over which Canada has no control. But the economic weapons in the hands of government, and particularly of the Federal Government, may be of importance for increasing the national income. The Commission, however, refrains from making

specific recommendations on the proper policies for achieving this end. It was not empowered to advise on public policy as such; its function is rather that of advising how the burdens and functions of government and the sources of governmental revenue may be most efficiently distributed with due regard to the "proper carrying out of the federal system". It is the Commission's hope, however, that its recommendations in these respects will not only conduce to more economical and efficient administration, but will also facilitate the adoption of public policies for the expansion of the national income.

CHAPTER I

UNION OF CERTAIN PROVINCES

Throughout Canada the view seems to be widely held that the cost of government might be materially reduced by a reduction in the number of provincial governments.¹ It is frequently suggested that economies would result both from the cash saving in the dead weight cost of government, and from a reduction in the wasteful expenditures of government through a reduction in the number of spending units. In addition it may also be suggested that the union of certain of the present provinces might, by pooling economic risks, improve their general credit and thus enable them to borrow money at lower interest rates. But union of provinces is not a simple matter. In addition to its financial consequences there are broad political implications. These include both an increase in political stature, which may be obtained at the expense of some loss in intensity of local political life, and a change in the outlook of the citizen who is asked to forgo some traditional local loyalties or at least to merge them in a loyalty to the larger political entity. But on the political desirability of the question we express no opinion; our concern is merely with the possibilities of economy. In particular two consolidations were suggested to us: the union of the Prairie Provinces and the union of the Maritime Provinces.

(a) Union of Prairie Provinces

The savings which might be effected by union of the Prairie Provinces may be inferred from a cursory examination of the public accounts of the three provinces for a single year. In 1936 the gross current expenditures of the Prairie Provinces amounted to \$56,171,000. In that year expenditures on education amounted to \$6,962,000; on relief \$13,486,000; on other types of public welfare \$9,549,000; on highways \$2,646,000, and on net debt charges \$13,450,000. Together these items accounted for about 82 per cent of the total combined expenditures of the three provinces. It is unlikely that any of these major expenditures would be substantially affected by union. Education and other services would continue to cost

¹ The proposal to reduce the number of provincial governments is distinct from the proposal advanced on one or two occasions to the Commission, and frequently heard in public discussion, that all provinces should be abolished. Apart from the merits or demerits of this latter proposal it is clearly beyond our terms of reference, as our instructions in the Order in Council appointing the Commission clearly require "the retention of the distribution of legislative powers essential to a proper carrying out of the federal system".

approximately the same for the whole area whether there were one government or three; debt charges would still have to be carried, presumably by the new unit, but in effect by the same people. It is often assumed that savings could be made from a reduction in the overhead costs of government, especially from a reduction in the numbers of lieutenant-governors, executive councils, legislative assemblies, and departmental offices. The costs of these items in the year 1936 were as follows:—

EXPENDITURES OF THE PRAIRIE PROVINCES ON LEGISLATION AND GENERAL GOVERNMENT IN 1936*

(Thousands of dollars)

	Alta.	Sask.	Man.	Total
<i>Legislation:</i>				
Lieut. Governor's office.....	3	6	5	14
Government House Maintenance.....	17	14	8	39
Legislative Assembly.....	153	131	116	400
Legislative Library.....	4	10	9	23
Other Legislation.....	3	8	11
	180	169	138	487
<i>General Government:</i>				
Ministers of the Crown.....	84	78	51	213
General Departmental Offices..	1,285	1,126	788	3,149
	1,369	1,204	789	3,362
Total.....	1,549	1,373	927	3,849

* In addition elections, voters' lists, etc., involved a cost of \$140,000, land titles or registry offices cost \$401,000, and civil service superannuation funds cost \$483,000, but these items would not likely undergo a substantial reduction by the union. Figures compiled from the Commission's Public Accounts Inquiry.

It seems probable that a single legislature would be larger than any one of the three existing legislatures and hence the item of \$400,000 for legislative assemblies could not well be reduced by more than one-third, or \$133,000; the item of \$213,000 for Ministers of the Crown could not, for the same reason, be reduced by more than \$100,000. The possible savings in the item of \$3,149,000 for general departmental offices are not capable of measurement, but it seems possible that, over a period, certain head office costs might be reduced by the amalgamation of government departments. The field staffs of many branches of government, such as highway departments, school inspection staff, etc.,

which provide detailed services to the people would, however, probably cost as much as at present, and might even cost more, by reason of higher travelling and supervision expenses in the larger unit. It is doubtful if any substantial amount could be saved in this item by a union of the provinces that could not be saved by efficient reorganization in each of the three provinces. But even if the substitution of one province for three resulted in a saving of a full two-thirds of the present total cost of the items listed (which is much more than would be possible), the saving would amount to slightly more than \$2,500,000, an amount which represents less than 5 per cent of the present current expenditures for the three provinces.

The remaining large item of expenditure which might be affected by amalgamation of provinces is the item of debt charges. It is conceivable that the greater economic stability of a larger and more diversified area might improve the credit of the region. As maturities occur it is possible that a single province might be able to refund at lower rates of interest than any one of the three provinces separately. We discuss elsewhere² the whole question of public debt, but we should note here that amalgamation is not the only, and is perhaps not the best, way to secure relief from high debt charges.

As an argument in favour of amalgamation of the provinces it is sometimes suggested in public discussion that a single legislature might be more frugal, since there would be fewer members seeking favours for their constituents. We are not in a position to judge of the merits of this contention. In any case it is for the people of the provinces concerned to consider whether or not their present expenditures on these matters could be reduced and if so, whether or not amalgamation is the best method of reducing them.

Whatever the financial advantages of union might be, we have already pointed out that any practical discussion of the subject must take account of political factors lying outside the scope of this investigation. The Commission addressed inquiries to the Premiers of Manitoba and Saskatchewan as to their opinion of the merits of union.³ Both were ready and willing to examine the question, and the Premier of Manitoba went so far as to suggest⁴ that this Commission should study (with the three provinces concerned) the proposal for consolidation. As the Province of Alberta declined⁵ to appear before us we could not

act on this suggestion and we, therefore, leave the broader aspects of amalgamation to be examined by the provinces concerned.

Assuming no general changes (such as we have recommended elsewhere) in Dominion-provincial financial relations, there would be a strong case for union of the Prairie Provinces on the ground that it would improve the general credit standing of the region. By union the economic risks of the three provinces would be pooled, and the resulting increase in financial stability for the region would tend to diminish the need of Dominion assistance in times of crop failure. We believe, however, that our general financial proposals (Plan I) will meet the financial difficulties of the Prairie Provinces (including their credit position) much more equitably and efficiently than union alone would do. Plan I does not, of course, preclude union which might well be an additional support for the public credit of the region.

It has also been suggested that a single Prairie Province, which would be able to speak in Dominion affairs with one voice on behalf of the whole prairie region, would exercise greater influence in favour of advantageous Dominion policies, and against policies believed to be unfavourable to the interests of the region. These, as we have said, are matters for the consideration of the three Prairie Provinces.

We should point out, however, that, if the proposal of union is ever to be considered, it should be examined without delay as provincial loyalties are developing and will strengthen with the years.⁷

⁷ Analogous to the savings from a union of the three provinces are the possible savings from a consolidation of the three Prairie universities (and conceivably of the University of British Columbia), which are largely supported by provincial grants. This matter was investigated at the public hearings in the three Prairie Provinces, when the presidents of the three universities appeared before the Commission. The matter had already been under consideration by the four western universities and was the subject of a conference in 1932. It appears that such steps in the direction of economy as are practicable have already been taken. An understanding has been reached that each university will place emphasis on different branches of instruction: the University of Saskatchewan on agricultural training, the University of Manitoba on electrical engineering, the University of Alberta on mining engineering are examples. (Ev. p. 1933.) Many of the professional schools, such as Law, Pharmacy, Household Science, etc., which are found in more than one university nearly pay for themselves in fees, and it is an undoubted convenience to the people of each province to have such schools near at hand. The largest apparent multiplication of costs is in the engineering schools but to consolidate such schools would, it appears, result in very small savings. Apart from the new capital expenditures necessary for buildings and equipment any consolidation would require an almost exact repetition of existing salary costs as, in each university, many classes have reached an optimum size and could not with efficiency be increased. (Ex. 82.) (Ev. pp. 1932-33; 1936-38; p. 1055.) It would thus appear that savings from an amalgamation of the three Prairie universities would be small, and the intangible losses would obviously be considerable. Understandings between the four western universities for co-operative specialization in teaching activities should be continued and expanded in scope, and might indeed be extended to other Canadian universities.

² See pp. 1227.

³ Ev. pp. 1135-52 and pp. 2271-74.

⁴ Ev. p. 1152.

⁵ Ev. p. 6625.

(b) Union of the Maritime Provinces

Some of the considerations applicable to the union of the Prairie Provinces apply also to the proposal for union of the Maritime Provinces. The major items of expenditure such as education, public welfare, highways and debt charges would remain substantially unaltered, but savings might be effected in overhead costs for such items as executive government and legislation and, after a time, in certain head office costs resulting from amalgamation of government departments.

In 1936 the total current expenditures of the Maritime Provinces amounted to \$16,815,000 of which \$5,300,000 went for debt charges.

The following table gives the amounts spent in the year 1936 on the items likely to be affected by a union of the three Maritime Provinces:—

EXPENDITURES OF THE MARITIME PROVINCES ON
LEGISLATION AND GENERAL GOVERNMENT,
1936

(Thousands of dollars)

	P.E.I.	N.S.	N.B.	Total
<i>Legislation:</i>				
Lieut. Governor's office.....			2	2
Government House Maintenance.....		3		3
Legislative Assembly.....	15	49	74	138
Legislative Library.....	3	3	1	7
Other legislation.....		6		6
	18	61	77	156
<i>General Government:</i>				
Ministers of the Crown.....	13	37	44	94
General Departmental Offices..	90	262	272	624
Other general government.....		199	18	217
	103	498	334	935

Even if the substitution of one province for three resulted in a saving of a full two-thirds of the present total cost of the items listed (which is much more than would be possible) the saving would amount to about \$721,000, or about 4.3 per cent of present current expenditures for the three provinces.

The prospective savings of a Maritime union become smaller when several local factors are considered. In all three provinces the salaries of ministers and officials and sessional indemnities for members of the legislature are low, and a larger governmental unit would probably involve higher sessional indemnities, higher salaries for Ministers of the Crown and officials, as well as higher travelling

expenses. Costs of social services and education in this region are also low at the present time and may be expected to rise, whether or not the provinces unite. The credit rating of the Maritime Provinces has been such that little, if any, saving in interest charges on public debt could be expected. No express suggestion was made to us that union of the Maritime Provinces would strengthen politically the Maritime region in relation to other regions in Canada, and this possibility is a political matter on which it would be out of place for us to offer conjecture. It may be observed, however, that provincial loyalties are more deeply rooted in the Maritime Provinces than in the Prairie Provinces because of their longer history as separate provinces. It is significant that each of the Premiers of the Maritime Provinces, when requested by the Chairman for his opinion on union, was adverse to the proposal and expressed the view that there was no large measure of support for Maritime union among the people of the three provinces.⁸

We have thus far discussed the two proposals for provincial union from the point of view of economy in provincial government costs. They should also be considered from the standpoint of savings to the public and to the Dominion Government. From the standpoint of the citizen in his relation to government there are many factors to consider—the costs of tax compliance, the costs of statistical returns, the costs of political activity. Some individuals and some corporations have to deal with more than one provincial government. Their costs would obviously be decreased had they to deal with one government instead of three. On the other hand the cost of attending a more distant provincial capital to conduct their business with the government would be greater.

By union of three provinces into one larger unit, there would undoubtedly be some savings in Dominion governmental costs. How far the present offices and officials maintained by the Dominion in three provincial capitals could be replaced by one set of offices and officials in the new provincial capital, it is impossible to say. There would be a saving in salaries of Lieutenant-Governors, and certain of the chief Dominion officials in the provinces might be able to assume jurisdiction over the larger area, but it seems probable that most of these officials would, for the sake of efficiency and public convenience, require to be retained in the larger new unit.

⁸ Ev. pp. 4222-26 (N.S.); pp. 4545-48 (P.E.I.); pp. 9056-57 (N.B.)

(c) Appeal Courts, Maritime and Prairie Provinces

There is one proposal, analogous to provincial union but falling short of it, which we feel should be given serious consideration in view of substantial savings that might result for both the Dominion and the provinces concerned. At the public hearings of the Commission in Charlottetown the question of the feasibility of a Maritime Court of

Appeal was raised, and subsequently the Commission arranged to obtain information concerning the number of criminal and civil appeals heard in the appellate courts of the three Maritime Provinces and the three Prairie Provinces. For purposes of comparison, statistics of appeals in the Ontario Court of Appeal were also obtained. The following table gives the results of these inquiries:—

APPEAL CASES 1929 TO 1938

Year	P.E.I.	N.S.	N.B.	Man.	Sask.	Alta.	Maritime Total	Prairie Total	Ont.
1929.....	11	44	32	204	127	173	87	504	522
1930.....	8	89	29	207	138	195	126	540	615
1931.....	10	62	26	246	149	220	98	615	741
1932.....	13	96	29	185	110	160	138	455	740
1933.....	17	65	31	205	96	166	113	467	653
1934.....	31	46	36	258	93	201	113	552	590
1935.....	25	57	27	216	82	192	109	490	589
1936.....	22	52	25	227	74	163	99	464	615
1937.....	20	42	27	212	90	159	89	461	496
1938.....	35	47	17	204	66	159	99	429	523
Average.....	19	60	28	216	103	179	107	498	608

In Ontario and in the three Prairie Provinces special divisions of the Supreme Court of the Province sit to hear appeals. In the Maritime Provinces a rigid division between trial judges and appellate judges is not made. The following table gives the number of judges of the Supreme Court, and the respective population, in each province under consideration:—

SUPREME COURT JUDGES IN PROPORTION TO POPULATION

—	Trial Judges	Appeal Judges	Total	Population
Prince Edward Island.....			3	93,000
Nova Scotia.....			7	542,000
New Brunswick.....			7	440,000
Maritime Total.....			17	1,075,000
Manitoba.....	6	5	11	717,000
Saskatchewan.....	7	4	11	939,000
Alberta.....	6	5	11	778,000
Prairie Total.....	19	14	33	2,434,000
Ontario.....	13	8	21	3,711,000

These figures disclose that, while Ontario has one Supreme Court judge for every 177,000 of

population, the Prairie Provinces have one for every 74,000 and the Maritime Provinces one for every 63,000. It may well be that for the expeditious hearing of cases the number of judges engaged in trial work cannot be substantially reduced, but we fail to see how the same argument can apply to the hearing of appeals. The statistics given in the first of the two preceding tables cover a ten-year period and should be representative. While it is undoubtedly true that the time required for hearing and consideration differs greatly between one appeal and another, there is no reason for supposing that fifty appeals in the Prairie Provinces could, or should, require longer to hear or decide than fifty appeals in Ontario. If over a ten-year period the Ontario Court of Appeal of eight judges has been able to dispose of an average of 608 appeals each year it is difficult to understand why fourteen appellate judges in the Prairie Provinces are necessary to deal with a yearly average of 498 appeals. In the Maritime Provinces such an exact comparison is not possible, as judges hearing appeals are also engaged in trial work, but it seems likely that the work of hearing appeals in the courts of these three provinces could be done by fewer

judges than the total number now so engaged. It seems to us not unreasonable that the number of appellate judges in the Prairie Provinces might be reduced by six, and the number of judges in the Maritimes by at least four.

There are certain differences in the statute law of the six provinces under consideration, but in all the basic common law is the same, and the trend in recent years toward uniformity of statute law suggests that such differences as exist would be no insuperable bar to the creation of a regional court of appeal in each of the two areas. It is possible also that over the larger areas appellate judges would be able to enjoy greater variety of experience than they can now have.

We suggest, therefore, that the appropriate authorities should consider the feasibility of establishing a Maritime Court of Appeal and a Prairie Court of Appeal. We believe that if sittings were held in succession in each of the provincial capitals no substantial delay or inconvenience to the public would arise. A saving of the order of \$100,000 annually could be achieved in this way, and in our opinion there would be a gain, rather than a loss, in efficiency.

(d) *The Quinquennial Census*

One minor economy, which relates to the special position of the Prairie Provinces, may be conveniently discussed here. The quinquennial census taken in the three Prairie Provinces was instituted * in order that the subsidies based on population might

be kept in close relationship to the actual population of these provinces which was expected to increase rapidly. A readjustment of their subsidies is made at intervals of two-and-a-half years and is based either on the census figures or on intercensal estimates. The need for this frequent readjustment has disappeared, as the rate of growth of their population does not now exceed that of the other provinces. We shall note elsewhere the tendency to continue enterprises after the need for them has ceased, and there is a prima facie case for believing that the quinquennial census is an instance of this tendency. In the five year period 1931-36 the Prairie Provinces failed to hold their natural increase.** The cost of the 1936 Prairie census was \$983,000 and as it, therefore, appears that an economy of the order of \$100,000 a year might be made, we recommend that the special Prairie census be discontinued. But although this quinquennial census was established for reasons which are no longer valid it may have come to serve important subsidiary purposes which may well have their counterpart in other provinces. There is a growing tendency in other countries to take a census more frequently in order that governments may be supplied with accurate indices of the changing aspects of society. We have made no investigation as to the desirability of more frequent censuses for Canada as a whole and can, therefore, express no opinion as to their desirability. The point we make here is that there is now no valid reason for treating the Prairie Provinces differently from the rest of Canada in the matter of the census.

* In Manitoba in 1884, *Statutes of Canada*, 48 Vict., c. 50, in the other provinces by the Alberta Act and the Saskatchewan Act (1905), 4-5 Ed. VII, cc. 3 and 42.

** See W. J. Waines, *Prairie Population Possibilities* (mimeographed), Ch. III.

CHAPTER II

AVOIDANCE OF OVERLAPPING AND DUPLICATION

The preamble to the Order in Council appointing the Commission contains the following recital:—

“3. That governmental expenditures are increased by overlapping and duplication of services as between the Dominion and provincial governments in certain fields of activity. . . .”

Moreover, the Commissioners are specifically instructed (3 (c) of the Order in Council),

“to examine public expenditures . . . in general, in order to determine whether the present division of the burden of government is equitable, and conducive to efficient administration. . . .”

It should be noted that the Commission's attention is drawn to “overlapping and duplication of services,” not to the nominal duplication of departments of government. The mere existence of ten departments of agriculture or of public health does not in itself imply duplication of services. A function may be divided between a Dominion and provincial department in such a way as to avoid overlapping. But fields of activity which are regulated and served by both Dominion and provincial departments deserve special examination in such an inquiry as this, because the situation lends itself readily to overlapping unless care is taken to avoid it.

The Commission's instructions did not call for a searching examination of the efficiency with which every unit of government performs the functions assigned to it, and indeed the elaborate and detailed investigation necessary could not appropriately have been made in conjunction with a general examination of Dominion-provincial relations. This survey is primarily concerned with the question whether there is extensive physical duplication between Dominion and provincial departments of government. But overlapping is only one of several unsatisfactory conditions which may exist when two governments share a field of activity. There may be failure to occupy the whole field, which may be termed “underlapping” or neglect; or the field may be divided illogically and inefficiently, leading to waste and friction. Our general inquiry on overlapping and duplication also threw some light on administrative tendencies which increase

government costs within individual governments, and some suggestions are made toward reducing them.

A high degree of administrative co-ordination is more difficult to attain in a federation than in a unitary state. The relative effectiveness of single authority as contrasted with divided or dual control is obvious in any sphere of administration. Within a federal state the advantages of single authority are possible in fields exclusively assigned to one or the other government. But dual control is inevitable in those areas of concurrent, divided and contentious jurisdiction which are characteristic of federal states, and which tend to increase with the growing complexity and interdependence of society. Efficiency and harmony in government administration in such fields depend upon a measure of good-will, give-and-take, sincere and positive co-operation of the governments concerned, on both political and administrative levels. These are conditions difficult to achieve and still harder to preserve.⁹

The administrative problems inherent in all federations are increased if the member states or provinces differ widely in size, wealth, and political and social outlook, because it becomes impossible to fit national activities precisely to the needs of each of the provinces. In Canada there are several jointly occupied fields in which the Dominion provides supplementary services through bureaux for consultation, direction and research. The problem is one of complementing or supplementing each of the highly varied provincial services. In supplying these services some provinces are earlier in the field, adopt more aggressive policies, spend far larger sums. Any attempt to match national policy to all of these at once encounters a dilemma. To complement the activities of all provinces on the scale needed by the smaller and less aggressive provinces results in duplication of services for the larger provinces. To match activities with the more aggressive provinces means that the needs of the smaller and fiscally weaker provinces will be neglected. Such a dilemma may be avoided in the

⁹ See Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction*.

field work of the Dominion Government by stressing these national services in those provinces where they are most needed and minimizing them elsewhere. Such adjustment is more difficult if the national service consists of a branch or bureau operating at each provincial capital. Even regional adjustment may lead to charges of discrimination, and in practice the Dominion Government usually steers a middle course which results in some measure of duplication with the services of the stronger provinces and some inadequacy of service for the weaker ones. In a federation of provinces of unequal size and resources it is difficult to see how this basic dilemma can be avoided.

These factors point to the inevitability of some waste and maladjustment in such a federation as the Dominion of Canada, even if a high degree of co-operation and unanimity can be maintained between the several governments. The aim of administrations must, therefore, be to confine waste as much as possible to what is inherent and unavoidable.

In order to determine the extent of overlapping between governments the Commission attempted to examine in its public hearings the principal officials of relevant departments of Dominion and provincial governments. All but two Governments (Alberta and Quebec) co-operated in supplying the names of appropriate officials and permitting them to appear before the Commission. Although under the Inquiries Act the Commission could have subpoenaed officials of any government, it was not deemed expedient to ask civil servants for information if the government concerned objected. In addition to the public hearings two of the Commission's staff made a special survey of Dominion and provincial services. We now proceed to summarize by services the results of our inquiries.

AGRICULTURE

Measured by total expenditures, agriculture is the largest field of concurrent service,¹⁰ and the existence of nine provincial departments of agriculture as well as a Dominion department appears to give rise to a popular conviction that duplication in this field is very extensive. Comprised within the term "agriculture" is an intricate network of diverse services and regulations included under the four general headings: production, marketing, research and promotion. These break down further

into much smaller divisions. *Research* involves local matters such as soil analysis and matters common to all provinces, or even international in interest, such as plant hormones or certain animal and plant diseases. *Marketing* includes the procedure by which a market-gardener exchanges his produce in the local village, as well as the highly organized international grain trade. In this complex field there are activities so obviously local that no one questions the desirability of their provision or regulation being provincial; others are as obviously national, for it is the Dominion Government alone which can efficiently provide or regulate them. In between are activities not so easy to allocate since they have both local and national aspects. The relative importance of provincial and Dominion interests in these activities alters as the Canadian economy becomes more integrated and provincial economies more interdependent, and as the technology of farming changes. The constitutional provision for agriculture in 1867, which made it a subject of concurrent jurisdiction with the provision that provincial enactments were effective only "as long and as far" as they were "not repugnant to any Act of the Parliament of Canada", appears to have permitted the vast growth of government activity in this field to take place without serious friction between jurisdictions. Although the division of activities which has been reached today is essentially the result of a long process of trial and error rather than design, it is not markedly different from what would be dictated purely by considerations of logic and efficiency.

Dealing first with the extent of duplication, the Commission did not find, either in its public or private investigations, any basis for the popular belief that the activities of Dominion and provincial governments overlap extensively, or that by complete elimination of what overlapping exists there would be any substantial reduction in the present cost of agricultural services in Canada.¹¹ A few minor cases came to light, but the potential economies, disregarding for the moment other values that may be involved, would be a mere drop in the bucket when measured against the annual Canadian tax bill or even against the annual sums spent upon agriculture. The amount of duplication in agricultural services is less now than it was some years ago, improvement having resulted from two

¹⁰ Dominion estimates for 1938-39 for agricultural services were \$9,937,000, the total provincial estimates for the latest available fiscal year were \$8,742,000, giving a total of \$16,679,000.

¹¹ Ex. 167, Memo. Dominion Dept. of Agriculture, pp. 8-11; Ex. 212, Memo. B.C. Dept. of Agriculture; Brief of Man., Pt. VIII, p. 15; Ex. 12, Memo. Man. Dept. of Agriculture; Brief of N.B., p. 69; Ev. (N.S.), p. 4149; Ev. (Ont.), pp. 7853, 7865-66, 7873; Ev. (P.E.I.), p. 4604; Ex. 71, Memo. Sask. Dept. of Agriculture.

quite different factors: (a) a concentrated attack on the problem as the result of public criticism; and (b) the retrenchment in all government expenditures consequent upon the depression (especially by certain provincial governments).

Present relationships between the provincial departments and the Dominion reflect to a considerable measure the fiscal strengths and fortunes of the several governments. During the depression agricultural services were sharply curtailed by almost all governments, and restoration has proceeded unevenly with the arrival of better times. In those provinces which have not found it practicable to restore expenditures to earlier levels, the Dominion Government is now providing a much larger share of the combined services than it was before the depression. This relative expansion by the Dominion is accepted as unavoidable, especially by the smaller provinces, or at least as preferable to complete neglect of services formerly provided by the provinces but now beyond their means. Certain provincial leaders, however, hold that it would be more satisfactory if the Dominion, rather than expanding its own services to meet the deficiencies of the provinces, would provide grants-in-aid so that the provinces could directly undertake services which, though it is not now financially feasible to undertake them, are of a character likely to respond more profitably to provincial than to Dominion direction. The danger of additional duplication in the future, as the provinces restore their services to pre-depression levels because of either a return of better times or a reallocation of revenues and obligations as recommended in another part of this Report, should be noted. When all the provinces once more find it possible to meet all those agricultural services which are logically of a local nature, it will be necessary to reconsider carefully the division of services between them and the Dominion, and the latter government may find it conducive to efficiency and harmony to retire from certain fields.

A division of agricultural activity between the Dominion Government and the provinces suggested both by logic and experience would allot to the Dominion the following fields:—

- (1) Marketing, grading and inspection, except for local distribution of commodities locally produced;
- (2) Plant and animal protection from pests and diseases especially those introduced from abroad;
- (3) Research of a general nature;
- (4) Certain national and international aspects of production and of agricultural economics.

The provinces would then undertake:—

- (1) Extension and promotion;
- (2) Organization of farmers' activities, including co-operative marketing;
- (3) Production, except as under (4) above;
- (4) Local aspects of research, such as soil surveys;
- (5) Local interpretations and use of Dominion marketing and commercial intelligence services;
- (6) Local marketing of commodities locally produced.

This is not dissimilar to the division now in effect. There are some activities (e.g. production) which combine national and local aspects in a manner difficult to divide with complete satisfaction. Marketing and grading have been dealt with in another place.¹²

The finding that gross physical overlapping does not exist must not be taken as assurance that waste of public funds does not occur in the fields of agricultural service and regulation. Overlapping between Dominion and provincial departments is by no means the only potential cause of such losses. It is possible that there is avoidable overlapping between a department of agriculture and other departments within the same government. Duplication can also occur within a department. In this connection we think that great care should be taken by the Dominion Department of Agriculture which has undertaken so many varied activities and has grown to such an enormous size that overlapping and waste may easily occur within the Department unless there is constant effort to prevent it.

The Commission's opinion is that substantial waste and loss in agricultural services arise from quite another condition, namely, the tendency for government policies to get into ruts. What is here said applies to government operations generally. It is always easier to continue traditional services than to make innovations. In private, competitive business, the penalty for decadence is swift and sure. In the more sheltered world of government monopoly, stereotyped and unprogressive policies may escape detection and elimination much longer. The dynamic and swiftly-changing character of agricultural problems today demands highly flexible and resourceful methods of attack. The Commission recommends for the earnest consideration of all governments the frequent examination and reappraisal of all services, schemes and enterprises,

¹² The difficulties of enacting marketing legislation are discussed at pp. 54ff of this Report. While in a sense the attempts to enact marketing legislation have involved duplication of effort and expense, the difficulties are constitutional rather than administrative, and we do not, therefore, deal with them in the present section.

in the light of modern needs, so as to prune out the dead wood and keep the administrative structure vital and effective. One or two specific devices which may be of value in this connection are suggested at the end of this chapter. Governments can save themselves future difficulty by launching new policies, so far as possible, on a "project" or interim basis, subject to careful scrutiny before becoming permanent. In the world of private enterprise the profit motive usually assures a periodic overhaul of activities, but governments need to devise some substitute. The retrenchment due to the depression impaired services of all kinds but in partial compensation it eliminated certain activities whose value had largely or wholly expired. From private and public evidence the Commission is satisfied that the waste due to outmoded, redundant or misdirected activities involves much larger amounts than any physical overlapping between services of different governments.

Within the limits of this Report a detailed consideration of all branches of agricultural services cannot be undertaken, but two services merit special attention.

Agricultural Research.—The nature and scope of agricultural research are such that it is difficult to co-ordinate. It is carried on by provincial universities and agricultural schools, by provincial departments of agriculture, by the Dominion Experimental Farms, by the Science Service Branch of the Dominion Department of Agriculture, by the National Research Council under the Minister of Trade and Commerce, and by private corporations. However, by far the greater part of agricultural research in Canada is carried on by the Dominion Government, or under its auspices. Modern agricultural research has become so highly technical and intricate that it would require a superman to keep authoritatively informed on all the lines of research being carried out in Canada and elsewhere at any time. Yet without this knowledge and the authority to co-ordinate all agricultural research in Canada a certain amount of duplication and misdirection is inevitable. However, such duplications are not without some value as checks. Moreover, even if it were theoretically possible, it might be unwise to attempt a rigid co-ordination of research with economy or even efficiency as the only criterion. The history of research proves that for best results you have to turn a good man loose with funds and freedom. Centralization is not necessarily beneficial. Our conclusion was rather that research should be kept decentralized among

colleges and individual workers as much as possible. Duplication of research may, however, readily occur if there is lack of adequate information about projects under way or findings of completed projects. Careful records of all agricultural research activities should be available, and the findings of research workers collected as speedily and disseminated as widely as possible. Research programs should be co-ordinated so far as consistent with the encouragement of individual enterprise, and these functions can only be adequately performed by the Dominion. The relations between the National Research Council and the Department of Agriculture appear to call for continuous scrutiny. The benefits of agricultural research in Canada have been so vast in relation to the sums spent upon this activity that we hesitate to urge parsimony in this field. The price of skimping a few thousand dollars a year in research might be the elimination of the discovery of a Saunders.

Experimental Farms.—The experimental farm system is almost exclusively a Dominion activity, although several provinces operate demonstration farms or research stations doing similar work. The Dominion farms are used for both local and national research. The practical use of research discoveries involves conveying them to the farmer, and in many ways the agency which actually makes the discovery is in the best position to pass the information along. In this way the experimental farms branch out into agricultural education and extension. These are, by and large, fields of provincial jurisdiction, and all provinces make some provision for them through their own departments of agriculture and their agricultural colleges or university activities. It is also impossible to draw a sharp line between national and local research, and the Dominion farms cannot avoid undertaking research projects which have certain local aspects, and which in some instances are more likely to be effective if pursued under local direction. The farms are also actively concerned in production, which, as has been said, falls more logically into the provincial sphere. The scope for duplication of effort is large.

The opinion that most of the work of the experimental farms could be undertaken more effectively by the provinces was frequently stated to the Commission's special investigators. It was asserted that since the soil is a natural resource as much as the forest or the mine, the servicing and regulation of agriculture could be undertaken with greater flexibility and effectiveness by provincial authorities. It was contended that provincial

authorities were more intimately acquainted with the peculiar production problems of the region, with the problems of agricultural economics and of research, and that they could act more swiftly and flexibly in coping with local problems as they arose. The further argument was advanced that, since the provinces are concerned with education and extension, the logical arrangement would be for the experimental farms to be closely linked up with agricultural colleges and provincial departments of agriculture, the three bodies acting in intimate conjunction to tackle the basic problems of the region. Certain provincial premiers and ministers of agriculture were confident that if experimental farms and illustration stations were both left to the provinces they could be made to perform a larger and more useful part in agricultural production and education.

It should be noted that these views as to the experimental farm system are held by some, but not all, of the provincial leaders. Others express themselves as well satisfied with present arrangements and results. Hitherto the experimental farm system has been too expensive for most provinces to assume. It was said that several years ago the Dominion offered to retire from the field but the provinces, on counting the cost, declined the offer. It was argued that the substitution of systems of provincial experimental farms in place of one national system would almost certainly increase the total cost and increase the likelihood of duplication, and that it might result in great lack of uniformity. It was contended that there would still remain the national aspects of production and research, which might require a national farm system as well as nine provincial ones, and that some of the gains in flexibility supposedly inherent in provincial attacks on agricultural problems would be offset by a loss in stability and permanence in research programs, since agricultural policies would then be subject to the more erratic fortunes of provincial politics.

Apart from these matters of jurisdiction, the charge has been made that in certain provinces the number of experimental farms is larger than is strictly necessary; that political factors are responsible for their number; and that any effort to reduce them meets with so much local protest that it is not pursued. One competent authority asserted a smaller sum spent on fewer farms, more adequately staffed and equipped, would result in more and better work. It was estimated that as much as \$100,000 a year might be saved in one province by such a step.

It is also urged by some critics that while the farms did excellent work in the pioneer stages, educating the farmers of the area in the farming techniques necessary for the soil and climate of the area, the need for such experiments sharply declined when suitable seed varieties, methods, suitable types of cattle, etc., had become established, and that routine experiments tend to survive indefinitely to a point of sharply reduced utility. The inference was that the programs of the farms were not shifting as they should from problems of diminishing importance to new problems of agricultural economics, marketing and production, with which agricultural communities are now faced.

On balance there is a prima facie case for the Dominion withdrawing from many of its activities in connection with experimental farms, and either for disposing outright of most if not all experimental farms and illustration stations, or for handing them over to the provinces. Admittedly, there are technical questions involved which the Commission has not had the time nor the opportunity to investigate fully. An inquiry by technically competent authorities would probably be advisable before action is taken. But it should be pointed out that, if the financial recommendations of this Report are adopted, the financial obstacles against certain provinces taking over experimental farms will have been removed. In any case the Dominion should carefully reappraise its whole experimental farm program.

Grants to Fairs and Agricultural Organizations

The policy of government grants to agricultural organizations should also be carefully reappraised. Once such grants are begun, there is a tendency to continue them in a routine way. Dominion grants to such institutions were inaugurated as a war-time measure to assist in the stimulation of production. Except for grants to exhibitions and fairs of a national and international scope, it is suggested that the Dominion should withdraw from the field, leaving to the provinces, as a part of their production policy in connection with the provincial departments of agriculture, the responsibility for making such grants as they deem wise.

* * * *

What is said above is not intended to imply a lack of co-operation between the several authorities under the existing system. In most provinces the activities of the Dominion experimental farms and the extension and promotion work directed by the provinces are knitted efficiently together. In at

least one province the provincial and Dominion authorities even choose their new personnel with this harmony in view. In general we commend the high level of co-ordination which exists between the provincial and Dominion officials of the several departments of agriculture.

COLLECTION OF TAXES

Duplication of services for the collection of taxes obviously increases costs both of government and of tax compliance. We have dealt with the latter elsewhere.* Here we deal only with increased costs of government. Though extensive duplication does not exist in the sense of duplicate organizations for the collection of similar taxes, there is waste in that simpler and less expensive machinery might be used to collect present taxes.

In our financial proposals we recommend that personal income taxes, corporation taxes and succession duties should be levied solely by the Dominion Government and we there discuss certain advantages of economy, equity and efficiency in having these taxes collected by one agency. If the recommendations concerning these taxes are implemented the overlapping and duplication of governmental costs of collecting these taxes will be automatically eliminated. But even if there is no redistribution of revenue sources, the advantages of a single system for the collection of at least personal income taxes and corporation taxes are great. It is obvious that if the same information on which both the Dominion and a province base their calculations of income taxes can be supplied only once instead of twice, the governmental cost of checking the return and the taxpayer's cost of preparing the return are materially reduced.

At the present time the Dominion collects, in addition to its own income tax, similar taxes for Ontario, Manitoba and Prince Edward Island, to the apparent satisfaction and benefit of all parties.¹⁵ It was stated that a single system of collection is possible wherever the two definitions of "income" are the same, even though deductions and exemptions are different.¹⁶ In hearings in Victoria it was stated that joint collection of Dominion and British Columbia income taxes was impossible because "taxable income" in the two statutes was different.¹⁷ While there may be

differences in the present definitions, it seems evident that the two definitions of "income" could be made identical and the same results could be substantially attained by different schemes of deductions and exemptions. Were this done it would be possible to avoid the duplication of tax-collecting offices, the increased governmental expense of audits, and unnecessary costs and annoyances of tax-compliance to the taxpayers. The case for joint collection of personal income taxes is overwhelmingly strong, whether the proceeds of such collection are retained by the Dominion or divided between the Dominion and province in which collections are made. Similarly provision should be made for collection by the Dominion Income Tax Division of municipal income taxes if they are retained, at least in so far as these are really income and not property taxes.

Many of the same considerations apply to the collection of corporation taxes. Numerous representations protesting against present arrangements were made in public hearings by business organizations.¹⁹ These submissions did not in general complain about the taxes as such, but attention was directed toward the excess cost of collecting them, both to governments and taxpayers. All provinces have built up extensive organizations for collecting such taxes, and the cost is substantial. Our recommendations with regard to the taxation of corporations were framed to replace provincial taxes, which are expensive to collect, by an extension of the Dominion tax on corporate income which is collected in any case. This change would reduce the total cost of collection, and would remove the cost of tax-compliance arising from the preparation of multiple tax returns calculated on different bases.

If our recommendation that the Dominion should have sole jurisdiction to levy corporation taxes is not carried out, little, perhaps, can be done to diminish this cost by unified collection except in the field of income taxes on corporations. Other types of provincial corporation taxes are so different in the several provinces that little advantage would be gained by Dominion collection, even if it were feasible.

¹⁹ Ex. 88, Brief of Canadian Manufacturers' Ass'n; Ex. 267, Brief of Citizens' Research Institute; Ex. 394, Brief of Canadian Chamber of Commerce; Ex. 188, Brief of Associated Boards of Trade of B.C.; Ex. 202, Brief of Victoria Chamber of Commerce; Ex. 268, Brief of Toronto Board of Trade; Ex. 343, Brief of Chambre de Commerce de Montréal; Ex. 107, Brief of Chartered Banks of Canada; Ex. 113, Brief of Canadian Federation of Mayors and Municipalities; Ex. 92, Brief of Canadian Life Insurance Officers' Ass'n.

* See p. 154.

¹⁵ Ev. pp. 3578, 3584. See also Ont. Brief Pt. II, p. 67. Ev. (Ont.), p. 7609.

¹⁶ Ev. p. 3579.

¹⁷ Ev. pp. 5370-76. Ex. 185, Memo. B.C. Dept. of Income Tax, pp. 4-5.

Complaints were also made concerning duplication between the Dominion and certain provinces in the collection of stock-transfer taxes.²⁰ These taxes on the transfer of securities are imposed by the Dominion, by Ontario and by Quebec, and an audit is conducted by all three governments. An unnecessary expense both to governments and to taxpayers is thus incurred. We think that for these taxes a single collection and a single audit would be appropriate and that savings in cost both to governments and to taxpayers would thereby result.

PUBLIC HEALTH

The existence of a Dominion Department of National Health, provincial departments of health, and municipal organizations dealing with the same general service offers some ground for suspicion of unnecessary duplication, but our inquiries, both public and private, satisfied us that public health has local, provincial and national aspects which justify the existence of administrative machinery at all three levels, and that no material overlapping occurs at present among them.²³

Expenditures by the Dominion Government for quarantine and leprosy, for inspection of immigrants, for the treatment of sick mariners, for disabled veterans, for inmates of penitentiaries and for Indians are not duplicated in any way by the provinces. Jurisdiction in all these instances is expressly conferred by, or clearly implied from, the British North America Act. Other important branches of Dominion expenditures in this field provide for the administration of the Food and Drugs Act, the Laboratory of Hygiene and the division of public health engineering. The last named service inspects water and milk supplies on common carriers engaged in international and inter-provincial traffic and the sanitary conditions in Dominion buildings and parks. The Commission did not discover any duplication of these services by the provinces, though it is possible that some saving could be effected by the purchase of certain services from the provinces as an alternative to the maintenance of Dominion organizations for the purpose.²⁴ The annual saving would not be large, however, and there may be off-setting advantages

²⁰ Ex. 108, Brief of Investment Dealers' Ass'n, p. 15; Ex. 95, Brief of Dominion Mortgage and Investments Ass'n, pp. 17-18.

²³ Ex. 137, Memo. Dom. Dept. of Health, Ev. pp. 3820-34; Ex. 191, Memo. Health and Welfare Services, B.C.; Ex. 13, Memo. Man. Dept. of Health, Ev. pp. 728-36; Brief of N.B., p. 43; Ev. pp. 8670-71A; Ev. (N.S.), pp. 4130-31; Ex. 319, Memo. Ont. Dept. of Health; Ev. (P.E.I.), p. 4581. See also this Report, pp. 32ff.

²⁴ *E.g.*, inspection of milk and water supplies on common carriers. It is suggested at p. 35, that health services for Indians might be purchased by the Dominion from provincial departments.

in the present arrangement which outweigh the financial considerations. It is recommended that this possibility be investigated and the method be adopted wherever, on balance, it seems advisable to do so.

Several new Dominion services touch more closely upon the provincial sphere (child and maternal hygiene, epidemiology, industrial hygiene, and publicity and health education) but we are satisfied from our inquiry that the danger of duplication has been kept in mind in establishing the new services and its extent kept to a minimum, and that the establishment of such services on a national scale was at the request of certain provinces which will derive material benefit from them. It is true that they will, in some measure, duplicate work already carried on by two or three of the larger provinces, but some such duplication is inherent in federalism. In any event, unless the Dominion expenditure expands far beyond present intentions, the cost of such duplication will be small.²⁵ These new services are provided by consultative and research bureaux which are available at the need of the several provinces, and which co-ordinate and disseminate medical information more efficiently than a series of similar provincial bureaux would be likely to do. If the financial recommendations outlined elsewhere are implemented, the fiscal capacity of the several provinces to support adequate medical services may be brought up to a more approximate level, and in that event the Dominion Government may need to reappraise its health policies so as to avoid duplication with services that the provinces are then able to provide for themselves.

POLICE SERVICES

In six of the nine provinces the enforcement of provincial as well as Dominion statutes is entrusted to the Royal Canadian Mounted Police under agreements between the Dominion and the provinces concerned. The province pays the Dominion, \$1,000 per year, for each member of the Royal Canadian Mounted Police required for provincial service. The other three provinces, Ontario, Quebec and British Columbia, continue their own provincial police forces. In these provinces, accordingly, two forces operate (in addition to municipal officers). In the main they are engaged in quite distinct work, but it is all a part of the general task of law enforcement. In these three provinces a certain amount of duplication exists and

²⁵ The Dominion estimates for 1938-39 for these services amounted to about \$80,000.

considerable sums could be saved by the negotiation of arrangements with the Dominion Government similar to those now in effect in the other six provinces. These three provinces could be policed by a single force which would be somewhat smaller than the present combined Dominion and provincial police forces operating in them, and there would in addition be some saving of administrative overhead. The standing offer of the Dominion Government to extend its present arrangements to the three provinces has not been accepted because of considerations which in the opinion of the provincial governments concerned outweigh the financial savings promised by the change.

Provinces which have entered into agreements with the Dominion have been able to cut their police costs in half.²⁶ Analogous savings in the case of Ontario, Quebec and British Columbia would be of the order of \$350,000 for each province, or a grand total of about \$1,000,000 a year.²⁷ Although this sum would be saved to the provincial taxpayer, the total Canadian tax bill would, however, not be relieved to that extent, since the Dominion Government performs the service for the province at considerably less than cost. But it appears that approximately a total of \$500,000 annually could be saved if the Dominion were to make arrangements for police services with the three remaining provinces similar to arrangements with the other six. This saving is sufficiently great to warrant careful consideration, though there are other than financial considerations involved.

The chief argument advanced for retention by the province of its own police service is the desirability of the closest possible co-ordination between the provincial attorney-general's department, the crown attorneys of the province, and the law-enforcement officers.²⁸ It was represented to us that, since the provincial legislature and the provincial executive are responsible to the people of the province for the manner and method of law enforcement, it is desirable that the province have complete control of its own police force. A supplementary practical consideration, of special force in British Columbia, is that some provincial police officers act also as general provincial agents in certain civil matters. It was suggested that Dominion police could not be expected to perform these services in full, if at all, or in any case as

satisfactorily, because of their lack of knowledge of the local situation and the more inflexible character of a Dominion-wide organization. As a result the province might have to enlarge its civil service to carry out functions now performed by the provincial police.

As against these arguments it was asserted that the efficiency of law enforcement across Canada as a whole would be materially improved by the greater co-ordination of activity that would result from further unification. The weakness arising out of divided control was illustrated by the experience of the several forces in coping with the "sit-down" strike of single unemployed in the city of Vancouver in 1938, where the confusion over jurisdiction was said to have hampered the police materially in their efforts to deal with the situation.²⁹ Moreover, the arguments in favour of the maintenance of provincial forces were, presumably, applicable to each of the six provinces which have entered into agreements with the Dominion, but, on the whole, the provinces within the agreements are satisfied with present arrangements, and, with the exception of Alberta, show no disposition to go back to a force of their own.³⁰

UNEMPLOYMENT RELIEF AND OLD AGE PENSIONS

Elsewhere important recommendations are made concerning the reallocation of responsibilities for unemployment.³¹ If these changes are made, the powers and responsibilities of the several units will be clearly defined and duplication and other administrative waste in the handling of relief should be materially reduced. In this section it is merely proposed to call attention to the duplication which exists under the present arrangements.

Both unemployment relief and old age pensions are at present jointly financed by two or more levels of government. Expenditures on direct relief are made by municipalities, on old age pensions by the provincial governments, and in both cases subject to audit by the Comptroller-General of the Dominion and later by the Auditor-General.³² Audits of relief expenditure are also conducted by provincial governments. It is difficult, however, to see how this duplication of auditing could be eliminated under the present

²⁶ *E.g.*, Alberta's costs fell from \$540,000 (1931) to \$225,000 (1932); Saskatchewan from \$485,000 (1926) to \$175,000 (1928); New Brunswick's from \$214,000 (1930) to \$100,000 (1933).

²⁷ These three provinces together are spending about \$2.5 million annually on their provincial police forces.

²⁸ *Ev.* p. 7931.

²⁹ See Ex. 188, Brief of Associated Boards of Trade of B.C., pp. 5 and 9, *Ev.* p. 5412; for the B.C. Govt's opposition to national policing see *Ev.* pp. 5924-25.

³⁰ For Alberta's objection see *Canada Sessional Papers*, 1938, No. 256.

³¹ See pp. 24ff.

³² See Appendix 7—J. A. Corry, *Difficulties of Divided Jurisdiction*.

system whereby costs are shared between two governments. Dual audits are almost certain to continue so long as sums are advanced by one jurisdiction to be spent by another, subject to conditions. It would be unreasonable and, indeed, politically impossible for a government supplying a large part of the costs of a service to waive the right to audit expenditures made through the agency of another government. The procedure results, however, in a considerable measure of friction which is detrimental to harmonious relations between the Dominion and the provinces. Our recommendations for a clear-cut division of responsibility for relief³³ would, in general, mean that each authority would finance its own services with its own funds, in which case the need for such dual audits would disappear.

In the administration of old age pensions similar duplication of auditing exists, though to a lesser degree. But again it is difficult to see how this can be avoided so long as funds are contributed by both governments. But this occasions considerable friction. Numerous differences of opinion also have arisen over the interpretation of the regulations.³⁴ Most of the early differences have now been ironed out, but new ones arise from time to time. It seems to us desirable that some simple provision should be made to provide for authoritative decisions as to contested points. This involves the choice of some tribunal satisfactory to the interested parties and capable of giving expeditious and authoritative rulings as to the meaning of the regulations.

RESEARCH

So many governmental and private agencies are engaged in research that it would be strange if there were not a certain amount of waste or duplicate effort. Research in agriculture has been considered under that heading.³⁵ The field in which duplication is most likely to occur is private competitive research in which the utmost secrecy is maintained. Our evidence on the whole matter indicates that in respect to research under governmental auspices the present situation is "reasonably satisfactory".³⁷ Persistent care is needed in this field to limit waste effort to a practical minimum. The benefits of shrewdly directed research are so great in proportion to the sums expended, and the need for industrial and scientific research in Canada

is so widespread that undue "efficiency" in organization might prove to be false economy. The situation is complicated by the fact that many discoveries in pure science prove afterwards to be of enormous value in the field of applied science. If state aid were completely withheld from projects which, though promising to extend the field of man's knowledge, appeared to be of no immediate practical or financial benefit, the progress of research in both pure and applied science might be seriously checked. But such considerations do not justify duplication of identical experiments unless required for checking purposes, useless investigations, or other sheer waste, and we recommend that the present machinery of associate committees and other co-ordinating devices be extended wherever a greater pooling of knowledge and effort can be accomplished.

TOURIST AND TRADE PROMOTION

The only question concerning Dominion-provincial duplication in the field of tourist promotion arises out of the creation in 1934 of the Canadian Travel Bureau. This was designed to "sell Canada" to the tourists of other countries and to act as a co-ordinating office for the numerous provincial, municipal and private tourist agencies in Canada. Both public and private inquiries were made by the Commission relating to the work performed by the bureau and the administrative relationship between it and the other bodies throughout Canada.³⁸ Some conflict of opinion was apparent as to whether tourists could be attracted to Canada by general advertising or whether it was more effective to advertise the specific local attractions of the diverse regions. If the latter, then a question arose as to the value of extensive Dominion advertising. The Commission was unable, without extending its inquiry unduly, to measure the relative effect of general versus local advertising upon potential tourists from abroad, and thus to evaluate the work of the Canadian Travel Bureau in a precise way. The annual sum devoted to tourist promotion by the Dominion is small in proportion to the vast sums spent in Canada each year by tourists, and without more information we should not like to disparage what may be a very valuable service. In view of some critical comments made by the provinces, however, we think the Dominion Government should satisfy itself by periodic reappraisal that this new service

³³ See p. 24.

³⁴ See J. A. Corry, *op. cit.*

³⁵ See p. 175.

³⁷ Ex. 402, Memo. on services of the National Research Council, p. 48.

³⁸ For public inquiry see Ev. pp. 9910-25, Ex. 220, Memo. Dept. of Trade and Industry, B.C., Ev. pp. 5816-19.

does not duplicate that of the provincial bureaux. If duplication appears the Dominion service should be reduced accordingly. The situation is complicated by the wide diversity of provincial expenditures. Several provinces have adopted a most aggressive tourist policy, and these provinces tend to feel that the Dominion Government may be overlapping their services. Other provinces are spending very little and rely (even gratefully) upon the promotion sponsored and financed by the Dominion Government. The basic federal dilemma arising out of the unequal financial ability of the provinces again crops up, and it is impossible to satisfy the requirements of all the provinces.

In the field of external trade promotion there is always the possibility that provincial trade representatives may duplicate the work of the Dominion Department of Trade and Commerce, but we are satisfied that up to the present there has been no serious overlapping. There appears to be a field for provincial trade agents to assist in the sale of commodities of special concern to their own region,⁴⁰ and, provided the facilities of the Dominion Commercial Intelligence Service are first explored and used as fully as possible before such special campaigns are launched or special provincial representatives appointed, we do not believe the practice should be reprehended. The provincial representatives are able, it is contended, to act as selling agents in a way not permissible for Dominion Trade Commissioners, and in some cases local industries co-operate with provincial governments to finance the provincial service. There is no reason why Dominion and provincial trade agents should not co-operate fully for the mutual benefit of their governments, and indeed we were assured that a large measure of co-operation does now exist.⁴¹

STATISTICS

Practically all Dominion and provincial departments collect some statistics in connection with their administrative operations, and the task of the Dominion Bureau of Statistics in part is to act as a collecting, correlating and interpreting office.⁴² A great deal of attention has been devoted in the past twenty years to arrangements between the Bureau on the one hand and the Dominion and provincial departments on the other so as to eliminate waste

effort. Provincial statistics are for the most part collected by the provinces and compiled by the Dominion Bureau. The latter prints and standardizes the information returns and schedules used by the provinces in obtaining the information, and when the material is compiled—according to a plan usually agreed upon beforehand by all parties—it is made available to the provinces for their own use. In addition there is some provincial compilation of material, the Province of Quebec for example, having published a year book for many years. Since 1918 the departments of the Dominion Government have used the Dominion Bureau of Statistics as their statistical agency, although for special purposes, or when greater speed is required and is thought to be possible by direct collection, some of the departments still collect their own statistics from time to time. The danger of administrative waste in the collection of statistics is considerable, but our inquiries did not bring to light any serious cases of duplication.

The effective and economical compilation of statistics in many fields depends upon close and intricate co-operation between the Dominion Bureau of Statistics and the nine provincial governments. This is at present fostered by occasional *ad hoc* Dominion-provincial statistical conferences. It was represented to us that the co-ordination would be strengthened by the creation of a Statistical Council⁴³ which would be required to meet at least once a year.

GEOLOGICAL SURVEY

The interests of the Dominion Government and the provinces overlap in the broad field of mapping and survey. Both geodetic and topographical surveys are closely related to the Dominion functions of regulating navigation, and of national defence. Since geological survey is a preliminary investigation looking toward the exploitation of natural resources, the title to which is vested in the provinces, it would appear to fall within the provincial field. There are, however, material advantages in a national service able to draw upon technical skills in a way not available to the smaller provinces at least. Geological survey is closely dependent upon topographical survey, and unless topographical survey precedes geological survey it is necessary for the geological survey parties to spend part of their time doing preliminary topographical work. The practice has been for the Dominion and the provinces to share geological

⁴⁰ Ev. pp. 8784-85; Brief of N.B., pp. 71-72.

⁴¹ Ev. pp. 4716-24D.

⁴² Ex. 139, Memo. *re* Constitution and Administrative Machinery of the Dominion Bureau of Statistics; Ex. 220, Memo. B.C. Dept. of Trade and Industry; Ev. pp. 3835-51, 5814, 5821.

⁴³ Ev. p. 3844.

survey work. We were told of the consultations that take place each spring before geological survey parties go out so as to avoid overlapping between Dominion and provincial efforts.⁴⁴ The attitude of the several provinces toward Dominion participation in this field differs markedly.

The Province of Ontario, with major interests in mining, has looked after practically all of its own geological survey work since 1935 and its brief⁴⁵ expressed the willingness of the Province to assume the entire responsibility for this work if the Dominion would exempt mining companies from income tax on actual mining operations. Other provinces, however, look to the Dominion to extend rather than curtail activities in this field.⁴⁶ In support of this position it was urged that every province could not afford to maintain the necessary staff of specialists. Manitoba, Saskatchewan and British Columbia, as well as Nova Scotia, favoured Dominion retention of this service and urged greater speed in the completion of topographical and geological surveys. The situation calls for a division of the field between the Dominion and the provinces in a flexible way to take care of the needs of the various provinces. Since the activity consists largely of field-work it is feasible for the Dominion Department of Mines to distribute its survey parties so as to supplement the activities of the provincial governments.

LABOUR LEGISLATION

Most of the provinces maintain a branch or department dealing with labour but no serious financial waste due to duplication with the Dominion department came to light either in public or private investigation. The Dominion Department maintains services dealing with such matters as annuities, investigations under the Combines Investigation Act, fair wages on Dominion projects or construction, unemployment relief and co-ordination of employment offices. The only activities in which overlapping with provincial functions might occur are the employment service, unemployment relief, and conciliation and investigation of industrial disputes. These activities are, however, dealt with at length elsewhere and recommendations made thereon.⁴⁷

⁴⁴ Ev. p. 9627.

⁴⁵ Pt. II, p. 55. See Ex. 317, Memo. Ont. Dept. of Mines.

⁴⁶ *E.g.*, in Nova Scotia, see Ex. 146, Memo. N.S. Dept. of Mines, p. 2.

⁴⁷ See Sect. A., Ch. I (2); and p. 47.

JAILS; PENITENTIARIES; LAW ENFORCEMENT

The cost of administering justice and of maintaining penal institutions is divided among the several governments in Canada. Since the appointment of this Commission, recommendations have been made to the Dominion Government by the Royal Commission to Investigate the Penal System of Canada. These include proposals for the reorganization of the present administration over provincial jails and reformatories, and penitentiaries. Our recommendation for a general power of delegation of jurisdiction by a province to the Dominion or vice versa, if adopted, will conveniently provide means for any change of jurisdiction involved in the recommendations of the Penal Commission. In view of the exhaustive inquiry made by the Penal Commission on the whole subject of penal institutions (including overlapping), we think it would be out of place for us to say anything further on the matter of overlapping in this field, but certain complaints were made at our public hearings and may be appropriately mentioned.

It was represented in hearings in the Maritime Provinces that the present arrangements were in some respects inequitable and anomalous, and especially that the cost of enforcing such federal statutes as the Customs Act bore with undue weight upon the municipalities where the offence happened to take place.⁴⁸ In New Brunswick it was urged that excessive costs fell upon the municipalities from offences committed by Indians, who were held to be a Dominion responsibility.⁴⁹ The inability of the weaker municipalities to provide modern penal institutions and uniformity of treatment was stressed.⁵⁰ These, however, are matters to be settled between the provincial government (which is responsible for the enforcement of law and order) and its agent or creature, the municipality. If the financial adjustments recommended elsewhere are made, every province will be in a financial position to make whatever rearrangements with its own municipalities appear to be called for in the interests of equity and efficiency.

TRANSPORTATION

A separate section of this Report is devoted to the discussion of transportation problems, and one of the most important problems discussed there is

⁴⁸ *E.g.*, Ex. 154, Brief of Union of N.S. Municipalities, Ev. pp. 4230, 4243 *et seq.*; Brief of P.E.I., pp. 51-53, Ev. pp. 4528-45.

⁴⁹ Ex. 375, Brief of Union of N.B. Municipalities, Ev. pp. 9068-69.

⁵⁰ Complaint was also made by the Government of Ontario with respect to the cost of maintaining prisoners who became insane during incarceration. See Ev. p. 7908.

the actual and potential duplication of transportation facilities by the Dominion and the provinces.⁵¹ Indeed, duplication of services between governments is greatest in the field of transportation, and probable developments in transportation may tend to increase greatly this duplication unless a comprehensive scheme of co-operation between the Dominion and the provinces is evolved.

COMPANY INCORPORATION AND REGULATION;
INSURANCE; FISHERIES

There is also some duplication of effort and services in the above fields although the costs resulting from this duplication are not large. These subjects, however, are discussed at length elsewhere and recommendations made thereon.⁵²

SUMMARY OF OVERLAPPING AND DUPLICATION

The foregoing indicates that the Commission's inquiries failed to disclose the measure of overlapping and duplication between governments which has been charged from time to time. This conclusion is supported by the testimony of witnesses whose close contact with administrative conditions should have placed them in a position to detect any substantial degree of such wastes.⁵³ Every provincial government, as well as the Dominion Government, was asked to permit officials to appear and give evidence about overlapping. During the Ontario hearings questions were addressed to the Government of Ontario seeking precise evidence regarding allegations of overlapping made in the Ontario brief. Further information was promised but was not received.⁵⁴ Similar requests to provide us with concrete evidence were made of business organizations,⁵⁵ which had deplored the amount of duplication in government, but again with negative results.

It should, however, be reiterated that the failure to discover gross overlapping does not warrant the assumption that no administrative waste exists. We are satisfied that considerable sums could be saved to the Canadian taxpayer without material loss in efficiency of services by a systematic weeding-out of ill-considered or obsolete activities.

⁵¹ See pp. 200ff.

⁵² See for Company Incorporation and Regulation, p. 56; Insurance, p. 59; Fisheries, p. 58.

⁵³ Brief of Sask., p. 321; Brief of Man., Pt. VIII, pp. 14-15; Brief of N.S., Ev. p. 4199.

⁵⁴ At Ev. p. 8114 the following question was directed to the Government of Ontario: "In Part I of the Ontario submission, p. 5, it is stated that there is 'gross prodigality and woeful waste in public administration' and that 'there is overlapping between the central and provincial bodies.' Would the Government of Ontario indicate as completely as possible where prodigality, waste and overlapping exist?" See also Ev. pp. 7403-04.

⁵⁵ E.g. Winnipeg Board of Trade, Ev. p. 864; Canadian Chamber of Commerce, Ev. pp. 9535-36.

The Dominion Government has within its Civil Service Commission an embryo agency for the systematic canvassing of the efficiency of the civil service. The organization branch of that commission undertakes surveys of the day-by-day work of each civil servant; and on their recommendations depend promotions, reclassifications, new appointments and termination of posts. They report on any proposed expansion of administrative machinery. We believe that this device is sound, but needs considerable strengthening and extension to be effective. If the idea can be copied by the provincial governments it should result in greater efficiency in provincial services.

But many wastes are of a nature which such administrative surveys are unable to disclose since they arise from unwise, static and outmoded policies which fail to change with the needs of a dynamic economy. The Civil Service Commission is not in a position to criticize policy in public expenditure. If sums are voted for a stated purpose by Parliament, all that the Civil Service Commission can do, no matter what its private views may be regarding the value of the service, is to see that the sums are spent through an efficient organization. Critical appraisal of policy can be made only by representatives of the people. We suggest that the task of periodic reconstruction of all branches and departments of government be entrusted to a special committee of Parliament set up for the purpose. Instead of being permitted to coast along on its momentum in grooves worn smooth by custom, every branch and project of government should at intervals be called upon to justify its cost in terms of values to society. Only in some such way can the operations of government be kept free from deadwood and duplication. This suggestion, of course, applies to the Dominion alone, but some analogous method might be devised by the provincial governments.

From the point of view of the civil servant such periodic reappraisals, which in order to be of value would need to be drastic and conducted without fear or favour, would constitute a threat of insecurity of office that would raise some new problems. In choosing the civil service as a career many persons accept a somewhat smaller income and less attractive opportunities for advancement as an offset to the insecure speculative nature of employment in private enterprise. It would be necessary to combine security of tenure within the civil service as a whole with a new insecurity of special function. Any such increase of flexibility within the service would, we think, be a desirable attainment in itself.

SECTION D
DOMINION-PROVINCIAL ASPECTS OF TRANSPORTATION

CHAPTER

- I The Freight Rate Structure
- II The Problem of Railway and Highway Competition
- III British and United States Experience
- IV The Basis for Dominion-Provincial Co-operation

SECTION D

DOMINION-PROVINCIAL ASPECTS OF TRANSPORTATION

There could be no thorough study of the matters remitted to the Commission for consideration without an understanding of how closely many of these questions are related to certain phases of the complicated and wide-ranging railway and transport problem. The submissions, dealing with aspects of this problem, were important; and many of the questions thus raised have been considered in the light of their connection with other issues which the Commission has found it necessary to examine and to deal with. These had to do with such matters as the purposes of national integration and encouragement of trade which inspired the transportation policies of the Dominion Government: the building of the Intercolonial, the enlargement of internal waterways, the provision by aid, direct and indirect, of three transcontinental railways within a period of forty years; inquiry into charges that the policies had not fulfilled the purposes, with results disappointing and injurious to important sections of the country; consideration of a complaint by Prince Edward Island that engagements as to continuous communication had not been met, and of a claim by British Columbia that the Canadian National Railway System should be extended to take in the Pacific Great Eastern Railway. All these questions are discussed elsewhere with comments justified, in the judgment of the Commission, by the ascertained facts.¹

In addition to these matters, representations were made to the Commission dealing with railway questions of great moment, rightly calling for consideration by the competent authority, but which in the judgment of the Commission did not impinge directly upon Dominion-provincial relations; and did not, therefore, call for inquiry and discussion. It is on these grounds that the Commission has omitted the question of the relations between the two great railway systems. There were several references to this matter in submissions made to us. These ranged from observations that the situation

was serious, calling for resolute and constructive action,² to support for some not clearly defined scheme or plan of "unification" or "amalgamation" with "preservation of existing private rights."³ In no case were there detailed specific recommendations as to courses of action deemed adequate to attain the desired ends.

This is not a problem of Dominion-provincial relations, coming within our instructions. These two railway systems are exclusively within the jurisdiction of the Dominion authorities; and the question of what is advisable to be done has been engaging their attention for years. There was an exhaustive study of this situation in 1932 at the instance of the Dominion Government by the Duff Commission, which made an extensive report with specific recommendations; and this inquiry has been supplemented by an examination carried on by a special Committee of the Senate during the sessions of 1938 and 1939.

It was stated in one of the submissions that "the financial problem of Dominion-provincial relations" is greatly aggravated by the existence of an unsolved "Railway problem".⁴ The implication—that financial adjustments between Dominion and provinces, when found necessary, could be more readily made if the Dominion Government had not to meet heavy demands from other quarters—is doubtless accurate; but it does not affect the principle, to which the Commission has adhered, that the review of policies, financial or otherwise, solely within the sphere of Dominion or provincial power, is not a function which it is called upon to exercise, unless these policies have been the occasion of Dominion-provincial friction.

Transportation matters, where they come definitely within the ambit of Dominion-provincial relations, are of major importance; and we shall proceed to discuss at some length questions of this character, which have not already been dealt with. These questions, which await consideration, fall into two main classifications. There is that subject

¹ Section F, Chap. III, B.C. claims as to Pacific Great Eastern Railway; V, Claims concerning Trade Through Maritime Ports; VI, Compensation for Excess Freight Rates; VII, Prince Edward Island Claims.

² Ex. 394, Canadian Chamber of Commerce, p. 4.

³ Ex. 270, Brief of Canadian Manufacturers' Ass'n; Ev. 6756-6821.

⁴ Ex. 108, Canadian Investment Dealers, p. 11.

of perennial interest and constant discussion—the existing sectional incidence of the freight rate structure which, since the completion of the first transcontinental, has been built up to cover the whole Dominion, and has been subjected to a process of continuous adjustment, to meet changing conditions. That this is a matter of lively interest, the submissions by most of the provinces attest; and to this careful attention has been given by the Commission.

It became evident to the Commission at an early stage of its labours that the whole field of transportation, with its division of responsibilities and opportunities in the matter of supplying essential facilities between all the units of Government, Dominion, provincial and municipal, would call for extensive examination. It is in this field that the greatest danger lies of overlapping of services and expenditures necessitated by them, which was set out in our terms of reference as a subject requiring the most searching scrutiny. Though this development is still far short of its potential maximum, it has already brought about an extensive and costly duplication of transportation services; destroyed heavy investments of capital, both public and private; and threatens a repetition in another field of the inordinate expenditures which marked the climax of railway building in the second decade of this century. The Commission thinks it somewhat remarkable that in the many references to highways to be found in the submissions made

to it, there was practically no recognition of the financial consequences if there continues to be a complete lack of co-operation and co-ordination between the various governments in the matter of railway and highway competition.

Most of the suggestions set out in the representations about highways made to the Commission were that the Dominion should make larger contributions toward the construction of main highways and highways to mines and national parks, and should give greater assistance to provinces to enable them to supply adequate roads.

This defect in the information supplied the Commission, by the ordinary means of voluntary submissions and free discussion, has, however, been met by the results of an intensive study of the whole transportation field undertaken by a staff of experts at the instance of the Commission,* which revealed actual and potential dangers of the present state of unlimited competition between agencies and facilities for transportation operated under different jurisdictions. The Commission has, therefore, thought it desirable to throw such illumination, as its researches and special studies have made possible, upon the situation.

* This study was carried on under the general direction of Mr. R. A. C. Henry, formerly Deputy Minister of Railways and Canals. The material proved too voluminous for publication but will be filed with the records of the Commission, and selections from the material are being published as an Appendix, *Railway Freight Rates in Canada* (mimeographed).

CHAPTER I

THE FREIGHT RATE STRUCTURE

The Commission has been in receipt of numerous representations in which regional or provincial complaints about freight rates, on grounds of discrimination or undue preference, have been voiced.

In keeping with our reasons, already stated, for regarding railway questions which impinge upon Dominion-provincial relations as coming within our terms of reference, we deem it expedient to give consideration to some general aspects of the question of public control of railway rate-making—a matter which has been a fruitful cause of trouble between regions and between provinces and the Dominion for at least the past sixty years.¹

The Order in Council of June 5, 1925.—It is not necessary, in considering the historical aspects of the question, to go further back than 1925. It was in that year, June 5, that the Dominion Government passed an Order in Council requiring the Board of Railway Commissioners to make a full and complete investigation into the freight rate structure of the railways. When the Board of Railway Commissioners entered upon this task it had (with one exception) complete control over rates in Canada, subject to an appeal on points of law to the Supreme Court and an appeal on merits to the Governor in Council. The exception was the statutory provision that the eastbound grain and flour rates embodied in the Crow's Nest Pass Agreement of 1897 should be continued and applied to the entire prairie area.

This provision was the continuing remnant of the extensive agreement of 1897 between the Dominion Government and the Canadian Pacific Railway. Between those who thought the Crow's Nest Pass Agreement Act (which antedated the Bill creating the Board of Railway Commissioners by six years) should be repealed, leaving freight rates in the West to be fixed by the railways subject to appeals to the Board, and those who held that these rates should be continued as a protection to

an area which was not favoured with water competition, a conflict began in 1922 which was fought out in special Parliamentary committees, in cases before the Board of Railway Commissioners, in references to the Supreme Court, in appeals to the Governor in Council and in Parliament itself. In the result, the principle that it was proper for Parliament to put statutory limits to the powers of the Railway Commission was clearly established by the retention in the Order in Council of June 5, 1925, of the grain and flour provisions of the Crow's Nest Pass Agreement. Again in 1927 there was a further exercise by Parliament of its power to fix maximum rates in the passage of the Maritime Freight Rates Act.

The present situation as to rate-making is therefore this: The railways are free to make such rates as the Board of Transport Commissioners (which is the successor of the Board of Railway Commissioners) will approve subject to the power of Parliament to fix limits within which both the railways and the Board must exercise their powers. But the Board, in its supervision of rates, is under obligation to observe the principles of rate-making laid down in the declaration of policy contained in Order in Council P.C. 886 of 1925, part of which reads as follows:—

"The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."

Again:—

"The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crow's Nest Pass Agreement, should not be exceeded."

¹For a general discussion of the right of a province or a region in Canada to make a claim in respect of federal policies see Section F, Chap. I, "Compensation for the Adverse Effects of Federal Policies".

The next paragraph of the Order instructs the Board that its power, except for the Crownsnest Pass rates, is "unfettered by any limitation". The order proceeds:—

"The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries. . . ."

Summary of Representations.—The representations bearing upon these matters made to us may be thus summarized:—

The Transportation Commission of the Maritime Board of Trade,² speaking as representative of the interests of the three Maritime Provinces and with the approval of the governments of these provinces, raised an important and difficult question with respect to the effect of the reduction of freight rates made by the railways in Central Canada to meet truck competition. It was claimed that the 20 per cent differential in freight rates granted to the Maritime Provinces under the Maritime Freight Rates Act had been nullified by these reductions. The suggestion was therefore made that the differential should be restored by a new adjustment; and that adjustments should continue to be made whenever necessary to maintain the relationship. This is discussed later in this chapter.

The Nova Scotia Government in its brief³ also referred to this partial breakdown of the benefits conferred by the Maritime Freight Rates Act and stated that if the present conditions are to continue "then certainly some compensation must be made to the people of the Maritime Provinces."

The representations of the Ontario Government were not with respect to freight rates in the Province of Ontario. The freight rate structure of Western Canada was criticized on the ground that it was too low. Premier Hepburn said that grain rates in the West were 9 cents per bushel lower than comparable rates in the United States. "I shall not attempt", he said, "to compute the 'excess' burden shouldered by the people of the eastern

² Ex. 366, Brief of Transportation Commission, Maritime Board of Trade.

³ Ex. 140, Brief of N.S., pp. 104-5; see also Ex. 357, Brief of N.B., pp. 55-59.

provinces as a consequence of what I am told are the world's lowest per mile rates on wheat, but multiplying the number of bushels of wheat exported (in even a bad year) by nine cents gives promise of being a substantial sum." A request was made for a statement by this Commission of "the distribution of federal expenditures for railways on a per capita basis by provinces."⁴ The share of each province in payments to meet the Canadian National deficit was computed in the brief on the basis of traffic originating in the province, which made Ontario's share in 1936-37 30 per cent as against 31 per cent for the Prairies.

The Saskatchewan Government, in its submission to the Commission,⁵ made a detailed survey of freight rates to show not only that the Prairie rate structure was higher than the Eastern rate structure but that terminal and other classes of rates bore heavily upon the Province. The Saskatchewan Government referred with approval to the suggestion in the Report of the Duncan Commission that the jurisdiction of the Railway Board be enlarged permitting, in the words of submission, the Board in regulating freight rates to "deal with broader aspects than the mere question of the reasonableness of the rate charged for a particular service . . . and questions of unjust discrimination and undue preference"; and suggested that these recommendations be studied as a means of securing the adjustment of rates on a more equitable basis. "The west", it declared, "can no longer pay . . . higher transportation charges."

Several briefs dealing with freight rates were submitted to the Commission in Alberta. Their common burden was that Alberta is at the apex of the transcontinental freight rate structure and that in every classification and division of rates Alberta pays the topmost charge. "Alberta must sell the bulk of its agricultural products in world markets at world prices less transportation costs, and must buy the bulk of its purchases within Canada at prices . . . to which must be added the cost of long-haul transportation under a varying schedule that reaches its peak on shipments to Alberta."⁷ A grievance of Alberta which was specially stressed is that through rates to Vancouver—put in operation

⁴ Ex. 290, 297, Brief of Ont., Pt. I, p. 28; Pt. II, p. 20.

⁵ Ex. 34, Brief of Sask., pp. 203-223. In the presentation of the Transportation Commission of the Maritime Board of Trade at Fredericton the suggestion by the Saskatchewan Government was referred to and strongly seconded, both in the submitted brief and in the supporting argument, Ex. 366; Ev. pp. 8886, 8887.

⁷ Ex. 236, Brief of the Edmonton Chamber of Commerce, p. 29. See also Ex. 242, Brief of Alta. Assoc. of Municipal Districts; Ex. 255, Brief of United Farmers of Alta.; Ex. 257, Brief of Alta. C.C.F. Clubs.

by the railways to meet water competition via the Panama canal—enable goods in certain cases to be shipped by rail to Vancouver and back into Alberta more cheaply than they can be shipped direct. Much attention was paid in these briefs to the “Spokane Decision” of the Interstate Commerce Commission under which intermediate points (Spokane, for example, in relation to Seattle) were not to be charged rates higher than their fair proportion of through rates without the permission of the Commission. The submissions in Alberta called for relief from so-called high rates and from rates which appeared to the witnesses to be discriminatory and indefensible.

The British Columbia submission⁸ presented other aspects of the same rate problem. The complaint most strongly voiced in the brief presented by the Government was that freight rates on goods brought in from Eastern Canada—under compulsion because of the tariff—were higher than the rates on bulk goods shipped from British Columbia to markets in Eastern Canada, though there was no corresponding difference in haulage costs. This it was asserted was a discrimination against British Columbia consumers. “On the surface,” it is stated in the brief, “this situation is apparently inequitable, since for almost similar services performed very dissimilar freight tolls are exacted. The principle of charging what the traffic will bear has an inherent spirit of discrimination, at least when applied to whole areas. Primary producing regions selling a comparatively low value product are compelled to pay the relatively high freight tolls; while, on the other hand, secondary producing areas receiving revenue from their comparatively high value products pay the relatively low freight tolls.” Comparative regional rates are quoted to show that they are higher than rates on similar articles for similar distances in the Ontario-Quebec district; and it is denied that these are related to costs of operation. A special protest was made against the high rate on grain shipped to Vancouver for local consumption in comparison with the export rate.

Ontario Representations.—The Ontario representation,⁹ it will be seen, differed in content and direction from the representations made by other provinces in that it did not make specific observations suggesting reduction in the rates in the area for which it spoke. It was largely directed toward suggesting that the Western Provinces, which com-

plained of high rates, were in fact the recipients of unusually favourable treatment in the existing freight rate structure to the disadvantage of other areas. We propose to deal with these observations before proceeding to a discussion of the other submissions which raise questions of general rate policy affecting the whole Dominion.

Among the Ontario suggestions was one that the distribution of federal expenditures for railways on a per capita basis by provinces should be ascertained. This information is in part supplied by Mr. R. A. C. Henry in a study prepared by him for the research staff of the Commission. The following table gives a summary of the cost of railway facilities, in respect of which the Dominion has assumed financial responsibility either as public works or by reason of ownership through stock control, allocated by regions as at the end of 1936:

	Cost	Per Capita
Maritimes	\$162,414,000	\$158
Quebec	291,891,000	94
Ontario	653,425,000	177
Prairies	408,426,000	169
British Columbia	166,453,000	222

The tabulation indicates how valueless calculations of this kind are in any attempt to allot responsibility to regions for their supposed contribution to over-investment in railway facilities. To sort out instances of sectional extravagance from the mass picture of nation-wide over-expansion would be a difficult if not impossible task; and instead of attempting it we prefer to associate ourselves with an observation on this aspect of the transportation problem made by an earlier Royal Commission, under the chairmanship of Sir Thomas White:—

“As some reference has been made to the vast sums expended by the Dominion or by Government-controlled railway systems upon the construction of transcontinental lines and local branch lines in the Western Provinces it seems desirable to point out that such expenditure was regarded as essential by the various governments of the Dominion in pursuance of the policy of promoting settlement as rapidly as possible in those extensive areas in the interest not alone of the Western Provinces but of all the Provinces of Canada. The express purpose of Confederation was to bind together the scattered Provinces and territories of British North America as a national and economic unit capable of unlimited growth and development to the benefit and advantage of all its inhabitants. For the realization of this great undertaking in nation-building the construction of transcontinental railways linking together east and west was a paramount necessity. It is not too much to say that the policies of all Dominion Governments during the fifty years following Confederation were

⁸ Ex. 172, Brief of B.C., pp. 299-301.

⁹ Ex. 206, p. 28; Ex. 297, p. 20.

directed to this end. The various forms of public assistance given in promoting the construction of the Canadian Pacific, the Canadian Northern and the Grand Trunk Pacific Railway systems and the construction by the Government of the Intercolonial and the eastern section of the National Transcontinental System were all motivated by this policy. That we have built in excess of our real transportation requirements is undoubtedly true and that Dominion Governments or Dominion-owned railway systems in respect of the construction or acquisition and betterment of local lines in various provinces (including the Maritimes) have had regard to local conditions or local benefit is also true but the latter action was not exclusively taken in the case of the Western Provinces and the former with the object of benefiting all parts of the Dominion. It must also be remembered that hand in hand with our railway development, has gone the development, at the general expense of the Dominion, of our ports and harbours on the Atlantic and Pacific Coasts. This development although in its physical aspect confined locally to British Columbia and the Maritime Provinces has enured like that of our railway systems to the benefit and advantage of all Provinces of Canada and not exclusively to those in which it has actually taken place."¹⁰

There is also in the Ontario submission the somewhat definite statement that an excess burden has to be shouldered by the Eastern Provinces because of the Western rates on grain and the suggestion that this burden can be computed by "multiplying the number of bushels of wheat exported by nine cents per bushel,"¹¹ which would run into a large sum of money even in a year of limited export. The figure, nine cents, represents what the railways claimed was the difference between United States and Canadian rates on wheat. This was an *ex parte* statement recently made by them as a justification of rates on petroleum products which were admittedly higher in Western Canada than the rates in the adjoining states.* As this supposition, that the rates on wheat in Western Canada are unremunerative and therefore a large contributing factor in the difficulties of the railways, constantly finds expression in the discussion of the railway question, the Commission, without undertaking to express an opinion, thinks it desirable to draw attention to the statements available in the records bearing upon this point, which tend to show that this is an open question upon which a variety of views may be held.

In the 1921-22 freight rates investigation and again in the General Freight Rates Inquiry, 1925-27, counsel for the Prairie Provinces sought to

¹⁰ Report of the Royal Commission on Financial Arrangements between the Dominion and the Maritime Provinces, 1935, p. 18.

¹¹ Ex. 296, Brief of Ont., Part I, p. 28.

* *Ibid.*

prove by analysis of the statistical material submitted by the railways and by examination of their expert witnesses, that in the preceding years—which were years of large grain movements—the railway earnings on their Western lines, largely arising from the carrying of wheat, made much the greatest contribution to the gross operating income of the railways. The heart of the argument was that, while the rates were undeniably low, the movement of the grain in train loads over relatively long hauls with resulting cheapness of operation, netted substantial profits. It was contended that the American rates, cited by the railways, were for shorter hauls and a smaller volume of freight than those that prevailed in the Canadian West. A summary of this evidence showing comparative earnings and operating expenses for a period of years was submitted to this Commission by the Saskatchewan Government in its brief.¹² Counsel for Manitoba in the General Freight Rates Inquiry of 1925-27 in presenting his case to the Board, urged it to make a finding on the profitability or otherwise of these statutory rates on wheat. His argument was that, since the earnings of the Western lines were high, it followed that the grain rates were profitable or alternatively that the rates on other commodities were unduly high since they more than made up the loss.¹³

No formal finding was made; but there were references to the question by two of the Commissioners. Deputy Chief Commissioner Vien gave it as his opinion that "no accurate and definite conclusion can be drawn from the information on the record as to the actual cost of moving grain in trainload lots from Armstrong to Quebec"—an opinion equally applicable to the moving of grain in the West. He quoted the statement of Mr. E. E. Lloyd, a Canadian Pacific Railway official, who gave evidence about earnings and rates, that "I do not know what the cost of handling grain is." Commissioner Oliver discussed the question at length. After a summary of the inferences to be drawn from the material produced he said: "It was also shown that the net returns were higher in the years of largest crop. In view of these facts it does not seem possible to accept as proven the

¹² Ex. 34, Brief of Sask., pp. 211, 212.

¹³ "I am going to ask the Board, if they will, to make a finding with respect to the profitable nature of the grain traffic. So long as it is left in the realm of speculation you will have the large amount of propaganda which has gone over this country, contributed to by the railways. I think, on the material before the Board, that that question ought to be settled. . . . It seems to me essential to decide whether or not these grain rates do or do not pay because if they do I say we are entitled to consideration of some other rates." (From argument of H. J. Symington, K.C., counsel for Manitoba, April 6, 1927, proceedings of Board of Railway Commissioners in General Freight Rates Inquiry.)

first contention of the railways that the present grain rates are in themselves unprofitable."¹⁴ Commissioner Oliver also discussed at some length the argument that since the grain rates in the Western states were higher than those in Western Canada the latter must be unduly low; and reached the conclusion that this inference was unwarranted. His opinion was that the United States Interstate Commerce Commission in an effort to put the American railways in a position to earn 5½ per cent on their capital investment, recognized as reasonable by Congress, had "laid an undue share of the burden of general transportation costs on the basic product of grain."¹⁵

The record, thus summarized, leaves the question as to the profitability or otherwise of the grain rates undecided. This is not desirable if the charge of unprofitability is to be constantly made in discussions dealing either with the general railway problem or with the consideration of charges of discrimination as between regions. An examination of these conditions and a definite finding would be a contribution of value to the processes of adjustment; but upon the evidence available to us we cannot make such a finding.

Submissions on Behalf of the Maritime Provinces.—The other representations made in provincial submissions are illustrations of the difficulties and apparent inequalities that result from the competition of other forms of transportation with the railways. The Maritime complaint which we have summarized above arises from the unsettlement of the relationship, which had been established between Maritime and Central Canadian rates by the Maritime Freight Rates Act, through the necessity with which the railways were faced of either meeting the competition of trucks in the central area or abandoning to them a considerable share of their business in that area. This is an illustration of the effect which the development of trucking competition in particular areas can have upon the whole freight rate structure of Canada. The effect, if the railways decide to meet the competition, is to increase the rate differential between various regions thus checking or even reversing the present trend toward equalization. For the Maritime Provinces such results are especially unfortunate since they affect adversely the differentials established by the Maritime Freight Rates Act. The remedy suggested in submissions made to us on behalf of the

Maritime Provinces¹⁶ is maintenance of the differentials fixed in the case of railways no matter what form the competition takes or what the consequences to the railway may be; but there is recognition of the difficulty of doing this in the absence of some measure of federal control over alternative systems of transportation.

We find ourselves unable to accept the argument that, in the circumstances now existing, a railway rate differential in favour of a region must be maintained against all forms of competition and regardless of the costs of operation. This difficulty about the maintenance of these Maritime rates is a consequence of truck competition and it can only be dealt with as part of the wider problems of transportation which are discussed in the following chapter.

Saskatchewan Submission.—The Saskatchewan submission¹⁷ is the restatement of a long-standing complaint of the Prairies—that the rates on freight in identical classifications differ between the Western and Central regions to the advantage of the latter. Whether or not this is a well-based complaint depends chiefly upon the answer to a question to which we have already given some attention. If grain which constitutes a high percentage of the freight moved by railways in the Western Provinces is carried at unremunerative rates the case, as set out in the Saskatchewan Brief, is obviously affected by that fact. A comment upon variations in regional rates due to differences in the character of the freight handled may be quoted:—

"Whilst it has not been possible to devise any suitable criteria with which to test the relative regional incidence of railway rates, because of lack of appropriate data, it may be said that the rates on primary products have been consistently low and consequently such as to promote rather than discourage regional development. It may also be said that there has been throughout Canada a tendency towards rate equalization in a downward direction under which many of the factors which were formerly considered as justifying differences in rates are being disregarded. The possibility of a complete equalization in a downward direction of the higher class rates necessitating a higher level for rates applicable to primary products should not be overlooked. In this latter connection, it may be said with reasonable accuracy that the average revenue received per ton mile for the railway haulage of wheat is about one-half cent and, whilst the average haul is somewhat over seven hundred miles, the average revenue per ton mile is only about half that received for all railway traffic. The theory

¹⁴ *Judgments and Orders of Board of Railway Commissioners*, Vol. XVII, p. 131 at pp. 198, 248.

¹⁵ *Ibid.*, p. 250.

¹⁶ Ex. 366, Brief of the Transportation Commission, Maritime Board of Trade; Ex. 357, Brief of N.B., pp. 55-59; Ex. 140, Brief of N.S., pp. 100-105.

¹⁷ Ex. 34, Brief of Sask., pp. 203-223.

upon which railway freight rates is based demands that consideration be given to the relation between low and high grade traffic, otherwise there would be no way of compensating for the failure of the low grade traffic to meet its full share of the cost of the whole service rendered. In other words a region whose traffic consisted of a large percentage of low-grade traffic moving at very low rates, and small percentage of high-grade traffic ought to expect to be charged a relatively higher rate on the small percentage of high-grade traffic than a region where the high- and low-grade traffic maintained an even balance."¹⁸

This opinion gives support to the contention made to us, to which attention will later be drawn, that for rates on low-grade freight, where these are not remunerative, the railways must either make up the losses by steeper rates on freight in the higher classifications or look to the public treasury for compensation.

Alberta Submissions.—The various representations from organizations in Alberta,¹⁹ in addition to embodying a complaint as to higher local and distributing rates in Alberta than in the East, illustrate in particular the situation which was created for the railways by the water competition made possible by the construction of the Panama canal. To meet this competition the railways lowered their through transcontinental rates to hold the volume of traffic which they regarded as essential. It then became necessary for the railways to decide whether they should make the rates to intermediate points a proportion of the through rate as determined by water competition, or should fix these intermediate rates in the traditional manner having regard to the value of the service rendered and what the traffic would bear. The decision was in favour of the latter course and there resulted divergencies in charges from the East upon identical classes of freight to points in Alberta and to the terminals at the Pacific ports. These were drawn to our attention in the Brief and in the Evidence submitted by the Edmonton Chamber of Commerce, the most striking being the variation in the charges on a car of canned tomatoes from Aylmer, Ontario, to Edmonton, 2,200 miles, \$1,038; to Vancouver, 2,900 miles, \$450.²⁰ The rates to Alberta in some cases, it was represented, were determined on the basis of the through-rate to Vancouver and the local rate from that port to Alberta points. It

was stated that Alberta is at the apex of Canada's freight structure and suffers in special degree from these variations in rates. These submissions, the Edmonton Chamber of Commerce took care to explain, were not in the nature of an appeal to the Commission for remedial recommendations but to indicate that there was from this cause an increase in living costs which bore heavily upon a pioneer economy.²¹ The suggestion was made that the situation might be met by the adoption by Canada of what is known in the United States as the "Spokane rate"—a ruling of the Interstate Commerce Commission that, without its special permission, no railway freight rate to intermediate points shall be higher than the rate to the terminal point. "If the principle of the Spokane Rate Case . . . were in force in Canada its effect on Alberta's position . . . within the Dominion would be tremendous."²² No evidence, however, was laid before us that any application has ever been made to the Board of Transport Commissioners that something analogous to the Spokane rate should be incorporated in the Canadian freight rate structure and this body alone would have the full authority to hear the argument and render a binding judgment; and this Commission is unable to go beyond taking note of this suggestion.

British Columbia Submission.—The British Columbia submission²³ raises practically all the questions which arise in Canada from freight rate differentials and the distribution of rates on the basis of the present classification. It shows as well that the customs tariff is a factor in rate-making by protecting freight rates as well as manufacturing costs. "It is claimed," says the Brief (p. 313), "that the consumers of British Columbia are penalized not only because of geographical conditions but because of the freight rate structure of the Canadian railway system." A "freight rate structure . . . based on the principle of what the traffic will bear, works a hardship upon British Columbia because of our economy here."²⁴ These complaints, however, do not require special discussion here; they are considered along with general complaints in the following paragraphs.

The Nature and Control of the Present Freight Rates Structure.—The pressures and necessities which have fashioned the traditional freight rate structure, with its variations in charges determined

¹⁸ From a Memorandum prepared for the information of the research staff of the Commission by Mr. R. A. C. Henry, para. 649.

¹⁹ Ex. 236, Brief of Edmonton Chamber of Commerce; Ex. 242, Brief of Municipal Districts of Alberta; Ex. 255, Brief of United Farmers of Alberta; Ex. 257, Brief of Alta. C.C.F. Clubs.

²⁰ Ev. p. 6055.

²¹ Ev. p. 6064.

²² Ex. 236, Brief of Edmonton Chamber of Commerce, p. 30.

²³ Ex. 172, Brief of B.C., pp. 239-314.

²⁴ Ev. p. 5176.

by a complexity of causes of which actual cost of movement is often only of minor significance, have been frequently discussed.²⁵ But this structure, in itself seemingly anarchic to those who see no reason why rates should not be fixed on simple considerations of mileage and expense of handling, could only be maintained with rigid uniformity in territory where a virtual monopoly of transportation by railways is possible. Such a monopoly does not exist in Canada. Wherever there are alternative means of transportation by water or truck or airplane, the railways are faced with a choice between meeting the competition or abandoning the traffic. Moreover, the railways must always be mindful of their balance sheets and must as a minimum seek to meet operating expenses. In consequence of adjusting the rate structure to meet both the revenue needs of the railways and the competition offered by other systems of transportation apparent inequalities and injustices have arisen.

The result of these conflicting pressures is to be seen in the bewildering conglomeration of rates which comprise the freight rate structure of Canada. In fact, it is not haphazard. It has been built up in conformity with the Railway Act's provisions under the constant supervision of the Board of Railway Commissioners which has never lacked the services of able men and a staff of competent experts.

Study of the judgments which the Board has delivered down the years shows clearly that the complaints lodged with our Commission are of long-standing. Most of them have been passed upon by the Board of Railway Commissioners, and, indeed, many of them have been gone over again and again in the Board's judgments. A brief summary of the

Board's rulings on the issues raised by the complainants will indicate why remedial action in the form of a technically complete equalization of rates has not been considered either desirable or attainable.

The Board of Railway Commissioners is purely a regulatory body. The powers conferred upon the Board are regulative and not managerial. "It is not the Board's function, as delegated by Parliament, to make rates . . . but to deal with the reasonableness of rates either on complaint or of its own motion."²⁶ The Board has power to see that there is equality of tolls and facilities under substantially similar circumstances and conditions and that there is no unjust discrimination or undue or unfair preference as between persons or places. The discretion of the Board to decide what are substantially similar circumstances and conditions is unrestricted. In practice the Board has chosen to deal with each complaint of discrimination on its merits. Application of a general formula to all cases has not been thought practicable. While the railways determine their rates (the Board has no power to initiate rates) the Board must authorize all rates before they come into force. The railways are the judges as to where and how competition is to be met; they may, between specified points, lower rates below the level approved by the Board. The railways may do so for reasons of water or other competition, the promotion of trade, or the development of the general business of an area; and they may do so without lowering the general level of rates or the rates between intermediate points. Once a competitive rate has been put in, the Board may equalize competitive rates to other points. This was done, for example, in the one cent rate on wheat from Quebec eastward. The Board made the rate equal to both Maritime ports.²⁷ Whether such a reduction in rates by the railways is or is not discriminatory would be for the Board to decide, but it is to be noted that the Board, unlike the Interstate Commerce Commission of the United States, has no control over minimum rates. Its control is restricted to the maximum that the railways may charge. The Board has no power to act as an arbiter concerning industrial and commercial policy. If the Western farmers are suffering because of the low price of wheat and, in their view, the high price of manufactured goods, the Board has no power to adjust freight rates to moderate these conditions. Nor can the Board make rates to offset the incidence

²⁵ A summary of the problems involved in such rate making is given by Prof. W. T. Jackman in his *Economics of Transportation*, pp. 135, 136 in these terms: "If the cost of service were the most prominent element in the determination of rates many of the most important articles or commodities would not be able to move more than a few miles from the place of production. . . . It costs as much to transport a ton of textiles (cottons, woollens, or silks) as a ton of stone or cement; but if the latter had to pay according to the cost of service they would not move very far from the quarry or the manufacturing plant, while if the former were charged upon that basis the cost of movement would be an almost imperceptible addition to the price of the product. Instead of making rates on this basis, which would hinder the movement of commodities, rates have been made according to what the traffic can bear and the commodities of low value in proportion to bulk or weight will pay only such a low rate as they can stand, and the commodities of high value in proportion to bulk or weight will be charged a rate which is much higher but which they can stand because of their greater value. . . . The railway establishes a rate which will move the traffic; the higher-class traffic will pay the more because it can bear the heavier charge, and the lower-class traffic because of its lower value will have the burden adjusted accordingly. It would be impossible for a railway to operate on the basis of rates made for none but low-grade commodities, since it would not have enough revenue to meet all its requirements. . . ."

²⁶ 13 C.R.C., p. 178.

²⁷ *Judgments and Orders of the Board of Railway Commissioners*, Vol. XX, p. 236.

of public policy in one or other sections of the country. Rates to benefit producers here or there; rates to serve national or patriotic purposes; rates to promote new industries—all rates of these kinds must be initiated, if at all, by the railways themselves or by statute. Only if questions arise as to their fairness, can the Board intervene. It is concerned, in a word, with the reasonableness of rates and with questions of discrimination and preference.

Most of the complaints made to this Commission have to do with discrimination. In this regard the Board of Railway Commissioners has said:—

“The Railway Act . . . authorizes and justifies discrimination. It is only an undue, unfair or unjust discrimination that the law is aimed against.”²⁸

“Discrimination may or may not fall within the provisions of the Act” [Railway Act]. “The Act, as it has always been interpreted by the Board, only forbids discrimination when it is undue or unreasonable.”²⁹

“Mere mileage comparisons do not afford criteria of discrimination, but all facts material must be given weight. In other words, under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination; discrimination, in the sense in which it is forbidden by the Railway Act, is a matter of fact to be determined by the Board.”³⁰

“A mere comparison of distances without consideration of the peculiar circumstances affecting the traffic is not the final criterion of discrimination.”³¹

“As the result of various freight rate investigations by the Board, particularly the Western Rates Case in 1914; *re* Freight Tolls, 1922; and the General Freight Rates Investigation, in respect to which judgment issued in September, 1927, it is a matter of general knowledge that there are differences in the rates on the same traffic for similar distances in different parts of the country, and that this does not constitute unjust discrimination of the character forbidden by the Railway Act.”³²

Numerous other citations upon this point could be given.

The Board's rulings on cases dealing with water competition, which have particular relation to the Alberta complaints, are equally clear:—

“The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that

comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates *per se*.”³³

“So far as water competition is concerned it has been recognized over and over again in various decisions of this Board that the extent to which water competition shall be met is in the discretion of the railway. The Board has also held that it is not the privilege of the shipper to demand less than normal rates because of such competition, unless the railway, in its own interest, chooses to meet it. This principle of water competition has also been recognized practically by all rate-regulating commissions.”³⁴

The question of export rates and domestic rates which is raised by complaints from British Columbia was dealt with by the Railway Commission in a judgment issued January 3, 1935. The existing rate structure was confirmed and the past decisions of the Board on the point in issue were reviewed:—

“Commenting very briefly on the broad question of import or export rates lower than the domestic rates, it may be stated that the rate structure has always recognized such a condition, and the Board has also approved of it as being, under certain circumstances, a proper one, not contrary to the provisions of the Railway Act. In many decisions of the Board, the carriers have been required to establish import and export rates lower than governing when the same traffic is moving locally between the same points in Canada, and the Board has stated, in many decisions, that an import rate is in no sense a necessary measure of the reasonableness of the domestic rate, or proving that unjust discrimination exists. Such rates are but proportions of through tolls governing on the traffic from point of origin to final destination. Further, import, as well as export, traffic is subject to port competition.”³⁵

On the point specifically raised in the British Columbia submission objecting to rates on grain from the Prairies to the Coast being higher than rates on grain for export, the Board has made findings on more than one occasion. One such judgment is in these terms:—

“Application was made on behalf of British Columbia that the domestic grain rate to Vancouver be lowered to an export basis. This was urged partly on the ground that it costs no more to move the one class of grain than the other, and an improper discrimination is set up by reason of such difference, and by a comparison of grain rates elsewhere.

“The first contention altogether disregards the reasons lying at the basis of export rates, and ignores also the primary test of domestic rates; which is, whether the rate be reasonable and fair. It is not intended to repeat any more fully the arguments justifying an export basis lower than that accorded

²⁸ 11 C.R.C., 375.

²⁹ 18 C.R.C., 424.

³⁰ *Judgments, Orders, Regulations and Rulings of the Board of Railway Commissioners for Canada*, Vol. XII, p. 73.

³¹ *Ibid.*, Vol. XVIII, p. 457.

³² *Ibid.*, Vol. XVII, p. 564.

³³ *Ibid.*, Vol. XV, p. 49.

³⁴ *Ibid.*, Vol. XXI, p. 282.

³⁵ *Ibid.*, Vol. XXI, p. 10.

to domestic traffic further than to say that the former is simply part of a through rate, and it is thoroughly justifiable from that standpoint. It does not compete with grain transported for domestic purposes and consequently no comparison between the two rates is properly drawn."³⁶

These are some of the judgments which apply with respect to the specific complaints submitted to the Board, but the Commission, while declining to embark upon any scrutiny of these cases both on the ground of lack of knowledge and of authority, has thought it not beyond the scope of its duties to consider what contribution these disputes about railway rates make to friction between the Dominion and the provinces and whether the tendency of our national rate policy is to moderate or increase this friction. That policy is defined in the Order in Council of 1925 as one "of equalization of freight rates to the furthest possible extent as being the only means of dealing equitably with all parts of Canada." Is progress being made toward the fulfilment of the purpose thus avowed? Upon this point the Commission has had the benefit of extensive studies by members of its research staff; and there is agreement in their conclusions that despite very special difficulties due to conditions of geography and terrain the tendency of rate making has been and still is to lessen the regional differences and, what is also very important, to keep for Canada a position of relatively low railway rates.³⁷

The movement has been toward a lessening of differentials which handicap regions. There was prepared for the information of the Commission a comparative statement in the most minute detail of maximum standard mileage rates for representative distances in the various rate territories and also "town tariff" and "distributing" class rates. These cover the whole period since the creation of the Board of Railway Commissioners (some of the comparative tables indeed going back to 1876) and in accompanying schedules there is a record of decisions by the Board.* Every fluctuation and change in the rates since 1903 is thus shown and, save for the War years, there is plainly a trend toward bringing about equalization throughout Canada.³⁸ The summaries of the Board's decisions show this to be a constant factor, restrained in its

³⁶ *Ibid.*, Vol. XVII, p. 155.

³⁷ The only flagrant case of disturbing established differentials to the injury of a region was the equalizing of Maritime rates with those of the Central division in 1912. This was done by the management of a railway under government control against whose decision no appeal could be taken to the Board of Railway Commissioners, and this situation was subsequently righted by the Maritime Freight Rates Act, 1927.

* See Appendix, *Railway Freight Rates in Canada* (mimeographed).

³⁸ Rates for the Maritime Provinces are admittedly exceptional and covered by statutory provisions.

application, however, by the need for considering competitive influences and also by the variations in regional earning capacity due to the freight classifications.

A set of diagrams prepared for the Commission to show mileage rates for various distances in all classes for the whole Dominion covering a long term of years, indicated in every case a drawing together of the regional rates in contrast with the wide spread of former years. The relation between the standard rates, first class, 400 miles distance, at present is: Central (Ontario and Quebec) basic; Maritimes 20 per cent under; Prairies 26 per cent above; British Columbia 46 per cent above. For fifth class freight: Central basic; Maritimes 20 per cent under; Prairies 14 per cent above; British Columbia 32 per cent above. There are variations but they lie in the shelter of Board findings rendered in the light of rate-governing conditions.

We draw attention to certain conclusions dealing with these matters reached by Dr. W. A. Mackintosh in his study entitled *The Economic Background of Dominion-Provincial Relations*, which was prepared at the instance of this Commission and is published as an appendix:—

"The outlines of the rate structure . . . have been profoundly modified by decisions of policy expressed in legislation or in orders of the Board of Railway Commissioners . . . the direction of such policy has been unmistakable. It has been toward low rates on basic commodities—rates lower than comparable rates in the United States—and toward the reduction of regional differentials or in the case of the Maritimes the restoration of favourable differentials. From the time of the Crow's Nest Pass Agreement down to the Maritime Freight Rates Act, policy, in the main, has moved in this direction. The result has been that transportation rates have been modified to the advantage of those regions least favoured by competitive influences. The chief, and important, exception was in the period 1913 to 1923 when rate changes were distinctly adverse to the Maritime Provinces." (Ch. VII, s. B.)

Variations in regional freight rates Dr. Mackintosh believes cannot be entirely ironed out unless changes involving consequences of great moment are made. His conclusions in this respect are thus stated:—

"If it is argued that it would be desirable that all regional differentials should be removed from railway rates, it is necessary to note that such a policy would involve the following accompaniments:—

1. complete jurisdiction by a single authority over all alternative means of transportation, water, rail, road, and air; and

2. the raising of rates on basic commodities and of rates generally in the regions most subject to highway and water competition; or

3. the meeting of a part of railway costs out of taxation through payment of railway deficits by government.

The second is not possible without the first and if the first two are rejected, the third is very difficult to avoid." (Ch. VII, s. B.)

Whether either of these alternatives would serve the general public interests better than the existing system may be said to be highly doubtful. The attainment of the first would be difficult whether it should be sought by continuing agreement by ten governments or by an enlargement of Dominion jurisdiction. The second is, of course, attainable should it be decided after due inquiry that the burden of moving bulky basic commodities, essential to the national commodity, at non-remunerative rates should be borne by the taxpayers instead of being placed, as at present, upon other classes of freight by means of higher rates.

Proposal to Enlarge Powers of Board of Transport Commissioners.—We have now dealt with all the submissions embodying freight rate complaints with one important exception. The Saskatchewan Government, in its Brief, urged the study of the observations by the Duncan Commission upon the powers of the Railway Board with accompanying suggestions as to their possible enlargement presumably in the hope that we would endorse the recommendation made by that Commission.³⁹ Our attention was also drawn to this matter by the Transportation Commission of the Maritime Board of Trade, which strongly urged our approval of the proposition.⁴⁰ The recommendation of the Duncan Commission, if given effect, would have substantially altered the powers of the Board of Railway Commissioners. The Railway Commission, it is pointed out in the Report,⁴¹ "does not feel itself empowered to pass under its review, when appeals are made to it, the same wide range of business considerations which railway companies themselves can take into account in forming a judgment as to the extent to which they should develop trade and business." While deprecating the view which had been presented to them that "the railways should be operated to the advantage of the trader irrespective of the financial results to the railway" the Duncan Commission

goes on to say: "On the other hand, from a public point of view, in return for the statutory and other public privileges which railway companies enjoy, it may not be unreasonable that there should be a responsible review of their policy (as interpreted in their rate structure) in its relation to the natural basic products of the country, and the development of these products and associated enterprises." It therefore recommended that the Board of Railway Commissioners be given power in weighing an application involving the considerations suggested—the development of industries through rate adjustments to overcome handicaps of geography and "such reasonable compensation over all as to permit of a certain amount of trade development"—"to order an accounting investigation at their own hand, into the incidence of the railway charge on the costs of production of the commodity, and its relationship to other costs, and to the general trading results of the interest involved."

Such a change in the powers and function of the Board of Transport Commissioners would give it managing powers of a kind which it has hitherto repudiated when urged to exercise them.⁴²

If the Board were given these powers to be exercised in the manner suggested, the Government of Canada would clearly be involved in responsibility for the financial consequences to the railways thus obliged, perhaps against their own judgment, to adopt policies designed for the development of particular areas or special enterprises. The recommendation, in the twelve years that have passed

⁴² "... while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determine what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion." Vol. XV. *Judgments, Orders, Regulations and Rulings of the Board of Railway Commissioners for Canada*, p. 203.

"... It is no part of the obligations of the railways, under the Railway Act, to equalize costs of production through lowered rates so that all may compete on an even keel in the same market. This phase of the complaint fails." *Canadian Portland Cement Co. v. Grand Trunk and Bay of Quinte Railway Cos.*, 9 C.R.C., p. 211.

"... Railways are not required by law, and cannot in justice be required, to equalize natural disadvantages such as location, cost of production, and the like." *Canadian Oil Cos. v. Grand Trunk, Canadian Pacific, and Canadian Northern Ry. Cos.*, 12 C.R.C., 356.

"... A railway company is not called upon so to adjust its rates that the shipper will always be able to carry on his business at a profit. The rate is only one item in the shipper's costs. The obligation of the railway company is to charge a reasonable rate. It is not called upon, through the reduction of the rate, to guarantee that the business will be carried on at a profit. In other words, the needs of the business and the way in which it is carried on are not the measure of the reasonableness of the rate." *Western Retail Lumbermen's Association v. Canadian Pacific, Canadian Northern, and Grand Trunk Pacific Railway Cos.*, 20 C.R.C., p. 158.

³⁹ See "Scope of the Railway Commission's Functions", Section 12 of the *Report of the Royal Commission on Maritime Claims*, 1926.

⁴⁰ Ex. 366, pp. 18-20.

⁴¹ *Report of Royal Commission on Maritime Claims*, pp. 24, 25.

since it was made, has not been implemented, as the submission of the Maritime Transportation Commission points out, by any modification of the Railway Act in the direction suggested; and we do not feel that the public interest would be served were we to renew the suggestion that the power of the Board of Transport should be enlarged in these respects.

* * * *

The present balance of regional railway rates is the outcome of adjustments over a long term of years made voluntarily by the railways or under the direction of the Railway Board. The possibilities of this procedure are not exhausted. The review at intervals of the freight rate structure as it affects particular regions or the whole Dominion, has had useful results in adjusting revealed inequalities as

far as it is practicable to do so. This Commission makes no specific recommendation but it suggests, having regard to the length of time that has elapsed since the last general inquiry, the change in conditions due to the increased range and effectiveness of alternative means of transportation and the increasing signs of a revival of regional questioning as to the justice of the existing structure, that the present might be an opportune time to have a review of the railway freight rate structure on a Dominion-wide scale. This would make it possible to deal with the rates for water-borne transport which is now to some extent under the Board of Transport Commissioners and would permit the governments who have made representations to us to present their claims for consideration to a qualified body having power to make appropriate awards.

CHAPTER II

THE PROBLEM OF RAILWAY AND HIGHWAY COMPETITION

A problem of Dominion-provincial relationships, to which little attention was paid in the various submissions, but which grew in importance in the judgment of the Commission as it pursued its studies of the financial aspects of these relationships, is that arising from the situation which has been created by the emergence of the highway and the motor vehicle as a highly efficient agency of transportation. The absence of representations on this important matter can only be attributed to failure to look beyond the advantages and benefits of these new forms of competition to their secondary consequences in the field of Dominion and provincial finance. The fact that as matters stand at present there is an almost complete division of jurisdiction has tended to blur considerations of foresighted prudence which might have come into play if these powers had been in a single hand.

The problem stated in its briefest form is that an exclusive transportation system in the Dominion field established by expenditures almost astronomical in character has been effectively challenged by a newer method of transportation falling exclusively—or almost so—within the jurisdiction of the provinces, with a consequent possibility of great and increasing damage to the earlier system. The situation which has developed is that a Dominion Government investment of three billion dollars in railways, together with an investment of considerably over a billion in a privately-owned road, made originally on the assumption that railways would have a monopoly of land transportation, have now to face increasingly dangerous competition which not only divides tonnage but is destructive of the rate structure upon which the railways rely for their revenue. The provinces on their part are confronted by the need of revenue from road traffic sufficient to meet fixed and other charges on an investment already large and likely to increase at a minimum rate of \$50 million per year.¹

The problem cannot be approached with any assurance that it can be dealt with successfully without widespread and well-informed recognition that it is one of major importance and that refusal

to deal with it or failure in an attempt to deal with it will have consequences, financial and political, dangerous alike to the Dominion and the provinces. Involving as it thus does both the Dominion and the provinces and having within it possibilities of so alarming a character, this question has engaged the most earnest attention of this Commission.

We have been particularly charged with examining the ways in which the cost of government may be increased by overlapping between governments. The most serious case of overlapping, and one which constitutes a menace to the financial solvency and to the economic well-being of Canada, lies in this field of transportation. We do not here allude to the expenditure incidental to the continued existence of two railway systems, for matters within the competence of a single government lie outside our terms of reference. We have in mind the fact that the provinces are now engaged in developing means of transportation which may destroy the possibility of solvent operation of the railways; and also that there is the likelihood that over-investment in transportation facilities which, in the past, through too-lavish provision of railway facilities, imposed so heavy a burden upon the Canadian economy, may be duplicated, perhaps upon an enlarged scale, in the highway development now taking place.

The basic problem is how to assure to the public a national transportation system in which all the parts will function smoothly in their proper sphere so as to furnish the best service at the lowest overall cost. For the purposes of this discussion, however, the rail-motor aspects of the whole problem of transport co-ordination are arbitrarily isolated and dealt with as a separate problem, despite a certain artificiality in this approach.

JURISDICTION OVER TRANSPORTATION

The railways of Canada with inconsiderable exceptions² are under the sole control of the federal authority. This condition has been brought about by the earlier exercise by the Dominion of

¹ Estimate by Mr. R. A. C. Henry in memorandum prepared for the Commission.

² Exceptions: The Pacific and Great Eastern in British Columbia, The Temiskaming and Northern Ontario, seven small railways in various parts of Canada, and generally street railways.

its right under the British North America Act to declare works for the general advantage of Canada, and by the gradual merging of the many separate roads that once existed, into two great transcontinental railway systems—the Canadian Pacific and the Canadian National. The ancillary powers over labour which followed upon this exercise of power have also been clearly defined.

The Dominion also appears to be able to exercise exclusive jurisdiction over water transportation by lake, river or canal, except possibly in the case of purely intra-provincial traffic.

Air transportation appears to be exclusively under Dominion jurisdiction.

The method of land transportation alternative to the railways—trucking and motor transport generally—falls within the jurisdiction of the provinces except with respect to interprovincial and international services. These exceptions do not as yet give the Dominion authority any large measure of control over highway transportation. Except between Quebec and Ontario, interprovincial highway motor services are not on a large scale; and the same remark applies to the volume of international business. These conditions will change with the development of motor traffic, but at present the provinces have almost complete control over highway transportation without protest of the Dominion.

In a bill introduced in the Dominion Parliament by the Minister of Transport in 1937 an attempt to exercise a measure of control over highway transportation was foreshadowed. The measure was not proceeded with, and when it was reintroduced at the 1938 session, this provision was missing for a reason frankly stated by Hon. C. D. Howe, Minister of Transport.

"The bill differs from that of last year in that any attempt to include control of traffic on the highways has been deleted. The difficulty in that connection, of course, is that the government has jurisdiction only at certain points. Our legal officers advise me that we have jurisdiction over trucks passing from one province to another, or crossing the international boundary, or in certain of the Dominion Government parks. It was felt on reconsidering the matter that such jurisdiction as we have is too limited to be particularly effective, under the conditions which prevail in Canada, and in view of the strenuous opposition of the provinces we have decided to delete that feature from the bill this year."⁴

⁴ *House of Commons Debates*, 1938, p. 911. This decision was approved by Right Hon. R. B. Bennett, then Leader of the Opposition: "I cannot but think that the Minister is well advised in not endeavouring to deal with highway transportation, having regard to the difficulties he would encounter because of the fact that it might impinge at so many points upon provincial jurisdictions."

These delimitations of control over motor transportation have been accepted with a minimum of questioning; there has been relatively little litigation over matters of jurisdiction. The situation may, however, not be permanent since main motor highways might possibly be brought under Dominion jurisdiction under section 92, subsection 10, of the British North America Act, which provides that local works and undertakings wholly situate within a province may be declared by Parliament to be for the general advantage of Canada or of two or more provinces. By the exercise of the declaratory power, Parliament attained jurisdiction over many railways wholly situated within a province, and over grain elevators. While the term "works" awaits definite judicial definition, there would seem to be no reason why it would not cover highways of the type indicated. Thus, Hon. Mr. Meighen, while the proposed Transport Act was being considered by the Senate Standing Committee, February 10, 1937, said: "It would not be unreasonable to declare that the Trans-Canada highway was a work for the general advantage of Canada."

The problem which has resulted from the emergence of alternative systems of transportation is to be found wherever there are highways and railways; but there are features about the Canadian situation which make the problem one of exceptional concern to the governments of Canada. There is, for instance, the high railway mileage in relation to population, the result of the multiplication and duplication of railway lines in keeping with policies which commanded strong popular support, and the extent to which this construction represented lavish outlays of public moneys.

The record of the extraordinary development of railways in Canada is set out in detail in Book I of this Report, and only the briefest of references to it is called for here. This record reveals faith in the beneficial effects of railways, and a resulting railway development, without parallel in the world.

In the policies of integration by which it was sought to unify the interests, economic and political, of the diverse geographical units which had been brought together to form the Dominion of Canada, railways held first place. Their construction was encouraged and assisted by the Dominion, the provinces and, in some instances, by municipalities. Indeed, in time it came to be thought that the building of a railway—almost any railway—would create, directly or indirectly, enough wealth to justify the financial risk involved in construction.

Supplementing its large expenditures for the construction of the first transcontinental railway, the Dominion Government in the year 1882 initiated a policy of offering cash subsidies, at varying rates, for the construction of railways subject to a time limit for the earning of the subsidy; within the next twenty years \$26,800,000 were paid out under the provisions of the statute for the construction of local lines in the Eastern Provinces.

It was in this faith that the provinces, despite their meagre sources of revenue and their limited credit, encouraged the building of railways, supplementing those constructed under federal auspices, at first by direct aid, and later by the device of guarantees of bonds. As long ago as 1884, Sir Leonard Tilley, Minister of Finance, in submitting a proposition for readjustment of the subsidies, said that the purpose was to afford "relief to the provinces" from burdens self-imposed, in the matter of furthering railway construction. "Such," said Sir Leonard, "has been the desire on the part of the people in all the provinces to have railway extension, we know that the pressure has been such that these provinces have had, from time to time, to yield to that pressure, until there is scarcely one province that is not embarrassed at this moment, or if not at this moment, that will not be embarrassed when the engagements entered into in the shape of subsidies to roads not yet constructed are met."⁵

Later, in the stimulating atmosphere of what is termed in Book I "The Wheat Boom", the Western Provinces undertook to second the action of the Dominion Government in enabling two additional transcontinental railways to be built by assisting these railway companies to supply themselves with feeder lines by the device of bond guarantees. Confidence that these guarantees involved no risk was universal on the part of the governments that granted them and of the promoters who asked for and obtained them. They meant cheaper money for the railways and no risk for

the public; why not then make free use of the magic?⁶ The Western Provinces were relieved of contingent liabilities, incurred as a result of following this policy, of \$85,874,000.⁷ This is an item in the history of the financial relations between the Dominion and the provinces which does not enjoy the recognition called for by the magnitude of the operation.

Viewed in the light of present conditions these railway policies, which met with the ardent approval of the Dominion Parliament, the provincial governments and the public generally, appear as rash speculations, entered upon in a spirit of undue optimism. But these enterprises were projected in the pre-War era: and the estimates and predictions upon which they rested were not so divorced from reality as they appear in retrospect. There was justifiable expectation that there would be a continuous growth in traffic and that this traffic would be handled exclusively by the railways. No one saw in the motor vehicle, then beginning precariously to travel the roads built for horse transport, a competitor that, in the course of a few decades, would take from the railways a large and profitable proportion of their business. The Great War, and its aftermath of world disasters in the form of a continuing and intensifying economic war with its accompaniment of closed markets and controlled trade, in due time to breed new wars, lay below the horizon and far beyond the range of man's gloomiest apprehensions. Had the conditions which at the turn of the century seemed to justify the expectations of that day continued, the too-optimistic prophecies of that time could not, it is true, have been fulfilled, but the burden and loss arising from the over-estimation of possibilities would have been carried with no great discomfort. It ought always to be borne in mind in considering these matters that in 1913, the last of the pre-War years, although by that time the losses of too extravagant railway policies had begun to show themselves on the balance sheet, the total outstanding gross debt of the Dominion

⁵ *House of Commons Debates*, 1884, p. 1553.

⁶ Manitoba appears to have initiated the technique of aid to railways by the guarantee of bonds. This practice was begun in 1898 with the guarantee of principal and interest at \$8,000 a mile to the Lake Manitoba Railway and Canal Company which was the germ of the Canadian Northern system, for a railway line from Sifton to the Saskatchewan river. A series of guarantees to the Canadian Northern followed, running as high as \$20,000 a mile and including lines outside the Province, for example, the Canadian Northern line from Rainy River to Port Arthur. All the Manitoba guarantees were to the Canadian Northern Railway. Saskatchewan began guarantees to railways in 1908 at the rate of \$13,000 a mile given in about equal proportion to the Grand Trunk Pacific and Canadian Northern for the construction of branch lines. The Alberta guarantees, of which the Province was relieved,

were given to these same railways, the amounts ranging from \$13,000 to \$20,000 a mile. In British Columbia guarantees were given in 1910 to the extent of \$35,000 a mile for 600 miles for the construction chiefly of the Canadian Northern main line to Vancouver; and in 1914 this guarantee was increased to \$40,000 a mile. There were also guarantees to Canadian Northern in 1912 at \$35,000 a mile for 295 miles of branch railways. These provinces were only saved from the consequences of their policies by the fact that ultimately the roads for whose construction the guarantees were issued were taken over by the Dominion Government.

⁷ Manitoba, \$24,330,000; Saskatchewan, \$17,904,000; Alberta, \$18,394,000; British Columbia, \$25,026,000; Ontario was also relieved of a contingent liability of \$7,860,000.

of Canada was \$483,232,555, a total which seems almost trivial to eyes accustomed to the figures of today.⁸

The disastrous collapse of ambitious private railway enterprises in the War period, which compelled the intervention of the Dominion in protection both of its financial investment in them and of the general interests of the state, resulted in the creation of the Canadian National Railway system. But it did not induce an attitude of caution toward additions to railway equipment and mileage during the next decade. There was a still unshaken faith in a policy of agricultural expansion in the West, with an accompanying confidence in the willingness of the outside world to buy the products of this expansion.⁹ This, together with the industrial boom of the twenties, which was interpreted as the beginning of a period of rapidly rising prosperity, encouraged the investment of new capital by the railways.

The Canadian Pacific, in the period 1923-1935, inclusive, made net capital expenditures of \$364,009,039. The Canadian National Railways in this period made net capital expenditures of \$461,258,000. The combined total was \$825 million. Most of this money was spent prior to 1930. The mileage of the Canadian Pacific grew from 13,123 miles in 1923 to 17,222 in 1935 and that of the National Railways from 21,851 to 23,684.

The story of the astonishing growth of railways in Canada is indicated in outline by mileage figures. In 1870 there were 76 miles of railway for every 100,000 of population; by 1901, they had risen to 338; and by 1917, the year of the Drayton-Acworth report, to 469, which represented the peak. In 1936, with a population of 11,028,000, there were 42,552 miles of railway in operation, or 385 miles per 100,000 of population. This is nearly twice the corresponding figure for the United States. Canada, indeed, overhauled the per capita mileage figures of the United States as long ago as 1884, and thereafter in proportion to population ran far ahead of her neighbour in the projection and building of railways.

Public opinion in the twenties showed little uneasiness as to the future of railway transportation. The common view was that there had been undue expansion for which the country would have to pay, but there was no realization of the full

seriousness of the situation, nor of the fact that rival forms of transportation were beginning effectively to challenge the railways. This lack of appreciation of the true situation can be explained, no doubt, by the tendency to take the Canadian Pacific rather than the Canadian National as the index of normal railway operations. There was no indication of impending difficulties in the operation of the Canadian Pacific. The net operating income of the Canadian Pacific Railway rose from \$37,479,000 in 1923 to \$51,694,000 in 1928; an increase which seemed to foreshadow continuing prosperity.

The experience of the depression, however, revealed the realities of the situation in which the railways find themselves. Not only are they burdened by a capital investment of staggering proportions, but on the income side it has been made apparent that their normal sources of revenue have now to be shared with new agencies of transportation which, in certain respects, are destructively competitive. A study of the records shows that this competition has been operating with ever-growing effectiveness since 1920, but the public is only now becoming conscious of the problem for the railways and for the governments of Canada which this condition is creating.

There are various ways in which the effect of this competition upon the railways can be measured. If the industrial production of Canada is plotted on a graph, together with the movement of freight by rail, it will be seen that the rail movement up to 1924 was, on average, about 20 points higher than industrial production. When production increased, the movement of rail freight increased proportionately. But after 1924 these lines rapidly converge. The line of industrial production passes through and above the line of rail freight movement in 1926 and since 1933 there has been an ever widening gap between the two. Today, industrial production stands more than 30 points above the movement of rail freight.¹⁰ Told in another way, the volume of rail freight increased about 6 per cent per annum between 1890 and 1920. From 1920 to 1929, a period of great economic expansion, the increase was but 2 per cent per annum. Thus the railways have suffered progressively from competitive methods of transportation (and from greater rationalization of Canadian industry, elimination of cross-shipments and industrial unit self-sufficiency). This competition has come from several agencies—as, for instance, from facilities for shipping provided by the Panama canal which have

⁸ These are the figures given in the Public Accounts published annually by the Dominion Government. The debt of Canada and the provinces on all counts, inclusive of railway obligations as shown in the consolidated statement prepared for this Commission, was \$794,269,000.

⁹ See Terms of Order in Council *re* Inquiry into Freight Rates, 1925, in previous chapter.

¹⁰ Lesslie R. Thomson, *The Canadian Railway Problem*, p. 276.

cut into transcontinental business and also forced a reduction in transcontinental rates. But our inquiry here is limited to the conditions which are the result of competition between the rail carriers and the comparatively new motor carriers, and the problems it is creating for the governments in Canada.

The astonishing development of the automotive industry can be indicated by a few striking figures. In 1904 there were 535 registered motor vehicles in Canada, all in Ontario; in 1936 they numbered 1,240,124, nearly half in Ontario.

A tabulation of provincial expenditures on motor highways (exclusive of expenditures for rural roads and urban streets and also of \$40,000,000 given for highway construction by the Dominion as a relief measure) up to 1937 prepared for the Commission by its research department shows a total outlay of \$549,725,000 of which \$228,053,000 was spent by Ontario.¹¹

Great as has been the growth in the number of motor vehicles, the development of motor highways has been proportionately more rapid. From 1925 to 1936 motor registrations increased in Canada at the rate of 5 per cent per annum, while the aggregate investment of the provinces in motor highways in the same period grew at the rate of 9.5 per cent per annum.¹² These statistics are significant as showing the strength of the public demand for highways to meet not only the present but the developing needs of motor transportation.

What are the effects of this competition on the railways? In what respect does this conflict of interest between railways and highways affect Dominion-provincial relations? Is an arrangement or understanding between the Dominion and the provinces possible which will be mutually advantageous and also of benefit to the general public by providing a national co-ordinated system of transportation which will give maximum service at minimum cost? What are the lines upon which such a readjustment might be made? It is to these questions that we shall now direct our attention.

The public advantages of motor transportation will be discussed later; we here direct attention to some of the consequences to the railways of motor competition. No exact figures of the effect of highway competition on the earnings of the railways are available; but there are reliable estimates which indicate a progressively large percentage of

the freight business of the country is going to the trucks. A statement prepared jointly by the railways for the information of the Duff Commission gave three million tons of freight and \$24,000,000 in earnings as the share of the trucks in 1930. By 1937 the earnings of all common carrier and private trucks operating over the highways were estimated at \$59,503,000 by the Bureau of Research and Development of the Canadian National Railways. In 1930, with motor earnings of \$24,000,000, gross railway freight earnings were \$322,733,000; in 1937 railway freight rate earnings had fallen to \$270,498,000 and motor earnings had risen to \$59,503,000. This Commission has been given by its own experts an estimate of an annual loss to the railways from highway competition of from \$75,000,000 to \$80,000,000 of which \$30,000,000 represents lost passenger traffic. These comparative figures are to be borne in mind in any consideration of this question; they are significant as to the nature and seriousness of the problem.¹³

Trucks have extended the area of water competition in the Great Lakes region to the whole district which can be served by trucks plying from lake ports. There has been a spectacular increase in travel by private motor car. There has been a steady rise in the transport of passengers by buses, threatening electric railways with extinction. A new situation exists. The monopoly of land transportation by the railways is gone, and they are faced with competition not foreseen when the railway structure of Canada was in the process of building.

In competition with motor transport, railways are particularly vulnerable with respect to short hauls and to particular classes of freight. In this last respect motor competition is destructive of the freight rate structure upon which the railways rely for their earnings. The principle upon which railway rates are fixed and the reasons for its application are thus stated in a memorandum prepared for the Commission.

"It was very early found, in the history of rate making, that the charges for transportation could not be apportioned amongst the different articles of freight based solely upon the cost of transporting them severally, even if such cost could be ascertained, because if an attempt were made to base rates entirely on the full operating cost for each particular commodity, or character of service rendered, it would restrict within very narrow limits the commerce in articles whose bulk and weight are large as compared with their value; consequently, the carriage of low-grade commodities for considerable distances would

¹¹ The Ontario expenditure until the end of 1938 is given as \$296,593,340 in the report of the Ontario Commission on Transportation.

¹² From material prepared for the use of the Commission and its research staff by Mr. R. A. C. Henry.

¹³ *Ibid.*

be prevented, while the rate for carriage of other articles of much greater value would be absurdly low.

"The actual difference in the cost of the movement of a carload of silk and a carload of coal is relatively insignificant, compared with the difference in the value of the two carloads and, under any theory of cost of service, the rate on coal would be prohibitive, whereas the silk would not contribute its fair share to the carrier's revenue. Accordingly, it has always been considered not unjust to apportion the whole cost of service on all the articles transported upon a basis which has regard to many considerations."¹⁴

Thus the state from the outset gave railways the power to provide themselves with a subsidy for carrying bulk freight at a charge which made little contribution to the overhead cost of the railway by exacting from the shippers of articles of high intrinsic value rates far in excess of the actual cost of transporting the goods. This is popularly called fixing rates "on what the traffic will bear." Railway services could have been supplied on no other basis. To fix rates on the sole basis of cost would mean prohibitive rates for bulky and relatively cheap articles such as fuel, lumber, agricultural products. A country of vast distances such as Canada could not have been developed on any such plan of rate-making. This rate-making by the railways thus presents highway carriers with favourable opportunities, of which they take full advantage, for choosing particular classes of traffic to which high railway rates apply. Convenience and expedition of movement, and less exacting packaging requirements are further trucking advantages which tell heavily against the railways. Motor truck operations compete with railways chiefly in the class of goods designated as the merchandise group. The effect is the undermining, on an ever widening scale, of the basic principles of rate-making, particularly in the short hauls.

Within the area of effective operation motor service has replaced the principle of "what the traffic will bear" by, at best, a charge representing the cost of carriage plus a profit, and often by a bargain rate based upon "what the carrier can get."¹⁵

¹⁴ *Ibid.*

¹⁵ Everywhere this is the effect of motor competition upon one of the main sources of railway revenue. Thus Sir Josiah Stamp (now Lord Stamp), Chairman of the London Midland and Scottish Railway, speaking at the annual meeting of his company, February 27, 1937, complained that "the ability of road hauliers to pick and choose traffic and to change rates and charge without any responsibility for transport as a whole continues to wear down the upper ranges of that railway rate classification on which the industry of the country has been built up."

The character of this competition and its effect on Canadian railways were thus stated to the House of Commons by Hon. C. D. Howe, Minister of Transport.¹⁶

"We have built up over the years a rate structure which I think we all believe is absolutely essential to the well-being of Canada. The basis of that rate structure is that low-price commodities shall be carried at a low rate, and that the natural products of our country, particularly those of our prairies, shall be carried the great distances to our seaboard at export rates which are undoubtedly the lowest on this continent. I believe Canada has the lowest ton mile rates of any country in the world. To permit our railways to carry these commodities the long distances at exceedingly low rates, it was necessary that the structure provide that the rates on commodities of a greater value and moving shorter distances should be proportionately higher. The rate structure having been built on that basis, the result is that the railroads have been exceedingly vulnerable to competition from motor trucks. These motor trucks are interested only in high-grade commodities, and serious inroads have been made in the tonnage of these commodities carried by the railroads."

It is in this capacity to pick and choose that motor service finds its opportunity to do a profitable business. But it is not an agency that, however it might be extended, could supply a service, on the lines upon which it is operated, at all comparable with that given by the railways. The average cost of moving all freight carried by the railways is one-half cent per ton per mile; on highways the standard rate is about five cents, but the information in the possession of the Commission is that this rate is falling, particularly in Ontario, and that some freight moves by truck at three cents per ton mile. It is thus evident that trucks are usable for only certain kinds of traffic. Railway freight services remain indispensable to the Canadian economy and must be supplied. This is an unchallengeable fact which cannot be overlooked in the consideration of this question.

In an effort to meet this competition in areas where it is particularly effective, the railways have been experimenting with modifications, regional in character, in their rates and services by establishing for less than carload freight "pick-up and delivery"

¹⁶ *House of Commons Debates*, 1938, p. 1636.

rates designed to meet the trucks on their own ground.¹⁷

But competition since 1937 has operated remorselessly to undermine this tariff. The railways have been compelled again to reduce their charges. One example is the rate on first class less than carload traffic between Toronto and Montreal. The 1937 rate was 83 cents per hundred, but this has now been reduced to 70 cents on any commodity in lots of 1,000 pounds or over and 60 cents in lots of 5,000 pounds or over, both including free pick-up and delivery. The experience in Central Canada shows that truck competition influences railway rates on haulages up to 650 miles. With respect to carload rates, the railways have adopted a different method. The railways meet carload competition as it arises by fixing rates as and when competition requires.

The lowering of railway rates in the Central Provinces has lessened the advantages given to Maritime shippers under the Maritime Freight Rates Act which was passed to meet the recommendations of the Duncan Commission, and this has given rise to protests, to appeals to the courts and to representations to this Commission. The effects of these readjustments in the freight rate structure will be felt elsewhere, as was stated in the Brief of the Transportation Commission of the Maritime Board of Trade: "Industries outside the pale of the competitive area are at a distinct disadvantage because of destroyed parities and also because of the conveniences their competitors enjoy through the greater flexibility of truck transportation."¹⁸

The tendency toward equalization of sectional freight rates, noted elsewhere¹⁹ is thus being

¹⁷ In the Central Canadian area extending from Windsor to Quebec and north to North Bay and Sault Ste. Marie, the first railway tariff to meet motor competition became effective in 1933. Under pressure of competition, the 1933 tariff had to be changed, and on June 14, 1937, it was superseded by a new tariff. The 1937 tariff made five important changes:

1. The railways gave free pick-up and delivery to and from named stations. The Canadian Pacific, for example, named 140 stations, some of them being towns with less than 1,500 population. This free service is equivalent to a reduction of 10 cents per hundredweight on the normal rate.

2. The packaging rules were made easier and the penalty clauses, in effect, were withdrawn.

3. A special classification was provided which reduced the rate on a wide class of traffic.

4. In a number of commodities, the carload rate was given to "any quantity" shipments, with free pick-up and delivery thrown in.

5. A wide reduction in rates was made.

¹⁸ Brief, p. 9.

¹⁹ This matter of sectional equalization of freight rates is discussed in the preceding chapter of this section, "Railway Policy As Affecting Freight Rates."

checked and may in effect be reversed. This would be a definite departure from a policy accepted as desirable in the interests of national unity.

Other experimental modifications in the traditional railway freight rate structure are also being made in the hope that the competitive position of the railways will thereby be improved. A provision in the Transport Act of 1938 permits a railway to make an arrangement with a shipper for the transport of all or any part of his goods at "agreed rates" subject to approval by the Board of Transport Commissioners. These rates may be lower than the rates in existing tariffs provided they do not involve "unfair discrimination". This provision is an adaptation of British railway legislation of 1937. The hope behind it was that by making agreements with a shipper, whereby his shipments would be carried for a stipulated period at a rate reached by negotiations, the railways would be able to protect themselves to a considerable extent against motor competition. In the annual report of the Canadian Pacific Railway for 1938, issued in March 1939, it was announced that appropriate regulations and methods of procedure under the Act were being worked out between the railways and the Board, foreshadowing an effort to take advantage of the provision. By the end of the year four applications providing for "agreed rates" affecting a considerable volume of freight had been negotiated between the railways and shippers and approved by the Board, while two other applications were pending.

These expedients—lowered regional rates, pick-up and delivery facilities, and adoption of "agreed rates"—are expressions of a hope once generally held in railway circles, and still entertained in some measure, that in the long run the superiority of railway services would be established. Those who hold this view foresee higher taxation for the trucks to meet the greater cost of the improved highways that will be required, increasing costs in the operation of trucks, greater railway efficiency and the progressive freeing of the railways in the matter of rate-making. An objective survey of the situation is apt to suggest that these are hopes rather than justified predictions. The question remains whether or not there is to be a continuing "free-for-all" between these competing services with increasing capital outlays in the newer field leading to almost certain over-expansion in the total investment in all transportation.

In dealing with this problem of transportation the prime consideration must be the general public

interest. This interest is not identical, either with the protection of the older forms of transportation against newer methods which, in respect of many commodities, are more convenient, more efficient and cheaper, or with the subsidization of these newer methods by artificial advantages supplied at the public expense. Nor can the general public interest be identified either with that of the shippers and consumers of heavy and bulky commodities, who desire to perpetuate a rate structure affording them low rates, or with that of the shippers and consumers of those commodities which have in the past borne rates that absorbed a high proportion of the overhead costs of the railways and so made possible the low rates for heavy and bulky goods.

It must be remembered that when this rate structure was built up there was no fundamental clash of interests as between these two classes of shippers and consumers. There was no deliberate sacrifice of one set of interests to the other. There was a union of interests. Both heavy and light goods received the benefit of lower rates than they would have had to pay had the other party to the union been excluded. In a sense, therefore, the shippers of light and costly goods received help from the carriage of heavy and bulky goods on terms which made some contribution, slight though it sometimes may have been, to the overhead costs of the railways. The aid which the railways received from the state was thus extended to all shippers and to all consumers. The vital element in the transportation problem today is that conditions have arisen which destroy this union of interests so that a once happy marriage faces dissolution. As in all divorces the immediate interests of the parties may have to be subordinated in some degree to the general public interest. But it is peculiarly difficult to say where this general public interest lies.

This Commission is not the body which must define this general public interest. It is concerned rather with the question of where it is desirable that the responsibility for defining this interest and the power to give effect to it should lie. A decision must be reached in Canada as to the adjustments to be made between various competing interests, all subject to the idea of a general public interest which includes them all. The shippers and consumers of heavy and bulky commodities are of great importance in the Canadian economy and a rate structure which curtailed the movement of these goods would involve a most serious disloca-

tion of that economy. The shippers and consumers of light and costly goods naturally feel that they are entitled to the advantages which new and more efficient forms of transportation might afford them and that it would be outrageous to require them to continue to buy their transportation facilities in indissoluble partnership with others whose interests no longer coincide with theirs. Taxpayers are, presumably, reluctant to assume the enormous burden which may be involved in subsidizing (directly, or indirectly through meeting railway deficits) the movement of heavy and bulky commodities. Taxpayers ought certainly to be spared the misfortune, which may easily arise from the present system of divided jurisdiction, of having to subsidize both classes of shipper and consumer—by absorbing railway deficits through the Dominion treasury, and providing roads at the public expense through provincial treasuries.²⁰ In a general way it is easy to say, and hard to deny, that the situation is one which calls for gradual adjustment based on intelligent and generous compromise. The form of compromise cannot be predicted with any precision. Presumably what would be aimed at would be a revision of the rate structures both of railways and of highway carriers, the effect of which would be to divide traffic between them so that the railways would be kept from bankruptcy, while shippers and consumers of goods likely to move by road would make some sacrifice during the period of adjustment. At the same time (as will be explained later) the taxation of trucks might be put on a basis that would protect their competitors against any danger of subsidized competition.

With this idea in mind the possible allocations of jurisdiction may be briefly reviewed. Exclusive jurisdiction by the Dominion would concentrate power and responsibility. But (as will appear when conditions in Great Britain are examined) even a single omnipotent authority may find the transportation problem extremely difficult. In Canada (as a comparison with American conditions will show) it would not be easy to regulate transportation in the national interest without frequent interference in matters of vital provincial interest.

²⁰ In a sense the roads pay for themselves if the provincial taxes on automobiles and gasoline can be regarded as earmarked for road construction and maintenance. But, even on this favourable hypothesis, the operators of commercial vehicles are heavily subsidized at the expense of private users. This somewhat leonine partnership has points of resemblance with that between the shippers of heavy commodities and the shippers of light commodities in the case of rail transportation. If this is not too fanciful an idea the jackal of the railway partnership has developed into the lion of the road partnership.

Concurrent jurisdiction by the Dominion and the provinces would avoid the evil of debarring a province from dealing on its own initiative with matters of urgency. But it would expose provinces to constant danger of reversal of their policies by the Dominion and this danger would be particularly serious in view of the large capital investment involved in road construction.

The present division of powers may easily lead to chaos, unless the policies of the Dominion and the provinces can be co-ordinated. But, given a disposition on the part of the various governments to co-ordinate their controls over transportation and their financial aid, so as to leave to each type of transport a chance to perform on remunerative

terms those classes of service which it is best adapted to perform, the Canadian transportation problem may not be insoluble.

The Commission, while it can make no specific recommendation as to the lines which governmental action should take, feels that it can usefully stress the seriousness and urgency of the problem, illustrate some of the difficulties which must be faced, and make some suggestion as to the possible methods of securing co-operation between the Dominion and the provinces in framing a co-ordinated national transportation system, either on the basis of the present distribution of legislative powers or of some modification of it. It will, however, be useful to discuss first British and American experience.

CHAPTER III

BRITISH AND UNITED STATES EXPERIENCE

BRITISH EXPERIENCE

In Great Britain the clash of interests between the railways and motor vehicles has engaged the attention of the Government and Parliament for the past decade; and the record of the efforts, not as yet completely successful, to find an adjustment satisfactory to the interests affected and to the public throws a measure of illumination upon the Canadian problem—all the more perhaps because in Great Britain there is not the complication of divided jurisdiction. Authorities have to deal only with the difficulties inherent in the situation; but for these they do not appear to have found completely satisfactory solutions.

Following a report by an earlier commission, a conference of transportation authorities was held in 1932 which produced what is commonly known as the Salter Report. This Report recognized that the road transportation service had advantages and had come to stay. In fairness, said the Report, it must be admitted that part of the railways' troubles was due to the motor vehicle being more convenient and economical for many classes of traffic. "It would be undesirable," said the Report, "to attempt by taxation beyond what is in the public interest, to divert traffic back from the roads and deprive trade and industry of the convenience of the new form of transport. . ." The railways were advised, in lieu of their lost monopoly, to "look to their share of a generally increasing total of trade, as economic activity expands with population and higher standards of life, and to the new facilities they can themselves offer to the public by co-ordinating railway transport with road transport, whether their own or not."

Thus, in this first attempt in Great Britain to supply a working solution, certain broad propositions were laid down: road competition with the railways, given fair conditions, was legitimate and in the public interest; the approach to a solution must be by co-ordinating railway transport with road transport, which meant a division of function to be determined by efficiency and by convenience.

The Roads and Rail Traffic Act of 1933, based on the Salter Report, provided for the licensing of all highway hauliers. Owners of motor vehicles engaged as public or contract carriers already in

business (1932-33) were given licences and the licences ran for one or three years according to the kind of business done. The licensing authority was instructed not to grant licences, additional to those in existence in 1932-33, unless the public interest required it. The authority should consider "any objections to each application which may be made by persons already providing facilities, whether by rail or road, for the carriage of goods for hire or reward in the district or between the places which the applicants intend to serve on the ground that suitable transport facilities, either generally or in respect of any particular type of vehicle are (or would be) in excess of requirements, or on the ground that any of the conditions of a licence have not been complied with". Two years were allowed as a transitional period during which the authority could study the road problem in order that the intention of the law could be given effect to when the licences came up for renewal.

The railways regarded this legislation as intended to confine the future road haulage business to the position it occupied in the base year 1932-33, a year of industrial depression; and when at the expiry of the transitional period two transport companies had their licences fully renewed the four main line railway companies took an appeal to the Road Traffic Appeal Tribunal on the ground that these licences under the law should be reduced in number. The railways, in their case, relied upon a statement made by the Government spokesman in the House of Lords, when the Roads and Traffic Bill was being considered, "that the granting of licences would be against the public interest if it were considered that existing transport facilities suitable to meet the public requirements to be served by the applicant were already in existence".

The judgment of the Appeal Tribunal was against the railways on all counts; and the licences were continued though it was established that the hauliers were carrying traffic previously handled by train. The Tribunal refused to the word "suitable" the meaning ascribed to it by the railways; while the railway service was admittedly physically adequate, it was not, they held, necessarily suitable. The Tribunal found that the licensing authority had no jurisdiction over road charges even when

they were less than railway rates, and stated, further, that the Act did not require a licensing authority to decide which goods should be rail-borne, and which should go by road. It was held that it was not the duty of the licensing authority to make any classification of goods to be carried by rail and road respectively, nor was it its duty to consider the question whether it was in the national interest that the existing railway facilities be more fully employed. For the remedy of these grievances, the railway companies were advised to go elsewhere—that is, to Parliament.

The railways then sought and obtained authority from Parliament to make special freight arrangements with large shippers on the basis of "agreed charges"; and when this method did not prove satisfactory to them they sought complete freedom in the making of rates. The British Railway Companies on November 23, 1938, waited upon the Minister of Transport and presented a petition asking (among other things) that: "The existing statutory regulation of the charges for the conveyance of merchandise traffic by railway, together with the requirements attached thereto, including such matters as classification, publication, and undue preference should be repealed"; and, also, "that railways, exactly like other forms of transport should be permitted to decide the charges and conditions for the conveyance of merchandise which they are required to carry. Equality having been achieved, any regulation imposed on one should be imposed on the other."

This demand was referred by the Minister of Transport to the Transport Advisory Council, and there followed lengthy inquiry by the Council with accompanying negotiations between the railways and various organized interests (road hauliers, iron and steel federation and traders) which resulted in agreements between them and the railways except in the case of the coal industry. The Transport Advisory Council reported in May, 1939, advising the passage of an act limited to five years which would recognize these agreements and provide for further negotiations and conferences as these might be required with an appeal to the Railway Rates Tribunal in the event of failure to reach agreement. Subject to these provisions, the report recommended that the present system of control of railway freight charges including the traditional classification should be abandoned; and that, subject to certain safeguards, the railway companies should be entitled to make such reasonable charges as they might think fit. But the freedom thus proposed for the railways appears to be somewhat

illusory. The railways undertake to maintain a voluntary system of classification; they engage not to increase existing charges and rates save by agreement with the organizations and trading interests indicated; and they submit to the provision that the reasonableness of their rates may be made the subject of an appeal to the Railway Rates Tribunal.

The net result of the ten years of negotiation and experiment was this finding by the Transport Advisory Council that the railways should be freed in some measure from the controls which had been imposed in the public interest when they had a monopoly of transportation and thus enabled to deal with rival interests either by competition or by arrangement. No attempt was made in the finding to bring about unified control or to provide for a division of traffic on the basis of relative efficiency.¹

Sir Arthur Griffith-Boscawen, Chairman of the Transport Advisory Council, in a public statement following the award said:—

"Such is the 'square deal' as rounded off by the Transport Advisory Council. It is now up to the Government and Parliament to implement its proposals as they think fit. I regret that legislation is not possible in the present session."²

Legislation to give effect to these findings has not yet been enacted, owing to the outbreak of war. Available information is that the question has been shelved for the duration of the War.

THE UNITED STATES EXPERIENCE

Since motor transportation has developed further in the United States than in Canada and has been the subject of various legislative attempts at control there, the results of this experience may be of assistance in determining policies in Canada. The United States problem is not dissimilar, but the control which the Federal Government has over the vast interstate traffic gives it a power in support of its views as to desirable policies of co-operation which is far beyond any exercisable by the Dominion Government; and it has in addition the persuasive power which comes from a policy of making large conditional grants for highway construction purposes. Federal highway aid to states and municipalities, which was \$75 million in 1930, amounted in

¹This was made the occasion for critical comment by the *London Times* in its issue of May 30, 1939. "The truth is" said the *Times* "that no plan other than unification of transport would really solve the railways' problem. . . . It is only by some system of pooling and bringing road transport into an organized controlled rate schedule that financial stability of the railways could ultimately be restored and assured."

²*Sunday Times*, May 28, 1939.

1938 to \$138 million in regular funds and \$122 million in emergency relief, making a total of \$260 million. Expenditures on this scale are likely—if not assuredly—to be accompanied by a measure of control by pressure or by suggestion. “Both municipal and state officials fear that the grants-in-aid system will be used as a vehicle to force a federal pattern upon them.”³

The rapid development of motor transportation was made possible by the existence of an extensive network of highways and, of course, this development in turn has stimulated the expansion of highways. The state roads supported by revenues collected from highway users and by federal aid grants form the backbone of this network. Secondary and feeder roads are maintained by counties and townships; recently they also have been receiving federal grants.

The federal Government is responsible for seeing that the highway system meets the needs of national defence. As a means of promoting this end the Federal Road Act was passed in 1916, under which the states receive from the Federal Government up to 50 per cent of the cost of construction and maintenance of certain designated roads. The United States Bureau of Public Roads, under the authority of the Federal Road Act, “necessarily and very properly seeks to co-ordinate the road-building activities of the United States and thus to provide an integrated national system of adequate highways.”⁴ In 1936 the Bureau embarked on a comprehensive program of state-wide planning surveys in co-operation with various states which “are expected to result in the provision of all the facts necessary for the formulation of a definite highway program, defensible both economically and socially.”⁵

Complying with a request by Congress, the Bureau submitted in the spring of 1939 a report on the feasibility of a group of toll super-highways across the country. In the second part, this report

“ . . . discusses at length the development to date of the composite street and highway system of the country, and presents the general outlines of what in effect is a master highway plan for the Nation.”⁶

³ Raymond S. Short in *Annals of the American Academy of Political and Social Science*, January, 1940, p. 47.

⁴ “Extent and Possibilities of Highway Regulation,” by Dawes E. Brisbine and George M. Adams, *The Annals of the Academy of Political and Social Science*, January, 1939, p. 235.

⁵ H. E. Stocker, *Motor Traffic Management*, New York, 1938, p. 93.

⁶ Letter of Submittal of H. A. Wallace, Secretary of Agriculture, contained in *Toll Roads and Free Roads*, House Doc. No. 272, 76th Congress, 1st Session.

The interest of the Federal Government in highway matters, therefore, is much deeper and broader than simply to act as a distributor of funds to the states.

The rapid growth of motor transportation was accompanied by a wide differentiation of functions. The economic and social implications of this rapid expansion in size and function were summarized by the Federal Co-ordinator of Transportation in 1936 in these terms:—

“Transportation conditions have changed radically since the World War, and they are still in a stage of rapid transformation. . .

“Highway transportation, in particular, has brought about important changes in industrial and social conditions. It has had much to do with the growth of so-called ‘hand-to-mouth’ buying, and has probably tended to increase short-haul as compared with long-haul transport and spread the production of manufactured goods throughout the country. It is probable, also, that it has materially increased the sum total of labor engaged in transportation, although the number of railroad employees has sharply decreased. Certainly it has enormously increased the travel habit of the American people.

“The country has gained from these transportation changes. Much service has become quicker, more convenient, or more comfortable, as well as cheaper. But not all of the results have been good, and some of them threaten the future. The problem is to get rid of the evil results and to preserve and multiply the good.”⁷

The “evil results” which thus threatened the future were those of an over-supply of transport facilities. With motor carriers of freight, in particular, the comparative ease of inaugurating a small trucking enterprise led to such an influx of operators that competition became extremely keen. After 1930 conditions became rapidly worse, as mounting unemployment and large numbers of cheap trucks increased the supply of service and declining business activity decreased the available traffic volume. Rates were drastically cut in the pursuit of traffic and many shippers took advantage of the situation to force further concessions. The result was a condition within the industry of extreme instability. External to the motor carrier industry, the railroads were immediately affected by the rapid growth of very keen competition for their highest-rated class of traffic.

Out of these conditions there finally arose sufficient pressure to force passage of a Bill in 1935 for federal regulation of motor carriers engaged in interstate operations.

⁷ *Fourth Report of the Federal Co-ordinator of Transportation on Transportation Legislation*, January, 1936, pp. 1-2.

There had already been for a considerable period of time regulatory provisions by the states over motor transportation engaged in intra-state commerce. For the most part these regulations were applicable only to common carriers. In the early years there was doubt as to how far state regulation could go in controlling interstate operators using state highways. But in March, 1925, the Supreme Court of the United States rendered decisions⁸ that the states could regulate interstate operators only in so far as their police powers covered safety and conservation of the highways. From that time, therefore, until federal regulatory laws were passed in 1935, there was no real control over interstate motor carriers.

By 1931 practically all of the states had laws regulating intra-state operations of common carriers, both of passengers and property, and the majority of them also had taken control over contract carriers of property. The right of the states to be adequately reimbursed by highway users for their highway expenditures had become a factor in state regulation and it was rapidly becoming apparent that the regulatory problem was broader still, involving also the need for some degree of control to counteract the growing instability within the industry.

The situation at the time the Motor Carrier Act was passed (1935) has been thus described by the Interstate Commerce Commission:—

“The situation in the motor-carrier industry when the act became effective was no less than chaotic. The years of depression had materially increased the number of motor carriers, particularly carriers of property. With an increasing number of carriers, competition became intense, resulting in rate wars, wide-spread evasion of State regulations, destructive practices of various kinds. The whole structure of industry was weakened. Business mortality among such carriers, predominantly the small operators, was high. Highway accidents had become a national problem...”⁹

In 1933 the National Recovery Administration placed both buses and trucks under self-made code regulations. Self-regulation was only partially effective, but the short experience under the codes was an important factor in bringing the larger operators in the industry to favour federal regulation.

The Federal Co-ordinator of Transportation submitted reports over several years in which he recommended comprehensive federal regulation; and he

was instrumental in drafting the bill which finally became law. His ideas were influenced by the need to stabilize the chaotic conditions of the time, although he evidently had hopes that federal regulation would also have other far-reaching results. He wrote:—

“... A partial and incomplete system of regulation such as we have had, will not work... Unless competition is brought under greater restraint, it can bring only wide-spread losses to shippers, to communities and sections of the country, to investors in rail, water, and motor facilities, and to the public generally. Competition between the different forms of transportation will continue to have an important part to play, but it must be held within reasonable limits and kept from assuming destructive and wasteful forms. The transportation system must be knit together and co-ordinated. This can only be done under the guiding hand of the Federal Government... Regulation should build on the experience of the States and give them the support they need in carrying their own efforts at regulation to a more successful conclusion.”¹⁰

The Motor Carrier measure which had been backed by the Interstate Commerce Commission, the various state regulatory bodies, commercial interests, various competing forms of transportation, and by a considerable section of the motor carrier industry itself representing the larger operators, became law in August, 1935, as Part II of the Interstate Commerce Act; and as such is administered by a separate division of the Commission with a Bureau of Motor Carriers to look after details.

The Declaration of Policy contained in the Act reads as follows:—

“It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such a manner as to recognize and preserve the inherent advantage of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and co-ordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defence; and co-operate with the several states and the duly authorized officials thereof, and with any organization of motor carriers in the administration and enforcement of this part.”¹¹

⁸ *Buck v. Keykendall*, 267, U.S., 307 and *Bush Co. v. Maley*, 267, U.S., 317.

⁹ 50th Annual Report of the Interstate Commerce Commission, 1936, p. 88.

¹⁰ *Regulation of Transportation Agencies*, Senate Doc. No. 152, pp. 23-4, 73rd Congress, 2nd Session.

¹¹ Interstate Commerce Act, Part II, Sec. 202 (a).

The Act provides for regulation of interstate common and contract carriers of both passengers and freight and also of brokers. Private truckers, with the noteworthy exception of farm trucks, may be regulated from the standpoint of safety "if need therefor is found". The principal provisions applying to common and contract carriers may be thus summarized:—

- (1) Although all bona fide carriers in existence when the Act was passed were allowed to continue operating, new operators, or the extension of existing lines into new territory, must first be given permission by the Commission in the form of a certificate of convenience and necessity for common carriers or a permit for contract carriers.
- (2) The Commission has control over the issue of securities, consolidations, mergers and acquisitions of control.
- (3) Control over rates to prevent unreasonableness, undue prejudice, disadvantage or discrimination is similar to that relating to railroad rates. Contract carrier contracts must be filed with the Commission and common carrier rates must be made public in published tariffs. The Commission may prescribe minimum rates and charges for both common and contract carriers.
- (4) Rules governing such matters as qualifications and maximum hours of employees, compulsory insurance and self-insurance qualifications and safety regulations may be prescribed.
- (5) Standard accounting practice and periodic statements and reports are required.
- (6) Numerous penalty powers, including suspensions, revocations, heavy fines and imprisonment, are provided.
- (7) In administration, close contact with state regulatory personnel familiar with local situations is provided through the appointment of joint boards composed of representatives of the states involved, to hear and report on individual cases.

Present Conditions.—Since 1935 the scope of federal and state control has been fairly well defined. The states regulate intra-state for-hire carriers, both common and contract, and they have proceeded to systematize their regulatory provisions, frequently along the lines suggested by the Interstate Commerce Commission. Some progress has been made in bringing about uniformity among the states with regard to safety rules and equipment requirements. Extension of state regulations for safety purposes to private trucks is proceeding. Increasing interest is being shown in the matter of regulating private operators of motor vehicles.

"A number of states, following the leadership of Texas, have already sought to regulate the private operator as a 'carrier,' and a number of bills have been prepared for early introduction in other states

that would extend full regulatory control over these private operations... The trend of the moment is definitely towards complete regulation of private transport."¹²

In the federal regulation of interstate carriers, the first year or so of operation of the Act found the Commission almost swamped with the details of passing upon applications for operating rights (mostly under the "grandfather" clause)¹³ and in the technical work of obtaining and filing tariffs and schedules. Control over the issue of securities and mergers has enabled the Commission to supervise the inevitable consolidation taking place within the industry. More recently the Commission has been giving greater attention to rate cases. The general tendency has been to raise the level of truck rates, frequently by means of the power to prescribe minimum rates. Little has been done, however, to solve the basic rate questions involved in facilitating the performance by each type of transportation of the service for which it is best suited. "Rates," it is stated, "are being fixed without any clear understanding of actual costs of operations" and again "... rail tariffs are rapidly becoming a comparative yardstick for the making of motor carrier rates."¹⁴

Valuable groundwork has been laid by the Commission in prescribing a uniform system of accounts, requiring monthly, quarterly and annual financial and statistical reports and in issuing administrative rules covering such matters as safety, extension of credit and hours of service of employees.

In many respects there has been close co-operation between the federal and state authorities and the Commission has made extensive use of the joint boards to prepare its case reports. It has also recommended various regulatory measures to the state bodies. The result of this co-operation has been that some progress toward a national system of motor carrier regulatory law in which the state and national controls are complementary has been made.

As a result the motor carriers according to a statement by the Interstate Commerce Commission are subject to stricter regulation than are the railways:—

"The Motor Carrier Act, 1935, was favoured by the organizations of both the truck and the bus industries, and since its passage our rate-making

¹² "Extent and Possibilities of Highway Regulation", by Dawes E. Brisbane and George M. Adams, *The Annals of the American Academy of Political and Social Science*, January, 1939, p. 235.

¹³ I.e., under the clause providing for the continuance of franchises granted prior to the passage of the Act.

¹⁴ *Annals of the American Academy of Political and Social Science*, January, 1939, p. 240.

powers thereunder have been invoked much more often by the motor carriers themselves than by the shippers. Similarly the air carriers were urgent in their support of the Civil Aeronautics Act, 1938. These two acts provide for the motor carriers and the air carriers, respectively, a system of regulation which is, if anything, more comprehensive than that which has been provided for the railroads."¹⁵

Rail-Motor Co-ordination.—The term co-ordination, as here used, is meant to cover the combining of the two forms of transportation in the interest of better service or economy by having each concentrate on the task for which it is best fitted.

Immediately after the Supreme Court decision in 1925 which left interstate motor carriers practically unregulated, a few railroads began to enter the highway field. The typical attitude of most railroads toward the motor carriers for many years was, however, that they were interlopers who should be taxed off the roads. Despite this, the participation of railroads in the highway field expanded steadily up to the passage of the Motor Carrier Act.

One of the first steps toward the co-ordination of motor carriers with the railways was the gradual extension of motor haulage in local cartage service to and from railroad stations, formerly conducted at shippers' expense, either by railroad-owned vehicles, or by those of a subsidiary or local contractor. The gradual adoption of pick-up and delivery service as an integral part of the transportation service offered by the railroad at published rates culminated early in 1934 in the general adoption of free pick-up and delivery within certain limits.

More formal attempts at co-ordination are illustrated by the use which a number of railroads make of trucks and buses in substitution for railroad trains. This usually takes the form of motor haulage in lieu of local passenger and way-freight service to points served by branch lines on which it is desired to abandon or curtail service. A closely allied use of motor carriers is complementary to rail service. This consists of the concentration and distribution by motor of passengers and freight at and from important rail centres and the use of the motor carriers in line haul service to intermediate points. This makes it possible greatly to speed up train service between the important centres.

A few railroads also have attempted to develop the carriage of truck bodies on rail flat cars, thus combining the flexibility of the motor carrier for

terminal operations with the economy of the railroad in line haul operations. While this scheme has some theoretical merits, it has not progressed far. It has not been used to any extent by railroads for hauling their own or a subsidiary's trucks; but rather for the carriage of competing trucks at tariff rates not too attractive to the latter.

The extent of railroad investment in motor carriers was estimated by the Interstate Commerce Commission in the spring of 1936. At that time the Class I railroads had a financial interest in 128 highway motor vehicle enterprises with an aggregate capitalization of over \$43 million. By far the larger part of this investment was in passenger carriers.¹⁶

With the passage of the Motor Carrier Act the extension of railroad activities in the motor field practically ceased. While the railroads which had motor operations in existence when the Act was passed received operating rights under the "grandfather" clause, the same as other motor carriers, the acquisition of additional routes since then has been difficult. In general the Interstate Commerce Commission has taken the position that it is a legitimate operation for the railroads to use trucks and buses in substitution for rail service and in some cases as complementary to it. But the Commission has disapproved of any use of the motor carrier to compete with existing motor carriers or railroads where such competition was not in existence prior to passage of the Act. In the passenger field specifically, the Commission has not looked with favour upon the control of various Greyhound companies by the railroads, and in some cases has forced relinquishment of such control even after it had existed for some time.

Many railroads appeared to look upon passage of the Act as the beginning of the end of their troubles with the motor carriers and so ceased to explore the possibilities of further co-ordination. Nevertheless, in an effort to circumvent regulation under the Act, there has been an increasing tendency for railroads to create so-called forwarding companies, utilizing the facilities of both railroads and motor carriers. It was recently ordered, however, that these practices shall be changed to comply with the provisions laid down by the Interstate Commerce Commission.¹⁷

¹⁵ 52nd Annual Report of the Interstate Commerce Commission, 1938, p. 8.

¹⁶ *Investment of Steam Railways in Highway Motor Vehicle Enterprises as of May 1, 1936*, I.C.C. Statement No. 3669.

¹⁷ *Freight Forwarding Investigation*, 229 I.C.C. 201.

In conclusion, it may be said that the regulation of motor carriers in the United States has been brought to the point where conditions are somewhat stabilized; much of the former intensive competition has been curbed and moderated, to the advantage of the railroads and of the motor carriers themselves. There are prospects that further gradual improvement in this direction will take place. But the progress in regulation has done little to further extensive co-ordination between the railroads and the motor carriers. The Motor Carrier Act allows

the carriers to institute, but does not give the Commission power to establish, through-routes and joint-rates for both passenger and freight traffic carried partly by rail and partly by motor. Such rates would apparently open the door to co-ordination in practice between independent and otherwise competing agencies of transportation. But in practice very little use has been made of this provision. Some joint-passenger tickets are sold, but the volume of traffic is very small and practically no use of joint freight rates has yet been made.

CHAPTER IV

THE BASIS FOR DOMINION-PROVINCIAL CO-OPERATION

Neither the British nor the United States experience in dealing with modern transportation problems can afford a clear guide for Canadian action. In Great Britain the problem is simplified by the existence of a single jurisdiction, though the competition between road and rail is intensified by the short distances which are involved. In the United States the power of the Federal Government to deal with interstate commerce gives it a degree of control over road traffic which has no counterpart in Canada where interprovincial traffic is a negligible proportion of the total traffic on the roads; while the United States government may almost be said to have bought a measure of control over road development by its system of conditional grants for road construction.

In Canada it may be reasonably assumed that, in future, the Dominion will be charged with the responsibility for seeing that the country has adequate railway services while the provinces will continue to build highways suitable for motor traffic in keeping with the public demand, which is likely to be insistent. The pressures for the construction of highways will be so powerful that it is likely that they will be checked only by the financial limitations of the provinces. Demands may be expected from motorists for highways comparable to those which they find in the United States. The desire to encourage motor tourists to travel in Canada will be a powerful inducement to this end.¹ Areas now served by rural roads will press for paved highways. Main highways will be constantly improved to take care of increasing passenger and freight traffic. A conscious intention to facilitate the movement of freight by motor vehicles for developmental and social reasons must now be counted one of the considerations affecting provincial highway construction.²

The problem before Canada is, therefore, how best to establish and maintain co-operation between

the Dominion, in respect of its railway services, and the provinces, in respect of their road construction. Effective co-operation is of immense importance because, as has been shown in an earlier chapter, numerous important interests will be vitally affected by whatever course of action Canadian governments may take. To allow the railways to adjust themselves freely to the new situation would greatly benefit some classes of shippers and greatly harm others. To encourage the restriction of railway services in cases in which other forms of transportation can provide a more efficient service would throw railway employees out of work and (if branch lines were closed down) would prejudice some shippers for whom the other transportation services are not satisfactory. To subsidize the railways, directly or indirectly, in order to enable them to maintain the existing rate structure or existing services would impose a heavy burden on the taxpayer.

POSSIBLE METHODS OF CO-OPERATION

Logically there are two methods whereby the new forms of transportation might be controlled and co-ordinated with the old: the provinces might adopt substantially uniform policies with respect to the control of highway carriers, and co-ordinate this control with Dominion control over railways; or jurisdiction to control highway carriers might be transferred to the Dominion.

The first method, that of uniform provincial regulation, was recommended by the Duff Commission in 1932.³ In the Dominion-Provincial Conference of 1935 (December 9-13), in which all the provinces were represented by their governments, a number of resolutions were adopted in which the desirability of uniform regulation by the provinces was recognized in principle.⁴ One of these resolutions reads: "That a licence should only be granted for the operation of vehicles for the transportation of passengers or freight for hire where it can be proved to the satisfaction of the licensing authorities that the service proposed is a public necessity

¹ In 1937 tourist expenditures in Ontario, according to official estimates by the provincial authorities, ran to \$117,750,000. *Report of the Ontario Royal Commission on Transportation, 1938*, p. 1.

² "In many instances motor trucks have reduced the cost of freight transportation; have stimulated business, and by giving frequent and expeditious service to outlying areas have assisted in the decentralization of industry and the commendable building up of prosperous small communities distant from the large cities." *Ibid.*, p. 1.

³ *Report of the Royal Commission on Railways and Transportation in Canada, 1931-32*, p. 105.

⁴ *Record of Proceedings*, p. 31.

and convenience." There is much to suggest that there is a common recognition by the provinces of the need for control both of rates and services and general agreement as to the form the control should take. A questionnaire was submitted on behalf of the Commission to the provinces and from the answers received it appears that there is developing in each province systems of control, which impose rates, require adherence by the trucking and bus companies to schedules of pay and hours of labour for employees, and limit by licences and other means the number of vehicles engaged in transportation to what are considered to be the necessities of the area served. There is much to suggest that there is in existence a basis upon which a Dominion-wide system of regulation might be built.⁵

Yet it must be recognized that regulation of one form of transport—highway carriers—by one authority (the province), and of other forms of transport by the other authority (the Dominion) offers little hope of preventing duplication of carrier facilities as between highways and railways, or of protecting the railways from undue or unfair competition by highway carriers. The fact remains that the interests of the Dominion Government as the trustees of the national interest in railway transportation, and of provincial governments as the trustees of the provincial interest in highway investment, are to some extent competitive, and there is no assurance that the regulatory authorities of the Dominion and the provinces will co-operate or respect each other's interests.

The alternative is a common regulatory authority which can take under its purview all forms of public carrier service, including that of highways. It would not, however, seem essential that all highway

⁵ All the provinces, except Quebec, replied to the questionnaire and the answers suggest strongly that the statutory means to regulate and control motor transportation are available now. For example, all the provinces have a special motor act. In seven of the provinces covered by the answers to the questionnaire all public carriers require special permits (Prince Edward Island is the exception). The outline of regulation is visible in the discretionary power given to licensing authorities. In New Brunswick the licensing authority is to have regard for the "effect on other kinds of transportation". In Manitoba, "public convenience and necessity" must be considered. In British Columbia regard must be had for routes already served, for necessity of the proposed service, for the public interest, and so on. Quebec has corresponding provisions with ample machinery for control. There are, likewise, signs of regulation to maintain specific rate schedules and the trend in this direction will become more marked if the recommendations of the Chevrier Commission in Ontario are implemented. This Commission has recommended the creation of an Ontario Transport Board with power over highway traffic similar to that exercised over other kinds of transport by the Dominion Transport Commission. It is not suggested that the provinces hitherto have consciously regulated highway traffic in the sense that railway traffic is regulated. But the trend of provincial legislation and administration is in that direction and may gain momentum as the transportation problem comes to be more clearly appreciated.

transportation should come under this common authority. It would be impossible for a single authority to regulate private vehicles, throughout Canada, nor would it seem essential for a central authority to regulate all aspects of highway carrier service. It would seem sufficient if the common authority over transportation had jurisdiction over motor carriers merely to the extent of granting franchises to operate, and of regulating the service performed for the shipper and the rates charged. Such jurisdiction need not be as extensive as that at present over Dominion railways. It need not extend to such matters as safety appliances; wages, hours and efficiency of operators; speeds, loads, etc. Such matters would be better left to the provinces in view of the necessity for their regulation and control of privately-owned motor vehicles. If this alternative were adopted it would involve the transfer of some jurisdiction to the Dominion.

If our recommendation elsewhere providing for a method of delegation of legislative power by the Dominion to a province, or vice versa, becomes effective, it would be legally possible for the provinces, individually or collectively, to delegate the necessary authority to regulate motor carriers to the Dominion which could then exercise this authority through the Board of Transport Commissioners.

Another method for reaching the same result would be to amend the British North America Act so as to confer on the Dominion concurrent jurisdiction over motor carriers either restricted to the right to grant franchises and regulate rates and services, or unrestricted. This would be similar to the jurisdiction now exercised over agriculture and immigration under section 95 of the British North America Act. By such a device, provincial regulation would be effective until superseded by Dominion legislation. Moreover, the Dominion would scarcely in practice occupy the whole field of regulation, even if it had the power, but legislation could be adopted to meet different needs in different areas, or as experience warranted.

A third possible means of achieving a measure of unified control should also be noted. It is possible that the Dominion could by reference declare designated highways works for the general advantage of Canada, or of two or more provinces, as it did in the case of most railways and grain elevators. It could then use existing machinery (the Board of Transport Commissioners) to regulate motor carriers to a much wider extent than we have suggested above as desirable. But the political repercussions likely to follow the exercise of the declaratory power

in this way make its use highly undesirable except after agreement with the province, or provinces, concerned.

Taxation of Motor Carriers.—One of the possible methods of regulating competition (or of establishing fair competitive conditions) between railways and motor carriers consists in taxation. A uniform policy in the various provinces and co-operation between the Dominion and the provinces are important if taxation is to be used for regulatory purposes, as an examination of possible policies will show.

To-day it is probable that no province is taxing motor carriers or private trucks the full share of the cost of their operation to the province. It should be noted that truck traffic requires much heavier road construction and causes greater wear and tear on the roads than private motor cars. Yet all provinces by means of a flat-rate gasoline tax compel private motor car owners in effect to subsidize buses and trucks. The taxation which it is appropriate that each province should impose on motor carriers by way of licence fees might be worked out by a research body on the basis of engineering tests of the cost of wear and tear on roads by various types of vehicle. If the provinces agreed to impose this taxation the effect would be to protect railways (as they should be protected) from unfair competition by truck traffic. Tax rates on trucks and buses more nearly equal to the cost to the province would probably increase provincial revenues substantially. They would at the same time increase trucking costs and thereby improve the competitive position of the railways. Combined with heavier taxation on truck operation should go adequate policing to ensure observance of regulations for loading, speeds, safety appliances, and efficiency of operators of trucks, and this would also tend to increase truck operating costs. These matters lie almost wholly within provincial jurisdiction, though it is possible that the Dominion might exercise considerable influence on the provinces by establishing effective regulation over motor carriers and private trucks entering into interprovincial or foreign trade.

Control of New Investment.—There is also the important problem of controlling new investment in transportation in order to prevent over-investment and duplication such as have occurred in the case of railways. New capital investment in transportation is likely to occur primarily in highway, air and water transport, but further railway developments may occur, especially in the opening up of new areas. In view of the fact that the Dominion

already has jurisdiction over all but a few railways and in view of the enormous Dominion investment in railways and of its proposed assumption of provincial debt incurred for railway construction, the Commission recommends that the Dominion should have exclusive jurisdiction over all railways⁶ and that no further railways should be chartered except by the Parliament of Canada. Subsequent proposals will indicate that Parliament would have the benefit of advice by a competent and disinterested technical body.

New investment in highways is, however, much more difficult to control. As we have pointed out earlier, the pressure for new or improved highways is likely to be continuous, and provincial governments are likely to be compelled by public opinion to improve and increase highway facilities. One obvious limit is, of course, the funds available, but our financial proposals elsewhere will, if carried out, enable some provinces to expand their highways more easily than they can at present. The practical problem is whether or not the Dominion should attempt to influence the road construction of the provinces either by "buying control" through conditional subsidies as the United States has done or by attaching conditions if it has occasion to encourage highway construction as part of a program designed to stimulate employment. A healthier and in the long run more potent means of influence seems to the Commission to lie in encouraging the use of systematic research and far-sighted planning which would aim at co-ordinating all forms of transportation service in a comprehensive national system.

Planning and Research.—This conclusion points to the necessity of continuous and comprehensive planning of the whole field of transportation. United States experience, as has been indicated, strongly supports the case for planning and research. Of course, planning of transportation is not a new venture in Canada. Indeed, all federal or provincial aid to railways, and all provincial highway construction are ventures in planning. But in the past, planning of transportation has been piecemeal in character and has been concerned with only one or a few aspects of the problem. What is needed to-day is planning taking account of all forms of transportation, continuous, not intermittent, and concerned with the co-ordination of existing services (especially of rail and road traffic) as well as with the expansion of these services.

⁶ With an exception of railways which are purely local in character, e.g., street railways.

The Dominion, as the government with the biggest investment in transportation and the government alone able to consider the whole field as a single problem, should take the lead in establishing a planning organization, while the provinces should co-operate by availing themselves of its services. It is recommended that a planning board either responsible to the Minister of Transport or independent of the Government should be set up. It should be composed mainly of experts, including both engineers and economists. If the provinces, as well as the Dominion, made use of its services it might develop into a body which would co-ordinate on a voluntary basis the future highway, railway, waterway and air programs in Canada, as well as lending technical assistance and making investigations when requested to do so. If Plan I were adopted, this Board might be called on for a report by the Finance Commission on the merits of transportation projects to be financed by borrowing through the agency of that Commission. It is also suggested that efforts should be made to enlist the co-operation of the provinces in planning transportation and co-ordinating existing services, especially road and rail traffic, and that this might be done by establishing joint planning boards on which the national planning body and provincial highway departments or highway carrier control boards might be represented.⁷

A further aspect of planning might be for the Dominion to give consideration to the desirability of a complete review of the railway freight rate structure in the light of conditions as changed by motor truck competition and that the powers of the Board of Transport Commissioners should be extended accordingly.

The systematic and planned co-operation which might result from the activities of the proposed consultative bodies could achieve purposes of high public value. Unnecessary duplication of investment in transportation facilities and equipment could be guarded against, especially in new regions—mining areas, for example—where the service best fitted to the needs of the locality could be agreed upon and supplied. Arrangements providing for all

the year round services by trucks and buses, combined with effective rate-control would permit the abandonment without resulting public inconvenience of certain short railway branch lines, whose earning power has been permanently destroyed. In some cases services on branch lines might be substantially reduced, in others rail services might be provided only during seasons when the highways were impassable. Under a policy of co-ordinating all forms of transportation, in order that the best service possible may be given to districts at minimum maintenance charges and investment cost, Dominion assistance might well be given in the building of highways where those serve as the sole agency of transportation under an agreed scheme. Requests for recommendation for Dominion assistance for provincial highway construction were made to the Commission⁸ but programs of this character on any considerable scale should wait upon the adoption of some kind of joint transportation policies.

Summary.—In its discussion of rail and road transportation the Commission has confined itself to pointing out the immense potential dangers of waste and overlapping in the field of transportation, calling attention to the complexity of the problem and the multiplicity and importance of the legitimate interests affected, citing the experience of Great Britain and the United States with modern transportation problems and drawing what seemed to be the obvious conclusion for Canada, namely that there must be intimate and cordial co-operation between the governments—federal and provincial—which divide the jurisdiction over transportation problems. The precise form which this co-operation should take must depend on the lines on which agreement can be reached, but an essential condition for its success is that there should be available not merely expert advice in crises or emergencies but continuous expert planning which can extend to all the inter-related branches of this peculiarly intricate problem. Throughout the discussion the Commission has endeavoured to give first place to the interests of the public, whether as shippers, or consumers, or as heavily burdened taxpayers, and to assume that the Dominion and provincial governments will feel bound, in the long run, to treat the general interest as paramount.

⁷ The Duff Commission recommended a similar method, p. 56: "The federal and provincial governments in co-operation should, however, examine this question of the regulation and taxation of road motor vehicles with a view to equalizing the conditions under which road and rail transport is carried on, and to securing uniformity throughout the Dominion. A joint inquiry in which both federal and provincial governments were represented should enable a measure of agreement to be reached upon the general principles which should govern the regulation and taxation of motor vehicles using the public highways. The administration and adaptation from time to time of the agreed principles of road transport might be left to a consultative committee consisting of representatives of the various provincial governments and of the federal government."

⁸ The Government of New Brunswick in its brief, p. 48: "In view of the fact that the Province of New Brunswick has provided highways of such a nature as to be necessary in time of peace and for the protection of the nation in time of War and has incurred a relatively large amount of public indebtedness in their construction, it seems only fair that the Dominion should assume part of this burden. We trust that the Commission may be able to recommend to the government of Canada that some concession be made to the Province in respect of highway construction."

SECTION E

MISCELLANEOUS SUBMISSIONS TO THE COMMISSION

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MISCELLANEOUS SUBMISSIONS TO THE COMMISSION

In the course of the public hearings of the Commission many submissions were made on matters quite beyond its terms of reference. Some of these concerned matters of policy clearly within the competence of the Dominion;¹ others concerned matters within the competence of the province.² On several occasions it was explained that by our terms of reference we were not concerned with public policy as such, but rather with Dominion-provincial relations, and that however strongly we might sympathize with submissions on matters beyond our terms of reference we could not make recommendations concerning them.³ But we think that it is expedient to mention certain of the submissions although our instructions debar us from discussing their merits.

Two briefs submitted to us in the Province of Quebec contended that the women of that Province should be allowed to vote in provincial elections.⁴ This is a question which lies entirely within the competence of the Legislature of the Province of Quebec.

Another contention, also made in Quebec, was that the French-speaking population in New Brunswick should have representation in the New Brunswick Legislature commensurate with, or proportional to, its numerical importance in that Province.⁵ This, too, is a question which is within the exclusive competence of the legislature of the province concerned.

A third contention concerns the position of the French language in provinces in which there is a substantial French-speaking minority.⁶ There are

three aspects to this contention. The first concerns primary and secondary education, the second the use of French in the legislature and courts of the province and in governmental publications, the third the use of French in communications with the Federal Government or in business with the employees of that government. The general argument in the briefs was that section 133 of the British North America Act affirms and consecrates the bilingual character of the Dominion, and that the intent of this section has been reproduced in the Manitoba Act of 1870⁷ and in the North-West Territories Act of 1877.⁸ All the briefs and submissions on this question claim that the British North America Act simply confirmed natural and historic rights, and they quote to this effect capitulations, treaties, statutes and speeches by many of the Fathers of Confederation.⁹ These briefs contend that no narrow interpretation should be given to section 133, but that it should be read in the wide sense which it is alleged that the Fathers of Confederation, to judge by their words, intended that it should convey.¹⁰ The particular complaints are: that French is not an official language outside of the Province of Quebec except in the field of the Federal Government and in federal courts; that French-Canadians and Acadians do not have a share in the civil service of Canada commensurate with their numbers; that many of the federal civil servants with whom the French-speaking part of the population must deal do not understand French, still less speak or write it; that in certain parts of the country, outside of Quebec, there are no programs in French over the Canadian Broadcasting Corporation's network; that in the schools, outside of Quebec, there is practically no instruction conducted in French, even though English could be better taught to French-speaking children through French.¹¹ It is contended that it is one of the natural rights of a father to have his children educated in the language of the parents. French-

¹ *E.g.* Ex. 262, Brief of Alberta Co-operative Sugar Beet Growers' Ass'n which urged among other things special freight rates for the assistance of western sugar beet growers.

² *E.g.* Ex. 29, Brief of Catholic Minority of Manitoba.

³ *E.g.* Ev. pp. 1232-33.

⁴ Ex. 345 *La Ligue des droits de la femme*, and Ex. 349, *Alliance canadienne pour le vote des femmes de Québec*.

⁵ Ex. 352, *Mémoire des Acadiens et des Canadiens-français des provinces Maritimes*.

⁶ Ex. 351, *Comité permanent des Congrès de la langue française*; Ex. 352, *Les Acadiens et des 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. 29, *Catholic Minority of Manitoba*; Ex. 344, *La Société Saint-Jean-Baptiste de Montréal*, which was 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*, *Association Canado-Américaine*, *Les Patriotes de Rosemont*, *Association des hôteliers de la campagne de la province de Québec*, *L'Union des vétérans canadiens*. Opposition to the views set out in these briefs was expressed in Ex. 395, *Brief of Grand Orange Lodge of Ont. West*.

⁷ Section 23.

⁸ Section 11.

⁹ An extended discussion is to be found in Ex. 344, *La Société Saint-Jean-Baptiste de Montréal*.

¹⁰ For a discussion of the difficulty of interpreting the B.N.A. Act in accordance with the intentions of the Fathers of Confederation, see Book I, chapter entitled "The Nature of Confederation".

¹¹ This argument is developed at length in Ex. 355, *Brief of Les Canadiens-français de l'Alberta*.

Canadians and Acadians refuse to have their status compared with that of immigrant minorities, and resent such a comparison, for they were the discoverers and first settlers of the country and claim that anywhere in Canada they are in their motherland. No one, we think, will deny the importance of the part played by Canadians of French origin in exploring, pioneering and settling Canada. Nor will anyone, we think, dispute the desirability of supplementing English and French culture and vice versa whenever it is practicable to do so. In the field of secondary and higher education particularly there is little danger of the cultural value of either of the two great languages of Canada being underrated in provinces in which the other is the language of the majority. We may call attention to a brief presented to this Commission by the Youth Council of Greater Vancouver¹² in which it was suggested that every normal boy and girl in Canada should learn both languages. Considerations of sentiment reinforce this suggestion that the language of each of the two races which have pioneered the North American continent should be part of the cultural heritage of both.

But the education of the young is, as we emphasize elsewhere,¹³ one of those cultural matters over which each province enjoys under the British North America Act almost exclusive control. In the primary education of children likely to leave school at a very early age the question of language instruction presents peculiar difficulties. Our contribution toward meeting them, while indirect, is not unimportant. We have endeavoured to frame recommendations which, if implemented, would place every province in a position in which its treatment of primary education and of the school-leaving age need not be dominated by the considerations of rigid and almost ruthless economy which have in some instances undermined the basis of our educational system. In the same way the use of both languages in public business is a matter in which, subject of course to existing constitutional provisions, the legislature of the province concerned has exclusive jurisdiction. And the federal policy in this matter must, subject to the same limitations, be determined by the Parliament of Canada. Thus, while we sympathize with the persistence of the French Canadians and Acadians in holding to their language and their culture, and while we are far from wishing to minimize the importance of this question, we see in the order in council which

defines our duties no justification for undertaking a detailed study of the question or for making recommendations in connection with it.

A fourth contention, which has received widespread support throughout Canada, is that constitutional safeguards should be provided to protect the fundamental political rights and liberties of citizens of Canada against any possible infringement by provincial legislation.¹⁴ There are many ways in which such protection might have been given. A "Bill of Rights" might have been added to the British North America Act, so worded as to define the rights to be protected and to invalidate any legislation purporting to infringe them. But the difficulty of defining rights in the constitution, of enforcing their protection, and of preventing a "Bill of Rights" from being a barrier to social progress, is evident from the experience of the United States. Or, a second method might have been to vest in the Parliament of Canada an express power to define and protect these rights although some provinces would have probably objected to giving such powers to the Federal Parliament. This device would probably not have given to Parliament any wider powers than it now enjoys under other heads, but it would have operated to deprive provincial legislatures of power to infringe these rights. This device would, however, have involved the difficulty of defining precisely the rights to be protected. A third device would have been to define authoritatively the circumstances under which the power of disallowance should be exercised by the Government of Canada, including under these circumstances the invasion of the rights and liberties of the citizens of Canada.

The Fathers of Confederation apparently preferred to trust to the good sense, fair-mindedness and traditional constitutionalism of the majorities in each part of the Dominion for the practical protection of such rights, rather than to attempt to set up any artificial control which would have implied anxieties and a lack of mutual confidence really contrary to the ideals with which they were then impressed.

Whether or not Canadian experience since Confederation shows that some artificial control is now required in that regard instead of the original trust and confidence, is a question with respect to which

¹⁴ See Ex. 17, Winnipeg Board of Trade; Ex. 33, Native Sons of Canada; Ex. 106, Trades and Labor Congress; Ex. 236, Edmonton Chamber of Commerce; Ex. 249, Calgary Board of Trade; Ex. 243, Alberta Youth Congress; Ex. 92, Canadian Life Insurance Officers Ass'n; Ex. 255, United Farmers of Alberta; Ex. 207, Native Sons of B.C.; Ex. 345, La Ligue des droits de la femme; Ex. 386, Canadian Legion; Ex. 401, Communist Party.

¹² Ex. 205.

¹³ See p. 50ff.

our practical conclusion must be much the same as that reached in our discussion of the submissions concerning the position of the French language.

A fifth matter to which considerable argument was addressed before the Commission was that of provision for amending the British North America Act without resort to the Imperial Parliament. The Province of Nova Scotia in particular stressed the need for devising procedure to this end,¹⁵ and this contention was in general supported by the Provinces of Saskatchewan, Manitoba and British Columbia.¹⁶ The Provinces of Nova Scotia and Saskatchewan contended that the consent of every province should not be required to an amendment, except in matters involving minority rights.¹⁷ On the other hand, the Government of Quebec contended that the British North America Act embodied an agreement between the provinces, and as such was not amendable except by the consent of all provinces.¹⁸ New Brunswick's submission was based in part on a similar contention.² Important as is this question from the point of view of Dominion-provincial relations, we feel that it falls outside our terms of reference which are confined in the main to the economic and financial aspects of the federal system. While some of our recommendations will if implemented involve specific amendment of the British North America Act, the procedure whereby these amendments should be

brought about is a matter for the governments and legislatures concerned, rather than for this Commission.

Another constitutional matter submitted to us was that of the implementation of treaties. It was contended that a recent decision of the Judicial Committee of the Privy Council had the effect of limiting the power of the Dominion Parliament to implement treaties under section 132 of the British North America Act to those treaties negotiated by the King on the advice of his United Kingdom ministers, and that for treaties made by the King on the advice of his Canadian ministers, or conventions made by the Canadian Government, on any matter within the legislative jurisdiction of the provinces the Dominion Parliament had no power of implementation. It was contended that this made it extremely difficult, if not impossible, for Canada to perform its international obligations. It was further urged that the normal method of implementing treaties in a federal state was by the central rather than the state or provincial authorities.¹⁹

But, except for conventions of the International Labour Organization (which are intimately related to jurisdiction in labour legislation),²⁰ the Commission felt that the problem of implementing treaties, however important in Dominion-provincial relations or in relation to the status of Canada as a member of the family of nations, fell outside its terms of reference.

¹⁵ Brief of N.S., pp. 14-15; Ev. pp. 3870-71.

¹⁶ Brief of Sask., pp. 8, 330; Brief of Man., Pt. II, p. 41, Ev. p. 71; Brief of B.C., p. 351.

¹⁷ Ev. (Sask.), pp. 1221, 2277; Ev. (N.S.), pp. 3870-71.

¹⁸ Ex. 341, Statement of the Province of Quebec, Ev. pp. 8132-35.

² Brief Pt. II, also Supplementary Brief. Cf. also views of Premier Hepburn of Ontario, Ev. p. 7400.

¹⁹ For an extended discussion see Ex. 100, Brief of League of Nations Society. See also Ex. 106, Brief of Trades and Labor Congress; Ex. 386, Brief of Canadian Legion; Ex. 99, Brief of League for Social Reconstruction; Ex. 257, Brief of Alberta C.C.F. Clubs; Ex. 205, Brief of Greater Vancouver Youth Council; Ex. 209, Brief of Young Liberal Ass'n (B.C. Section); Ex. 28, Brief of Greater Winnipeg Youth Council; Brief of Man. Pt. II, pp. 26-27; Brief of Sask., p. 334.

²⁰ See p. 48.

SECTION F
SPECIAL CLAIMS

CHAPTER

- I. Compensation for the Adverse Effects of Federal Policies.
- II. Claim of British Columbia for Revision of Subsidies.
- III. British Columbia's Claim as to Pacific Great Eastern Railway.
- IV. Saskatchewan's Claim for Revision of the Natural Resources Award.
- V. Claims Concerning Trade through Maritime Ports.
- VI. Other New Brunswick Claims.
- VII. Prince Edward Island Claims.

SECTION F

SPECIAL CLAIMS

We have left for consideration in this section a number of claims presented by individual provinces which sought relief from the Dominion as a matter of right, rather than of law. In so far as their character is monetary these claims, whatever their strength, would have no practical importance if effect were given to our financial proposals and in such an event it would matter not at all whether we rejected these claims or allowed them. We believe that every province which has presented claims to us would be better off under our proposals than if effect were given to its claims and the proposals disregarded; and, under the method of calculation which we have followed, a province could not improve its financial position as a matter of right, without diminishing in equal degree the amount due to it on the basis of fiscal need until this amount reached zero. It could not, therefore, have both the benefit of the claims which we are about to consider and of the subsidies and debt relief which we have already recommended.

It is, perhaps, not altogether fortuitous that claims should have been presented on behalf of provinces for which we have recommended aid on other grounds. A claim is apt to be the reflection of a need, and the strength of the need is apt to reinforce the conviction that the claim is just. A province which has not prospered under Confederation, relatively to other provinces, is alert to find ways in which it appears to have been wronged, or in which federal policies appear to have operated to its disadvantage. And it is precisely to help provinces which have prospered less than others (on the ground that a proper conception of Confederation requires that their governments should be kept in a financial position to provide services on Canadian standards) that our main financial proposals are designed.

Yet it is important that these claims should be discussed. Some of them are not monetary in character but concern wide issues of policy. Even the monetary claims become of obvious significance only if our main proposals are not implemented. Like all claims of right, they are accompanied by a feeling of grievance—a feeling which is detrimental to national unity. We have, therefore, felt it our duty to give full consideration to every claim presented to us. In so doing we do not consider that we are going beyond our terms of reference. Although we were not appointed as a claims commission our mandate was extremely wide and a thorough consideration of the claims of the provinces was necessary if a picture were to be formed of their true financial position and of that of the Dominion, because an award of compensation on any of these claims would have altered the fiscal need of the province concerned. Moreover, a report which left numerous claims outstanding would be an unsatisfactory basis for the permanent adjustment of the financial relations between the Dominion and the provinces. Some of the claims are of so general a character as to raise issues of vital importance to the federal system. These are discussed in the chapter immediately following this. Other claims were more specialized. British Columbia in particular had been led to expect that this Commission would deal with its claim, which was of very long-standing, and we received special instructions from the Dominion Government to deal with it. It would have been out of the question to deny to other provinces a privilege accorded to one of them, and we, therefore, felt that we had been, by implication, expected to deal with other special claims as well.

CHAPTER I

COMPENSATION FOR THE ADVERSE EFFECTS OF FEDERAL POLICIES

In our public hearings the incidence of various federal policies on certain provinces and regions was discussed at length. In particular it was argued that the customs tariff bore with exceptional severity on the four Western Provinces and on the Maritime Provinces;¹ that the federal monetary policy after 1931 had seriously injured the Prairie region;² that the freight rate structure (indirectly the responsibility of the Dominion Parliament) discriminated against the Western Provinces and, especially, Alberta;³ that the Maritime Provinces were not enjoying the benefits of the freight rates or of railway management promised at the time of the construction of the Intercolonial railway;⁴ that the Dominion corporation income tax policy prejudiced industry in Ontario;⁵ and that Dominion personal income and corporation income taxes injured the fiscal interests of the Governments of Ontario and British Columbia.⁶ In part these complaints were no doubt due to misapprehension of the nature of the Commission's inquiry, and were based on the opinion that the Commission could make recommendations on federal policy. Some complaints were intended merely as an explanation of the unsatisfactory fiscal condition of the province concerned. But the inference of some of these representations was that the Dominion was accountable to the province for the adverse effects of federal policies suffered by the people of the province and the province was entitled either to compensatory policies to remedy the situation, or failing such policies, to damages payable to the provincial government.

¹ Ex. 236, Brief of Edmonton Chamber of Commerce, p. 27; Ex. 172, Brief of B.C., Pt. VI; Ex. 4, Brief of Man., Pt. IV; Ex. 357, Brief of N.B., pp. 46-51; Ex. 144, Brief of N.S., pp. 80-94; Ex. 161, Brief of P.E.I., p. 10; Ex. 34, Brief of Sask., pp. 223-232; Exs. 421, 424, 427 (Ev. pp. 10,277-702) supp. statements of Hon. John Bracken, Dr. Jacob Vincer and Hon. S. Garson on behalf of Manitoba.

² Brief of Man., Pt. III; Brief of Sask., pp. 233-51; Brief of Edmonton Chamber of Commerce, pp. 40ff; Ex. 423 (Ev. pp. 10,373-502) supp. statement of Dr. A. H. Hansen on behalf of Manitoba.

³ Brief of Edmonton Chamber of Commerce, pp. 28-35; Brief of Sask., pp. 203-23; Ex. 172, Brief of B.C., pp. 297ff.

⁴ Ex. 366, Brief of Transportation Commission of the Maritime Board of Trade. See discussion in Chapter "Claims Concerning Trade Through Maritime Ports."

⁵ Brief of Ont., Pt. II, p. 62.

⁶ Brief of Ont., Pt. II, pp. 50-55; Brief of B.C., p. 24.

On several occasions Chief Justice Rowell, the first Chairman of the Commission, stated clearly that the Commission was not concerned with any federal policy as such, and that it could only take account of any federal policy if it could be shown that that policy had prejudiced the financial position of the province.⁷ On reconsideration of the matter we think that this is the proper position for us to take. Our general financial recommendations, which provide for federal assistance to a province in relation to its fiscal need, indirectly, by assessing the taxable capacity of the people of the province, take account of the incidence of all federal policies, and provide for adjustments which will continue to take account of effects of federal policies in the future. If our recommendations in this respect are adopted, claims for compensation to a province for adverse effects of federal policies will lose much of their force. If these recommendations are not implemented it is probable that such claims will recur with increasing frequency in Dominion-provincial relations. For this reason, and because claims of this nature raise fundamental issues about the nature of the Canadian federal system, we think that the whole question of the accountability of the Dominion to the provinces for federal policies demands careful examination here.

In all states, whether unitary or federal, national policies are largely the result of compromise between conflicting views and interests. The benefits of policy rarely, if ever, are distributed evenly over the whole nation. Most, if not all, policies benefit some individuals or groups more than others, and very often some areas or regions more than others. Even within a unitary state policies which prejudice interests of groups or regions may lead to serious political difficulties. But we know of no state which, except in instances where private property is actually appropriated for public purposes, follows the practice of paying damages directly to groups or regions or communities or individuals which suffer adversely from national policies. Compensatory policies are, indeed, often adopted to assist

⁷ *E.g.*, Ev. pp. 1232-33; p. 4459.

groups or regions adversely affected by other policies. In the modern world where economic nationalism is predominant this practice is characteristic of most states. It has frequently been followed by Canada. For example, the Maritime Freight Rates Act of 1927, in order to compensate the Maritime Provinces for the additional mileage of the Intercolonial railway due to military considerations, provides for a differential of twenty per cent on freight rates on freight originating in, or going to, these provinces. Again, fixed prices for wheat have been supported on occasion on the ground that they compensated the Western Provinces for their burdens under the tariff. But compensatory policies on behalf of groups or regions are quite a different matter from the payment of damages for the adverse effects of policy. Again, it is one thing for a state to provide compensatory policies on the grounds of expediency, but it is quite another matter to hold that it is under obligation to do so.

The question arises whether the situation is different in a federal state from that in a unitary state, and whether the provinces (or states) in a federal union are entitled either to compensatory policies or monetary damages for losses occasioned by their people from federal policies. The claim that the provinces are so entitled appears to rest on the assumption that the Dominion is the agent of the provinces, responsible to them for the effects of federal policy, rather than directly to the people of Canada. But the Dominion cannot in any sense be deemed the agent of the provinces. The provinces did not create the Dominion nor delegate to it their powers. It is true that prior to 1867 the representatives of three colonies (Nova Scotia, New Brunswick and Canada) met together and drew up terms of union which formed the basis of the British North America Act. But the colonies were not sovereign states, and could not of themselves create the new entity, the Dominion of Canada. The Imperial Parliament alone could do this, and it is significant that the act of creation destroyed one of the colonies whose representatives had participated in drawing up the basis of union and created out of it the two provinces of Ontario and Quebec. Nor have the courts ever held that the powers of the Parliament of Canada have been delegated to it, either by the provinces or by the Imperial Parliament. Within its own field of jurisdiction it is as sovereign as the Imperial Parliament itself or as are the various provincial legislatures within their proper field.

The essential difference between a federal and a unitary state is the division of power in a federation between central and local units of government, and hence a division of responsibility. Within its field of jurisdiction each unit is autonomous. But the central authority and the local authority are not two independent states, rather they act for the same people in different capacities. It cannot be said that the Parliament of Canada when it legislates within its field of power is legislating for the people of Canada exclusive of the people of Saskatchewan or of Manitoba or of any other province, even if all the representatives of the people of the province dissent. Rather, it acts for the whole nation, and for the exercise of its discretion it is responsible to the people of all Canada, including the people of every province. It may formulate policies which benefit more the people of some provinces than of others, or injure the people of some provinces while benefiting those of others, or restrict economic opportunities of the people of some provinces while enlarging economic opportunities of the people of other provinces, but this is entirely within the field of discretion entrusted to it by the British North America Act. And for such actions only the people who elected the Parliament of Canada, namely the people of all Canada, can hold it to account.

If the logic of constitutional theory is not sufficient to negative the assumption that the Dominion is accountable to the provinces for federal policies, the practical difficulties of making this assumption a working principle of Dominion-provincial relations are nevertheless insurmountable. The survey of the economic and financial history of Canada given in Book I of this Report indicates the complexity and inter-relation of federal policies. Transportation policies and the tariff have acted and reacted upon one another since Confederation, the effects of one cannot be completely isolated from the effects of the other. Monetary policy after 1931 was intimately related to earlier developmental policies which had laid Canada under a heavy burden of external debt, and its effects cannot be considered in isolation from the effects of these earlier policies, or indeed apart from the effects of tariff and transportation policies. Nor can the effects of taxation under the customs tariff be considered without reference to the effects of the sales tax or other federal taxes. Indeed, federal policy, though unplanned as a whole, has developed into a highly complex web, no thread of which can be completely disentangled from the others. The incidence of any one policy

cannot be properly measured alone for the reason that it is affected by the incidence of every other policy. A province or region, for example, which suffers from some items in the tariff may benefit from others, or even if it suffers from the tariff as a whole, it may benefit from other policies such as fixed prices, or special freight rates, or developmental policies at federal expense, or external trade policies. Any fair system of accounting would have to include gains and losses from all federal policies not only at any given time, but for the whole period since federation. And even if the tangled skein of federal policy over seventy years could be unravelled, losses and gains could, in many cases, only be estimated by examining the alternative policies which might have been followed. No estimate based on so many "might-have-beens" of Canadian history could be reliable. There is, indeed, no possibility that a province could draw up a reasonably accurate account of losses and gains from membership in federation.⁸

It is, of course, of the essence of democracy that any individual, or group, or the people of any part of Canada, is fully entitled to seek to change public policy through political means. Those who seek to change public policy are fully entitled to make use of all legitimate means, including existing organizations, or the formation of new political organizations, to effect the desired change. It is inevitable that the people of a province should on occasion be assisted or represented by the government of their province in seeking to effect a change in federal policy. It is one thing for a provincial government in the interests of its people to seek to effect a change in federal policy, but it is quite another thing to hold that the Dominion is liable in damages to the provincial government for the effects of federal policy upon the people of the province. It is equally unsound to hold that a province is entitled as of right to remedial policies to make good adverse effects of other federal policies on its economy. It would, indeed, be quite as logical to hold that the province is liable in damages to the Dominion for the adverse effects of provincial policy on the interests of the nation, or that it should adopt remedial policies to compensate the Dominion for losses from other provincial policies.

⁸ Dr. Carrothers, economic adviser for B.C., in reply to a question whether it was possible for a province to set up a balance sheet of losses and gains as against the Dominion, replied (Ev. p. 5204): "I think the practical difficulties involved would be almost insurmountable. The difficulty would be to segregate what is purely a provincial matter from what is a matter for the province as part of the Dominion." See also discussion of this point in the Ont. hearings, Ev. pp. 7755-58.

In thus holding that the Dominion in the exercise of its functions is not responsible to the provinces we do not mean to suggest that it should, in developing or continuing a federal policy, disregard the interests of a provincial government or of the people of a province. Even in a unitary state it is the part of wisdom for a government to have due regard for discontent of classes or regions arising from the incidence of national policy. It is the more so in a federal state where the people have two fields in which to exercise their control of government. A sense of their inability to influence federal policy directly may easily divert the electors to use the provincial field to organize their discontent with federal policy, and thus a policy, constitutionally within the discretion of the federal Parliament and presumably designed in the national interest, may become the occasion for serious friction between the Dominion and a province, and may thus tend to weaken the bonds of national unity rather than to strengthen them. The necessity of carefully estimating the consequences, both economic and political, of federal policy is an obvious lesson to be drawn from the survey of economic and financial developments since 1867 contained in Book I of this Report.

Another conclusion to be drawn from Book I of this Report is that federal policies considered as a whole have tended to benefit certain regions more than others. These tendencies have undoubtedly affected the financial position of every province, and of some provinces more than others.⁹ It is theoretically possible that federal policy might so weaken the financial position of a province as to make it difficult, if not impossible, for it to perform its functions on standards reasonably comparable with those of other provinces. In such an event we think that it is in the national interest for the Dominion to come to the assistance of the province thus adversely affected. The constitution lays upon the province responsibilities in the field of government which, if they cannot be fulfilled by the province, remain unfulfilled, since the Dominion

⁹ In fairness to certain provinces it should be stated that this was the ground on which, either in original or later statements to the Commission, they criticized federal policies. The Hon. John Bracken, Premier of Manitoba, in final hearings before the Commission stated (Ev. p. 10,340): "In connection with the discussion on monetary policy let me add that we have no thought of presenting a bill for damages to the Dominion for monetary losses sustained by the western provinces in consequence of federal monetary policy. We present the monetary brief only as one of the many factors which account for the economic stress to which the western provinces have been subjected, and which therefore serves to explain in part why these provinces now stand in need of a readjustment of their fiscal relations to the Dominion." For similar statement by Hon. A. L. Macdonald, Premier of N.S., see Ev. pp. 3858-59 and 4006. For further discussion see Ev. pp. 7750-53.

cannot undertake provincial functions. Moreover, the inability of a province to provide services on standards reasonably comparable with those of other provinces is bound to give rise to discontent and so to impair national unity. It is, therefore, in the national interest that the province should be able to carry the responsibilities of government entrusted to it by the British North America Act and amendments. But it cannot be held that hitherto the Dominion has been under any recognized constitutional obligation to enable a province to perform its functions.

But even when federal policy tends to impoverish a provincial area, its effect on provincial finance is at best remote and indirect, and only small in comparison to the total effect on the people of the province. The provincial government is rendered poorer, if at all, only to the extent that the capacity of its people to pay provincial (including municipal) taxes is impaired. A province and its municipalities normally take only a small proportion of the income of their people in taxation. A reduction in the total income of the people of a province may make more difficult, but not necessarily impossible, the collection of normal tax revenues by the province and its municipalities. Yet, even if the reduction in the income of the people of a province should be so great that the collection of normal tax revenues became impossible, the injury to the fiscal position of the province would be only the loss in tax revenues plus possible additional

expenditures due to such matters as relief, and not the loss in the total income of its people. The issue is not the liability of the Dominion to a province for the adverse effects of federal policy, but the ability of the province to perform its functions under the federal system. The measure of assistance which should be forthcoming from the Dominion is not, therefore, the net damages from federal policies, but the fiscal need of the province arising from any cause.

Admittedly, provincial fiscal need has not hitherto been expressly recognized as a principle of federal assistance to the provinces, but we think that it should be. Our recommendations for adjustment and emergency grants are based on this principle.¹⁰ They aim to place every province in a financial position to perform the functions entrusted to it by the British North America Act (with the exception of relief of employables which we have recommended should be the direct responsibility of the Dominion). In particular they aim to make possible for every province social and educational services on Canadian standards, and developmental services on the standards set by the province in the "peak" years, 1928-31,—ends which, if achieved, should alleviate the adverse effects of federal policy on the people of any region or province. The method adopted is that of measuring provincial fiscal need, rather than the impractical method of assessing the adverse effects of federal policies.

¹⁰ See Sect. B, Ch. V.

CHAPTER II

CLAIM OF BRITISH COLUMBIA FOR REVISION OF SUBSIDIES

For many years British Columbia has sought to have a Royal Commission appointed to consider its claim for additional subsidies to place it on equality with other provinces of Canada. After many requests, culminating in a brief filed in 1934,¹ a special interim payment of \$750,000 was granted by the Dominion in December, 1934, for the fiscal year ending March 31, 1935,² and payments of the same amount have been provided by the Dominion each year thereafter in the annual estimates. The Government of the Province, however, continued to press for the appointment of a Royal Commission to investigate its claim so that such amounts as it might be found entitled to would be placed on a permanent rather than on a temporary basis. When the present Commission was appointed the Government of the Province "was assured that any statement of the Province's case for special consideration would be heard by this Royal Commission".³ Instructions to hear such special claim were given to this Commission by the Dominion Government previous to the hearings in British Columbia and were confirmed by letter at a later date.⁴ The Province accordingly presented its claim to this Commission.

The Province contended that "when it is suggested that modifications be made in the Dominion-provincial financial relations, a preliminary special readjustment would have to be made in the case of British Columbia in order to bring it into line with the other Provinces of Canada before a general readjustment, which would be fair and equitable to the Province of British Columbia,

could be made."⁵ It was also contended that the special subsidy of \$750,000 was merely "an interim increase until such a time as the whole position of the Province in the Confederation could be examined and equitable financial arrangements determined".⁶ In hearing this special claim the first Chairman of the Commission invited a full discussion, stating: "we must have all the facts before us to enable us to say whether, in our opinion, you are entitled to \$750,000, or more, or less".⁷

HISTORY OF SUBSIDY RELATIONS WITH BRITISH COLUMBIA

The history of subsidies granted by the Dominion to British Columbia is set forth in detail in the Province's brief⁸ and in the special study on subsidies prepared for the Commission.⁹ It is, therefore, unnecessary for present purposes to do more than outline the situation.

British Columbia entered Confederation in 1871 under an Imperial Order in Council dated 16th May, 1871, passed pursuant to addresses from the Senate and House of Commons and from the Legislative Council of British Columbia setting forth the terms of union. In 1870 a delegation from British Columbia had gone to Ottawa to negotiate terms of union with instructions to ask an annual subsidy of \$213,000, made up of a grant for government of \$35,000, a subsidy of 80 cents per capita on an assumed population of 120,000, and a debt allowance based on the same assumed population at a rate of \$22 per capita.¹⁰ The actual population at the time was under 35,000, of whom about 25,000 were Indians, but it was contended that an assumed population of 120,000 was proper if consideration were given to the high per capita contributions by the people of British Columbia to the Dominion

¹ Ex. 179, British Columbia's Claim for Readjustment of Terms of Union, 1934.

² Ex. 175, Letter, 19th Dec., 1934, Rt. Hon. R. B. Bennett, Prime Minister of Canada to Hon. T. D. Pattullo, Premier of B.C.

³ Ex. 172, Brief of B.C., p. 22.

⁴ Extract from letter, 22nd Nov., 1938, from Deputy Minister of Finance to Secretary of Commission: "I have your letter of November 16th referring to representations already made by the Province of British Columbia in respect of their special claim for subsidy, and indicating that Senator Farris, on behalf of the Province, may possibly be making further representations to the Commission on this matter during the present week.

"I am instructed by Mr. Dunning to advise you that the Dominion expects the Commission to deal with the special subsidy claim of British Columbia and to make a special recommendation in regard thereto." See also statement by Chairman, Ev. p. 4980.

⁵ Ex. 172, Brief, p. 22.

⁶ *Ibid.*

⁷ Ev. p. 5235. See also Ev. pp. 5204, 5901, 5906, 5907.

⁸ Ex. 172, Brief, pp. 4-9; 22-23.

⁹ Wilfrid Eggleston and C. T. Kraft, *Dominion-Provincial Subsidies and Grants*. (Mimeographed).

¹⁰ See J. A. Maxwell, *Federal Subsidies to the Provincial Governments in Canada*, pp. 38-39.

treasury in the form of customs duties. This argument was not pressed to its logical conclusion. There was no suggestion that, when the actual population had reached 120,000, a new fictitious population should be used as a basis in order to take account of the large per capita contributions to the federal treasury. The Dominion Government of the time was unwilling to accept an assumed population of 120,000 as a basis for subsidies, but agreed to a population basis of 60,000 for the calculation of the per capita subsidy of 80 cents and a debt allowance of \$27.77 per capita. In addition an annual grant of \$100,000 was made which was declared to be in consideration of the conveyance by the Province of a strip of land along the proposed railway throughout its entire length in British Columbia, not to exceed twenty miles on each side of the said line. Subsequently, three and a half million acres of land in the Peace River District were transferred to the Dominion by the Province to make up for deficiencies in the original Railway Belt. The land in both areas was to be used to aid in the construction of the railway.¹¹ In view of the lengthy argument addressed to the Commission as to the true nature of this \$100,000 grant, it will be necessary at a later stage to consider it in detail.

The terms of union providing, *inter alia*, for the subsidy as so amended were accepted by the delegation from British Columbia and were ratified by the Legislative Council of British Columbia, which presented an address to the Crown asking for the admission of British Columbia into the Union. The financial terms thus agreed upon provided an annual population subsidy of \$48,000, a grant for government of \$35,000, and a debt allowance of \$1,666,200, which produced, after deduction of the amount of debt assumed by the Dominion, an annual interest payment of \$31,000. These sums, together with the \$100,000 railway land payment, produced an annual sum of \$214,000 instead of the annual sum of \$213,000 sought by the British Columbia delegation in 1870. The Province shared in the rearrangements of 1873 and 1884 arising from the absorption by the Dominion of the excess debt of Ontario and Quebec, and in the general readjustment of subsidies in 1907, when a special additional subsidy of \$100,000 per year for ten years was also granted to British Columbia for special reasons discussed later.

No special readjustments of the subsidy to British Columbia, other than those noted, have been made,

¹¹ See Sec. 11 of terms of union, *British North America Act and Amendments*, 1867-1927, p. 81. See also Eggleston and Kraft, *op. cit.* Pt. II, Ch. IX.

but, under the statutory provisions for subsidies, increases in population have resulted in larger subsidies from time to time. For the fiscal year 1936-37 subsidies totalling \$874,561.46 were paid. This total is made up as follows:—

Interest on debt allowance.....	\$ 29,151 06
Grant in support of government..	190,000 00
Per capita subsidy.....	555,410 40
Railway land grant.....	100,000 00
	\$874,561 46

In addition, the special interim payment of \$750,000 was begun in 1934, making a total subsidy payment of \$1,624,561.46.

SUMMARY OF THE CASE FOR REVISION OF SUBSIDIES

As counsel for the Province stated, "for the last forty years there has been a continuous, consistent pressure from this Province that British Columbia was entitled to further consideration".¹² In certain claims for readjustment of subsidies made by other provinces, in particular by the Maritime Provinces before the Duncan and White Commissions, the provincial submissions went beyond a claim as of right, and asked for an increased payment from the Dominion by reason of the difficult economic conditions of the people and of the acute fiscal need of the provincial governments. In the presentation of British Columbia's argument the plea of fiscal need was expressly and unequivocally rejected in the following terms:—

"The position of this Province is not based on any plea of poverty. She does not plead lack of resources, the unkindness of nature or lack of income in her citizens."¹³

Consideration of the claim for readjustment of British Columbia's subsidy does not, therefore, involve an estimate of the fiscal need of the Province. We have merely to consider whether or not British Columbia has received equality of treatment in subsidies in comparison with the other provinces of Canada and, if not, whether British Columbia is entitled to complete equality of treatment. In such comparisons it is necessary to leave out of the account special payments by the Dominion to certain of the other provinces by reason of fiscal need of those provinces as, for example, the

¹² *Ev.* p. 4910. For details of these claims see Ex. 172, Brief of B.C., pp. 12-21; also Wilfrid Eggleston and C. T. Kraft, *Dominion-Provincial Subsidies and Grants* (Mimeographed). Elaborate briefs were presented to the Dominion in 1934 and 1935, see copies filed as Exs. 179 and 173.

¹³ Ex. 180, Brief of Argument, p. 5.

special payments in recent years to Manitoba and Saskatchewan on the recommendations of the Bank of Canada.

The claims of the Province may be grouped under three heads: (1) the alleged high cost of government in British Columbia; (2) the high per capita contributions to the federal revenue; (3) inequality in the matter of per capita subsidies and debt allowances. In view of the importance given by the Province's argument to the nature of the transaction between the Dominion and the Province over the lands in the Railway Belt and Peace River Block it will be necessary to examine this question in connection with the last head of claim.

CLAIM BASED ON HIGH COST OF GOVERNMENT

One head of claim for increased subsidies to British Columbia is the contention that the cost of provincial government is higher in comparison with that in other provinces by reason of the physical characteristics of the Province. It was said that, because of the mountainous terrain, the widely scattered population and the difficulties of communication, increased provincial expenditures were required, particularly in relation to highways and other public works, education, policing, and health services.¹⁴ This claim must be distinguished from a somewhat similar claim that was also presented to the Commission¹⁵ that because of the enormous increase in the cost of provincial government the subsidy has become a very much smaller part of provincial revenue than it was at the time of Confederation and is today inadequate. This latter argument applies, though in varying degrees, to all the provinces and concerns the relations between the Dominion and the provinces generally. In dealing with British Columbia's claim we have carefully avoided discussing questions raised in the British Columbia brief which related to Dominion-provincial financial relations in general. British Columbia's special claim, which we are now considering, depends upon conditions of geography and topography peculiar to that province. It is thus based on the very "unkindness of nature" which counsel for British Columbia stated that the Province did not wish to advance as a ground for assistance. But we are unwilling to dismiss thus summarily a claim which has been advanced by the Province in various representations over the past forty years.¹⁶ In the hearings at Victoria no attempt was made to compare

¹⁴ Ex. 180, Brief of Agreement, p. 10.

¹⁵ *Ibid.*, pp. 7-10; Ev. pp. 4953-62.

¹⁶ For summary of past arguments, see Ex. 172, Brief of B.C., pp. 13ff.

statistically the costs of government in British Columbia with those in other provinces, but the Province was invited by the Chairman to do so.¹⁷ At the supplementary hearings of the Commission in Ottawa it was stated that, owing to the lack of comparative statistics, it had not been found practical to reduce the claim to definite figures. It was pointed out that the construction of roads was difficult and costly, and that the location of natural resources had the effect of scattering the population thereby increasing the cost of government services. In the absence of exact figures counsel for British Columbia suggested that this claim should be met by adding 5 cents per capita to the present population subsidy of 80 cents per capita.¹⁸

This is a very old claim of the Province which was recognized by the Dominion-Provincial Conference of 1907. This Conference recommended unanimously (British Columbia having withdrawn) a special subsidy of \$100,000 per year for ten years to cover the claim.¹⁹ Although the Province did not accept this as a final settlement of outstanding claims, it did receive the amount approved by the Conference.²⁰ We think that the considered judgment of all other provincial governments and the Dominion Government on the matter should not be lightly cast aside. The award of this special subsidy admits by inference that at the time the Province should have special assistance by reason of the high costs of government due to the unfavourable topographical nature of the Province and its then low population, and it assessed a sum which the Conference (except British Columbia) considered a fair amount. The Province now asks for a larger amount for past difficulties to be computed by altering the terms of union as from 1871 by assuming a population of 120,000 as from that date, and for increased allowances for the future. We shall discuss later the proposal to alter now the basis of union, but we think that in any case the special subsidy decided on by the Conference of 1907 should be considered a fair settlement of this claim at that date. The sole question remaining,

¹⁷ Ev. pp. 4992; 5902.

¹⁸ Ev. pp. 10,240-43.

¹⁹ Canada, *Sessional Papers* (1906-7), No. 29a, p. 13: "That in view of the large area, geographical position and very exceptional physical features of the province of British Columbia, it is the opinion of this Conference that the said province should receive a reasonable additional allowance for the purposes of civil government, in excess of the provisions made in the Quebec Resolutions of 1902, and that such additional allowance should be to the extent of one hundred thousand dollars annually for ten years."

²⁰ Wilfrid Eggleston and C. T. Kraft, *Dominion-Provincial Subsidies and Grants*, p. 179. (Mimeographed.)

therefore, is whether British Columbia should receive now special consideration for the period since this grant lapsed and/or for the future.

The special subsidy of 1907 cannot be regarded as a conclusive precedent for a special subsidy today. Economic conditions in the Province have changed radically since 1907. The Province, although requested, submitted no sound proof of the claim that its present costs of government are unusually high as compared with those of other provinces. We sympathize with its inability to submit convincing evidence on the comparative costs of provincial government since the task of compiling such statistics is admittedly difficult. Our own researches do indicate that costs of government in British Columbia are high, but mere totals signify nothing. High costs may arise from one or more of several factors: inefficient administration; inherently high costs of certain services because of peculiar natural conditions; more or better governmental services than other provinces; a different distribution of functions as between the province and its municipalities than that of other provinces.

With regard to comparative efficiency of provincial administration, we have no reason to suspect inefficiency.

Certain services such as highways might reasonably be expected to be more costly than similar services in certain other provinces. Under this item the Province alleges that the distribution of its natural resources has meant abnormal mileage and abnormally high construction costs of highways. But we do not think that such costs can be charged against the Dominion as a whole. Such costs are properly chargeable against the cost of exploiting natural resources, and should be met by the Province out of the increased taxable capacity which the exploitation of these resources has beyond question created. It should be borne in mind that, at least since 1925, the public domain revenues of the Province have exceeded the public domain revenues of all the Prairie Provinces and the Maritime Provinces combined, while its returns from the corporation income tax (most of which are traceable to the exploitation of natural resources) during the same period have exceeded those of any other province. Moreover, even if certain of British Columbia's services are inherently more costly, certain other services may be inherently more costly for other provinces. We do not think that British Columbia is entitled to special assistance from the Dominion because of excessive costs of certain services when other provinces are not

accorded the same privilege for their costly services. Under the present subsidy system we can find no principle which would entitle any province to such a privilege in the absence of real fiscal need. No such fiscal need has been shown or claimed by British Columbia.

It is apparent from our researches that the Province in such matters as highway construction, assistance for education and public health, bears a larger share of the cost in relation to its municipalities than do most other provinces.²¹ This, however, is largely a matter of provincial policy and would appear to constitute no sound reason for special assistance to the Province. Further, it appears that, on the whole, the Province has been more generous in its public welfare and educational policies than most other provinces.²² In this respect the Province is to be commended rather than criticized. Progressive policies of this sort, however, undoubtedly raise governmental costs. But, as we understand the claim of the Province, it did not ask, and we do not think it fairly could ask, for special assistance because it chooses to be more generous than certain other provinces.

In conclusion of this matter, it may be noted that despite generally high costs of government in the Province its people, at least during the past fifteen years, appear to have enjoyed a higher per capita income than the people of any other province except possibly Ontario.²³ We do not think, therefore, that any just claim can lie against the rest of the people of Canada for special assistance because of natural conditions, which, if they have made certain governmental costs higher, have also made possible higher rewards for human labour, over and above governmental costs, than obtain on the average in the rest of Canada.

CLAIM BASED ON CONTRIBUTIONS TO FEDERAL REVENUES

The claim for special treatment, on the basis that the Province has made a contribution greater than the average to Dominion revenues is one which we feel should not be recognized. This claim has been advanced in a number of the representations presented by British Columbia from time to time, but for reasons that are obvious no estimate of the amount of such claim and no

²¹ H. Carl Goldenberg, *Municipal Finance in Canada*. (Mimeographed.) Part IV.

²² See generally Appendix 6—A. E. Grauer, *Public Assistance and Social Insurance*.

²³ See Appendix 4—*National Income*; or summary in Appendix 3—W. A. Mackintosh, *The Economic Background of Dominion-Provincial Relations*.

conclusive proof of its validity has been made. The calculation of comparative contributions of the people of different provinces to Dominion revenues presents almost insuperable obstacles. Even were an estimate possible, we do not feel that it would provide a basis for a claim for subsidy readjustment. In a federation such as Canada the federating units merge themselves for certain purposes in the entity which they create. The citizens of the colony of British Columbia became, after Confederation, citizens of Canada. The right to impose customs duties was exclusively enjoyed thereafter by the Dominion Parliament, and when an individual resident of Vancouver pays customs duties he does so as a citizen of Canada. Payment of these or other Dominion taxes is in no sense a payment by the province, and the provincial government is not entitled to any readjustment of its financial relations with the Dominion on the basis of any such payment.²⁴ We are fortified in this view by the admission of counsel for British Columbia that it is impracticable to attempt to set off Dominion expenditures in a province against Dominion collections from that province.²⁵

CLAIMS BASED ON INEQUALITIES OF SUBSIDIES AND DEBT ALLOWANCE

(a) *Nature of the Grant for Railway Lands*

In the hearings at Victoria the nature of the special grant of \$100,000 for lands in the so-called Railway Belt was discussed at length. It will be recalled that the delegation from British Columbia that came to Ottawa in 1870 to discuss terms of union was instructed to ask for a subsidy which was in part to be based on an assumed population of 120,000. The Dominion Government was unwilling to allow an assumed population of more than 60,000 but offered an additional annual payment of \$100,000 in consideration of the transfer by the Province to the Dominion of a belt of land not to exceed twenty miles on each side of the proposed railway. This proposal was accepted and became part of the terms of union. In the result British Columbia entered Confederation with an annual subsidy of \$214,000. Counsel for the Province admitted before this Commission that "British Columbia got in 1870 what it expected to get" although "it did not get it on the contention upon which it asked for it".²⁶ Shortly after 1871 the

Dominion claimed that much of the land in the Railway Belt was unfit for agricultural purposes, and ultimately in 1884, after considerable controversy,²⁷ the Province transferred a block of 3,500,000 acres in the Peace River District which was accepted by the Dominion "in satisfaction of all claims for additional lands under the terms of Union".²⁸ The Dominion retained the Railway Belt and the Peace River Block until 1930, when, following the report of the Martin Commission, it reconveyed all lands remaining in its possession to the Province, amounting to 9,602,400 acres in the Railway Belt and 3,230,000 acres in the Peace River District. Notwithstanding the reconveyance of all remaining lands to the Province, the Dominion continued to pay annually the grant of \$100,000 pursuant to an agreement between the Dominion and the Province.²⁹

In the brief of British Columbia the land clause in the terms of union is referred to as "merely a device to give an excuse for the grant".³⁰ In the opening hearings at Victoria counsel for the Province supported this view³¹ which was in line with the position of the Province before the Martin Commission when it argued that "as to the payment of \$100,000 annually by the Government of Canada in consideration of lands conveyed, such payment was not in reality in return for lands conveyed, but was for the purpose of enabling the Government of the province to function properly and that the said payment should be so regarded."³² On a later day in the hearings at Victoria, the stand of the Province on this point was completely reversed. The contention that the grant of \$100,000 for the railway lands was a device was repudiated both by counsel and by the Premier of the Province. It was then contended that the payment was in fact what it purported to be, a payment for the lands; all statements to the contrary in the brief or in argument were withdrawn as having been made in error.³³ It was suggested that while the Dominion might not have been willing to buy these lands as an independent transaction, and while it was undoubtedly anxious to satisfy the financial claims of British Columbia, these facts were quite consistent with a bona fide purchase of these lands as part of a larger agreement.³⁴

²⁴ See discussion in evidence, pp. 5875-83.

²⁵ *Statutes of Canada* (1884), 47 Vict. c. 6.

²⁶ *Statutes of Canada* (1930), 20-21 Geo. V, c. 37.

²⁷ Brief, pp. 4, 21.

²⁸ Ev. p. 4902. See also p. 5108.

²⁹ Ex. 174, Report of Royal Commission on Reconveyance of Land to British Columbia, p. 29.

³⁰ Ev. pp. 5110-13; 5240-41; 5869-71.

³¹ Ev. pp. 5879; 5891.

²⁴ See discussion of this whole matter in preceding chapter, "Compensation for the Adverse Effects of Federal Policies."

²⁵ Ev. p. 4912. See also Ev. p. 524.

²⁶ Ev. p. 4916.

Where one of the parties to the terms of union, through its responsible representatives, asks that the agreement be given a strict and literal meaning, we feel it would be impossible for us to do other than apply the rules of construction which would be applicable to a contract. We find, therefore, that the argument finally made on this point on behalf of British Columbia is valid, and that the payment of \$100,000 annually was a payment for the railway lands as it purported to be.

From this conclusion as to the true nature of the \$100,000 grant for railway lands certain results follow. The payment in purchase of these lands is being continued after most of the lands have been reconveyed to the Province pursuant to the recommendation of the Martin Commission. If the grant of \$100,000 annually was payment for over fourteen million acres of land in the Railway Belt and the Peace River Block, one would expect that a proportionate reduction should be made after reconveyance to the Province of nine-tenths of the total area. Counsel for the Province recognized this difficulty and pointed out that there had never been any inquiry for British Columbia, as there had been for the Prairie Provinces, to ascertain the value of the lands alienated or the compensation to be paid for the use of the lands by the Dominion. Counsel also pointed out that in the 1935 submission by the Province claims had been advanced both that the original subsidy should have been calculated on an assumed population of 120,000 (on the theory that the land grant was a payment for the land) and that the Dominion should account for the use of the land and for the value of lands alienated. In counsel's opinion the Province was "not entitled to have it both ways", and he explained that in preparing his brief he had deliberately left out a claim for the use and alienation of lands by the Dominion.³⁵ Having agreed that the \$100,000 grant should be treated as payment for the railway lands, we agree also that the continuation of this grant after more than 90 per cent of the lands had been reconveyed to the Province must be regarded as adequate compensation to the Province for the use and alienation of lands by the Dominion during its tenure. In so finding we rely not only on the specific waiver of such a claim by counsel, in the presence of the Premier and other members of the Government of the Province, but we rely also on the discussion of Mr. Justice Martin at pages 26 and 27 of his Report concerning the value of these lands and the

expenditures by the Dominion on them, from which we conclude that a payment of \$100,000 annually in perpetuity would provide adequate and generous compensation for the use of these lands by the Dominion and the alienation of part of them.

No claim has been advanced by the Province, under this heading, but we considered it wise to discuss the subject in this way, so that, in making our recommendations as to British Columbia's special claims, it should be clear both that no claim has been passed over without consideration and that no claim has been left outstanding.

(b) *The Assumed Population of 1871*

On the assumption that the annual grant of \$100,000 was in payment for the Railway Belt, British Columbia argued that the assumed population of the Province, on entering Confederation, should have been 120,000 as requested by the Province instead of 60,000 as eventually agreed by the representatives of both the Province and the Dominion.³⁶ It was claimed that British Columbia is entitled now, to be placed in the position that she would have occupied had the original proposal for an assumed population of 120,000 been accepted by the Dominion. We think that the validity of this claim does not follow from the acceptance of the argument that the land purchase was a bona fide transaction. It was suggested to us that while the Dominion might not have been willing to purchase the Railway Belt as an independent transaction, it was willing to do so as part of a much larger transaction.³⁷ We think it is equally plausible to argue that while British Columbia might not have been willing to enter Confederation with an assumed population of 60,000, yet, as part of a larger transaction, in which provision was made for union and for the construction of a railway, it was willing to accept a figure of 60,000 for its assumed population, provided it found a purchaser for the Railway Belt at a price of \$100,000 annually. At all events the British Columbia delegates accepted the assumed population of 60,000, the Legislative Council adopted the terms of union and a petition was addressed to the Imperial Government seeking union with Canada. We think it quite impossible to say that in all these agreements and actions the representatives of the Province were mistaken and unwise, or to find that the Province is now entitled to be paid the difference between the subsidies actually received and the subsidies that would have been received on an assumed population of 120,000

³⁵ Ev. p. 5111.

³⁶ Ex. 180, Brief of Argument, pp. 10-13.

³⁷ Ev. p. 5879.

between 1871 and 1896 (when the actual population reached 120,000). It is noteworthy that, in the general settlement between the Province and the Dominion in 1884, when an agreement was reached "for the purpose of settling all existing disputes and difficulties between the two governments,"³⁸ it does not appear that any claim was put forward by British Columbia on the ground that its population had been assumed to be 60,000 instead of 120,000 as originally asked.

In view of the argument addressed in Victoria to the Commission on the subject of the finality of subsidy settlement, especially with respect to the assumed population of 1871, it may be well for the Commission to state its views on this point. We think that the proper attitude toward these settlements was accurately defined in discussion at Victoria between the Chairman (Chief Justice Rowell) and counsel for British Columbia when it was stated that all relevant facts should be considered, including any statements by the Province that it viewed certain settlements as final. But such statements were valuable only as evidence that a settlement had been considered to be satisfactory by provincial representatives at the time, and acceptance by the elected representatives of the Province was strong evidence that the settlement was in fact fair and equitable at the time it was made.³⁹

If we were convinced that a serious mistake in calculation had been made or that the representatives of the Province in 1870 had been deceived, or if important new facts had become known which were unknown at the time, we would not hesitate to recommend that the Dominion should make such adjustments as fairness and justice might have required. But it is one thing for a province to accept a sum in final settlement of its subsidy claims, and later to contend that because of intervening changes in its responsibilities the sum which was accepted is no longer adequate for its needs. It is quite a different thing for a province to accept a certain basis of calculation for its subsidy, and many years later, to argue that the agreed basis of calculation should, as of right, be replaced by a more generous basis which had been proposed by the province and rejected by the Dominion. The Province's claim must, therefore, rest on inequality of treatment since Confederation, and not on any right to readjustment of the original terms of union seventy years later.⁴⁰

³⁸ See *Statutes of Canada* (1884), 47 Vict. c. 6.

³⁹ Ev. p. 4981. See also Ev. p. 4904.

⁴⁰ For calculations of the claim under various heads based on an initial assumed population of 120,000 instead of 60,000, see Exs. 415, 416, 417 and 420.

(c) *Revision of Per Capita Subsidies and Debt Allowances*

Two items of the claim still remain to be examined; that for a two-and-a-half year revision of per capita subsidies, and that for a revision of debt allowances. Both claims are based on the assumption that British Columbia was in an analogous position within federation to the Prairie Provinces, and, therefore, should have been accorded the same financial terms on these matters.

The original provision of the British North America Act for revision of per capita subsidies following each decennial census applies to all provinces except the three Prairie Provinces.⁴¹ In 1885 it was provided that after Manitoba's population surpassed the assumed number of 150,000 its per capita subsidy should be revised after a quinquennial census together with a revision halfway between each census based on the estimated population of the Province. This change began to take effect after the census of 1891. The reason for the change was undoubtedly to make more quickly available to the Province any benefits in the way of subsidies arising from its rapid expansion of population. It should not be overlooked that Manitoba was at the time in a difficult financial position, and that, as a rapidly expanding province, its financial needs were also likely to expand rapidly. Similar provisions were made in the Saskatchewan and Alberta Acts of 1905. These changes were confirmed by the general subsidy revision of 1907. The amendment of the British North America Act of 1907 also provided for lump sum subsidies for each province "for the support of its Government and Legislature" in accordance with its population within fixed totals. The Prairie Provinces thus stood to gain more quickly than other provinces from an expansion of population in two ways: first by a two-and-a-half year revision of per capita subsidies; and second, by increased lump sum subsidies, if during the period between the decennial census they moved to a higher population group for purposes of a lump sum subsidy. British Columbia now claims that it should have enjoyed preferential treatment in the matter of revision of per capita subsidies like Manitoba since 1891, and that it should have enjoyed the advantages of revision of lump sum subsidies since 1907 like

⁴¹ For history of subsidies and debt allowances see W. Eggleston and C. T. Kraft, *Dominion-Provincial Subsidies and Grants*, (mimeographed); J. A. Maxwell, *Federal Subsidies to the Provincial Governments in Canada*; and *Federal Subsidies and Grants to the Provinces of Canada*, Dept. of Finance, Ottawa, 1937.

the Prairie Provinces. Under the former head it claims back payments for \$1,905,306.60 and under the latter, \$225,000.⁴²

The claim for revision of debt allowances has a somewhat similar background. The Province entered federation in 1871 with an assumed population of 60,000 and a per capita debt allowance of \$27.77 the same as that of Nova Scotia. The request of the Province for revision now of the assumed figure of population to 120,000 instead of 60,000 has already been dealt with in discussing per capita subsidies, and the reasons for refusing this request apply here also. The Province shared in the general revision of debt allowances of 1873 and 1884. On the original population base of 60,000 the total debt allowance then was \$2,029,391, from which a considerable amount has been withdrawn by the Province with the result that annual interest payments on debt allowances from the Dominion now stand at \$29,151. No general revision of debt allowances has been made since 1884, but a special revision was made for Manitoba in 1885. In 1905 the two new provinces, Alberta and Saskatchewan, were each given an assumed population of 250,000 (which, however, approximated to their actual populations) and a per capita allowance of \$32.43, making a total allowance of \$8,107,500. In 1912 Manitoba's debt allowance was revised to the same figure, and payments antedated to 1908 to bring it into line with the other Prairie Provinces.⁴³ British Columbia now claims that it should have been given similar treatment, and requests that its debt allowance be made equal to that of one of the Prairie Provinces (an assumed population of 250,000 and a total allowance of \$8,107,500) as from 1912. Back payments, according to the Province's estimate, would amount to \$8,326,413 on which it claims compound interest at 5 per cent. It requests that the whole be considered a capital sum and interest thereon at 5 per cent be paid for the future.⁴⁴

Undoubtedly there were certain economic similarities between British Columbia and the Prairie Provinces. Like the Prairie Provinces, British Columbia until recently was a "pioneer" province undergoing rapid settlement and expansion. But constitutionally the position of British Columbia was very different. The Province entered federation of its own free will, and made its own bargain as to the terms of union, as did the older provinces.

The Prairie Provinces, on the other hand, were created by the Dominion out of Dominion territory, and it was entirely within the Dominion's power to lay down such financial terms for these new provinces as it wished. We know of no constitutional requirement that the financial relations with these new provinces had to be identical with those of the older provinces. It may, of course, have been expedient to arrange financial relations which were not utterly dissimilar from those with the older provinces, but expediency is quite a different matter from constitutional obligation.

Moreover, we think that the financial terms on which these new provinces were constituted should be considered as a whole, and that it is quite unsound to single out the items of frequent revision of per capita subsidies and debt allowances and to found a claim thereon. It must be noted that in one respect the Prairie Provinces were seriously restricted both from a financial and a constitutional point of view: their natural resources were reserved for the purposes of the Dominion until 1930.

This constitutional difference had practical consequences. Without control of their natural resources, the Prairie Provinces were compelled to shape their policies respecting highways, schools, and other public services to meet the needs which arose out of the Dominion Government's policy of free homesteads and rapid settlement.⁴⁵ The words of Sir Robert Borden when introducing legislation in 1912 to place Manitoba on a position of equality with the other Prairie Provinces are evidence that the three Prairie Provinces were then regarded as having a special status both financially and constitutionally:—

"Because, I repeat once more, these three provinces (Alberta, Saskatchewan and Manitoba) stand in a different category from the other six provinces of the Dominion. The other six provinces have their natural resources, their public domain, mines, minerals and other assets of that kind; these three provinces have not those assets. Having in regard these considerations our policy and our proposal is, in the first place, to put Manitoba upon the same just and fair basis as that which has already been granted to Alberta and Saskatchewan, and then to take up, at the earliest opportunity, the question of the terms upon which the natural resources of all three prairie provinces shall be handed over to the administration of these provinces."⁴⁶

It is true that the Prairie Provinces were granted subsidies in lieu of lands, and that recent Royal Commissions have recommended compensation for

⁴² Ex. 417. See also Ev. pp. 5011ff.

⁴³ *Federal Subsidies and Grants to Provinces of Canada*, Dept. of Finance, Ottawa, 1937.

⁴⁴ For estimates of Province see Ex. 417.

⁴⁵ For discussion of this point see Ex. 236, Brief of Edmonton Chamber of Commerce. Also Ev. pp. 6003ff.

⁴⁶ *Debates, House of Commons*, 1912, p. 4296.

revenues which they might have enjoyed had they had control of their natural resources. While compensation for lost revenues may be possible, it can scarcely be said that they have been compensated, or could be properly compensated, for such an intangible but none the less real factor as inferiority of status to which they were subjected prior to 1930.⁴⁷ British Columbia was never subjected to this inferiority of status. It entered federation as a completely autonomous province, and had full use both before and after federation of its public domain for its own purposes (with the exception of the Railway Belt for which it received and is still receiving compensation from the Dominion). The analogy between British Columbia and the Prairie Provinces prior to 1930 from a constitutional point of view is, therefore, quite unsound. If constitutionally British Columbia's position within federation was different from that of the Prairie Provinces, there is no valid reason for assuming that its financial relations with the Dominion should have been identical with those granted the Prairie Provinces.⁴⁸

But the situation after 1930 was obviously different from that before. In 1930 the Prairie Provinces acquired full constitutional equality with other provinces. We think that as from that date the claim of British Columbia for similar terms in the matter of debt allowances and revision of per capita subsidies is entirely reasonable. There was, of course, no legal obligation on the part of the Dominion so to revise the financial terms, but the long history of settlements for "better terms" between the Dominion and the provinces indicates that the Dominion has long recognized a moral obligation to effect approximate equality in financial terms as between provinces within the same general region of the Dominion. Thus Ontario and Quebec have always been treated on virtually identical terms, and more recently the Maritime Provinces have been recognized as having peculiar difficulties which entitled them to special treatment as compared with other provinces.⁴⁹ We think, therefore, that on this basis British Columbia was entitled to equal treatment with the Prairie Provinces after

⁴⁷ The Royal Commissions on the Natural Resources of Saskatchewan and Alberta carefully restricted recommendations to compensation for possible lost revenues. The Saskatchewan award declared (p. 36): "We have sought to give Saskatchewan what we think the Province itself would probably have made out of its resources if it had had what each of the four older provinces had, that is, a free hand with its own public domain." A similar declaration was made in the Alberta award (p. 38).

⁴⁸ "Equality [as between provinces] does not and cannot mean equality in an unqualified sense." *Report of Royal Commission on the Natural Resources of Saskatchewan*, (1935) p. 18. For general discussion as to equality between provinces see the above Report and *Report of Royal Commission on Transfer of Natural Resources of Manitoba*, (1929).

⁴⁹ *Report of Royal Commission on Maritime Claims* (1926).

1930. Presumably the special interim subsidy of 1934 took account of this, subject to an accounting later.

With respect to the period prior to 1930, to recommend the amounts claimed by the Province would clearly place it in a privileged position as compared with the other Western Provinces, since it would then be given complete equality of financial terms while it had in fact enjoyed a superior constitutional position. On the other hand, we do not feel that it would be quite fair to British Columbia to recommend that it receive no compensation for the period prior to 1930. It was undergoing an experience of settlement and expansion more analogous to that of the Prairie Provinces than to that of the provinces of Central and Eastern Canada, and would have benefited by more frequent revision of per capita subsidies. With regard to debt allowances, it is obvious that they served a different purpose in the case of the four Western Provinces than in the case of the Central and Eastern Provinces. The latter entered union with capital equipment in the way of public buildings, roads, etc., and the debt allowances included expenditures for this equipment. Moreover, they turned over to the Dominion considerable assets as part of the settlement. On the other hand, debt allowances were a means of assisting the Western Provinces to acquire necessary capital equipment.⁵⁰ British Columbia was in a slightly different position from the other Western Provinces in that it was in existence as a colony before union and had some capital equipment, but its position with respect to capital equipment was more analogous to that of the Western than to that of the Eastern Provinces. While this may not have been recognized when debt allowances were fixed in 1871, there is some ground for the claim that some revision should have been made later.

We think, therefore, that the Province, because of economic conditions similar to those of the Prairie Provinces, is entitled to some adjustment for the period prior to 1930 both in the matter of revision of its debt allowance and in the matter of revision of per capita subsidies on a two-and-a-half year basis. But in view of the different constitutional status of British Columbia from that of the Prairie Provinces prior to 1930 it is not entitled to the full amount of its claims under these heads.

We have now considered in detail all the specific heads of claim advanced by British Columbia in support of the request for "better terms." At the hearings in Victoria the Province also presented

⁵⁰ *Report of Royal Commission on Financial Arrangements between the Dominion and Maritime Provinces*, (1935), p. 14.

argument concerning the relationship existing between the Dominion and the provinces generally, and it was, perhaps, inevitable that such argument should become confused at times with the argument concerning the special claims of British Columbia. We mention the matter merely to make clear that we do not consider the argument on such subjects as the effect of Dominion income taxes, the effect of Dominion tariff policy, or the taxation of revenues derived from the depletion of provincial natural resources, as being relevant to the special claim for equality of treatment in the matter of subsidies, nor do we think such argument was so directed by the Province.

SUMMARY AND RECOMMENDATIONS

We may summarize briefly our findings and recommendations.

We do not think that the Province is entitled to any special assistance on account of its topography, because it has not been shown that any general condition of fiscal need arises therefrom.

We do not think that the Province is entitled to have its financial relations with the Dominion altered by assuming now that its population in 1871 was 120,000 instead of 60,000 as then assumed.

We think that as from 1930 the Province was in fairness entitled to the same treatment in the matter of revision of per capita subsidies and debt allowances as the Prairie Provinces.

We think that, in fairness to the Province it should receive some adjustment for the period prior to 1930 because there had been no revision of per capita subsidies and debt allowances similar to the arrangements made with the Prairie Provinces, but we think that it is not entitled to the full amount claimed in view of the fact that during the entire period it controlled the disposal of its natural resources whereas the Prairie Provinces did not.

After careful consideration of the whole matter we think that the special interim subsidy begun in 1934 was adequate to take account of all items on which the claims of the Province can reasonably be allowed. If the debt allowance be deemed to have been increased as from 1934 to that of the Prairie Provinces the interest on the increase would amount to slightly more than \$300,000 annually ($\$8,107,500$ less $\$2,029,391 = \$6,078,109$ at 5 per cent = $\$303,905.45$). The balance of approximately \$450,000 annually is, we think, an adequate allowance for the two other items which we have allowed in part—a two-and-a-half year revision of per capita subsidies prior to 1930, and increased debt allowance prior to 1930—as well as any increases in interest on debt allowance, and

per capita subsidies, to which the Province was entitled between 1930 and 1934. We think, therefore, that the special interim subsidy of 1934 was a fair and generous settlement and no better estimate can be made by us.

In order to remove any doubts as to the future position of British Columbia vis-à-vis the Prairie Provinces, we recommend that British Columbia be accorded the same treatment as the Prairie Provinces in the matter of revision of per capita subsidies. At present, as pointed out above, revision of their subsidies depends upon a quinquennial census. We have had occasion to recommend elsewhere that the quinquennial census be dropped unless the whole country is treated equally in this respect.* But if this recommendation is not carried out, British Columbia should be placed on equality with the Prairie Provinces in the matter of census revision of per capita subsidies. Further, in order to remove any doubt about debt allowances, we recommend that henceforth British Columbia be accorded a debt allowance of \$8,107,500, the same as that of the Prairie Provinces, and that the difference between the interest on the increased debt allowance and the interim subsidy of \$750,000 be paid to the Province as a special annual subsidy, in full settlement of all claims for the period prior to 1934.

We recommend further that the special interim subsidy be replaced by statutory provisions for revision of debt allowance for the future.

The above recommendations for the revision of per capita subsidies and the debt allowance for the future will be applicable only if our general financial proposals (Plan I) are not implemented, since, if they are, the present system of subsidies and debt allowances will no longer operate.

In conclusion, we wish to emphasize that our recommendations are based on our opinion of what is fair and reasonable both to the Province and to the Dominion, taking all relevant factors into account. We have found no principle, or set of principles, and no system of accounting that fits the case. We do not pretend to have reached scientific conclusions, or to have based our findings entirely on principle. The fact is that provincial subsidies in general no longer rest on consistent principles. It is our hope that, if our general financial plan for a complete revision of the system of financial relations between the provinces and the Dominion is accepted, claims such as we have dealt with in this chapter will not in the future disturb relations between any province and the Dominion.

* See p. 171.

CHAPTER III

BRITISH COLUMBIA'S CLAIM AS TO PACIFIC GREAT EASTERN RAILWAY

At the hearings of the Commission in Victoria it was argued¹ on behalf of the Province of British Columbia that the Dominion was under obligation to take over from the Province the provincially-owned railway known as the Pacific Great Eastern.

This railway is 348 miles long running from Squamish to Quesnel within the Province of British Columbia. Its construction was begun in 1912 by a private company, securities of the railway up to \$35,000 (later \$42,000) per mile being guaranteed by the provincial government. This company had an agreement with the Grand Trunk Pacific Railway Company providing that traffic destined for Vancouver and points on the proposed Pacific Great Eastern should be routed over the latter railway. During the War (1914-18) the company was unable to complete construction of the railway, and the Provincial Government was compelled in 1918 to take over the assets and liabilities of the company and finish the building of the road. It was stated by the Province that its total investment in this railway was approximately \$78,000,000, and that the line is now showing a small operating profit which gives some indication of increasing as the area served by the railway develops.

It was argued before us that the Province had been deprived of the prospective benefits of the connection of the Pacific Great Eastern with the Grand Trunk Pacific and the prospect of making the former railway the Pacific outlet at Vancouver for the transcontinental line of the Grand Trunk Pacific Railway. When the Dominion amalgamated the Grand Trunk Pacific and the Canadian Northern into the Canadian National Railways system it made use of the outlet of the Canadian Northern railway to Vancouver by way of the Thompson and Fraser river valleys. It was also urged that the Dominion had established a policy of acquiring certain smaller railways under the Branch Line Act of 1915, and figures were quoted showing an investment of approximately \$26,000,000 in such lines throughout Canada. Counsel for the Province of British Columbia contended that "it is in the

interest of Canada that this railway should be completed to Prince George and from there northward, so as to give a Pacific outlet through the Ports of Prince Rupert and Vancouver to the Peace River Country." It was submitted that the Pacific Great Eastern railway and the proposed extensions should form part of the Canadian National Railways or should be operated under the joint control of the Canadian National and the Canadian Pacific Railway Companies. A number of advantages from such a course were cited, chief of which were the creation of an outlet to the Pacific from the Peace River District, and the relief of the Province of British Columbia from part of its financial burden. It was contended that the Dominion was under obligation to relieve the Province because Dominion railway policy had resulted in the destruction of the traffic arrangement with the Grand Trunk Pacific Railway which was the basis for the construction of the Pacific Great Eastern.

We are unable to see how any obligation was imposed upon, or inferentially accepted by, the Dominion, and, indeed, counsel for the Province stated that he did not suggest that there was any obligation in any legal, or moral, sense. He contended that there was some kind of "public" obligation arising from the fact that Dominion railway policy has so operated as to damage a provincial railway enterprise. It is well known that the taking over by the Dominion of the Grand Trunk Pacific and the Canadian Northern railways was the result of the failure of those enterprises, and we can find no basis for holding that the Dominion must come to the assistance of an unprofitable railway merely because it has in the past considered that it was in the public interest to assist other railways with which that railway had entered into contractual relations. This is a clear example of the point which we have sought to make elsewhere in this Report,² that unco-ordinated transportation policies of the Dominion and Provincial Governments have in the past caused, and will continue to cause, great loss and difficulty. It would, of course, be well within the powers of

¹ Ex. 180, Brief of Argument Counsel for B.C., pp. 34-37. See also Brief of B.C., pp. 196-97, 353; Ev. pp. 5143-54B.

² See Sect. D, Ch. IV.

the Dominion to acquire the Pacific Great Eastern as part of the Canadian National system, but this is wholly a question of policy upon which we are not called upon or empowered to advise. It is sufficient for us to state that we are unable to find that an obligation of any sort rests upon the Dominion to implement the proposals of British Columbia as to the Pacific Great Eastern railway.

A careful perusal of the general recommendations that we make elsewhere³ as to the assumption by the Dominion of the deadweight burden of provincial debts will show that if these recommendations are

implemented British Columbia will retain the physical assets of the Pacific Great Eastern railway while it would have no interest charges to meet in connection with this railway. British Columbia would, therefore, stand to benefit either by increasing the operating income of the railway or by disposing of it to any purchaser it might find. The Province would thus be substantially better off than if the Dominion were to buy the Pacific Great Eastern tomorrow and our general recommendations took effect later.

³ See Sect. B, Chs. II and IV.

CHAPTER IV

SASKATCHEWAN'S CLAIM FOR REVISION OF THE NATURAL RESOURCES AWARD

The Government of the Province of Saskatchewan in its printed brief¹ discussed at length the claim of the Province arising from the fact that for many years it had been deprived of the administration and control of its natural resources. On the creation of Alberta and Saskatchewan in 1905, the natural resources in these Provinces were retained by the Dominion "for the purposes of Canada" and special subsidies were provided because of this retention by the Dominion of the public land which would otherwise have been a source of revenue for the Provinces.²

From 1905 until 1930 there was considerable agitation for the return to the Provinces of Saskatchewan and Alberta of their natural resources. By an agreement dated March 20, 1930 between the Governments of Canada and Saskatchewan and approved by appropriate legislation, provision was made for the return to Saskatchewan of its unalienated resources and for the appointment of a commission to report as to what sums should be paid to the Province "in order that the Province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources". A commission was appointed in September, 1933, and reported in March, 1935. The majority (Mr. Justice A. K. Dysart and Mr. George C. McDonald) recommended payment of \$5,000,000 to the Province by the Dominion as compensation for the retention by the Dominion of the Province's natural resources. Mr. Justice Bigelow, in a minority report, recommended payment by the Dominion to the Province of over \$58,000,000.³

The agreement of March 20, 1930 between the Dominion and Saskatchewan provided for the submission of the report of the Commission to the Parliament of Canada and the Legislature of Saskatchewan, and for an agreement between the two Governments following the submission of such report. No agreement has yet been reached and the payment of compensation in respect of the natural resources of Saskatchewan remains unsettled.

In his argument to us on behalf of the Province of Saskatchewan, the Attorney-General suggested

that the minority report of Mr. Justice Bigelow rested upon firmer principles than did the majority report. He also suggested that, when the whole relationship between the Dominion and Saskatchewan was under review, the claim respecting natural resources should likewise be reviewed and a recommendation made which would aid in settling this dispute.⁴ In the hearings at Regina, the first Chairman of our Commission pointed out that it was impossible for us to sit in review of a commission which had examined and reported on this matter in an exhaustive way. He expressed the opinion that while we might feel that on any financial adjustment the whole matter should be settled, and while we might emphasize the desirability that a settlement should be reached, it seemed impossible for us to make detailed recommendations on such a complicated question which had already been the subject of a special inquiry.⁵

On further consideration we have been strengthened in the view expressed by the Chairman that it is impossible for us to sit in review of the findings of the Dysart Commission.

We strongly recommend, however, that this claim should be settled before, or as part of, any general readjustment of the financial relations between the Province and the Dominion. If our financial proposals for assumption of provincial debts by the Dominion and for the replacement of existing subsidies by adjustment grants based on fiscal need are adopted, we think it would not be unreasonable that the Province should relinquish all outstanding claims arising under the settlement of the question of natural resources especially since payments under the Natural Resources Award would automatically reduce the payments on the ground of fiscal need which we have recommended.

* * * *

Although we have not had the benefit of direct submissions from the Province of Alberta, much of what we have said concerning the natural resources of Saskatchewan applies to the natural resources of Alberta. We think it is equally desirable that the outstanding claim of Alberta for compensation should be settled at the time when a general readjustment of Dominion-provincial relations is made.

¹ Pp. 258-72.

² "The Saskatchewan Act", *Statutes of Canada* (1905), 4-5 Ed. VII, c. 42.

³ *Report of the Royal Commission on the Natural Resources of Saskatchewan, 1935.*

⁴ Brief, p. 272.

⁵ Ev. p. 1835.

CLAIMS CONCERNING TRADE THROUGH MARITIME PORTS

Serious complaints respecting the failure of external trade to flow in sufficient volume through the ports of the Maritime Provinces were voiced in hearings for these Provinces, and claims based thereon were advanced against the Dominion, especially by the Province of New Brunswick.

Before discussing these submissions some general observations on the nature of the claims for increased subsidies which have arisen from time to time since Confederation are, perhaps, in order. Usually these claims have arisen out of a condition of real fiscal need on the part of the province concerned. The unequal financial position within Confederation in which certain provinces have found themselves from time to time is apparent from the survey of the economic and financial history of Canada given in Book I of this Report. Financial difficulties have often been the product of adverse economic conditions and they have usually been accompanied by a strong, if vague, sense of injustice on the part of the government and the people of the province. As a result, discontent with the settlement of 1867 has frequently developed out of a condition of provincial fiscal need. The great difficulties experienced on occasion by some provincial governments in raising needed revenues by increased taxation has again and again driven them to seek aid from the Dominion Government. But hitherto there has been no recognized constitutional principle on which they could frame an effective appeal for aid, and no machinery for assessing need even if the principle of Dominion obligation in the circumstances were admitted. In the absence of express constitutional principles applying to a situation where a province finds itself in fiscal need and of convenient political apparatus to measure fiscal need, the disposition has been to seek for contractual or equitable grounds which might be plausibly worked out in terms of dollars and which would satisfy current sentiments of right and justice. It is not implied that in none of the claims presented to Ottawa in the past seventy-two years has there been a real legal or contractual basis. But taking the history of negotiations for increased subsidies as a whole, real fiscal need has been time and again the real basis for petitions put forward on legal or quasi-legal grounds for sums

allegedly owing to the provinces by the Dominion, supported often by lines of arguments which, to say the least, were unrealistic.

The financial plan which we have recommended elsewhere in this Report should encourage a more realistic approach to the problem. The plan frankly accepts provincial fiscal need (assessed on a comparative basis) as the basis for estimating adjustment grants to the provinces and it provides for periodical revision to take account of changing fiscal needs. In so far as the claims discussed in this chapter are reflected in provincial fiscal need they have been taken account of in estimating new subsidies for the Maritime Provinces. We might, therefore, have omitted separate discussion of the claims. But no attempt to place Dominion-provincial relations on a cordial and healthy basis could be successful unless it took sympathetic account of long-standing grievances, such as those concerning the use of Maritime ports by the rest of Canada. The Commission is glad, therefore, that this issue was brought before it in a frank and friendly manner, and it hopes that a careful examination of the merits of the claims presented will assist in alleviating an old source of misunderstanding and discontent.

The group of claims which revolve around the relative failure of Canadian import and export trade to flow through the commercial routes of the Maritimes will now be considered.

The contention that the Dominion has failed to live up to its obligations regarding trade through Maritime ports finds its fullest expression in the brief of the New Brunswick Government, and in the submission by the Transportation Commission of the Maritime Board of Trade which in the discussion of transport matters spoke for the Governments of the three Maritime Provinces. In addition, representations on transport matters were made by the Saint John Board of Trade and the Fredericton Board of Trade. In addition to the general case for preferential treatment in transportation for the Maritime Provinces, supported especially by the Transportation Commission, the New Brunswick Government charged that an engagement solemnly entered into as an

essential feature of Confederation has been continually ignored and evaded from Confederation to the present time by the Government of Canada to the great injury of New Brunswick. Complaint was also made by the Province of New Brunswick that the Dominion Government in making the Intercolonial railway a part of the Canadian National system in 1918 broke an understanding dating from Confederation that the road would be operated in perpetuity by the government and kept separate and distinct from all other Canadian railways.¹

Before commenting item by item upon the several aspects of this related chain of claims it will be useful to outline the essential facts of the transportation history out of which these complaints have arisen.

It is abundantly clear that prophecies were made by the exponents of Confederation that as a result of the political union of the provinces and the building of the Intercolonial railway, the external trade of the new Confederation would in large part flow by way of the Maritime ports. It was believed that, as a direct result of this new stream of commerce, an era of greater prosperity would dawn in the Maritimes, based first, on the capital investment needed to supply the transportation and port equipment, second, on the enlivening of domestic trade and employment and the improvement of markets resulting from the concentration of Canada's foreign trade through Maritime ports.

It is equally clear that the expectations of those pre-Confederation days were not fully realized. For reasons of transportation economics which the Fathers of Confederation did not know, or because of technological changes then under way, the effects of which they could not foresee, the traffic flowing over the Intercolonial railway and through the ports of Saint John and Halifax proved disappointing. In addition to Montreal, Quebec and later Vancouver, Portland, Boston and New York, attracted much of the external trade of the Dominion. The evolution of the steamship and the great improvement of the St. Lawrence waterway cheapened water transport and placed railway transport at a competitive disadvantage. The geographical advantage which in the era of sailing vessels Halifax enjoyed in relation to Liverpool ceased to be significant with the age of steam and steel. Steam vessels sought rather to penetrate as far as

possible into the interior of the continent for their cargoes. The bulk and diversity of cargoes offering at New York and Boston was a powerful magnet. Nor did the export trade originating in the old Province of Canada live up to expectations. Its wheat exports declined as Ontario and Quebec became more industrial, while the new export products, such as pulp and paper, went mainly by rail to the United States.

Repeated efforts were made by the Dominion Government to direct trade over east-west lines and improve the flow of traffic over Maritime railways and through Maritime ports. The tariff policy was designed to retain as much Canadian trade for Canadian industry and transportation as practicable. The building of the Short Line linking Montreal with Saint John, begun in 1884 and completed in 1890, and the \$170,000,000 undertaking (the National Transcontinental) to link Moncton with the wheat fields of the Northwest, illustrate the earlier efforts made through Dominion transportation policy to carry out what was accepted as one of the moral obligations of Confederation. In 1923 an inducement to use Canadian ports was inserted in the tariff by the provision that the duty on goods so shipped from British preferential countries would be entitled to a 10 per cent deduction, and in 1927 the entry via Canadian ports was made compulsory if the shipment was to enjoy the benefits of the preferential tariff. Large sums were spent upon improvement of port facilities at Halifax and Saint John.

The policies pursued by the Dominion Government failed to achieve in full the ends sought. Though the rest of Canada made material sacrifices in an effort to divert trade through Maritime ports, a large part of it continued to flow elsewhere. Still more drastic policies might have been adopted, but we are satisfied that the tariff and transportation policies which would have been necessary to force practically all Canadian external trade through the ports of Halifax and Saint John would have laid an intolerable burden upon the industries of Canada. The benefits to be derived from such a diversion in the Maritime Provinces would have been far outweighed by the handicaps which would have been laid upon the national economy as a whole, and the benefits for the Maritime Provinces themselves would have been at best temporary and illusory, since the adverse effects upon the rest of the economy would have been reflected before long in Maritime depression as an echo of general economic decadence of the Dominion.

¹ Ex. 357, Brief of N.B., pp. 74-121, Ev. pp. 8805-92, 8979-9011, 9014-52; Ex. 413 Supplementary Brief of N.B., Ev. pp. 10,183-286; Ex. 366, Brief of Maritime Transportation Commission, Ev. pp. 8862-8914; Ex. 140, Brief of N.S., p. 105; Ex. 161, Brief of P.E.I., pp. 46-47; Ex. 389, Brief of Saint John Board of Trade, Ev. pp. 8932-73; Ev. (Fredericton Board of Trade) pp. 8973-78.

We shall now consider the principal claim of the Province of New Brunswick which alleges a breach of an agreement antedating Confederation regarding the use of ports of the Maritime Provinces by the Dominion.

THE TRANSPORTATION PROVISIONS OF CONFEDERATION

The Province of New Brunswick contended it had "entered the Confederation upon faith of an agreement" which has not been fully carried out. New Brunswick submitted that a "material portion" of the "contract of Confederation" is to be found in Resolution 66 adopted by the conference of delegates from the various Provincial Governments held at London in 1866 prior to the passage of the British North America Act. Resolution 66 reads:—

"The communication with the North Western Territory, and the improvements required for the development of the trade of the Great West with the Sea-board, are regarded by this Conference as subjects of the highest importance to the Confederation, and shall be prosecuted at the earliest possible period that the state of the Finances will permit."

This resolution was not incorporated into the British North America Act; but the New Brunswick contention is that the whole series of resolutions adopted at London constitutes a "joint declaration" and "agreement" binding upon all the parties. New Brunswick urged that this view is supported by the reference in section 145 of the British North America Act (relating to the construction of the Intercolonial railway) to a joint declaration and an agreement between the federating provinces, which, it is contended, can only refer to the agreement contained in the London Resolutions. Subsequently, it is said, the Dominion admitted both by the preamble to the Intercolonial Railway Act of 1867, and by the acceptance of the Imperial guarantee provided in the Canada Railway Loan Act of 1867, that such an agreement was binding.³

By Resolution 66, according to the interpretation offered in the New Brunswick submission, the provinces engaged that provision would be made (presumably by the Dominion) for "such port facilities and shipping connections as would move the freight from the Great West to the Seaboard and from the Seaboard to the Great West and other points." The claim is repeatedly made that the term "Seaboard" in the resolution meant only the Maritime Provinces. The opinion is also developed that the

"agreement" meant that the entire overseas import and export trade of Canada was to be routed through the Maritime ports. This, it is stated, was the "understanding" of the people of New Brunswick upon which they placed "absolute reliance". The Dominion was thus obligated, it is argued, so to control freight rates as to secure this trade for Maritime ports and also to see to "the creation of port facilities and shipping connections and ocean rates" to enable trade to move through these ports at all seasons of the year. "There could be no proper trade development at summer ports only." This is the burden of the New Brunswick case.⁴

Meaning of Term "Improvements".—If these were the engagements to which the Dominion was committed they involved obviously the abandonment by the Federal Government of canal construction and other developmental policies in which the Province of Canada had long been interested. A statement is made on page 92 of the New Brunswick brief that strongly suggests that in order to supply the "improvements" required by Resolution 66 the "hundreds of millions of dollars" spent largely on the St. Lawrence should have been devoted instead to the development of trade through Maritime ports.

Such engagements, it is argued, also involved "improvements in overseas freight rates" so that there might have been a "continuous development of the trade between the Great West and the Seaboard". It is to be observed that this would have required a control over railway freight rates which at that time lay outside the accepted scope of government, and also a control of ocean freight rates which has not even yet been attained. The Dominion Government is censured because "it did not discontinue the traffic to the American ports or try to do so." The inference is that the shipper should not have been allowed to route his shipments as he chose. To substantiate this attitude New Brunswick "relies" upon what it terms "the design of Confederation". "We say that it was perfectly feasible for the Dominion to cause the substantial part of the grain to be shipped to the East through British territory to the ports of Saint John and Halifax." "Importers of grain in Britain could easily have been persuaded to cause the grain to be shipped through British ports and the influence of

³ Ex. 357, Brief of N.B., pp. 74f.

⁴ Brief pp. 90-92, 98, 110-11. See also Ev. p. 10,177.

the Imperial Government in that respect would have been a great factor in the accomplishment of this result."⁵

It is suggested in the supplementary brief of New Brunswick that Resolution 66 also involved the extension of the Intercolonial into the Great West to be operated on grounds of national policy with freight rates not based on commercial considerations.⁶ There is no citation of documentary support for this contention, and we can find no contemporary evidence that this future for the Intercolonial was in the mind of anybody at that time.⁷ The building of the National Transcontinental is described in the supplementary brief as a partial performance of Resolution 66: it could "only be attributable to the contract". But the Province contends: "The failure of Parliament to compel the traffic to follow that route [to the Atlantic ports] regardless of the act of the shipper, is a matter wherein the agreement was not carried out."⁸

It has, therefore, been necessary to reach definite opinions as to Resolution 66—its origins, the purposes it was meant to serve and the extent to which

⁵ Brief pp. 110-116. These views are supported by the supp. brief (p. 3): "It is quite apparent from the declarations made at the time of Confederation that the purpose of all parties was to avoid any necessity of conducting trade through United States territory and United States ports." Some qualification, however, appears to have been made in the hearings: Mr. Jones, counsel for New Brunswick (Ev. p. 10,094): "My view is that this traffic should have been forced to the outlying provinces and have developed our ports. I do not mean to say that none should have been sent to the United States, but I say that we should have had reasonable treatment."

⁶ Supp. Brief, p. 26 and p. 40.

⁷ It was apparently not until 1903 that any suggestion of extending the Intercolonial beyond a terminus of the St. Lawrence was made by responsible parties. In that year R. L. Borden and Hon. A. G. Blair suggested extension of the Intercolonial to Georgian Bay as an alternative to the construction of the National Transcontinental. *Debates, House of Commons*, 1903, pp. 8994-98.

⁸ Supp. Brief, p. 40. The broad interpretation given to the term "improvements" by the Province is illustrated by the following extract: (Ev. p. 10,209)

"Mr. STEWART [counsel for the Commission]:...You are relying upon an implication, which you draw from clause 66 of the London Resolutions, that trade and commerce was to be compelled to follow the route from the west through Maritime ports. Do I understand that to be your contention?"

Hon. Mr. JONES [counsel for N.B.]: Yes. Whatever improvements were necessary for the development of that trade must be provided."

And again at p. 10,210:

"Mr. STEWART: But there is nothing in section 66 about the cost of carrying freights over those lines of communication, and about improvements—not a word about that.

Hon. Mr. JONES: Not exactly, but there is this to be considered, that the improvements necessary for the development of trade involve the provision of harbour facilities, shipping facilities, to carry the export traffic outside of the country; and, if necessary, freight rates must be such as to promote the development of trade.

Mr. STEWART: Can you show me where the implication is substantiated that freight rates should be so reduced as to compel traffic to follow the route to the maritime ports? It certainly is not in section 66 of the resolutions.

.....
Hon. Mr. JONES: It is there of course, under the head of improvements."

it imposed obligations on the Dominion Government. This examination must be on the lines of historical rather than legal inquiry. The Province did not put forward its case on strictly legal grounds: it argued rather that Resolution 66 constituted an "agreement that the provinces and the Dominion should carry out, from the standpoint of what is fair and right and just."⁹ For the correct interpretation of Resolution 66 we must look, as does the Province, to the records and documents of the time.

The project of building an intercolonial railway preceded by years the emergence of any movement for Confederation; the difficulties, political and financial, which had prevented its construction, disappeared as the movement for Confederation gained strength. The supporters of Confederation in the Maritimes were delighted that they could at last obtain railway access to the markets of the upper provinces;¹⁰ and the reluctance of strong political elements in the Province of Canada to embark upon this enterprise was transformed into active support by the fear that the United States (then in the stresses of Civil War) would suspend the bonding privileges by which alone Canadian trade could reach the sea during the winter months when the St. Lawrence route was not available.

The much-quoted statements by Canadian public men in their pro-union campaign in the Maritime cities in the late summer of 1864, and similar expressions of gratification in the Confederation debates of the Canadian Parliament in 1865 that the Central Provinces were thereafter to have an all-year access to the sea, are to be read, interpreted and appraised as political appeals for support for a policy which was then in issue before the people. As such, these statements are rightly subject to the qualifications and subtractions which informed contemporary opinion always applies to political advocacy. It is always to be borne in mind that the opposition to the project of Confederation, at every stage of its progress, was everywhere formidable. The public men who urged Confederation were, as their work establishes, statesmen; but they were also the partisans of an enterprise to which they had committed their political fortunes. They put their predictions of favourable results at the maximum of what they hoped was possible; and if these in actuality fell short of expectations, it can be said that the experience was far from unique in Canadian history.

⁹ Ev. pp. 9010-11.

¹⁰ The strong desire of the people of the Maritimes for railway connection with Canada was expressed by S. L. Tilley in his emphatic statement at the Quebec Conference: "We won't have this union unless you give us the railway". E. Whelan, *The Union of the British Provinces*, (1865) p. 72.

The whole situation with respect to the construction of the Intercolonial is readily understandable. There was agreement among the supporters of Confederation in all the provinces that the railway was desirable and that it would be mutually advantageous. To the people of Canada the prospect of the road was most welcome because they had been forced to consider what their plight would be if the frontier of the United States were closed to Canada's overseas trade. There is in the recorded speeches sufficient warning that Canadian public men did not consider access to the Maritime ports as a complete substitute for the United States' ports. Canada would not by its own act inflict upon itself the injury which it feared from the United States by the abolition of the privilege of shipping its products through that country in bond. The proposed Intercolonial was regarded as an alternative route, not a complete substitute for routes through the United States. This is made clear beyond all question by a speech of John A. Macdonald at Halifax, September 12, 1864, made during the tour of the Maritime Provinces by Canadian leaders in the interval between the Charlottetown and Quebec Conferences. Macdonald said:—

"I don't hesitate to say that with respect to the Intercolonial Railway, it is understood by the people of Canada that it can only be built as a means of political union for the Colonies. It cannot be denied that the Railway, as a commercial enterprise, would be of comparatively little commercial advantage to the people of Canada. Whilst we have the St. Lawrence in Summer, and the American ports in time of peace, we have all that is requisite for our purposes. We recognize, however, the fact that peace may not always exist, and that we must have some other means of outlet if we do not wish to be cut off from the ocean for some months in the year."¹¹

If the Maritime Governments were prepared to enter Confederation only on a basis of the special concessions, as to the highly preferential treatment in trade and in public improvements set forth in the New Brunswick brief, would they not have attached their conditions to the provisions in the British North America Act requiring the building of the Intercolonial, about which there could be no doubt, instead of relying upon an obscure phrase in the London Resolution No. 66, the application of which policy was contingent and conditional?

¹¹ E. Whelan, *The Union of the British Provinces*, (1865), p. 45. This statement may be compared with a letter by A. T. Galt, Nov. 17, 1858, to Earl Lytton, Secretary of State for the Colonies: "I do not for a moment pretend to say that Canada would use the Intercolonial Railway for her trade while shorter and cheaper lines exist, but if at any time a different trade policy were adopted by the United States or war were to break out, then she would possess another outlet and would gladly suffer any inconvenience from the greater length and enhanced charges." O. D. Skelton, *Life and Times of Sir A. T. Galt*, p. 246.

Instead there was, as the documents of the time make clear, a belief that the building of the road, which would establish a connection between the Canadian and the railway systems of the Maritime Provinces, would in itself bring all the happy results that were with such apparent confidence predicted. There was little general understanding of the economics of competition in transportation and an artless faith on the part of many that freight would move over a long railway haul regardless of water competition and would seek the ultimate land point of transference, instead of the nearest access to the sea as has been so clearly shown by the test of experience.¹²

Historians of the Confederation period and researches made on behalf of the Commission are in agreement in giving an Upper Canadian origin to Resolution 66. It was submitted and was adopted to reconcile Upper Canadians to the construction of the Intercolonial to which in the past they had been opposed.¹³ The antecedents of the Resolution, the circumstances attending its appearance in the Quebec and London Resolutions, every direct reference to it of which there is record, suggest that this Resolution was a declaration of an intention to proceed, as speedily as possible, with a developmental project of particular concern to Upper Canada, which involved the building of communications with the Great West and extensive "improvements" in the Canadian canal system. In the resulting prosperity which was hoped for, it was believed that the Maritime Provinces would share.

¹² Professor Creighton quotes an enthusiastic speaker in Halifax who saw that city as a place of transit comparable to Venice and Genoa because "we form the nearest point to Europe". See Appendix 2—*British North America at Confederation*, Section 8. Sir John A. Macdonald appears to have had the same idea. Writing to C. J. Brydges of the Grand Trunk Railway, Oct. 31, 1870, about prospective freight rates on the Intercolonial, he said: "It is of course the duty of the government to see that no preference of any kind is given, or possible, and that a barrel of flour arriving by water at Quebec will have just as good a chance as if it were sent by railway from Sarnia." (*Macdonald Letterbook*, No. 14, Canadian Archives). It is evident that Sir John Macdonald thought that a through rate over the Grand Trunk and the Intercolonial might be cheaper than a combined lake, river and rail rate.

¹³ R. G. Trotter, *Canadian Federation*, p. 283: "Therefore if the latter [the Intercolonial] was to be built by the new General Government at the insistence of the Lower Provinces, they demanded that the improvement of western communications should also be undertaken by the same authority. The inclusion of both projects in the Quebec Resolutions was thus in a sense a means of reconciling diverse sectional interests."

George Brown, who had ardently supported western development but had questioned the utility of the Intercolonial, found himself in difficulties in the Canadian Parliament when the Quebec Resolutions were before it for approval, because the two projects were not given equal standing. While he conceded that the building of the Intercolonial had been given the preference, he declared that "the Confederation is, therefore, clearly committed to the carrying out of both these enterprises." (*Confederation Debates*, p. 103).

Cf. Appendix 2—D. G. Creighton, *British North America at Confederation*.

We are, therefore, quite unable to agree that the word "improvements" in the context in which it appears in Resolution 66, imposed upon the Dominion Government obligations to do the things set forth in the New Brunswick brief.

Meaning of the Term "Seaboard".—Nor is it possible to accord to the word "seaboard" the precise and limited significance given to it in the New Brunswick brief. By linking up canal improvements with the establishment of communications with the Northwest Territories it was hoped to prevent trade benefits resulting from the opening up of the Northwest from inuring to the sole benefit of the Erie Canal which, prior to Confederation, had captured a large proportion of the shipping traffic originating on the Great Lakes. "Seaboard," to the framers of this Resolution, meant that part of Canada in which there were ports actual or in prospect to which ocean-going ships could come to carry away the traffic which would originate in the Great West and come down the canals. Canada welcomed Confederation because it gave her an extended seaboard with all-the-year ports to which access would be given by the Intercolonial. When George Brown in the Confederation debates (February 8, 1865) spoke of the unsatisfactory position of Canada "shut off as she is from the seaboard in the winter months," he said, in effect, that during the summer Canada had her own seaboard.

At no time since the British first occupied Canada have Quebec and Montreal not been recognized officially and in current language as seaports. When in 1785 the British Government passed an Order in Council which forbade trading by sea between Canada and the United States, this was held by the governor of that time and his council to apply to Quebec and Montreal but not to the inland lakes.¹⁴ Adam Lymburner, merchant of Montreal, appearing at the bar of the British House of Commons, March, 1791, to oppose the division of Canada into two provinces pleaded that since the only "ocean ports" were in Lower Canada the two provinces would find themselves involved in controversy.¹⁵ The official statistics of the Department of National Revenue give the registered tonnage of sea-going traffic at Montreal as follows for these pre-Confederation years: 1865, inbound 133,286 tons, outbound 144,475; 1866, inbound 172,262, outbound, 149,719.¹⁶ The same terminology is used today. Thus Sir Alexander Gibb in his *National Ports Survey* (1932), makes a division between inland

and canal ports and seaboard ports. He states therein that there are "46 seaboard ports" in Quebec, which makes the seaboard identical with the banks of the St. Lawrence from Montreal to the mouth of the river.¹⁷ Indeed the Government of New Brunswick itself states in its brief that Canada was without a seaboard for only a portion of the year. "Here," it says, "were provinces locked up for one-half the year without a seaboard, at the mercy of the United States for an outlet."¹⁸ In evidence counsel for New Brunswick called this a "very careless statement,"¹⁹ but in fact the brief of New Brunswick here used the word in exactly the sense in which it was employed by George Brown and his associates in the drafting of Resolution 69 of the Quebec Resolutions (66 of the London Resolutions).

Neither the developmental policy subsequently adopted by the new Dominion Government, nor the public utterances by Dominion statesmen about it, support the construction placed by New Brunswick on Resolution 66. In the early years of Confederation the Intercolonial was begun, a Royal Commission was appointed to advise as to a policy of canal construction, and initial steps were taken toward the building of a transcontinental railway. In his budget speech, April, 1873, S. L. Tilley, Dominion Minister of Finance, took note of these developments, and, in the spirit of optimism then prevailing, undertook to foretell the economic and national consequences. The Pacific railway was to bring the produce to the head of Lake Superior where it would be placed on ships and brought down the canals to the seaports. Montreal would become a rival of New York. Quebec would be second to Montreal in the Province. "Then," he added, "coming to my own province [New Brunswick] with perhaps limited advantages compared with Ontario and Quebec, but prepared as we shall be with the aid of the railway, we shall fight hard for our share of the shipping trade. Passing to Nova Scotia, . . . Halifax will secure her share of trade as the necessary result of the Intercolonial."²⁰

Tilley, it is apparent, was unaware of the implications of Resolution 66 which New Brunswick has now urged; he made no charge that the "agreement" upon which New Brunswick had entered Confederation was not being respected. Nor is there any evidence that he had become aware of

¹⁴ D. G. Creighton, *The Commercial Empire of the St. Lawrence, 1760-1860*, pp. 104-105.

¹⁵ *Ibid.*, p. 115.

¹⁶ Obtained from Dept. of National Revenue.

¹⁷ p. 12.

¹⁸ Brief, p. 111.

¹⁹ *Ev.* p. 10,180.

²⁰ "Scrapbook Hansard" 1873 (Library of Parliament) p. 54.

such a breach of faith ten years later when, again as Minister of Finance, he delivered the budget speech. Speaking in Parliament, March 30, 1883, he said:—

“Our whole policy, the policy of both Governments since 1867, has been to do everything that the means of the country would justify to afford increased facilities to the shipping coming to and going from Canadian ports. . . . These figures show that every Government, and every Parliament have been fully alive to the importance of this matter. . . . It has been the policy of the Government [the Macdonald Government] in legislating for the Canadian Pacific Railway to direct the trade of the Great West, during the summer, through Montreal and Quebec, and, during the winter, through the open ports of the Dominion.”²¹

It is, perhaps, worth pointing out that Sir Leonard Tilley was a member of both the Quebec and London Conferences; that he was presumably thoroughly familiar with the history of Resolution 66 and the nature of the policies it foreshadowed; that he was Premier of the Province of New Brunswick at the time of Confederation; and that he, representing a New Brunswick constituency, entered the Dominion Government and served from 1867 to 1873 and again from 1878 to 1885.

We are thus unable to accept the contention of New Brunswick that Resolution 66 of the London Conference constituted in any sense a contract or agreement with the Maritime Provinces; or that the term “improvements” used therein implied the means of forcing trade through Maritime ports as New Brunswick contends; or that the term “seaboard” meant only the seacoast of the Maritime Provinces. But we have examined the submissions of New Brunswick carefully and, we trust, with detachment, in the hope that a complete review may not merely show why we are unable to recommend that this claim be allowed, but may also serve to remove a sense of grievance which has been long standing.

OPERATION OF THE INTERCOLONIAL RAILWAY

The submissions regarding the operation of the Intercolonial railway may now be considered.

The complaint of New Brunswick, to which the Province attaches a good deal of importance, is that in making the Intercolonial railway a part of the government railway system the Dominion broke an understanding dating from Confederation that the road would be operated in perpetuity by the government and kept separate and distinct from

all other railways.²² The very general belief that there was a definite agreement to this end does not appear soundly based. In 1870 the question of the future control and management of the Intercolonial was discussed in Parliament as one that still awaited a decision.²³ Moreover, on October 31, 1870, Sir John A. Macdonald wrote to C. J. Brydges, who was both General Manager of the Grand Trunk and a Commissioner for building the Intercolonial, discussing the manner of operating the Intercolonial railway when finished and voicing the tentative impression that “the most satisfactory move in the public interest of working the railway” would be for the Government to make arrangements with the Grand Trunk for that purpose.²⁴ In the same letter Sir John expressed the opinion that if “Brown, Mackenzie and Company” were to come into power they would seek a different solution. The expectation proved well-founded; following the accession of Alexander Mackenzie to the premiership the railway was placed in 1874 under the direct control of the Department of Public Works. This arrangement was not disturbed when Sir John A. Macdonald returned to office in 1878. In 1889 he declared that “the road can only be properly kept up, and the bargain with the Maritime Provinces can only be maintained by that road being always kept up as a government work.”²⁵ A transfer of the Intercolonial at the time of this statement could only have been made to a privately-owned road which, unless restrained by the terms of transfer, would presumably operate it on strictly commercial lines. Its merger thirty years later with other railways, also publicly-owned and under the direction of a board appointed by the Dominion Government, was an action widely different from that feared in 1889 about which Sir John Macdonald’s assurance was given—an assurance of 1889, it is to be noted, and not of 1867.

The New Brunswick Government also objects to the operation of the Intercolonial railway by the Canadian National Railways on the ground that this corporation is operating “not with reference to the rights of the Maritime Provinces under the

²² Brief, p. 120.

²³ *Dominion Parliamentary Debates* (1870), pp. 988-1013. A motion introduced by Galt called for private construction and operation. Members of the Cabinet contended construction by the Government was required by the Imperial Intercolonial Guarantee Act, but admitted operation after construction was another matter. “After the construction”, said Sir John A. Macdonald, “the government might lease—to the Grand Trunk or to the company spoken of by the hon. member for Carleton.” (p. 1011).

²⁴ *Macdonald Letterbook*, No. 14. (Canadian Archives.)

²⁵ *Debates, House of Commons*, April 29, 1889, p. 1660.

²¹ *Debates, House of Commons*, 1883, pp. 337-38.

Confederation system, but with the object of showing results in the same way as any private corporation." Under "the Confederation agreement," it is said, it was not intended that freight rates should be made so as to cover interest on the cost of construction or even to meet operating expenses, if this involved rates, "bearing too heavily upon the interprovincial or other trades of the Maritime Provinces". "The design of Confederation," it is stated, called for a local management of the Intercolonial with headquarters at Moncton. The present operation of the Intercolonial is described as a "commercial operation which is entirely contrary to the scheme of Confederation". This Commission was asked by New Brunswick to make recommendations "that the Dominion remove the Intercolonial from the control of the Board of Transport Commissioners and put into effect a schedule of rates based on what was designed at Confederation and not upon exclusively commercial considerations"; that facilities at the ports be extended and shipping arrangements made to encourage trade through the ports; and that some compensation be given the Province for non-fulfilment of obligations.²⁶

That the rates imposed by the management of the Intercolonial in 1912, and continued for fifteen years, were wholly commercial in character is beyond question.²⁷ Because this was a purely commercial rate it was held by the Duncan Commission to be a violation of an understanding reached at Confederation which it described in these terms: "That to the extent that commercial considerations were subordinated to *national, imperial and strategic* considerations the cost would be borne by the Dominion, and not by the traffic that might pass over the line."²⁸ The reduction of 20 per cent which the Duncan Commission recommended would, in its view, take care of the "national, imperial and strategic considerations", leaving the adjustment of other claims to the Board of Railway Commissioners. A reasonable inference from the Duncan Commission findings is that the reduction (which was made statutory in the Maritime Freight Rates Act, 1927) would meet

the obligations of Confederation leaving the adjustment of other rate matters to the system of rate control to which all the railways in Canada were subject; and we are confirmed in this deduction by the opinion of the Duncan Commission of the effect of its recommendation: "It separates completely considerations of national public policy from considerations of railway policy proper. It restores the original purposes of the Intercolonial Railway as interpreted by the freight structure prior to 1912, without withdrawing it from the consolidated system of National railways, a step which we think would be retrograde, and, in the end, very unsatisfactory."²⁹

With this opinion we are in complete agreement, and we think that the criticism of the New Brunswick brief to the effect that the Intercolonial railway is now run as a "commercial operation which is entirely contrary to the scheme of Confederation" is not well founded.

NATIONAL TRANSPORTATION POLICIES AND MARITIME PORTS

In view of the criticism, implied or express, in various submissions discussed in this chapter, that the Dominion has ignored the legitimate claims of Maritime ports to an adequate share of Dominion trade, we think it advisable to survey briefly the salient features of Dominion policies on railway construction and freight rates as they have related to the Maritime Provinces.

The construction of the Intercolonial railway promptly followed the union of the provinces in keeping with the provisions of section 145 of the British North America Act. The building of the road was entrusted to a government commission with Sandford Fleming as chief engineer. While the choice of the route, with its maximum mileage, was compelled by supposed military necessities,³⁰ there was confidence on the part of Fleming that through-traffic would be large from the outset which resulted in the railway being built to much higher standards than had been intended. The original estimates were \$20,000,000, but the actual cost was \$34,368,396.

²⁶ Brief, pp. 107-121.

²⁷ An explanation of this increase was given to the House of Commons by Hon. Frank Cochrane, Minister of Railways, in the session of 1912-13. He said the average increase was 5 per cent but that on particular commodities it worked out higher. Some of the members placed the increase on individual commodities as high as 40 per cent. Mr. Cochrane's defence was: "I am trying to run the Intercolonial on a business basis... I am satisfied that increases in rates are necessary." *Debates, House of Commons, 1912-13, col. 12,065.*

²⁸ *Report of the Royal Commission on Maritime Claims, p. 21.*

²⁹ p. 23.

³⁰ A more direct route would not have been acceptable to the Imperial authorities as is made clear by a despatch from the Secretary of State for the colonies to Viscount Monck dated July 22, 1868: "...Her Majesty's Government have learned with much satisfaction that the latter" (the most northerly route) "has been selected by the Canadian government. The communication which this line affords with the Gulf of St. Lawrence at various points, and its remoteness from the American frontier, are conclusive considerations in its favour, and there can be no doubt that it is the only one which provides for the national objects involved in the undertaking." *Canada Sessional Papers, 1869, No. 5, p. 8.*

The expectation that traffic would develop on a large scale over the Intercolonial was general. There was an evident expectation that ultimately freight from the middle western states as well as from Central and Western Canada would find its way to seaports by way of the Intercolonial. Thus in 1879, when the Dominion bought the Grand Trunk section from Rivière du Loup to Point Levis and added it to the Intercolonial, it was stipulated that the sum paid, \$1,500,000, was to be "devoted towards obtaining an independent railway connection from Sarnia to Chicago".³¹

The extra mileage of the Intercolonial, due to the military considerations which determined the route, was compensated for by low freight rates. A comparison of rates on the Intercolonial with those charged by the railways in Ontario and Quebec in the eighties shows variations of 20 per cent in favour of the Maritimes in classes 1 and 2 rising to 40 per cent for classes 4 and 5; and these differentials remained fairly constant until the rates were equalized with the central rates in 1912.

In 1897 the Intercolonial was extended from Point Levis to Montreal by the purchase of existing railway lines at a cost of some seven million dollars. Hon. A. G. Blair, Minister of Railways, in justifying the extension, declared that under similar circumstances any railway company would "strain every nerve and assume every reasonable responsibility in order to relieve itself of the incubus under which it laboured, the trammels under which it was operated, and to remove the blocks which prevented it reaching a point where it might fairly undertake all the business that offered, and where it might pursue under favourable conditions the object for which the railway was established. Under existing conditions, I say the Intercolonial railway cannot be successfully operated." The lack of profit on the Intercolonial had created, he said, a prejudice in the public mind against government ownership; but the true explanation was that the Intercolonial had been "cribbed, cabined and confined".³² By arrangement the Grand Trunk was to turn over to the Intercolonial at Montreal a proportion of the through-traffic to be carried by the Intercolonial to Saint John or Halifax for transport to the markets of Europe.

Although the Intercolonial railway ceased to be under a management directly responsible to the

Minister of Railways in November, 1918, freight rates on the Intercolonial did not come under the control of the Board of Railway Commissioners until 1923.

In implementing the Duncan Commission recommendation for a permanent differential of 20 per cent in favour of Maritime rates over those prevailing in the central section, the Dominion Parliament formally recognized by statute the right of the Maritime Provinces to this consideration because of the national, imperial and strategic conditions which controlled the building of the Intercolonial. The preamble to the Maritime Freight Rates Act relying on the finding of the Duncan Commission, defined in precise terms the part which the Intercolonial was intended and is still expected to play in the national economy: "Whereas . . . the Intercolonial Railway was designed, among other things, to give to Canada in times of national and imperial need an outlet and inlet on the Atlantic ocean and to afford to Maritime merchants, traders and manufacturers the larger markets of the whole Canadian people instead of the restricted markets of the Maritimes themselves."³³

This outlines in brief the Dominion railway policy in furtherance of trade between the Maritimes and the rest of Canada as expressed in the construction and operation of the Intercolonial.

The "Short Line"

In the early projects for a transcontinental railway, which finally took form as the Canadian Pacific Railway, the interests of the Maritimes, it was thought, would be served equally with those of the other parts of Canada. The eastern terminus was fixed at Callander on Lake Nipissing; there the eastern system of transportation would connect with the transcontinental and as the traffic flowed eastward the Maritimes, through the operation of the Intercolonial, would get their share. When the Canadian Pacific Railway Company was chartered its eastern terminus was also fixed at Lake Nipissing; but there were further specific provisions empowering it to extend its line to Ottawa and, to obtain, hold and operate a line or lines of railways from Ottawa to any point at navigable water on the Atlantic seaboard or to any intermediate point.

³¹ G. P. de T. Glazebrook, *A History of Transportation in Canada*, p. 213.

³² *Debates, House of Commons*, June 16, 1897, col. 4258ff.

³³ *Statutes of Canada (1926-27)* 17 Geo. V., c. 44.

The all-Canadian purposes of the project were stressed by the Government when the arrangement was before Parliament for ratification.³⁴

The failure of the hopes that traffic would flow over the Intercolonial in increasing volume was the cause of much dissatisfaction in the Maritimes. Sir Charles Tupper, in 1884, gave as the reason the excessive mileage of the Intercolonial. "The government," he said, "have been driven to the conclusion by the force of circumstances and by the practical results, that it is impossible for the ports of Saint John and Halifax to compete with the nearer ports of Portland and Boston in the United States."³⁵ To meet this condition he announced that the Government would, by the granting of subsidies, secure the building of a Short Line giving direct communication between Montreal and Saint John and Halifax. Then, he said, "we will have the complete realization of our hopes and expectations." The result was the building of the Short Line across the State of Maine, giving the Canadian Pacific railway direct access to the port of Saint John.

That the Canadian Pacific Railway adopted the Short Line policy under strong pressure from the Dominion Government, and under assurances from its members that the Intercolonial thereafter would be operated as a local road, leaving the through-traffic to the Canadian Pacific, is stated categorically in letters from Sir George Stephen to Sir John

³⁴ Thus Sir John A. Macdonald (*Debates, House of Commons*, 1881, p. 493) said: "We desire, the country desires, that the road, when built, should be a Canadian road; the main channel for Canadian traffic for the carriage of the treasures and traffic of the west to the seaboard through Canada." There was a further desire to "build up Montreal, Quebec, Toronto, Halifax and Saint John by means of one great Canadian line, carrying as much traffic as possible by the course of trade through our own country."

Sir Leonard Tilley, speaking in the same debate (p. 527) said the Government "desired that when the millions of acres in the Northwest were settled, the products of that country should be brought down to Montreal, Quebec, Halifax, Saint John or Toronto...through Canadian territory."

The fact that Sir John Macdonald at one time considered Quebec City as the right terminus for the Canadian Pacific is not generally known; at Quebec, of course, it would be easy to transfer freight to the Intercolonial. The statement indicating Quebec as the proper terminus was made in Parliament when Sir John defended the action of the Government in paying retroactively subsidies to the Quebec Government for the construction of railways from Ottawa to Montreal and from Montreal to Quebec. Upon that occasion Sir John recalled that when the original project of building the Canadian Pacific had been initiated, Callander had been selected as the eastern terminus, but that subsequently the Mackenzie Government had extended the line "to Pembroke, and in fact to Ottawa." He added: "Then, Sir, from that moment I saw, and everybody of common sense must have seen, that Quebec had, with unwonted energy, finished a railway from the City of Quebec, which everybody admitted must be eventually the Atlantic terminus of the Canadian Pacific Railway; that Quebec, taking time by the forelock, in order to give to their province an immediate connection with the Far North-West, pledging their fortune and pledging their credit to complete the road, I foresaw... that the road they were constructing must form a portion of the great national highway and be aided like the rest." *Debates, House of Commons*, 1884, p. 1565.

³⁵ *Debates, House of Commons*, 1884, p. 1480.

Macdonald in 1889.³⁶ Sir Charles Tupper's hope that the building of the Short Line would bring traffic to the Maritime ports in volume sufficient to meet expectations was not realized; and following a change in government the Intercolonial again became the agency by which it was expected trade between Canada and the Maritime ports would be enlarged. Means to this end were supplied by the extension in 1897 of the Intercolonial railway to Montreal, as already noted.

The National Transcontinental

Just six years later the Dominion Government was proclaiming that both the Intercolonial and the Short Line had failed to promote trade through Maritime ports. When the Grand Trunk sought public assistance to extend its system from North Bay into the Prairie West, the Government found in the scheme the opportunity for constructing, in conjunction with the Grand Trunk, a second transcontinental railway whose eastern terminus would be in the Maritime Provinces. Sir Wilfrid Laurier, submitting the new transcontinental policy to the House of Commons, July 30, 1903, found both the Intercolonial and the Short Line inadequate as suppliers of traffic for the Maritime ports. Replying to the Opposition's contention that Quebec should be the eastern terminal, which implied that western all-rail traffic would be transferred at that point, he rejected the contention that the Intercolonial had been built to serve as a carrier of traffic originating in the Central Provinces or brought to that region by the opening of communications with the Great West. Speaking in the House of Commons, Sir Wilfrid said: "The answer which we have to make to this objection is plain, obvious, categorical, peremptory and paramount; the answer is that the Intercolonial never was intended and never was conceived and never was built for transcontinental traffic. The Intercolonial was first conceived as a military road. It was built and located for political reasons, . . ." ³⁷ Having dismissed the Intercolonial as a suitable road for the movement of traffic from the West through Canadian ports, Sir Wilfrid went on to say that the Short Line was likewise unsatisfactory because it passed through United States territory. The Transcontinental, he predicted, would achieve the purpose which he

³⁶ Stephen wrote (Sept. 3, 1889) " . . . Tupper and Pope repeatedly said, by way of inducement to undertake the work, that, on the opening of the Short Line, the I.C.R. would be run as a local road, that the through business would all come over the Short Line, that the I.C.R. worked as a local road, would be just as useful to the people of the country traversed by it. . . ." As quoted by Glazebrook, *A History of Transportation in Canada*, p. 297. For further correspondence see Pope, *Correspondence of Sir John Macdonald*, pp. 454-57.

stated categorically: "Our intention has been . . . to force traffic in Canadian channels and through Canadian waters."³⁸ Hence the necessity for the Quebec-Moncton section of the National Transcontinental.

These purposes were set out with precision and detail in the legislation embodying the Grand Trunk Pacific Agreement.³⁹

In keeping with the agreement with the Grand Trunk Pacific the National Transcontinental railway from Winnipeg to Moncton was built to the highest standard. No expense was spared in building this road to provide the cheapest and most efficient means of carrying the wheat of the Northwest to the Canadian seaboard. Estimates were made at the time the Transcontinental enterprise was launched that it would be possible to carry wheat profitably from Armstrong (equivalent to the Head of the Lakes) to Quebec for 6 cents per bushel. Once again the old belief was revived that, given a road bed and equipment of the highest standard, an all-rail rate could be set that would compete with the lake-and-rail rate. There is much to support the view that it was this faith that underlay the whole project of the National Transcontinental. Its chief objective was the delivery to Canadian ports, for export, of Canadian wheat.

The project of a transcontinental railway operated by the Grand Trunk Pacific under an agreement with the Dominion Government disappeared in April, 1915, when the Grand Trunk Pacific refused to lease the line from Winnipeg to Moncton on the ground that it had not been completed in accordance with the agreement, the estimated cost of \$61,415,000 having been increased to \$159,881,197. The National Transcontinental line was thus left in the hands of the Dominion Government and became, on February 1, 1915, part of the Canadian Government Railways.⁴⁰ Later all the

railways that came into the hands of the government, together with the Intercolonial, were consolidated and given the name of the Canadian National Railways.

It is now apparent that the purposes, so clearly avowed, and implemented by this vast outlay of money, have been attained only in relatively slight measure. The reason for this comparative failure is a proper subject for examination by all parties affected or interested; but from this survey, it seems to us there might fairly be excluded the presumption of indifference or hostility on the part of the residents of other parts of Canada to the fulfilment of the hopes which inspired the building of the National Transcontinental.

Controversy Over Freight Rates

The failure of the National Transcontinental to act as a vast grain-spout through which western wheat would flow to Quebec and the Maritime ports focused attention for a number of years on the freight rates over the line by the Board of Railway Commissioners, the courts and the Dominion Government.

When the railway was opened for traffic in 1916, a special rate of 6 cents a bushel from Armstrong to Quebec was set.⁴¹ But, in the following year, the management which was directly responsible to the Government, raised the rate to 34.5 cents per hundred pounds (35.5 cents to Maritime ports). This rate proved to be prohibitive. In 1925-26 when the Government ordered the Board of Railway Commissioners to carry out a general inquiry into freight rates, emphasizing the importance of "encouraging to the fullest extent the movement of Canadian grain and other products through Canadian ports" the Quebec Harbour Board, supported by the Governments of the Maritime and Western Provinces,⁴² asked that the rate from Armstrong to Quebec be adjusted to the statutory Crowsnest Pass rates for the West.

The application of the Quebec Harbour Board succeeded, and the grain rate was cut from 34.5 cents per hundred pounds to 18.34 cents—the

³⁷ *Debates, House of Commons*, 1903, col. 7,660.

³⁸ *Ibid.*, col. 7,694.

³⁹ The principal provision in this agreement was: "The aid herein provided for is granted by the Government of Canada for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels. The company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and that the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports, and that all such traffic, not specifically routed otherwise by the shipper, shall be carried to Canadian ocean ports." *Statutes of Canada*, (1903) 3 Ed. VII, c. 71, sec. 42.

⁴⁰ The cost of the National Transcontinental up to March 31, 1926, was \$169,294,876 and \$21,706,864 for the Quebec bridge. This does not include \$129,972,139 advanced to the Grand Trunk Pacific Company. *Annual Report, Dept. Railways and Canals*, 1925-26, p. 82. See also Fournier: *Railway Nationalization in Canada*, p. 26.

⁴¹ According to statements made in numerous later representations to the Government (as for instance in a memorial presented to Rt. Hon. R. B. Bennett, Prime Minister of Canada, April 13, 1932, by the Conservative Members of Parliament from the Maritime Provinces) this rate had been described in Parliament by the Minister of Railways as profitable, but no reference to *Hansard* was given in these memorials, and a diligent search of the speeches in Parliament has failed to disclose any such statement.

⁴² The Maritime Provinces later withdrew in view of the passage of the Maritime Freight Rates Act.

Crowsnest Pass rate. There was at that time, as there still is, a rate of 1 cent per hundred pounds from Montreal or Quebec to Saint John or Halifax on grain coming by rail from Georgian Bay ports, and the application of the Quebec Harbour Board had been made on the assumption (shared by the Governments of the Maritime Provinces) that this 1 cent rate would also apply to grain coming all-rail from Armstrong or Port Arthur. But, after an unsuccessful appeal to the Supreme Court against the ruling of the Board of Railway Commissioners which had applied the Crowsnest Pass rates to Armstrong-Quebec grain traffic, the Canadian National refused to extend to this traffic the 1 cent rate from Quebec to the Maritime ports. Instead, by adding to the rate from Quebec to Saint John and Halifax the reduction it had been ordered to make between Armstrong and Quebec, it left the through-rate from the West to the Maritime ports the same as it had been before the ruling of the Board.⁴³

In an effort to retrieve this defeat, the Halifax Harbour Board, supported by the Maritime Board of Trade, appealed to the Board of Railway Commissioners, asking that the 1 cent rate between Quebec and the Maritime ports be applied to shipments from the West. The real point at issue was whether or not the agreement of 1903 entered into by the Government and the Grand Trunk Pacific called for an all-rail rate to the Maritimes which would not merely meet the all-rail rate to competing American ports, but would also meet the lake-and-rail rate to these ports if this were lower. The Board divided on the application, and the appeal failed.⁴⁵ The rate from Armstrong to the Mari-

⁴³ Quebec retained the advantage of the lowered rate from Armstrong ordered by the Board but it has been of little value to the port as the rate, low as it is, cannot meet the lake-and-canal rate while that is in operation, and the period between the freezing-up of the lakes and canals and the closing of the St. Lawrence is too brief to permit any considerable movement of grain through the port of Quebec. From the crop year 1927-28 to 1937-38 (inclusive) total rail receipts of grain at Quebec (including some which came by other lines than the National Transcontinental) have been less than 5,400,000 bushels.

⁴⁵ The decision was rendered on October 28, 1930. Chief Commissioner McKeown and Commissioner Norris were of the opinion that Parliament had intended in 1903 that the rate over the Transcontinental should meet all competing rates; they therefore held that the 35.5 cent rate from Armstrong to Saint John and Halifax which matched the all-rail rate from Duluth to New York should be reduced to 19.34 cents to meet the lake-and-rail rate from Fort William to New York. Commissioners McLean and Lawrence would not grant the appeal but were ready to allow a proportionate extension of the Armstrong-Quebec rate which would have given a rate of 27.5 cents to Saint John and 30.5 cents to Halifax. Deputy Chief Commissioner Vien and Commissioner Stoneman thought that the parity of all-rail rates on Canadian and American lines was all that could be given, as any reduction in these rates would immediately be met by American carriers and no diversion of traffic to Canadian channels would result. Because of these conflicting opinions, the existing rate was undisturbed.

time ports has fluctuated to meet competitive conditions, but has remained well above the figure which the Quebec Harbour Board sought to obtain in 1926. As at December 9, 1938, the rate was 26½ cents.

An appeal was taken from the decision of the Board to the Governor in Council and heard January 15, 1932. Supporting it were the Halifax Harbour Commission and the Maritime Board of Trade Transportation Commission; and opposed to it were the Canadian National Railways, the Canadian Pacific Railway and the National Millers Association. Subsequently a petition signed by a number of Members of Parliament and Senators from the Maritime Provinces was presented to the Prime Minister objecting to the case being returned to the Board of Railway Commissioners for reconsideration; the Government was asked to "declare its policy" and "render a final decision". It does not appear from the records that have been consulted that any finding was made on the appeal by the Dominion Government.⁴⁶

It is apparent from what has been said here that transportation facilities have been supplied in ample measure to look after a much larger traffic. It is also established that the engagement as to parity of grain rates to American and Maritime ports has been respected if the engagement is held to apply only to rates of the same type. All-rail rates from Armstrong to Saint John and Halifax are on a parity with similar rates from Duluth to New York and other American ports. Efforts to have the all-rail route to the Canadian ports lowered to the level of lake-and-rail rates to the Atlantic ports have failed to secure authorization from either the Board of Railway Commissioners or the Governor in Council; and it appears from the record that the reason for this refusal was an acceptance of the argument advanced by the railways that this rate would be met by the competing American railways, thus leaving matters unchanged so far as the movement of grain would be concerned. The fact must be accepted that, with free competition and parity of rates, only a proportion of Canadian wheat exports will go via the Maritime ports. The defeat in one essential respect of the greatest rail-

⁴⁶ The last public reference to the appeal appears to be that made by the Minister of Railways (Hon. R. J. Manion) in the House of Commons, February 10, 1933 (*Debates*, pp. 2011-12) in which he said that he had been "informed, though quite unofficially, that the present arrangements were altogether satisfactory to those who were asking for the appeal to be disposed of."

way venture upon which the Dominion ever embarked is the result of the economic impossibility of maintaining lower rates for grain than those offered by competing American transportation systems.

In this connection, the conclusion of the Duncan Commission which examined the problem at length should be noted:—

“We do not feel, however, that we would be exhausting our own Terms of Reference, if we did not take some notice of what we believe to be serious misapprehension in the public mind in the Maritime Provinces as to the proximate cause of the difficulties in the way of development at Halifax and Saint John.

Over a series of years, the merchandising of the grain crops of the West in the markets of the world has been built up on a delicate mechanism which cannot be suddenly or violently disturbed without creating chaos, and even disaster. The routing has been determined not by reference to railway haul entirely but by the need for concentrating the grain at a key position which commands a range of ports where—because of the quantity and variety of ocean tonnage available—the shipper can be sure of finding cargo space within the shortest possible time for the quantity and destination of his shipment, at any given moment.” (p.28.)

“We think the beneficial reaction arising to the trading and commercial interests of the Maritime Provinces by reason of grain and other products passing through their ports has been much exaggerated, although grain exports may be of considerable value as basic cargo when other freight is also available. In the character of modern shipping, there would be very definite limitations to port development based only on traffic that was, as it were, merely piloted through a given channel.” (p. 29.)

In conclusion, we have not found that any contractual, or quasi-contractual rights of the Maritime Provinces in the matter of Dominion transportation policy have been violated. Nor can the Dominion be fairly accused of having ignored the legitimate claims of the Maritime Provinces to the use of their ports for the external trade of the Dominion. As the record indicates, the people of Canada have made substantial sacrifices to divert trade through Maritime ports, and we do not consider that any compensation should be allowed for the failure of bona fide attempts to build up this trade. The fact is, with the development of the large steamship and the growth of great ports elsewhere on the Atlantic coast, the economics of transportation have weighed heavily against the ports of the Maritime Provinces. But the fullest possible utilization of the ports of the Maritime Provinces consistent with the general welfare of the Canadian economy must remain in the future (as we are convinced that it has been in the past) a prime objective of Canadian policy. The people and Governments of the Maritime Provinces will naturally seek, through whatever agencies seem best to them, such a direction of Dominion transportation policies as in their judgment is calculated to assist in the well-being of the Maritimes; just as the people and governments of other provinces will be alert to safeguard their own interests. The Commission is not concerned so much with the merits of the resultant policies as with the effect which they may have on the fiscal needs of the various provincial governments and the financial recommendations which are made elsewhere are designed to meet whatever situation may arise in the future in respect of these needs.

CHAPTER VI

OTHER NEW BRUNSWICK CLAIMS

Two further claims were presented to us in our New Brunswick hearings, both requesting compensation from the Dominion.

THE HALIFAX AWARD

The Government of the Province of New Brunswick in the brief¹ presented at the Commission's hearings in Fredericton and again in its supplementary submission² in Ottawa advanced a claim for a share of the Halifax Award made in 1877 under the provisions of the Treaty of Washington, 1871. These dates indicate that the claim arises from events which occurred many years ago and, as it was suggested³ that the claim for approximately \$1,000,000 in 1877 should bear interest, the amount involved in this claim, as estimated by New Brunswick, is nearly \$15,000,000.

The basis of the claim may be stated briefly. The Treaty of Washington, 1871, between Great Britain and the United States of America contained several provisions relating to fishing privileges on the Atlantic Coast. By Article XVIII Great Britain agreed to give to fishermen of the United States, in addition to the privileges accorded to them by the Convention of 1818, the additional liberty to—

“take fish of every kind, except shell-fish, on the sea-coasts and shores and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereunto adjacent without being restricted to any distance from the shore, with permission to land upon the said coasts, and shores, and islands, and also upon the Magdalen Islands, for the purpose of drying their nets, and curing their fish; provided that, in so doing, they do not interfere with rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.”

The right of British fishermen to the salmon and shell fisheries, and to all other fisheries in the rivers and mouths of rivers, was expressly reserved. Similar rights were given by Article XIX to British subjects in American waters, and provision was

made by Article XXXII for the extension of the Treaty to Newfoundland. In Article XXII provision was made for the determination by arbitration of the “amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII,” having regard to the privileges accorded to British subjects by Articles XIX and XXI. Necessary legislation to implement the Treaty was passed not only by the British Parliament and the American Congress, but also by the Parliament of Canada and by the Legislatures of Prince Edward Island and Newfoundland. The provisions of the Treaty dealing with fisheries became effective on 1st July, 1873 (except as applicable to Newfoundland where they became effective on 1st June, 1874).

The three commissioners appointed pursuant to the Treaty met in Halifax in the summer of 1877 for the purpose of determining the compensation payable to Great Britain in accordance with the provisions of Article XXII. By a majority they awarded to Great Britain the sum of \$5,500,000. After deducting costs and expenses Great Britain paid \$1,000,000 to Newfoundland and the balance of \$4,490,882.64 including interest, to Canada, and this sum was by Canada paid into the Consolidated Revenue Fund.

Shortly after receipt by Canada of this amount representations were made by the Maritime Members of Parliament and the Governments of the three Maritime Provinces that Canada's share in the award moneys should be paid to the fishermen or to the governments of the respective provinces, but the Dominion took the position that the moneys belonged to Canada to be disposed of as Parliament might determine. Pressure from the Maritime Provinces continued from 1879 to 1882 and late in the parliamentary session of the latter year provision was made by Parliament⁴ for payment of bonuses amounting to \$150,000 a year to fishermen and owners of fishing vessels. In 1891 the amount

¹ Brief of N.B., pp. 65-69. See also Ev. pp. 8749-79.

² Ex. 413.

³ Ev. pp. 8753-54.

⁴ *Statutes of Canada* (1882), 45 Vict. c. 18.

appropriated for bonuses was increased to \$160,000⁵ and that sum has been paid yearly since that date. The payments of bonuses up to and including the year 1936 totalled \$8,708,283, of which New Brunswick fishermen have received \$935,145.⁶

Prince Edward Island, which was a separate colony when the Treaty of Washington was signed, had become a province of Canada when the fisheries articles came into operation on July 1, 1873. When the award was made Prince Edward Island claimed treatment similar to that accorded to Newfoundland. This was refused because during the period covered by the award Prince Edward Island was a province of Canada.

Since 1882 no serious attempt has been made by the Maritime Provinces to assert a claim to the award moneys. It was stated by counsel for New Brunswick that such a claim had never before been made to a commission, and in particular that it had not been made to the Duncan and White Commissions,⁷ although at least the former of these commissions had ample power to deal with such a claim. The Province of New Brunswick alone among the Maritime Provinces advanced before us the claim that "the amount paid to Ottawa as a result of the Halifax Award does not properly belong to Ottawa but to those provinces whose shore fishing rights were involved in the Treaty of Washington". It asked that "the net capital amount, with accrued interest, should be distributed to the provinces directly concerned" and retained by them "as a trust to promote the interests of the fishermen".⁸ It was suggested in evidence that the present value of New Brunswick's claim was approximately \$15,000,000.⁹ At a subsequent hearing in Ottawa an elaborate argument on a new footing was made in support of this claim.¹⁰ It was argued that the provinces alone had legislative power to grant or withhold the liberty of drying nets and curing fish on the shore above high water mark, and, as the Treaty accorded these privileges to fishermen of the United States, New Brunswick should be compensated for this invasion of her rights.

No question can arise as to the power of Great Britain to enter into the Treaty of Washington, or the power of the Imperial Parliament to implement the Treaty. In addition to the Imperial legislation Canada, Prince Edward Island and New-

foundland were requested to pass, and actually enacted, the necessary legislation to implement the provisions of the Treaty within their respective jurisdictions. By the express terms of the Treaty (Article XXII) the amount of the award was to be paid to the "Government of Her Britannic Majesty". We think it is beyond question that the Imperial Government was free to use the amount of the award in its uncontrolled discretion, and in the exercise of that discretion it saw fit to pay \$1,000,000 to Newfoundland and the balance to Canada, in both cases unconditionally, free from any trust or direction as to the uses to be made of the moneys. It was argued by counsel for New Brunswick¹¹ that the moneys thus paid to the Dominion Government constituted a trust fund, but we are unable to find any evidence of the creation of a trust nor is it possible to discover who would be the beneficiaries of it. In the New Brunswick submission it is indeed not contended that the Province has a beneficial interest in the amount claimed, and it is difficult to understand upon what basis the Province can establish a right to be constituted the trustee of a fund held by someone else.

It was suggested in argument that the Dominion's right to retain the share of the award transmitted to it by the British Government could not be based upon any proprietary right of the Dominion in the fisheries as a decision of the Privy Council in 1898 denied the existence of such a proprietary right.¹² It was argued further that the Dominion is not entitled to this money because of its responsibility for the regulation of fisheries, as this is a responsibility specifically imposed by the British North America Act for which the Dominion is not entitled to receive financial assistance.¹³ In view of the fact that the payment by Great Britain to Canada was made without conditions, it appears to us that it is not for the Dominion to establish its right to retain this fund, but rather it is for the Province which asserts a claim to establish its right to receive a portion of it. There has been great delay in asserting the claim by the Province of New Brunswick, but we are unwilling to dispose of it on the ground of lapse of time alone.

In the submission at Fredericton the Province based its claim on the suggestion that its "shore fishing rights were involved in the Treaty of Washington".¹⁴ No precise explanation of this suggestion was given, but if it was intended to imply

⁵ *Statutes of Canada* (1891), 54-55 Vict. c. 42.

⁶ Brief, p. 67.

⁷ Ev. p. 8765.

⁸ Brief, pp. 67-68.

⁹ Ev. pp. 8753-54.

¹⁰ Supplementary brief.

¹¹ Ev. p. 8752.

¹² *Attorney-General of Canada v. Attorneys-General of Ontario, Quebec and Nova Scotia* [1898], A.C. 700.

¹³ Ev. pp. 8754-62.

¹⁴ Brief, p. 67.

that there was a provincial power to regulate shore fishing rights, there is an obvious error as the regulation of fishing is under exclusive Dominion jurisdiction. It is probable that the suggestion refers to the use of the shore for fishing purposes, such as the right to dry nets and cure fish on the shore; this matter was discussed at great length at the supplementary hearing at Ottawa.¹⁵ It was argued that a portion of the award should be given to the provinces concerned because their jurisdiction to regulate the drying of nets and curing of fish on the shore had been invaded by the provisions of the Treaty. It appears that New Brunswick has never in fact sought to regulate these matters, and the Treaty did not, therefore, interfere with the operation of any existing provincial regulations. Moreover, it is extremely doubtful whether the rights to land on the shore for the purpose of drying nets and curing fish were at the time of the Treaty of any real value. The matter was mentioned in the brief filed by Great Britain before the Halifax Fisheries Commission but little evidence concerning it was given, and the subject was entirely ignored in the concluding argument of counsel for Great Britain. Counsel for the United States argued that the concession was of no value, and that the practice of using the shore for drying nets and curing fish "belonged to the primitive usages of a bygone generation";¹⁶ these statements went unchallenged by opposing counsel. If these rights were of little value to the fishermen to whom they were granted, it follows that the damages done by the infringement of the provincial right to regulate must have been infinitesimal.

We cannot find that, upon any of the grounds argued by the Province, any claim as of right against the Dominion has been established. In so far as the provincial claim is based upon a plea for justice and fair dealing we feel that the Dominion by its bounty system has compensated

¹⁵ Supplementary brief. Ev. p. 10,153ff.

¹⁶ In concluding the argument for the United States, Hon. Dwight Foster referred to the matter as follows: "If it was proved that the fishermen of the United States did use privileges of this kind under the provisions of the Treaty of Washington, to a greater extent than before, I hardly think you would be able to find a current coin of the realm sufficiently small in which to estimate compensation for such a concession. But, in point of fact, the thing is not done; there is no evidence that it is done. On the contrary, the evidence is that this practice belonged to the primitive usages of a bygone generation. Seventy, sixty, perhaps fifty, years ago, when a little fishing vessel left Massachusetts Bay, it would sail to Newfoundland, and after catching a few fish, the skipper would moor his craft near the shore, land in a boat and dry the fish on the rocks; and when he had collected a fare of fish, and filled his vessel, he would either return back home, or, quite as frequently, would sail on a commercial voyage to some foreign country, where he would dispose of the fish and take in a return cargo. But nothing of that sort has happened within the memory of any living man. It is something wholly disused; of no value whatever." *Record of Proceedings of the Halifax Fisheries Commission, (1877), p. 216.*

those who suffered loss by the grant under the Treaty of fishing privileges to the American fishermen, namely, the Canadian fishermen with whom the fishermen of the United States came into competition and, therefore, that the Province of New Brunswick has no claim in equity. Although there is nothing to show any direct connection between the fishing bonuses and the moneys received by the Dominion from the Halifax Award, the amount of the bonuses is approximately equivalent to interest on these moneys at a rate of slightly over 3½ per cent.

We are of the opinion that the Dominion, because of its jurisdiction to regulate fisheries, is in a position to administer these bonuses. Yet they have given rise to some dissatisfaction. A subsidiary argument was advanced by New Brunswick in which it was alleged that the distribution of the fishing bonus (which New Brunswick contends bears no connection with the Halifax Award) was inequitable as New Brunswick fishermen received only 10·7 per cent of the bonus although they produced 26·1 per cent of the fish products of the Maritime Provinces and Quebec.¹⁷ This is a claim that a Dominion statute, clearly within the competence of the Dominion Parliament, dividing a sum of money among fishermen in different provinces, gave New Brunswick fishermen too little and other fishermen too much. It is thus a claim based on the alleged unfairness of Dominion policy as between fishermen of different provinces, and as such is not within our terms of reference.

COMPENSATION FOR EXCESS FREIGHT RATES 1912-1927

The Province of New Brunswick addressed to us a claim for compensation for loss caused to the people of the Province by the excessive freight rates on the railways in the Maritime Provinces between 1912 and 1927.¹⁸ It was submitted by counsel on behalf of the Provincial Government that in this instance it was acting in the interests of shippers who had sustained loss, and that any moneys paid under the claim would be held in trust and distributed to the proper parties if they could be found.¹⁹

The Duncan Commission²⁰ found that freight rates after 1912, when they had been raised, were excessively high and that such rates placed upon

¹⁷ Brief, p. 68.

¹⁸ Brief of N.B., pp. 57-59.

¹⁹ Ev. p. 8802.

²⁰ Ex. 142, Report of the Royal Commission on Maritime Claims.

the traffic a burden which was never intended it should bear. The Duncan Commission found that, owing to excessive mileage on the Intercolonial railway alleged to be due to military and strategic reasons, a 20 per cent differential from rates in Central Canada should be allowed on traffic which originated or terminated at Maritime points. The findings of that Commission as to freight rates were subsequently implemented by the Maritime Freight Rates Act²¹ (1927) and the recommendation that a 20 per cent differential should be allowed, the cost of which was to be borne by the Dominion, was put into effect. The Province of New Brunswick claimed that the preamble to the Maritime Freight Rates Act amounted to a parliamentary declaration that the rates charged for freight after 1912 were excessive and unwarranted.²²

Elsewhere in this Report²³ we have discussed at some length the validity of the contention that a claim as of right lies against the federal authority on behalf of a province for compensation for the adverse effects of federal policies upon a province or its people. For the reasons there set forth we have reached the conclusion that such claims are inadmissible. The claim by the New Brunswick Government which we are now examining would seem to come within this category. The action complained of was taken by the Intercolonial Railway, an agent of the Dominion Government.

²¹ *Statutes of Canada* (1926-27), 17 Geo. V. c. 44.

²² Brief, p. 58.

²³ See Sect. F, Ch. I.

While it may be argued that the Duncan Commission found that freight rates after 1912 were higher than it was ever intended the traffic should bear, and that the preamble to the Maritime Freight Rates Act admits this finding, it cannot be said that any contractual obligation to maintain rates at the differential applicable before 1912 ever existed. Intentions with respect to freight rates in so far as they had been declared, were declared solely as a matter of public policy, and these declarations never assumed the character of a contract. We are unable to see how this claim of New Brunswick differs in any substantial way from claims for compensation for adverse effects of the customs tariff or of federal monetary policy which we have elsewhere held invalid. We, therefore, conclude that this claim of the Province of New Brunswick should not be allowed.

Although we have denied both claims discussed in this chapter we wish to repeat what we have said previously, that claims of this sort whatever their merits have by and large indicated real fiscal need in the claimant province. This, we think, is particularly apropos of the claims discussed in this chapter. We have noted in our financial section that New Brunswick is in a difficult financial and economic position, and we have recommended changes in financial relations with the Dominion which take account of the Province's real fiscal need. Thus, while we have disallowed the claims on their merits, we have not been blind to the condition of need under which the Province labours.

CHAPTER VII

PRINCE EDWARD ISLAND CLAIMS

Two claims arising from the agreement of Confederation were presented to us in our Prince Edward Island hearings. As we have already said several times in this section of our Report, claims of this sort have often been evidence of real fiscal need on the part of the claimant province, whatever the merits of the claims themselves. In our general financial proposals we have attempted to assess the real fiscal needs of the Province and to take account of them in recommending new financial arrangements between the Province and the Dominion. We have thus attempted in a direct and more complete way to meet the fiscal needs of the Province than could possibly be done by the old method of presenting claims against the Dominion. Having done this we think that the claims presented by the Province should be examined on their merits in order that no outstanding grievance should remain unanswered and thus continue to trouble relations between the Province and the Dominion.

CONTINUOUS COMMUNICATION WITH THE MAINLAND

A claim was presented to the Commission at its hearings at Charlottetown by the Board of Trade¹ of that city concerning the alleged failure of the Dominion to implement its obligation to provide continuous communication between Prince Edward Island and the mainland. The difficulties of transportation from the Island were also stressed in the brief of the Transportation Commission of the Maritime Board of Trade.² To both of these submissions the Government of Prince Edward Island gave its support and approval,³ and, therefore, while this claim was not put forward expressly by the Provincial Government, we feel it is desirable to express our opinions concerning it.

By the Order in Council of June 26, 1873, under which Prince Edward Island entered Confederation, it was provided that the Dominion should assume the cost of an "Efficient Steam Service for the conveyance of mails and passengers, to be established

and maintained between the Island and the mainland of the Dominion, Winter and Summer, thus placing the Island in continuous communication with the Intercolonial Railway and the railway system of the Dominion." This provision has been the basis of a number of complaints by the Province against the Dominion. In the brief submitted to this Commission by the Charlottetown Board of Trade a complaint was made about the failure to provide connections with the afternoon train from Montreal during the winter months, although it was admitted that a ferry service each week-day was provided. Protest was also made because of the fact that the ferry service did not operate on Sundays. It was admitted, however, that these alleged deficiencies in service were in large measure made up by an airplane service operated by Canadian Airways Limited and subsidized by the Post Office Department.

It may be noted that, in 1901, following complaints by the Island of the Dominion's failure to provide continuous communication with the mainland, an additional annual subsidy of \$30,000 per year was paid and accepted by the Island as compensation for deficiencies in communication service with the mainland between 1873 and 1888. The statute providing for this subsidy stipulated that "such allowance to be paid and accepted in full settlement of all claims of the said province against the Dominion of Canada on account of alleged non-fulfilment of the terms of union between the Dominion and the said province as respects the maintenance of efficient steam communication between the Island and the mainland."⁴ This special subsidy of \$30,000 is still being paid and any claim for deficiencies in communication must depend upon events subsequent to 1901.

In the brief of the Transportation Commission of the Maritime Board of Trade it was suggested that the practicability of tunnel communication between the Island and the mainland should be taken into consideration. In evidence, however, the representative of the Board of Trade who presented the brief admitted that the cost of such a tunnel would involve a large sum of money. Because of the enormous cost of such a project, we cannot think

¹ Ex. 180; Ev. pp. 4375-79.

² Ex. 366, p. 20; Ev. pp. 8889-92.

³ Ev. p. 4327; Brief of P.E.I. pp. 46-47.

that a tunnel is a practical solution of the Island's difficulties of communication, nor do we think that the Island is entitled to demand from the Dominion this type of continuous communication.

A similar claim that the Dominion has failed to provide continuous communication with the Island was apparently made to the Duncan Commission, which recommended that the matter should be considered "from the point of view of placing at the disposal of the Island such satisfactory means of communication as will ensure as regular and complete a service as can reasonably be made".⁵ Following this recommendation the ferry service to Cape Tormentine was considerably improved and a daily air service between Charlottetown and Moncton was inaugurated. In addition to this there is the summer ferry service between Charlottetown and Pictou for which we understand an improved service by Wood's Island, providing especially for the carriage of motor vehicles, will be substituted beginning in 1940.

Upon consideration of the whole matter we find that the Dominion has not failed, and is not failing, to discharge its obligations under the terms of union, and that there is no basis today for a claim by the Province on this ground. A reasonable ferry service has been provided and reasonable improvements have been instituted from time to time.

CANCELLATION OF LAND PURCHASE LOAN

The Province of Prince Edward Island asked⁶ that we should recommend the cancellation by the Dominion of a loan of \$782,402.33 provided for the Province at the time of its entry into Confederation. This loan was made to allow the Province to settle a serious land question which, for many years before Confederation, had created unrest and difficulty in the Island.

In 1767 most of the lands on the Island were distributed by lot to a number of persons in Great Britain who had real or imaginary claims against the Crown. These absentee landlords leased their holdings, often at high rentals, to tenants on the Island and in most cases refused to sell their holdings to those who were eager to buy and own the lands upon which they lived. From the facts disclosed in evidence at our hearings in Charlottetown it is quite clear that this system of land tenure produced great discontent and unrest. A "Tenant

League" was formed and frequent riots took place.⁷ The Government of the Island sought to assist the tenants in buying the lands held by absentee landlords and at the time of entry into Confederation had succeeded in purchasing about three-fifths of such holdings. Some provision for assistance in completing this transaction was made a condition of the Island's entry into the union, both in the discussions at the Quebec Conference and in the subsequent negotiations leading to the union in 1873. The Order in Council admitting Prince Edward Island into the union dated 26th June, 1873, contains the following clause:—

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

Advances were made under this clause to the Island totalling \$782,402.33 and interest on this sum amounting to \$39,120.10 annually was deducted from the land subsidy payment to the Province. The advances were used to purchase the holdings of the absentee landlords, and these holdings were resold principally to tenants in occupation of the lands.⁸ It appears that the purchase payments received by the Provincial Government for a number of years after 1873 did no more than provide the interest payments due by the Province on the loan from the Dominion,⁹ and in later years, as purchase payments were completed, the annual receipts of the Province dwindled to nothing. The advances from the Dominion were accordingly never repaid, and the Province, in effect, lost most of the \$45,000 subsidy in lieu of land. Had the lands been resold on terms which would have provided for reimbursement of the expenditure of the Province plus interest on deferred payments, it seems clear that the loan from the Dominion could have been repaid and the Province could then have received its full subsidy given in lieu of public lands.

We do not think this is a matter on which any finding in favour of the Province based on legal grounds could now be made. An argument on the subject of the land purchases was addressed to both

⁴ *Statutes of Canada*, (1901) 1 Ed. VII, c. 3.

⁵ *Report of the Royal Commission on Maritime Claims*, pp. 27-28.

⁶ Brief of P.E.I., pp. 53-54.

⁷ Ev. pp. 4416-20.

⁸ Ev. p. 4551.

⁹ Ev. p. 4415.

the Duncan and White Commissions. The Duncan Commission in its report dealt with this claim as follows:—

“The claim is, of course, a very belated one, but it is advanced, as we understand it, on very broad equitable grounds rather than upon strict contract. We think it must be looked at in the general financial revision or readjustment which we are suggesting for the Maritime Provinces.”¹⁰

The White Commission in its report stated that:—

“As recommended by the Duncan Commission we have given this claim, described by the Duncan Commission as ‘a very belated one’, due weight, bearing in mind, however, that the facts mentioned were partly taken into account by Parliament in 1912 when on this and other grounds an additional annual subsidy of \$100,000 was granted to Prince Edward Island.”¹¹

It is thus clear that any hardship suffered by the Province over its land transactions has been con-

¹⁰ *Report of Royal Commission on Maritime Claims* (1926), p. 19.

¹¹ *Report of Royal Commission on Financial Arrangements Between the Dominion and Maritime Provinces*, (1935) p. 18.

sidered and provided for in previous financial adjustments between the Dominion and the Province, and we can see no sound reason for reopening the matter.

If, however, our general financial proposals are to be implemented, including the proposal that the Dominion should assume provincial debts, we feel that the Province should be relieved of this debt of \$782,402.33 to the Dominion along with all other provincial debts. In such an event, the Province could be relieved of annual interest payments on this loan, and its subsidy would be subject to the recommendations which we have made as to adjustment payments from the Dominion to the Province of Prince Edward Island. Such a result would be substantially what the Province has asked in the particular claim now under examination, but it should be noted that the relief of the Province from the debt arising from its land purchases would not be based upon any obligation of the Dominion in respect of this particular debt (an obligation which we find does not exist), but would arise as part of a general scheme under which the Dominion would assume all provincial debts.

SECTION G
ABSTRACT OF THE LEADING RECOMMENDATIONS

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ABSTRACT OF THE LEADING RECOMMENDATIONS

The Report which the Commission has prepared is the outcome of two-and-a-half years of carefully planned study. In the course of this period the Commission has held sessions in the capital of every province of Canada and at Ottawa. It has had the benefit of the collaboration of many of the provincial governments, of the evidence of federal and provincial civil servants, of representations made by a large number of organizations in every province of Canada. The Commission has given careful consideration to the requests and suggestions presented to it and has also, with the assistance of a very able research staff, instituted inquiries of its own into the financial, economic and social problems which came within the scope of its terms of reference.

The conclusions which the Commission has reached are, therefore, not sudden inspirations but the result of careful deliberation. The Commissioners consider it both remarkable and significant that, on questions on which the most divergent views are widely and tenaciously held both by public men and by private citizens, they should have arrived at complete agreement. This agreement is not the result of compromise or of give and take but reflects a sincere unanimity of judgment on the great issues which confront the nation. Its significance is enhanced by the fact that the four Commissioners are men from different regions of Canada, men who differ widely in background and in training, as well as in general outlook; and it is also significant that the conclusions which they have reached are far from being the views which any one of them held at the outset of the inquiry. Whether or not the Report will be successful in presenting clearly and forcefully to others the considerations which have carried weight with the Commission, and in convincing others of the validity of the conclusions which the Commissioners have formed, the future alone can show. But in drawing attention to the changes which have taken place in their own views, in the light of the studies which have been made, the Commissioners hope that they may predispose others to peruse both the Report and the research studies

which accompany it before arriving at their final opinion as to the merits of the recommendations which the Commission has made.

In the present summary the aim is to set out the principal recommendations embodied in the Report and to indicate briefly the reasons for them. At the heart of the problem lie the needs of Canadian citizens. These needs, whether material or cultural, can be satisfied only if all the provincial governments in Canada are in a position to supply those services which the citizen of today demands of them. The ability of provincial governments to meet the demands of their citizens depends in part on the constitutional powers which they enjoy, in part on their financial capacity to perform their recognized functions. The striking fact in the Commission's study of Canadian conditions is that many provinces, whose financial position is not the result of emergency conditions, are unable to find the money to enable them to meet the needs of their citizens. The basic problem before the Commission lies, therefore, in finding a way in which the financial position of the provinces could be improved and assured, without disastrous financial consequences to the Federal Government on whose efficient functioning all provinces are dependent. National unity and provincial autonomy must not be thought of as competitors for the citizen's allegiance for, in Canada at least, they are but two facets of the same thing—a sane federal system. National unity must be based on provincial autonomy, and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout Canada.

Some provincial governments explained to the Commission that they could pay their way, and perform their functions to their own complete satisfaction, if the Dominion were to assume this or that onerous service, or were to withdraw from this or that field of taxation, or were to increase their subsidies. But, on examination, it was found that a solution on these lines could not be generalized and that, while it might meet the needs of one or more of the provinces, it would do so at the cost of impairing the Dominion's finances, or of

prejudicing the position of other provinces. The Commissioners were, therefore, compelled to dismiss any such solution as inadequate.

The Commission did, however, find one onerous function of government which cannot, under modern conditions, be equitably or efficiently performed on a regional or provincial basis. This function is the maintenance of those unemployed who are employable and of their dependents. In reaching this conclusion (which is amply supported by the Evidence and the research studies) the Commission merely confirmed conclusions which had been reached by earlier Commissions.¹ So firmly is the Commission convinced of the validity of this conclusion that, even when it comes to consider the situation which will arise if its main recommendations are not implemented, it proceeds on the assumption that the relief of the unemployed who are able and willing to work will become a federal function.

Another function closely analogous to that of relief for employables is that of assistance to a primary industry (e.g., agriculture) in the form of operating cost advances. When relief is on a small scale the responsibility can be borne without difficulty by the province. But in the event of widespread disaster with which a province is unable to cope without assistance from the Dominion, or in the event that the Dominion by such means as an exclusive marketing organization has already established effective control of the industry concerned, the Commission recommends that the Dominion should assume direct administrative and financial responsibility rather than render indirect assistance by way of advances to the provinces affected.

The Commission's treatment of these expensive functions of government may be contrasted with its treatment of another expensive function, namely the payment of non-contributory old age pensions. As the Federal Government is already paying as high a proportion of their cost as it can reasonably pay without assuming control of the administration of the pensions, and as the Commission was convinced that it is more satisfactory that the provinces should continue to administer non-contributory old age pensions, it could not recommend any further financial help to the provinces in this connection. But the Commission is of the opinion that if non-contributory old age pensions were to be superseded or supplemented by a contributory system the latter should, for various reasons, be under the control of the Dominion.

¹ The National Employment Commission and La Commission des Assurances Sociales de Québec.

There is, however, an important financial burden of which provincial governments can be relieved without any sacrifice of autonomy. This is the deadweight cost of their debt service. The burden taken up by the Dominion, if it were to assume this deadweight cost, would be less than the burden of which the provinces were relieved because, as maturities occurred, the debts could be refunded more advantageously by the Dominion than by the provinces. To this extent a saving would accrue to Canadian taxpayers. The Commission has, therefore, recommended that the Dominion should assume all provincial debts (both direct debts and debts guaranteed by the provinces) and that each province should pay over to the Dominion an annual sum equal to the interest which it now receives from its investments. The reason for this proviso is that it would not be expedient that the Dominion should take over liability for a debt which represented a self-liquidating investment retained by a province. Conditions governing future provincial borrowing are outlined in detail in the Report.

In the case of one province this recommendation as to debt requires an important modification. The provincial debt of the Province of Quebec is low in comparison with the per capita debt of other provinces, and is an unusually low fraction of the combined municipal and provincial debt of the Province. To meet this situation, which has arisen through the policy of this Province in imposing on municipalities onerous functions which are performed elsewhere by provincial governments, the Commission has recommended that the Dominion should take over 40 per cent of the combined provincial and municipal net debt service in Quebec.

If the provinces are relieved, in accordance with this recommendation, of the deadweight burden of their debt, it is not unreasonable that they should surrender to the Dominion the subsidies, whatever their character, which they now receive. Prince Edward Island alone would give up subsidies more than equivalent to the deadweight cost of its debt, and, as will be seen, this apparent loss will be more than made up in other ways. The abolition of the provincial subsidies will be in itself no inconsiderable reform, for their history (which is fully examined in the Commission's research studies) is long and tortuous. The subsidies have been based on no clear principles and it has been impossible to say whether or not different provinces have received equal treatment. Specious reasons have often been advanced, and not infrequently accepted, in support of readjustments in

order to avoid the full implications of genuine reasons, and negotiations between the Dominion and the provinces have lacked the candour which is desirable in a democracy.

Up to this point the Commission's proposals, enormously beneficial as they would be to the provinces, would be very onerous to the Dominion. The Commission had, therefore, to consider how to provide the Dominion with sources of revenue which would enable it to carry its new burdens. This inquiry (as will be seen) was combined with the consideration of efficiency and equity in taxation specifically entrusted to the Commission. There could be no question of increasing the legal taxing powers of the Dominion since these are already unlimited. But the provinces, in return for the benefits which they would receive, and for further payments which the Commission finds it necessary to recommend, should be prepared to renounce some of the taxes which they employ (or are entitled to employ) at present. The Dominion, for its part, should be able and willing to refrain from competing with the provinces in respect of sources of revenue left to them and should leave the provinces free to collect these revenues in whatever way appears to them most efficient even if the method of indirect taxation should be involved.

Just as the assumption of provincial debts by the Dominion will lead to savings in interest from which taxpayers will benefit, so there are several taxes from which, if they are under unified control, as great a revenue can be obtained as at present with less hardship to the taxpayer. What is more important, a reorganization of these taxes, of a character which is possible only if they are under unified control, can remove many hindrances which in the recent past have been detrimental to the expansion of the national income (i.e., to the sum total of the incomes of all citizens of Canada). As this income expands, as the result of what may be fairly termed greater efficiency in taxation, the same revenue as at present can be obtained by taxes imposed at lower rates than those of today.

The first of the taxes which the Commission recommends that the provinces should renounce is the tax on personal incomes. Not all provinces impose this tax. Those which get most revenue from it are often taxing incomes which other provinces think that they should have a share in taxing, because they are in part at least earned in them although they are received in those provinces in which investors live, or in which large corporations have their head offices. Nor is this all. The general

equity of the whole Canadian tax system—and the Commission has been instructed to concern itself with equity as well as with efficiency in taxation—requires that the tax on personal incomes, which is one of the very few taxes capable of any desired gradation, should be used to supplement other taxes and should be uniform throughout Canada.

The second form of taxation which the Commission recommends that the provinces should forgo includes those taxes imposed on corporations which individuals or partnerships, carrying on the same business as the corporation, would not be required to pay, and taxes on those businesses which only corporations engage in. They include, therefore, the tax on the net income of corporations and a multitude of taxes devised to raise revenue from particular classes of corporations which a province cannot conveniently subject to a tax on net income. They do not include bona fide licence fees, the power to impose which would remain with the province. These provincial corporation taxes are peculiarly vexatious to those who pay them and particularly detrimental to the expansion of the national income. The cost of tax compliance is high. The tax is often payable by a corporation which has no net income. The tax is very likely to be a tax on costs rather than on profits. These taxes are also a frequent source of interprovincial jealousy. Great benefits may be expected if they are swept away and the equivalent revenue raised by federal taxes chiefly on corporate net income.

To ask the provinces to give up the entire revenue which they now derive from taxing corporations would, however, intensify a grievance of which the Commission received complaint in more than one province; for the Dominion would receive a tax on income which was in part derived from the depletion of irreplaceable natural wealth. It is clearly desirable that revenue of this character should be used for developmental work which will compensate for the damage which has been done to the resources of a province. The Commission has, therefore, recommended that the Dominion should pay over to the province concerned 10 per cent of the corporate income derived from the exploitation of the mineral wealth of the province. When what is required is the conservation of natural resources by maintaining their productivity, rather than compensation for depletion by new investment, the provinces are in a position to use their own taxing power.

The third tax which the Commission recommends that the provinces should forgo consists of various forms of succession duty. These differ from the

income taxes in that they have not hitherto been used by the Dominion: but they are taxes to which the Dominion might at any time be compelled to resort. The use made of them by the provinces has given rise to bitter complaint because the provinces have not made equitable arrangements with one another so as to tax each item in an estate in one province only. The differences in rates between provinces, and the dangers of double taxation, seriously distort investment in Canada. The potential competition between provinces desirous of attracting wealthy residents has made it impossible to use these delicate instruments of taxation as a means for giving effect to social policies. Many provinces feel aggrieved because estates which have been built up by investment throughout the whole of Canada are taxed, not for national purposes, but for the benefit of strategically situated provinces.

If the Commission's recommendations stopped at this point, they would, instead of being enormously beneficial to the provinces, leave some of them in a parlous financial position. After the provinces had, on the one hand, been relieved of the cost of unemployment relief and of the deadweight burden of their debt, and had, on the other hand, given up their right to impose personal income taxes, corporation taxes and succession duties, they would find themselves with far less variable expenditures than in the past and with less variable revenues. It is, therefore, possible to form an idea of the size of the probable surplus or deficit of each province. There is a purpose in making this calculation for, if a province were left with a prospective annual deficit, it would not be able to provide for the reasonable needs of its citizens unless it were able, without causing hardship, to increase the revenue which it derived from the sources remaining at its disposal, or to reduce its expenditures while still providing services equivalent to those provided by other provinces.

At this point there must be a refinement in the calculations. What is significant for the purposes of the Commission is the size of the surplus or deficit which would exist in a province if it were to provide the normal Canadian standard of services and impose taxation of normal severity. It is not the services which each province is at present providing, but the average Canadian standard of services, that a province must be put in a position to finance. It is not the revenue which its taxes yield at their present level which matters, but the revenue which it would derive from them if its people were as heavily taxed as

Canadians in general. Just as in the case of debt it is necessary to take account of the fact that some provinces are more accustomed than others to provide services for their people through municipalities or other agencies instead of directly. The Commission has, therefore, attempted to compute, province by province, what the cost would be if the province and its municipalities taken together were to provide services on the Canadian standard. Adjustments have been made for the cost of the developmental services appropriate to the province, and for the weight of taxation in the province. The result has been that the Commission has been able to make a recommendation as to the amount, if any, which each individual province should receive from the Dominion annually to enable it to provide normal Canadian services with no more than normal Canadian taxation. The calculations involved were not easy and presented peculiar difficulties in Quebec because of the extent to which educational and social services in that Province are provided, not out of taxation, but by the Church. But the calculations have been made and the Commission recommends that each province found to be in need of such a payment should receive it by way of an annual National Adjustment Grant from the Dominion. This grant as originally fixed would be irreducible. The Commission recommends, however, that National Adjustment Grants should be re-appraised every five years. For special emergencies, which might arise in respect of any province (and which exist in one province today), special provision should be made, as it would be undesirable either to fix an annual grant in perpetuity on the basis of conditions that are transitory, or to fail to provide for serious emergencies. The Commission believes that these provisions will permit of the necessary elasticity in the financial relations between the provinces and the Dominion which has been lacking in the old subsidy system.

In order to assure all provinces of fair and equal treatment in the matter of grants, and in order to assure the general taxpayer that any new or increased grant is justified on the basis of the comparative need of the province concerned, it will be essential that all requests from the provinces with respect to grants should be examined as scientifically and objectively as possible. The Commission, therefore, recommends the establishment of a small permanent commission (which may be called the Finance Commission), assisted by an adequate technical staff, to advise upon all requests for new or increased grants, and to re-appraise the system of grants every five years.

The recommendations which have been described would, if implemented, safeguard the autonomy of every province by ensuring to it the revenue necessary to provide services in accordance with the Canadian standard. Every provincial government (including those whose position will be so good as to make adjustment grants unnecessary) would be placed in a better financial position than it is in today. And the financial position of every province would be immeasurably more secure than it is today. The Commission looks on this as its primary achievement. It is convinced that this fundamental problem must be faced and it has not been able to discover any alternative way in which it could be solved. The recommendations which the Commission has made must be judged as a whole. They cannot with fairness either to the provinces or to the Dominion be considered in isolation for any one of them taken alone might produce grotesque results.

At what cost, it may be asked, will the provinces have secured these advantages? There will be a certain cost to the Dominion and, therefore, to the Dominion's taxpayers. The taxes forgone by the provinces, if replaced by Dominion taxes of equal yield, would not provide all the money which the Dominion will probably be called on to pay under the Plan. It is necessary to say "probably" because the Dominion, unlike the provinces, will be left with highly variable expenditures (e.g., those on unemployment relief) and variable revenues. The long-run effects of the proposed arrangements should, as has been explained, be to increase employment and to increase the national income and, therefore, the national revenue. But the expectation of the Commission is that the Dominion, in the first instance, will have to increase taxes somewhat. Even without increasing tax rates it will obviously increase the taxes payable by citizens of those provinces which have no personal income tax today. It is hardly necessary to add that, in view of the end to be attained, the price seems low.

There will, of course, be adjustments. At every stage of the Commission's inquiry it has endeavoured to frame recommendations which, if implemented, will avoid the minor hardships or inequities that might result if the measures which have, perforce, been somewhat crudely described in this summary, were crudely applied. One or two examples will be given here. Others will be found in the Report itself. But the whole spirit of the Report would suggest that analogous adjust-

ments should be made, even if the Commission has not thought of them and, therefore, has not mentioned them.

If the administration of a service or the collection of a tax is transferred from one government to another it is desirable that those who have administered the service or collected the tax in the past should continue to do so in the future and that their skill and experience should not be lost to the nation nor their personal expectation of continuous employment disappointed. The Commission has, therefore, recommended that the Dominion, if it takes over a provincial function, should continue the employment of those previously employed by the provincial government concerned. This recommendation is particularly important when questions of language are involved.

If a tax now levied by one government is to be replaced by a tax levied by another the new tax should be adjusted to the circumstances of the people on whom it is to be imposed, and advantage should be taken of the opportunity to design the new tax as equitably as possible. Thus, if the Dominion collects succession duties, it is important that the administration for their collection should be decentralized and that small estates should be rapidly cleared without correspondence having to go through Ottawa. And the taxation scales should be arranged so as to tax an estate more lightly when it is divided among many children.

If legislative powers (e.g., in relation to unemployment insurance) are to be conferred on the Dominion in addition to those which it now enjoys, it is important that they should be strictly defined so as to avoid the danger of their being extended by interpretation in unexpected ways which might interfere with the civil code in Quebec, or with the corresponding interests of other provinces.

This brief summary would lose its way among details were it to attempt to enumerate the recommendations—some of them important recommendations—which the Commission has felt bound to make in its Report. What has been said should indicate the structure of the Dominion-provincial financial relations which would, in the opinion of the Commission, characterize a healthy federal system in Canada. Before passing on to mention a few of the subsidiary recommendations, it may be worth while to point out that the Commission's financial proposals are, in terms of the economic life of 1939, very similar to what the provisions of the British North America Act were in terms of the economic life of 1867.

In the first place the Dominion assumed provincial debts in 1867, as it would do today were effect to be given to the Commission's recommendations. In the second place the Dominion was expected to exercise in 1867 the chief taxing power of that time (customs and excise) as, under the Commission's proposals, it is expected to exercise other chief taxing powers of today (the personal income tax, corporation taxes and succession duties). In the third place the Dominion was to pay subsidies in 1867 to enable the provinces to perform the functions entrusted to them without having to resort to oppressive taxation. Under the Commission's proposals the Dominion would pay National Adjustment Grants for precisely the same purpose. It is true that a different measure of the amount to be paid to each province would be adopted now than that which was then considered appropriate. But this difference is more apparent than real, for it arises from the inequalities of wealth which have developed as between the provinces. Equal per capita subsidies did conform in some rough approximation to the fiscal needs of 1867. They would not do so today. The Commission hopes that the methods which it has employed for calculating the appropriate adjustment grants will be able to accomplish what the per capita formula was intended to achieve in 1867, for, though the means have changed, the end remains the same, namely the maintenance of provincial governments which can provide the necessary services for their people.

It will be noted that, in the recommendations which have been summarized, nothing has been said of one of the major problems of Canadian governmental finance—the problem of municipal finance and of the burdens which have been placed on real estate. On this subject the Commission received numerous representations and was made fully aware of the seriousness of the situation. But the Commission was in a peculiar position, in so far as the municipalities were concerned, for they are the creatures of the provinces in which they are situated and their financial powers and duties are such as the province chooses to confer on them. The financial plan which has been described has taken account of municipal expenditures and taxation as part of the provincial picture and it will, if it is implemented, have very important indirect effects on municipal finance. It will relieve the municipalities of their share in providing relief for employables and their dependents. It will put every provincial government in a better position than it is in today for extending such aid as it

may think fit to its municipalities, whether by relieving them of the cost of services which they now perform, or by contributing financially to the cost of these services. In the case of the Province of Quebec, as has been explained, the Dominion would assume a portion of the municipal debt. In every province the way would be cleared for dealing (if the province so desires) with municipal debts generally in the same sort of way that the Commission has recommended should be adopted for provincial debts. Such a step would, in turn, facilitate much needed reforms in the structure of municipalities, particularly in the great metropolitan areas. But the future of the municipalities lies in the hands of the provinces.

One or two illustrations must suffice to show that other matters have come under consideration which are not closely related to the main financial questions. The Commission did not consider that it lay within its terms of reference to deal with the desirability, or undesirability, of the Dominion having power to implement its treaty obligations (otherwise than under section 132 of the British North America Act), if implementation would require legislation on topics within the exclusive jurisdiction of the provinces. But the Commission did consider that it could recommend that the Dominion should have power to implement conventions of the International Labour Organization. These partake of the character of international legislation. Many of the parties to them are countries with civil codes not dissimilar to that of Quebec; others are countries with English common law. Some are Catholic; others Protestant. In these circumstances it seemed that the rights of particular provinces were adequately protected against any encroachment of the federal power. And if international normative legislation of this character is desirable it is through the Dominion Government that Canada must become a party to it.

In respect to marketing legislation great difficulty has been experienced in framing Dominion and provincial legislation which will cover the whole field, even when the wishes of Dominion and provinces are identical. The Commission has sought to remedy this situation by recommending that the Dominion and the provinces should have concurrent legislative powers to deal with the marketing of a named list of natural products to which additions may be made from time to time by common consent.

Nor is this the only instance in which it has seemed appropriate that a power of delegation

should form part of Canadian federal relations. The Commission has recommended that this power should be quite general and that the Dominion should be able to delegate any of its legislative powers to a province, and that a province should be able to delegate any of its legislative powers to the Dominion. Delegation should provide a convenient means of dealing with specific questions as they may arise from time to time without limiting in advance the power of either the Dominion or the provinces. In some instances one or more of the provinces might be prepared to delegate powers to the Dominion while other provinces were unwilling, and in such cases the advantages of a power of delegation over constitutional amendment would lie in flexibility.

The Commission has come to consider the transportation problem of Canada one of the problems which cannot be solved without close collaboration between the Dominion and the provinces. It realizes, however, that its own technical competence is slight in this field and has, therefore, confined itself to discussing the issues which will have to be faced, in the hope of doing something to clarify the problem of jurisdiction. It points out, however, the great advantage which might be derived from a Transport Planning Commission which would be concerned both with planning transportation developments in a broad way, and with facilitating the co-operation between the Dominion and the provinces in transportation matters which is necessary for the taxpayer.

While the Commission believes that new governmental machinery should be kept at a minimum, it nevertheless considers that special provision should be made to facilitate co-operation between the Dominion and the provinces. In an earlier day, when the functions of government were relatively few and administrative organization relatively simple, it may have been possible for Dominion and provincial governments to operate largely in watertight compartments. But with the great expansion of governmental functions, and the growing complexity of administration, it is no longer possible to do this without serious loss of efficiency and economy in government. Co-operation between the autonomous governments of the federal system has today become imperative. The Commission recommends as the principal means to this end that Dominion-Provincial Conferences, which have hitherto met at infrequent intervals, should now be regularized, and provision made for frequent meetings, say every year. It urges further that the Conference should be provided with an

adequate and permanent secretariat for the purpose of serving the Conference directly, and of facilitating co-operation between the Dominion and the provinces in general.

The special claims advanced by certain governments have been considered in detail in the body of the Report. Although these claims will have little financial importance if the Commission's main financial proposals are implemented, it was deemed advisable to examine them on their merits and to report upon them in view of the desirability of clearing up old grievances in any general settlement between the provinces and the Dominion.

Many complaints about the working of the federal system were also presented to the Commission by private organizations. The Commission viewed such complaints as important evidence, but in many cases their subject matter fell outside its terms of reference.

* * * *

In conclusion of this summary it remains to add that the decisions underlying the recommendations contained in the Report were reached before the outbreak of War. The Commission decided, after deliberation, to complete the Report exactly as it would have been completed had War not been declared. Although it is true that the War is certain to produce great changes in the structure of the Canadian economy, it is equally true that the nature and extent of these changes, dependent as they are on the length and intensity of the struggle, cannot be predicted at the present time. The basic recommendations of the Commission concerning the re-allocation of the functions of government and the financial relations of the Dominion and the provinces were framed with the possibility of emergencies in mind and are, it is hoped, sufficiently flexible to be adjusted to any situation which the War may produce.

Of the subsidiary recommendations many are concerned with matters not in the least likely to be affected by the strains and stresses of War, while some may require modification in the light of events. The need for some action designed to enable the people of Canada to throw their whole weight into any great national effort, such as the struggle to which they have committed themselves, and at the same time to ensure the smooth working of the social and educational services on which the welfare of the mass of the people depends, is far greater and far more urgent in time of War and of post-War reorganization than it is in time of peace. And it is precisely to these two main objectives that the chief recommendations of the Commission have been directed.

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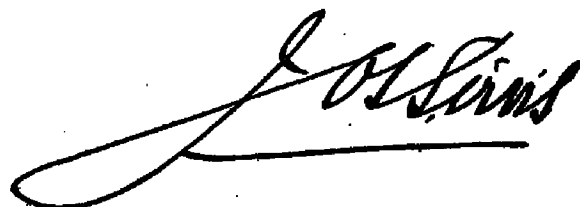
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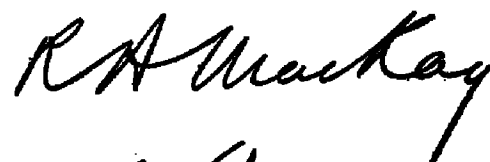
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It has been the aim of the Commission to frame proposals which will, if implemented, place jurisdiction over the social services in the hands of the governments most likely to design and administer them, not merely with the greatest economy and the greatest technical efficiency, but with the regard for the social, cultural and religious outlook of the various regions of Canada, which is essential to genuine human welfare. The financial proposals have been designed to enable every province of Canada to rely on having sufficient revenue at its command in war-time as in peace-time, in years of adversity as in years of prosperity, to carry out the important functions entrusted to it. They are also designed to produce this result while leaving the fiscal powers of the Dominion as wide in fact as they have always been in law, so that it may direct the wealth of the nation as the national interest may require. If some such adjustment of Canadian economic life appeared sufficiently urgent to lead to the appointment of the Commission in time of peace, how much more urgent is it in time of war? How much more urgent will it be in the critical transition from war to peace again?

The Report must face the verdict of public opinion and opinion is not the same in war as in peace. The Report was prepared with peace-time opinion in mind. But it is the hope of the Commission that the gravity of the hour will dispose people in all regions of Canada to take serious thought of their country's welfare and to look at the broad lines of the recommendations, keeping matters of detail in rational perspective. For the Report, while taking account of possibility of war as of any other emergency, was framed with a view to a future which will, it is hoped, be in the main one of peace, and it is on its merits with respect to this supposedly peaceful future that the Report must stand or fall. The Commission does not consider that its proposals are either centralizing or decentralizing in their combined effect but believes that they will conduce to the sane balance between these two tendencies which is the essence of a genuine federal system and, therefore, the basis on which Canadian national unity can most securely rest.



Chairman,


Alex. Skelton,
Secretary.

Adjutor Savard,
French Secretary.

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