

MUNICIPAL GOVERNMENT IN A NEW

CANADIAN FEDERAL SYSTEM

Report of the Resource Task Force on

Constitutional Reform

Federation of Canadian Municipalities

Ottawa

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May, 1980



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OFFICE OF THE MAYOR

April 23, 1980

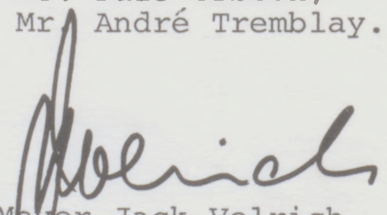
JOHN J. VOLRICH
MAYOR

To the Members of the Executive
Federation of Canadian Municipalities

I am transmitting herewith the final report
of the Special Committee on Constitutional Reform.

This report is submitted for the consideration
of the Members of the Federation of Canadian Municipalities
at its Annual Meeting to be held June 8th to June 11th, 1980
in Halifax.

If I may add a personal note, this report re-
presents an excellent presentation on a difficult, complex
subject and I should like to extend my sincere thanks to
the very able gentlemen who made up the special Resource
Group which has been responsible for the preparation of
this report, namely Dr. Edward McWhinney, Dr. Dale Gibson,
Mr. Lionel Feldman, Mr. Yves Beriault and Mr. André Tremblay.


Mayor Jack Volrich,
Chairman,
Special Committee on
Constitutional Reform.

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SUMMARY OF "MUNICIPAL GOVERNMENT IN A CANADIAN FEDERAL SYSTEM",
A REPORT OF THE TASK FORCE ON CONSTITUTIONAL REFORM

The Report Municipal Government in a New Canadian Federal System is a response to the revived "Great Debate" on the future of the British North America Act of 1867, as amended, and of the Canadian federal system generally, itself initiated as a direct consequence of the election of the Parti québécois Government in Quebec in the November, 1976, general elections. With research and study groups on the constitution launched at both the federal and the provincial governmental levels, it seemed likely that among the specific projects for constitutional change emerging in the immediate future would be proposals for comprehensive, as distinct from piecemeal or incremental, change, leading on to entirely new federal constitutional charters involving of necessity re-examination of the constitutional rôle, status, and powers (legislative and financial) of the municipalities as the third level of government within Canadian Confederation. Even without the stimulus to immediate, short-range proposals for constitutional change in response to the conceived Quebec political crisis of the late 1970's, the rapidly changing situation of the municipalities and of local government generally in the post-World War II era--the marked increases in population as a result of the flight from rural areas and of the mass waves of immigration to Canada, the new social and economic problems going with the augmented numbers and an increasingly plural, multi-lingual and multi-cultural urban community--meant enormous strains upon largely static municipal financial resources. There was also a crisis in decision-making power, flowing from the fact that existing municipal constitutional-legislative competences and their established techniques of social control through law could only with difficulty encompass the new social problems and the new forms of civil and criminal delinquency that accompanied them. It would thus have been inevitable, even without the Quebec crisis, that Canadian municipalities should undertake some review of their contemporary rôles and missions, as distinct from those originally envisaged and constitutionally provided for in the British North America Act at the time of its adoption in 1867; and also some critical examination of the extent to which the legislative competences and the economic resources effectively allocated to the municipalities more than a century ago respond to or fall far short of the present responsibilities. The election of the Parti québécois Government in November, 1976, and the launching of the Quebec referendum campaign, and the consequent acceptance by all Canadians of the obligation to re-examine the intellectual basis of our Confederation and the fundamental political compromises of contending social

forces and interests inherent in it, simply accelerated a process of constitutional review that, in the case of the Canadian municipalities, could not be postponed for too long. [The Federation of Canadian Municipalities set up a Special Committee on Constitutional Reform to formulate concrete proposals on the future rôle of the municipalities in a new or "renewed" Canadian federal system, and the Special Committee, in turn, formed an "expert" advisory research committee -- named the Resource Task Force on Constitutional Reform -- in January, 1979, charged with the task of preparing a scientific report that would set out the existing situation of municipalities within the Canadian federal system, identify the main objections raised against the existing system and also the points of weakness or strain, and finally canvass the main alternative options for change available for the future with some attempts at quantification, as far as possible, of the differing degrees of social cost. The Report, officially presented in May, 1980, and discussed at the Annual Meeting of the Federation held in Halifax in June, 1980, is the collective work of a group of scholars and specialists in Constitutional and Local Government Law, and it is broadly representative of the two legal systems, Civil Law and Common Law, and also of the main regions of the country. The collective responsibility of the Resource Task Force covers the scientific conclusions and recommendations set out in the Report, though individual members have assumed responsibility for particular research chapters and documents according to their individual expertise.

The constitutional plan of 1867 was [to allocate responsibility for local government to the Provincial spheres.] In terms of the British North America Act of 1867, the Municipalities are the creatures of the Provinces, and their powers to legislate and to impose taxes and raise revenues must therefore be derived, by constitutional indirection, from Provincial powers. From the viewpoint of the municipalities, this has meant that the quest for a sphere of legislative autonomy and of fiscal autonomy free from the possibility of arbitrary alteration or recall, and without which rational and orderly community planning and development on some continuing, long-range basis becomes difficult if not impossible, must be pursued through the Provincial governments. In part because of Canadian Supreme Court jurisprudence as to intergovernmental delegations and transfers of constitutional competences, and in part because of inflexible administrative attitudes at the Provincial governmental levels, such legislative and financial autonomy for municipal government on a guaranteed, term-of-years basis has proved difficult to attain. [While the federal Government in recent years has shown itself as sympathetic to municipal governmental decision-making concerns in the light of the sharply accrued social and economic problems and conflicts inherent in the larger urban concentrations, federal government ventures in dealing directly and bilaterally with the municipalities through the creation of a special federal Ministry and through the use of the federal Government's general constitutional powers in order to make financial grants directly to the municipalities without the intervention of the Provincial Governments have aroused strong Provincial opposition and produced a federal Government retreat when directly challenged or objected to by the Provinces.] The federal Government view seems to have been that, in venturing into such fields, it was doing what comes naturally in terms of cooperative,

intergovernmental decision-making in what are so often complex community problems involving more than one level of government at the same time. The municipalities would no doubt have agreed that, in cooperating with the federal government without using the intermediary of the Provincial Governments, they were merely acting to fill a vacuum in community decision-making created by the failure of the Provincial Governments themselves to move affirmatively with their own comprehensive programmes on their own positive authorizations to the municipalities to act on their own account. It must be noted, in this regard, that by comparison to other, more generally modern federal systems like that of West Germany, or to continually "modernized" constitutions like that of the United States, the B.N.A. Act of 1867 has significant gaps both as to the possibility and also the concrete machinery for intergovernmental co-operation involving the three levels of government (federal, provincial, municipal), or some of them, at any one time, and also as to the constitutional guarantee, on some more long-range and continuing basis, of legislative autonomy and financial autonomy to the municipalities, and even institutional autonomy (meaning here the ability to revise or amend, on one's own initiative, the basic municipal charter).

The three municipal and local governmental autonomies referred to—law-making, financial, institutional—could be constitutionally effected in several different ways. They could be entrenched in the federal constitutional charter, or else entrenched in Provincial constitutional charters, or finally realized at both federal and Provincial levels, in complementary ways. What seems important is that it be done, in one way or another, in a new or "renewed" Canadian federal system; and this is the main recommendation in the Report of the Resource Task Force. In fact, and on the basis, as a scientific committee, of recommending, if possible, in a way that involves no unnecessary constitutional escalation in terms of disturbance of existing institutions and processes within the constitutional-governmental system, the Resource Task Force recommends a two-level approach that will involve entrenchment of the general principle of local government and of the three local government "autonomies", in a new or "renewed" Canadian constitution, and that will have the concrete implementation and specification of such "autonomies" in Provincial constitutional charters, or in the general Provincial constitutional systems in the absence of a specific Provincial constitutional charter. The same results could, of course, be achieved another way by putting everything in a new or "renewed" federal constitution -- both the general principles and also the detailed specifications; and that would involve, of course, a frank and uninhibited constitutional acceptance of the existence of the three distinct levels of government--federal, provincial and municipal--each of these being autonomous within its own federal system as a whole in deference to the principle of federal comity. As already indicated, the Report's authors have not felt it necessary to go as far as that for present purposes; nor have they actively canvassed, in their recommendations, the possibility of constitutionally elevating to the rank of City-Provinces in their own right, certain of the great contemporary urban concentrations in Canada, interesting though such possibilities might be in a Canadian context in the future, and demonstrably successful though they have certainly been in comparative federal constitutional experience in the post-World War II era.



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April 23, 1980

TO: Members of the Federation of Canadian Municipalities and Delegates to
the 43rd Annual Conference

It is with pride and pleasure that I accept the final report of the Resource Task Force on Constitutional Reform. I am confident that it will serve as an outstanding basis for discussion of the Constitutional reform issue at our forthcoming Annual Conference in Halifax.

My colleagues on the Executive Committee and I extend sincere thanks to the members of the Resource Task Force and to its able Chairman, Dr. Edward McWhinney for their excellent work on the Federation's behalf. To Mr. Dale Richmond, who prepared Chapter 5 of this report, our special thanks are due.

A handwritten signature in dark ink, consisting of a large, stylized loop followed by a series of smaller, connected loops and a final horizontal stroke.

C. J. Purves,
President of the
Federation of Canadian Municipalities
Mayor of Edmonton

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Federation of Canadian Municipalities
Federation of Canadian Municipalities

April 11, 1966

10: Members of the Federation of Canadian Municipalities and
the 13th Annual Conference

to a with pride and pleasure. The 13th Annual
the Research Task Force on Constitutional Reform. I am confident
will serve as an outstanding basis for discussion of the Conference
reform issue at our forthcoming Annual Conference in Halifax.
In addition to the Executive Committee and I extend
thanks to the members of the Research Task Force and to the
Mr. Robert McInnes for their excellent work on the Federation's
to Mr. John Richmond, who prepared Chapter 1 of this report, and
thanks are due.



J. L. McInnes
President of the
Federation of Canadian Municipalities
Office of the President

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INTRODUCTION

MUNICIPAL GOVERNMENT AND GENERAL CONSTITUTIONAL CHANGE IN CANADA

The Resource Task Force on Constitutional Reform was established by the Federation of Canadian Municipalities in January, 1979, with Yves Bériault of Montreal, Lionel D. Feldman of Toronto, Professor Dale Gibson of Winnipeg, and Mayor Brian Smith of Oak Bay, B.C., as members, and with Professor Edward McWhinney, Q.C., of Vancouver as Chairman. Professor André Tremblay of Montreal was added to the Resource Task Force at its meeting in Quebec City in June, 1979. Brian Smith resigned in December, 1979, following his election to the Legislature of British Columbia and his subsequent appointment as Provincial Minister of Education.

The Resource Task Force has held six plenary meetings - in Vancouver, Toronto, Quebec City, and Edmonton - and has maintained a continuing exchange and discussion by correspondence and by smaller *ad hoc* meetings of two or more members in several cities, as to the progress of its researches. At its first plenary meeting, the Resource Task Force adopted a research programme oriented to the preparation of a preliminary study (or First Report) on the position of the Municipalities in any new or "renewed" Canadian Confederation that might be established as a result of the then-current round of federal-provincial First Ministers' conferences on the constitution and constitutional change. The preliminary report was intended to provide a technical base for the discussion on the constitution at the FCM Annual Meeting in Quebec City in June, 1979, and for Resolutions on constitutional reform planned to be introduced and debated at that meeting.

The Resource Task Force, from the outset, has focussed upon certain key issues:

- (i) the constitutional status of the Municipalities and of the so-called "Third Level of Government", including the question of any possible constitutional "entrenchment" of that status in any new or "renewed" Canadian constitutional charter;
- (ii) the constitutional competence of the Municipalities as to law-making, including the question of whether that should continue to be derived, by indirection, from Provincial legislative competences or whether there might not be independent, autonomous sources of constitutional competence stipulated for the Municipalities in their own right;
- (iii) the financial and tax bases of the Municipalities, including the question of whether independent, autonomous

sources of revenue might not be expressly stipulated for the Municipalities or whether the Municipalities might not have specific points earmarked for them under existing inter-governmental Tax-Sharing Agreements;

- (iv) the relations of the Municipalities to the other two levels of Government, including inter-governmental joint co-operative decision-making arrangements involving the Municipalities in relation to either or both federal and Provincial governments; constitutional power-sharing in general between the different levels of government; and grants-in-aid to the Municipalities for specific or general executive-administrative purposes from the other two levels of Government;
- (v) more generally, the nature of any future new, or "renewed", Canadian Confederation, and the opportunities of the Municipalities in improving and modernising or otherwise strengthening Canadian federalism, (including here the restructuring of the federal system to provide new regional arrangements and relationships involving the federal Government, the Provinces, and the Municipalities).

In its work plan, the Resource Task Force has surveyed the existing Canadian federal system flowing from the British North America Act of 1867, and the constitutional status, powers and attributes of the Municipalities within that general system. This has implied, in turn, a canvassing of contemporary proposals for change in the Canadian federal system and their implications for the constitutional *rôle* of the Municipalities, with some special attention to proposals emerging from Quebec. Since a good deal of the current constitutional discussion within Canada has sought to invoke comparative (foreign) federal constitutional experience - often only casually or carelessly researched - as a justification for recommendations for change in the existing Canadian system, we have looked not merely at our own distinctive Canadian experience but also at the record of other major federal systems. Among these, certainly the United States and West Germany, as the foreign federal systems most often cited in the current constitutional "great debate" in Canada, have seemed to warrant study in some depth in order to determine the lessons, if any, that they have to offer Canada today, in terms of any future recasting of the British North America Act of 1867 and the federal system established under it.

In the detailed substantive report that follows, Chapter One has been the special responsibility of Professor Gibson; Chapter Two, Part B of Professor Tremblay, and Chapter Two, Part C of Professor Tremblay and Mr. Bériault; Chapter Three of Mr. Feldman; and Chapter Two, Part A and Chapter Four by the Chairman. Chapter Five has been specially prepared for the Resource Task Force by Dale E. Richmond, Director, Economic and Policy Research, Chief Administrative Officer's Department, Municipality of Metropolitan Toronto.

If Chapter One of the Report reveals, clearly enough, the element of constitutional datedness in the British North America Act in terms of its failure (understandable enough in 1867) to recognise the community decision-making responsibilities and also the accompanying financial needs of the third level of Government, Chapter Four demonstrates the marked trends in modern democratic federal constitutionalism (viewed in world-wide, historical terms) to "constitutionalise" the role of the Municipalities, either by entrenching their powers and responsibilities directly in the Constitutional Charter itself or else by achieving the same essential result through developing conventional, customary law "glosses" on the Constitution. The main lessons to be drawn from comparative federalism and from comparative constitutional law generally are as to the case for granting to the Municipalities direct legislative and administrative decision-making autonomy (what is called constitutional "Home Rule"); and also for constitutionally guaranteeing to the Municipalities an assured access to the financial and tax revenue base necessary to support the exercise of such a new and expanded *rôle* for Municipal government (what is called financial "Home Rule").

On the other hand, within Canada, and looking to concrete constitutional governmental practice in supplement to the abstract text of the British North America Act of 1867, Chapter Two of the Report reveals a clear opposition by successive Quebec Governments to any new *rôle* for Municipal Governments other than what may be achieved through the juridical personality, and by the constitutional act, of the Government of Quebec itself. Contemporaneously with its expressed opposition to any new constitutional *rôle* for the Municipalities that might be achieved by or through the federal Government, the Quebec Government has recently indicated its own intention to confer, by its own legislation, some sort of augmented decision-making powers and status (as yet unspecified as to the concrete incidents) upon the Municipalities in Quebec.

Chapter Three of the Report considers the attitudes of the Provinces, other than Quebec, to Federal-Provincial-Municipal relations and their possible "constitutionalisation", and also notes points of similarity and points of difference with contemporary Quebec attitudes.

Chapter Five, for its part, offers a detailed break-down of Provincial-Municipal Tax and Revenue Sharing arrangements and actual practice for the decade of the 1970s.

Ways exist, of course, for reconciling in constitutional-legal terms seemingly disparate, or diverging, conceptions of the future constitutional *rôle* of the Municipalities within Canadian Confederation - whether a new, or a "renewed" federal system. This may, however, require, in time, the taking of positions on more general constitutional questions, transcending the issue of Federal-Provincial-Municipal relations, as such.

The Resolution on Constitutional Reform adopted by the Federation of Canadian Municipalities at its Annual Meeting in Quebec City on June 3-6, 1979, (Appendix I to this Report), may represent an important first step to solution of the problem, viewing specifically Municipal constitutional governmental problems in the larger intellectual context of general constitutional change in our federal system, to which all political parties now seem committed.

The Draft Resolution (Appendix II) prepared by the Resource Task Force as an aid to the debate at the FCM Annual General Meeting in Halifax in June, 1980, attempts to carry the process a stage further by offering concrete proposals for constitutional change within both the Federal and the Provincial constitutional systems, that are rooted in the key contemporary political realities of our Canadian society. We have also prepared, at the request of the National Board of Directors of the FCM made at their meeting in Edmonton on January 25, 1980, model constitutional articles, Federal and Provincial, (Appendix III) that reflect the principles expressed in the Draft Resolution and that could be inserted into any new or revised Constitution of Canada and into any Provincial constitutional system, new or existing, as the case may be.

Edward McWhinney, Q.C.
Chairman,
Resource Task Force on Constitutional Reform

Vancouver, B.C.

February, 1980

CHAPTER 1

THE CONSTITUTIONAL POSITION OF LOCAL GOVERNMENT IN CANADA

In Canada there are three major tiers of government: federal, provincial and municipal. That is the reality. In the eyes of the constitution, however, there are only two tiers. Local government has no constitutional status of its own, and functions as a mere delegate of the senior orders of government, primarily the provincial.

When Canada's constitution, the British North America Act, was being negotiated, it was readily agreed that the provinces should be responsible for "municipal institutions in the provinces".¹ The Parliament of Canada retains responsibility, of course, for municipal institutions in Canadian territories which have not yet attained provincial status.²

The term "municipal institutions" has been given a rather narrow judicial interpretation. While it certainly covers such matters as the creation of municipal corporations, the determination of qualifications for holding municipal office,³ and the reorganization of financially-troubled municipalities,⁴ it is not the primary source of constitutional authority for the great bulk of activities in which local government engages.

There was a time when a different view prevailed. For almost thirty years following Confederation, it was widely believed that section 92(8) of the B.N.A. Act empowered the provinces to endow municipal governments with authority over any matter that fell within the ambit of local government prior to Confederation, including matters now under federal control. As one Ontario judge put it:

"In using the term municipal institutions...it must have been the contemplation of the Legislature that existing laws relating to municipal institutions should not be affected, and that local legislatures should have the power to alter and amend these laws."⁵

However, the Judicial Committee of the Privy Council made it clear in an 1896 decision that the post-Confederation provincial jurisdiction over "municipal institutions" cannot authorize local governments to become involved in activities that are outside the constitutional scope of the provincial order of government. The case involved both federal and provincial temperance legislation. One of the disputed provincial provisions was a section empowering municipalities to prohibit the sale of liquor within their boundaries. The province pointed out that such powers had been possessed by some municipalities prior to Confederation, and that this provision was, therefore, to be regarded as legislation

relating to "municipal institutions". This argument was rejected by the Judicial Committee. Although the provincial legislation was upheld in part on other grounds, section 92(8) was not held to be relevant to the question.

"...section 92(8)...simply gives provincial legislatures the right to create a legal body for the management of municipal affairs. Until Confederation, the legislature of each province as then constituted could, if it chose, and did in some cases, entrust to a municipality the execution of powers which now belong exclusively to the Parliament of Canada. Since its date, a provincial legislature cannot delegate any power which it does not possess; and the extent and nature of the functions which it can commit to a municipal body of its own creation must depend upon the legislative authority which it derives from the provisions of section 92 other than No. 8."⁶

responsibilities ↓

The practical significance of this restriction should not be exaggerated, however. The provinces have, independently of section 92(8), extensive jurisdiction over most matters with which local government is likely to concern itself. Provincial control over "local works and undertakings..."⁷ permits municipalities to be given authority over most utilities and services. The provincial "education..."⁸ power sanctions local administration of school systems. "Administration of justice in the province..."⁹ supplemented by "establishment, maintenance, and management of public and reformatory prisons..."¹⁰ covers local police, courts and jails. "The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions..."¹¹ embraces many of the health and welfare activities in which local governments engage. The licensing of businesses is authorized in part at least by: "shop, saloon, tavern, auctioneer, and other licenses in order to the raising of revenue..."¹² Important forms of local taxation are sanctioned by the power to impose "direct taxation..."¹³ Any gaps left between these various specific heads of jurisdiction (the power to licence businesses and other activities for purely regulatory rather than revenue-raising purposes, for example) can usually be plugged by relying on the two major general grants of provincial competence: "property and civil rights..."¹⁴ and generally all matters of a "merely local and private nature..."¹⁵ Finally, there is an express power to stipulate penalties or punishments for the breach of any law made pursuant to most heads of provincial jurisdiction: "the imposition of punishment by fine, penalty, or imprisonment for enforcing any law...made in relation to any matter coming within any of the classes of subjects enumerated in this section."¹⁶ In short, since the *B.N.A. Act* is quite generous in its allocation of jurisdiction to the provinces, it does not place very serious limitations on the range of activities which the provinces may in turn place within the ambit of local government regulations.

[However, the federal order of government has also been given jurisdiction over many matters which can have a very serious local impact.] The fact that within the non-provincial territories Parliament has the same jurisdiction as a provincial legislature has already been referred to.¹⁷

Even within the provinces, Parliament's power to affect local matters is extensive. Federal laws may be made to deal with local conditions within the national capital district.¹⁸ Federal control over aviation, navigation and shipping, and other forms of extra-provincial transportation places such vital planning decisions as the location of airports, port facilities, and rail lines beyond the reach of local planners.¹⁹ Inter-provincial communications is another field of federal responsibility that can have serious local consequences in the form of the location of telephone lines, etc.²⁰ Federal defense²¹ and penal²² establishments affect local life, as does the quality of local federal postal services.²³ Municipal laws regulating billboard advertising cannot be applied to political advertisements by candidates in federal elections.²⁶ The federal government often uses its "spending power" to influence matters of provincial or local concern over which it has no direct constitutional control.²⁷ There is an immunity of federal Crown property from local or provincial taxation.²⁸ There is, in other words, a vast area of interface between matters of national and local concern.

The existence of this interface complicates the constitutional picture enormously. Space does not permit an exhaustive examination of all the difficulties to which it gives rise, or all the cases in which they have been dealt with.²⁹ All that can be attempted in the following commentary is an explanation of the major constitutional principles employed by the courts to resolve jurisdictional disputes, together with a few illustrative cases.

PRINCIPLES OF CONSTITUTIONAL INTERPRETATION

To understand many of the judicial decisions relating to the constitutional validity of Canadian legislation, it is necessary to have some acquaintance with three major interpretative principles:

1. Legislation is characterized for constitutional purposes by its general "pith and substance", rather than by its details.
2. A subject matter of legislation may have, in pith and substance, a "dual aspect", one facet of which is within provincial competence and the other within the federal domain.
3. Where, in a dual aspect situation, federal legislation on the subject in question conflicts with provincial legislation, there is "federal paramountcy".

These principles will be examined in turn.

1. Pith and Substance

Most statutes are complex documents, dealing with a great variety of details. If, in classifying legislative provisions for constitutional purposes, each of these details were taken into account, many provisions would be found to be within *both* federal and provincial jurisdiction. Suppose, for example, that a municipal by-law requires that no person who has been convicted of a crime relating to sex, morals or drugs shall be employed by the municipality, or permitted to enter the precincts of any school, without first obtaining a certificate of good character from the local chief of police or the commanding officer of the local RCMP detachment.

Such a provision could be said to relate to "criminal law", which is a federal responsibility, or to, "education", "municipal institutions", "property and civil rights", or "administration of justice", which are provincial concerns. For the purpose of constitutional classification, it is necessary to identify the dominant characteristic of the provision (in this case, probably criminal law, though there would be room for argument) and to ignore the other features. The dominant characteristic is usually referred to as the "pith and substance" of the provision. The other, secondary, characteristics, which are spoken of as "incidental", "ancillary", or "collateral", are not determinative of the constitutional question.

The case of *Ladore v. Bennett*³⁰ provides a good illustration of the "pith and substance" principle. Four Ontario municipalities became insolvent during the great depression of the 1930's. The situation was remedied by two Ontario statutes: one of which abolished the municipalities and replaced them with a new legal entity, the City of Windsor; the other of which empowered an administrative authority to specify the conditions (including variation of the rate of interest) under which the new city would undertake the financial obligations of the former municipalities. Because the new financial arrangement purported to reduce the interest payable to bondholders of the former municipalities, an action was brought on behalf of the bondholders. They claimed that the legislation was beyond the constitutional powers of the province because it dealt with two subjects under exclusive federal competence: "insolvency",³¹ and "interest",³² and also because it derogated from rights enforceable outside the province (several of the bonds being payable in Montreal or New York, and many bondholders living outside Ontario). The Privy Council rejected this attack, holding that:

"...the pith and substance of both the...Acts...are that the Acts are passed in relation to municipal institutions in the Province...The statutes are not directed to insolvency legislation; they pick out insolvency as one reason for dealing in a particular way with unsuccessful institutions; and though they affect rights outside the Province they only so affect them collaterally....

The question of interest does not present difficulties. The above reasoning sufficiently disposes of the objection. If the provincial legislature can dissolve a municipal corporation and create a new one to take its place, it can invest the new corporation with such powers of incurring obligations as it pleases, and incidentally may define the amount of interest which obligations may bear."

Another case, decided by the same tribunal the following year in a somewhat similar fact situation, indicates the flexibility which the "pith and substance" notion offers to the courts. In *Lethbridge Irrigation District v. I.O.F.*,³³ the Privy Council was asked to rule on the constitutionality of an Alberta statute halving the interest owing on provincially guaranteed bonds - from 6% to 3%. In some ways the legislation resembled that which had been upheld in the *Ladore* case. It was prompted

by the economic crisis of the great depression, and many if not most of the bonds affected by the statute were those of municipal corporations. Yet the Privy Council held the statute to be invalid on the grounds that "the pith and substance of the Act deals directly with interest, and only incidentally or indirectly with..." municipal institutions or other matters under provincial jurisdiction.³⁴ The *Ladore* case was distinguished in that the emphasis of the impugned legislation in that case had been on "municipal institutions", rather than "interest".³⁵ If their Lordships were merely responding to the difference in the *form* of the two pieces of legislation this distinction might be criticized - another consequence of the "pith and substance" doctrine is that the courts concern themselves with the substance of legislation rather than its form. It would appear from the background of the Alberta legislation, however, that the legislators did not act, as their Ontario counterparts had, primarily out of a concern for municipal organization; they seem to have been more concerned with: a) the province's own liability as guarantor, and b) the general Social Credit distaste for high interest rates.³⁶ The "pith and substance" principle enabled the Privy Council, discerning this important difference in emphasis between the two statutes, to arrive at different conclusions.

2. Dual Aspect

Sometimes a subject is found to have in pith and substance, equally dominant federal and provincial characteristics. In that event it is said to have a "dual aspect" and to be susceptible of legislation by either order of government.

Sunday closing laws offer an illustration. It has long been held that statutes like the federal *Lord's Day Act*,³⁷ which prohibits certain business and other activities on Sundays, fall within the exclusive federal jurisdiction over "criminal law"³⁸ if the purpose is essentially religious - to prevent the profanation of the sabbath.³⁹ Despite the fact that many modern supporters of such legislation now do so for social or economic, rather than for religious reasons, the federal Act is still being upheld judicially because of its religious roots.⁴⁰ On the other hand, provincial legislation relating to Sunday closing has also been held to be constitutionally valid, provided that it is passed to advance secular objects - employee welfare, leisure and recreational opportunities, etc. - rather than religious values.⁴¹ The subject of Sunday closing has, in other words, two equally prominent aspects: a religious aspect which has been held to place the subject within the "criminal law" power of the Parliament of Canada, and a secular aspect, which can be dealt with by the provinces under their responsibility for "property and civil rights", "licences", or "matters of merely local or private nature".

Because many heads of both federal and provincial competence under the *B.N.A. Act* are expressed in very general language, these situations of jurisdictional overlap are common. The area of federal responsibility with which legislation by or concerning local government overlaps most frequently seems to be the field of "criminal law". Although "criminal law" is a very important source of federal authority, and although Canadian courts were rather cautious at one time about permitting the provinces to enter the field where significant civil liberties were involved, the Supreme Court of Canada has recently seemed more favourably disposed to tolerate extensive jurisdictional duality.

Provincial censorship of movies in the interest of morality was upheld in 1978, despite undoubted federal criminal jurisdiction to prohibit and punish obscenity. Although "criminal law" permits Parliament to set national minimum standards of decency in the *Criminal Code*, the provincial heads of "property and civil rights" and "local or private" matters sanction the establishment of higher local standards:

"In a country as vast and diverse as Canada, where tastes and standards vary from one area to another, the determination of what is and what is not acceptable for public exhibition on moral grounds may be viewed as a matter of a 'local or private nature in the province'...."⁴²

A Montreal city by-law authorizing the prohibition of public assemblies in city streets and other public places whenever "there are reasonable grounds to believe that the holding of assemblies...will cause tumult, endanger safety, peace or public order..." was also upheld recently by the Supreme Court of Canada.⁴³ The majority of the Court pointed out that the *preventive* nature of the by-law differed from the *punitive* measures relating to riots and other unlawful assemblies in the federal *Criminal Code*:

"This preventative character is illustrated by the fact that the ordinance prohibits the holding on the public domain of *any* assembly, parade or gathering, including those of the most innocent and innocuous kind."⁴⁴

Although Parliament's criminal law jurisdiction might authorize federal preventative provisions ancillary to the federal punitive measures,⁴⁵ no such provisions exist, and in the meantime the "local" and "administration of justice" aspects of the matter justify local legislation.

These and similar recent decisions of the Supreme Court seem to indicate a significant change of direction. Until recently there was a considerable body of opinion, rooted in a number of cases decided by the Supreme Court during its celebrated "libertarian" phase in the 1950's,⁴⁶ that a local or provincial law which infringed seriously on basic fundamental freedoms, such as freedom of expression, religion or assembly, would be found, in pith and substance, to relate *solely* to criminal law, and therefore to be beyond provincial competence. For example, a by-law of a British Columbia municipality denying entry to the municipality to a group of Doukhobors who were reported to be marching to the municipality for the purpose of staging a demonstration at a prison in the municipality, was invalidated in 1962 on the ground that it was in pith and substance, a "criminal law".⁴⁷ Since the by-law was prompted by virtually the same motive as the Montreal by-law discussed above - the avoidance of apprehended breaches of the peace - the case should logically be regarded as overruled by the recent Supreme Court decision.⁴⁸

If the trend apparent in the Supreme Court decisions of the past few years continues, it could be concluded that local legislation will be permitted a broader ambit than hitherto in the many areas that

intersect with the vast federal domain of criminal law. There are at least two reasons for remaining a little cautious on the question, however. In the first place, the recent decisions were for the most part determined by very narrow margins, and accompanied by strong dissenting opinions. Small changes in the membership of the Court could bring a reversal of the trend at any time. In the second place, not even the majority judges have openly rejected the earlier decisions. In the Montreal by-law case, for example, Beetz, J., speaking for the majority, denied that the facts of the Doukhobor case were similar,⁴⁹ or that the by-law interfered with the freedoms of religion, press or speech in any way that would contradict the principles enunciated in the civil liberties cases of the 1950's.⁵⁰ While the spirit of the new decisions differs markedly from that of the earlier cases, therefore, there has not been any formal acknowledgment of a change in direction. This situation provides telling evidence, if any were needed, that the "dual aspect" doctrine, by creating a judicial discretion to decide whether a subject of legislation has one predominant aspect or two, equips the courts with still further flexibility, and contributes substantially to the difficulty of predicting the outcome of constitutional litigation.

3. Federal Paramountcy

Where a subject is found to possess a dual aspect, either order of government may legislate. However, if they both do so and there is an inconsistency between the federal and provincial provisions, the federal law is "paramount", and the provincial law becomes inoperative to the extent of the inconsistency. The federal provision is said to have "occupied the field".

In the movie censorship case, for example, although the provincial legislation was upheld in most respects, one particular regulation which was found to be in conflict with *Criminal Code* provisions concerning obscenity was invalidated and severed from the remainder of the legislation.⁵¹ In an early Saskatchewan case a by-law of the City of Regina fixing the percentage of butterfat in milk sold in the city was held to be *ultra vires* because it was, among other things, inconsistent with the federal *Adulteration Act*.⁵²

In deciding whether or not an inconsistency exists between parallel federal and provincial provisions, the courts have another opportunity to exercise considerable discretion. Two cases concerning the constitutionality of municipal noise by-laws illustrate the point. In *R. v. Rice*⁵³ the accused was acquitted of contravening such a by-law by conducting a noisy race of outboard motorboats. The court held that the field had been occupied, as far as boat racing was concerned, by regulations under the *Canada Shipping Act* that, by specifying certain safety precautions to be taken during boat races, impliedly authorized races to be held. This decision should be contrasted with a ruling in *R. v. Young*⁵⁴ that a similar municipal noise by-law was not in conflict with the "public disturbance" section of the federal *Criminal Code*, even though both provisions explicitly prohibited "shouting" and laid down rather different penal consequences. Although the cases can undoubtedly be distinguished on their facts, they represent different approaches to the question of whether a conflict exists between federal and provincial legislation on a subject: while some courts are willing to recognize

implied conflicts as grounds for invalidating provincial laws, others will seize upon minute differences between the two sets of legislation to justify their parallel existence.

Most Canadian courts normally adopt the latter approach. The *Young* decision is much more typical of their attitude than the *Rice* ruling. In neither the movie censorship case nor the Montreal public assembly by-law case, for example, was the existence of federal legislation on closely related matters regarded as occupying the field,⁵⁵ and in another fairly recent decision the Supreme Court refused to find a conflict between extremely similar federal and provincial provisions relating to the suspension of driving privileges in consequence of impaired driving.⁵⁶ It would appear, therefore, that the principle of federal paramountcy is not as serious an obstacle to effective local legislation as it might appear at first blush to be.

SUBORDINATE POSITION OF LOCAL GOVERNMENT

→ The fact that local government enjoys no autonomous status under the *B.N.A. Act* is a source of additional complications. With the exception of a few that can trace their authority back to pre-Confederation statutes or charters,⁵⁷ all municipal corporations in Canada owe their existence to legislation of the senior orders of government; and without exception their existence and powers are subject to abolition or alteration by such legislation.

Four ramifications of the subordinate status of municipalities will be dealt with separately: the *ultra vires* principle; the paramountcy of senior legislation; the illegality principle; and problems of delegation.

1. The Ultra Vires Principle

The legality of the actions of any body possessing restricted jurisdiction is open to attack on the ground that the actions are *ultra vires* - beyond the powers of the body in question. We have already seen that the principle applies to the senior legislatures themselves if they should exceed their constitutional jurisdiction under the *B.N.A. Act*; but in the case of municipal corporations it offers the additional opportunity to challenge by-laws not fully authorized by the statute or charter creating the corporation.

Corporations, whether municipal or general, fall into two categories: those whose powers are restricted to those set out in their statute or charter of incorporation, and those possessing a plenary capacity, analogous to that of human beings, to exercise any power not denied them. The *ultra vires* principle is more important to the first group than to the second, since their range of permitted activities is likely to be narrower. That is not always the case, however; it is entirely possible for corporations of the first type to be given extremely broad express powers, and for those of the second type to be placed under exceedingly restrictive express limitations.

→ [Almost all municipal corporations in Canada belong to the first group. Apart from the City of Saint John, New Brunswick, which was created by a royal charter in 1785, and perhaps one or two other special exceptions, all Canadian municipal institutions are creatures of statute.⁵⁸]

Some statutes authorize the creation of corporations with powers as sweeping as those established by royal charter, but few municipal corporations fall into that category.⁵⁹ For the most part, therefore, local governments in Canada must keep a constant weather eye on their incorporating statutes to ensure that each activity in which they engage is fully authorized. In *Ottawa Electric Light Co. v. Ottawa*,⁶⁰ for example, a by-law authorizing an agreement by a city to purchase electrical power from a private company was declared to be *ultra vires*, because the city's statute empowered it to "produce, manufacture and use" electrical energy, but not to purchase it.

Most enabling statutes for institutions of local government bestow ample express jurisdiction, however. Moreover, the courts are willing to expand the expressly granted powers by interpretation to include matters which, though not explicitly mentioned, are necessarily implied. Thus the statute in the *Ottawa Electric* case would probably have been held to authorize, without explicit reference, the purchase of property on which to construct the necessary generating equipment, as well as the expenditure of money to advertise the service, the employment of necessary personnel and so on.⁶¹ Practically speaking, therefore, the *ultra vires* problem is not always as troublesome as it could be.

2. Paramountcy of Senior Legislation

Because the legislation of local governments is subordinate to that of the senior orders of government, it will be inoperative if and to the extent that it conflicts with any provincial or federal statute. In *St. Leonard v. Fournier*,⁶² a town by-law relating to the licensing of theatres was found to be invalid on the ground that it was inconsistent with both the provincial *Theatres Act* and certain provisions of the federal *Criminal Code* relating to indecent performances. This is similar to the "paramountcy" which, as we have seen, federal legislation enjoys over incompatible provincial statutes.

A by-law is not invalidated by the mere fact that senior legislation exists on the same general subject, however. It has already been explained that different orders and levels of government are permitted to enact complementary laws on the same subject. Only where the laws are mutually inconsistent will the paramountcy principle be invoked, and courts are normally quite tolerant in deciding whether an inconsistency exists. In *R. ex rel Rankin v. Pendray*,⁶³ for example, a by-law prohibiting the firing of firearms within a municipality was held not to conflict with a provincial statute permitting (as an exception to the general prohibition of hunting out of season) the shooting of pheasants found to be damaging crops.

3. Illegality

A municipal by-law which is *ultra vires*, or which conflicts with senior legislation, is, of course, illegal. Those forms of illegality can be applied to the senior orders of government as well as to municipalities. The forms of illegality to be discussed in this section are peculiar to local government, and derive from its subordinate status.

The courts are unable to look behind the legislation of a sovereign legislature. They are required to give effect to a federal or provincial statute even if it can be proved that the legislature was misled,⁶⁴ or that its rules were breached; that the statute was introduced for corrupt motives, or that its terms are grossly unfair or discriminatory.⁶⁵ In the case of subordinate legislatures, on the other hand, the courts are empowered to perform a supervisory function which sometimes impairs local autonomy significantly.

Municipal by-laws can be set aside as "illegal" if it can be established that they were enacted for corrupt or personal motives,⁶⁶ that they were made in breach of fundamental procedural requirements,⁶⁷ that they are discriminatory in their operation,⁶⁸ or that they are unreasonable.⁶⁹ In recent years the courts have been somewhat slower than in the past to exercise this supervisory authority, especially on the ground of unreasonableness; they often exhibit great concern to preserve the autonomy of local legislators. Nevertheless, the illegality principle continues to expose municipal legislation to the risk of attack on grounds from which the senior legislatures are immune.⁷⁰

4. Delegation

It is a principle of statutory interpretation that a person or body to whom a function is delegated by legislation may not themselves delegate the function further unless the statute authorizes such further delegation expressly or by necessary implication. This principle does not stand in the way of any delegation of responsibility by provincial legislatures to municipal authorities, because the legislatures are themselves sovereign law-making bodies rather than mere delegates.⁷¹ It does, however, constrain the extent to which municipalities can pass on their responsibilities. In *Outdoor Neon Displays Ltd. v. Toronto*,⁷² the majority of the Ontario Court of Appeal invalidated on this ground what they construed to be a delegation of uncontrolled discretion to a Building Commissioner by the Toronto City Council:

"By-law No. 9868 leaves the approval of the location of a proposed roof sign in any area in the absolute discretion of the Building Commissioner. It contains no *indicii* to be applied by him in reaching his conclusion...this is an illegal delegation to the Commissioner of a power exercisable only by the Municipal Council. Whether or not, as a matter of civil planning, a sign in a given area should or should not be permitted is a matter on which the Municipal Council...must apply its own judgment; it cannot delegate that function to a municipal official."

In practice this constraint does not appear to have created many major difficulties; such powers of delegation as a municipal corporation may properly require are usually found embedded, expressly or impliedly, in the incorporating statute.

There is a school of thought to the effect that a delegation of responsibility which is so extensive as to be regarded as an "abdication" of authority over the subject in question is not permissible, even on the

part of a sovereign legislature. The majority of the Ontario Court of Appeal expressed this point of view in the *Outdoor Neon* case.⁷³ The by-law in question had been approved by the Ontario Municipal Board, acting under the authority of a provincial statute which stated that the by-law, as well as all future by-laws on the same subject, would be valid if approved by the Municipal Board. The City argued, therefore, that any illegality in the by-law had been cured by legislative sanction. The majority of the Court rejected this argument, however:

"When...the legislature purported to confer on the Ontario Municipal Board the power to validate what was otherwise illegal, it thereby attempted to confer on that Board a jurisdiction to create a power to be exercised by the municipality. In so doing it attempted to transfer to that Board a jurisdiction which the legislature alone possesses and which it alone can exercise."⁷⁴

In seeking to distinguish the earlier cases in which it had been established that provincial legislatures may delegate subordinate responsibilities to administrative or municipal authorities, the Court seemed to indicate that proper delegation involves relatively narrow discretion, to be exercised in accordance with the general principles or policy guidelines enacted by the legislature itself; the power to formulate these basic guidelines themselves is not delegable. Unfortunately, the validity of this "abdication" theory has never been ruled upon conclusively.⁷⁵ Support for it can be found in a number of high-ranking *dicta* over the years, but the *Outdoor Neon* case stands alone as an actual application of the notion in Canada. There was a strong dissent in that case, and the Supreme Court of Canada, in affirming the result on other grounds, declined to comment on the constitutional question.⁷⁶

One form of delegation that has been unequivocally held to be unconstitutional in Canada is a delegation of law-making powers from the Parliament of Canada to the provincial legislatures, or *vice versa*. When an experiment along these lines, designed to overcome some of the constitutional rigidity resulting from the difficulty of amending the *B.N.A. Act*, was proposed 30 years ago, it was declared by the Supreme Court of Canada to be constitutionally invalid, since it would amount to a virtual amendment by indirect means of the constitutional distribution of legislative powers.⁷⁷ This means, then, that the provinces may not delegate responsibility for "municipal institutions" to the Parliament of Canada, and Parliament may not shift "criminal law" jurisdiction to the provincial legislatures.

Canada's leading authority on municipal law contends, on the authority of this case, that it is "doubtful" whether Parliament may delegate powers under its constitutional aegis to municipal authorities.⁷⁸ It is submitted that this is a mistaken view. It overlooks the fact that while delegation from one sovereign legislative body to another has been proscribed, delegation to a *subordinate* administrative agency of the other order of government has been tolerated. The year after deciding the above case the Supreme Court of Canada ruled that a delegation by Parliament to a provincially created marketing board of responsibility

for administering extra-provincial marketing of potatoes was valid, and distinguished the earlier case:

"delegations to a body subordinate to Parliament ...were...of a character different from the delegation meant...in the...reference."⁷⁹

In the writer's view, Parliament could similarly delegate powers within its control to municipal bodies. It has been held that Parliament may impose *obligations* on municipalities,⁸⁰ and it is submitted that it could also invest them with *powers* extending beyond the reach of provincial legislatures.⁸¹ This is, paradoxically, one respect in which the subordinate nature of local government actually results in *greater* power than the senior governments. As a matter of logic, the provinces would have a similar right to delegate responsibility for municipal affairs to federal administrative agencies.

There is one potential impediment to federal-municipal delegation, however. As it was explained above, most municipal corporations, as creatures of statute, are limited in their legal *capacities* to those which are bestowed expressly or by necessary implication by their incorporating statutes. Parliament probably could not grant a power to a municipality which was beyond the municipality's capacity to accept under its incorporating statute. An old Ontario case provides a good example. The federal *Railway Act* empowered municipalities to construct street crossings over or under railway lines without compensation to the railway companies for the consequent use of their property. An attempt by the City of Toronto to use this federally-bestowed power was challenged on the ground that the Ontario Legislature has never given the city the capacity to accept such a power. In a careful judgment, Meredith, J. found that the capacity had in fact been conferred by provincial legislation, but he made it clear that if he had not so found the City's actions would have been *ultra vires*:

"The defendants are a provincial municipal corporation created by, and acquiring all their power under, Provincial legislation. By virtue of such creation and existence alone it can act. Federal legislation has no power over it in that respect. If the Provincial legislation has not given the defendants the legal capacity to acquire and make new streets across Dominion railways, the Parliament of Canada cannot confer that capacity upon them."⁸²

If this statement is correct,⁸³ it means that in situations of federal-municipal delegation a dual test of validity is imposed: a) Does the federal statute confer the *power* in question? and b) Does the provincial statute confer the *capacity* necessary to accept and exercise the power?

The delegation of *ajudicative* powers raises a special problem, which might conveniently be discussed at this point, although it does not flow from the subordinate nature of local government, and constrains

provincial legislatures as well. Section 96 of the *B.N.A. Act* stipulates that the appointment of judges to "Superior District and County Courts" in the provinces is an exclusively federal responsibility. This has been interpreted to mean that a provincial statute conferring on provincial appointees adjudicative powers similar to those possessed at Confederation by Superior, District or County Court judges, would be invalid. Numerous provincial and municipal tribunals have been attacked on this basis over the years. In *Toronto v. York*,⁸⁴ for example, the Ontario Municipal Board was challenged on the ground that it had been given the powers of a "section 96 court". The Privy Council held that, although there probably were some respects in which the Board was empowered to play a judicial role akin to that of Superior, District or County Courts, those aspects of the statute were relatively minor, and were "severable" from the remainder of the Act, including the part in question in the case, which was "administrative" in pith and substance.

A rather careless use of words by Lord Atkin in this case has led to some confusion. The words could be read as stating that a province may confer only *administrative* functions on tribunals it creates; that all *judicial* jurisdiction must be derived from federal legislation.⁸⁵ In truth, it is only those judicial powers peculiar to Superior, District and County Courts that are beyond provincial reach. A recent decision of the Supreme Court of Canada has so ruled, holding that a provincial Act concerning municipal taxation may validly empower a Court of Revision to inquire into a complaint that a person has been assessed as a supporter of public rather than separate schools. Although such a power is judicial in nature, it is of a type that was exercised by inferior tribunals prior to Confederation.⁸⁶ Unfortunately, neither the distinction between "administrative" and "judicial", nor that between the functions of "inferior courts" and those of "Superior, District or County Courts" is easy to draw, and the result is a rather confusing body of case law concerning the powers of particular types of tribunal. A recent treatise describes, for example, the "curious and inconvenient result" of a series of decisions concerning the Ontario Municipal Board:

"...while there is a valid appeal to the Ontario Municipal Board on the amount of a municipal assessment, and even as to the appropriate tax classification of a property owner, the Board has to decline jurisdiction when the issue is the liability to assessment...."⁸⁷

If one attempts to examine the various cases on other municipal and related tribunals in Canada, an even "curiouser" picture emerges.⁸⁸

INTERJURISDICTIONAL IMMUNITY

Even where a municipal corporation has been unmistakably authorized by its statute to deal with a certain subject matter within the undeniable jurisdiction of the provincial legislature, it may be powerless to enforce its laws against certain persons or organizations because they possess some form of special interjurisdictional immunity.⁸⁹

The only immunity that is conferred expressly by the *B.N.A. Act* concerns taxation. Section 125 states that: "no lands or property

belonging to Canada or to any province shall be liable to taxation."⁹⁰ This means that local governments are powerless to tax the sometimes very substantial property holdings of the federal government and its various agencies and Crown corporations within their boundaries. While they may impose fees for services, such as running water,⁹¹ it has been held that section 125 even prevents them from requiring federal authorities to either maintain their sidewalks in good condition or reimburse the municipality for doing so.⁹² The question of exactly what constitutes "Crown property" for the purpose of this section has been the subject of much litigation - too much to attempt to summarize here. An illustration of the type of disputes that arise is a Manitoba case holding that leasehold interests of non-Indians in Indian reservation lands are not protected from municipal taxation by section 125.⁹³ The Canadian Pacific Railway Company⁹⁴ and Hudson's Bay Company⁹⁵ also enjoy certain constitutionally guaranteed tax immunity in western Canada, although its practical significance no longer seems to be very great.⁹⁶ It should be added that the federal government, though not constitutionally obliged to do so, pays grants in lieu of taxation to municipalities.⁹⁷

The courts have created an even more significant form of immunity by holding that no provincial (or, therefore, municipal) law may be applied to a fundamental aspect of a project or undertaking that is under federal legislative jurisdiction. The location of airports within municipalities is thus free from local by-laws.⁹⁸ Radio and television operators cannot be required to take out local business licenses before being permitted to operate in a municipality.⁹⁹ A company operating an interprovincial telephone system may ignore municipal regulations requiring municipal consent before erecting poles and wires in the streets of the municipality.¹⁰⁰ An anti-smoke by-law is inapplicable to smoke produced by a ship in the course of its operation.¹⁰¹

This does not mean that no municipal by-law may ever be applied to federal enterprises. Laws of general application which have only an ancillary impact, and do not significantly affect the fundamental nature of the operation, are applicable. A federal railroad has been required, for example, to obey a general municipal by-law requiring occupiers of land in the municipality to keep clean any ditches on their property.¹⁰² A federal harbour commission has been held to be subject to a city zoning by-law, except to the extent that it actually affects harbour activities.¹⁰³ A municipal business tax would probably be enforceable against federally regulated enterprises, so long as payment were not made a condition of doing business in the municipality. Nevertheless, interjurisdictional immunity poses considerable limitations on the legal powers of local governments effectively to control the matters over which they have been given governmental responsibility. Taking into account the large areas of federally-owned realty, the potentiality of intergovernmental conflicts are patent.

TAXATION AND LICENSING

The Parliament of Canada has virtually unlimited taxing powers under the *B.N.A. Act*: "the raising of money by any mode or system of taxation".¹⁰⁴ The jurisdiction of the provinces in this regard overlaps with that of the federal authorities but is somewhat more restricted: "direct taxation within the province..."¹⁰⁵ Local governments, lacking

constitutional status, have no guaranteed taxation powers and must depend in this area as in most others on delegation from the provincial legislatures.

There are a number of limitations to the taxing powers that may be exercised by the provinces or passed on by them to local governments. The inability to tax federal Crown property has already been referred to.¹⁰⁶ Because the ambit of provincial taxes is restricted to "within the province", they must be carefully designed to focus primarily on property, persons or transactions within the boundaries of the province.¹⁰⁷ Inter-provincial import or export duties are prohibited.¹⁰⁸ The most significant restriction is the requirement that all provincial and local taxation be "direct".

A "direct" tax is usually defined as one which is likely to be ultimately borne by the persons from whom it is initially demanded, and not passed on by them to others in the form of increased prices or otherwise.¹⁰⁹ If a city imposed a 3% sales tax on all retail sales made within its boundaries, it is probable that the retailers would simply raise their prices by a corresponding percentage, and the tax would ultimately be borne by the consumers.¹¹⁰ Such a tax would be "indirect", and, therefore, beyond the powers of either provincial or local authorities.

The directness requirement does not constitute as formidable an obstacle to revenue raising at the local level as it might seem, however. In practice its impact has been softened by several factors. In the first place, clever draftsmen have devised ways of phrasing tax legislation that avoid the problem. The standard technique for imposing provincial sales tax schemes of the type mentioned above, for example, is simply to describe them as "purchase" taxes, openly directed at the ultimate consumer, with the retailer designated as a mere "collector" for the government.¹¹¹ Some provincial governments have gone so far as to impose such levies at the wholesale level, designating the wholesaler as the "collector" and the retailer as the "deputy collector".¹¹² Secondly, the traditional primary source of local government revenues - real property taxation - has been held by the courts to be direct, even where imposed in a form that is likely to be passed on; the fact that it was invariably so classified before Confederation overrides functional considerations.¹¹³ Finally, the directness restriction does not seem to apply to the raising of money by means of provincial or local licensing schemes.

It was recognized from early stages of the discussion concerning Confederation that provincial jurisdiction should extend to: "shop, saloon, tavern, auctioneer and other licences in order to the raising of a revenue for provincial, local or municipal purposes"¹¹⁴. The term "other licences" has been construed liberally, with the result that most forms of commercial activity fall within the scope of the provincial licensing power.¹¹⁵ Because the directness requirement does not apply to licence fees¹¹⁶, this head of jurisdiction can sometimes be quite important to provincial and local governments. The task of distinguishing between "taxes" and "licence fees" is not always easy. The test seems to be the existence of some regulatory component over and above the revenue-raising aspect of the levy; if the sole purpose of the levy is to raise money, it is a tax, and must, therefore, be direct, but if it is also intended to regulate the activity in question, it is a licence and the fee may be indirect.¹¹⁷

The chief tax problems of the provinces are not constitutional. A province with a strong tax base has, generally speaking, adequate constitutional power to raise adequate revenues.¹¹⁸ The difficulties currently being experienced by some of the provinces stem primarily from weaknesses in the provincial economies, and from the fact that the federal authorities are already reaching so deeply into the taxpayers' pockets as to limit what is left for other governments. Local governments share the problems of their provincial masters, but have the additional constitutional handicap that they have no guaranteed access to any source of revenue.

FEDERAL SPENDING POWER

Constitutions consist of more than formal lists of legal authority. The reality of constitutional arrangements is often influenced as much or more by sub-surface factors as by the legal text. In Canada, one of the most powerful extra-legal influences is the federal "spending power".

The almost limitless federal taxation power has been mentioned previously. So extensive is it that the government of Canada is easily able to raise much more money than it needs to carry out its formal responsibilities under the *B.N.A. Act*. Since about the end of World War II, the federal surplus has been used to help finance many projects that are legally under provincial jurisdiction - roads, education, health, welfare, and so on. The result is that many of the activities in which local governments engage, or which have a significant impact on local affairs, are funded at least in part from the federal purse. And since he who controls the purse-strings can regulate the activity in question by placing conditions on his financial involvement, this has given the Government of Canada a much more influential voice on the local scene than would appear from a reading of the *B.N.A. Act* and the cases interpreting it. The federal spending power, and its application in terms of federal government projects in the municipal area, is one of the key tension-issues of contemporary federal-provincial relations.

It is sometimes asserted that this federal spending power is unconstitutional. Pierre Elliott Trudeau expressed that opinion when he was a law professor,¹¹⁹ and there is a famous *dictum* of Lord Atkin in the *Unemployment Insurance Reference* that is sometimes so interpreted:

"...assuming that the Dominion has collected by means of taxation a fund, it by no means follows that any legislation which disposes of it is necessarily within Dominion competence. It may still be legislation affecting classes of subjects enumerated in section 92, and if so would be *ultra vires*."¹²⁰

The weight of academic opinion seems to support the legal validity of the spending power, however,¹²¹ and a recent decision of the Ontario Court of Appeal upheld it.¹²²

Unless the Supreme Court of Canada should reach a different conclusion, or constitutional reform negotiations should bring about a relinquishment or narrowing of the spending power,¹²³ therefore, its

existence ensures that virtually every major urban problem has at least the potentiality of three governmental dimensions: local, provincial and national.

CHAPTER 2

CANADA: QUEBEC POLICIES AND PRACTICE

A. SOME QUEBEC GOVERNMENT REACTIONS

A paper issued by the Quebec Minister of Municipal Affairs, in March, 1978, sets out traditional Quebec government policies on municipal and urban affairs.¹ It insists that the municipalities are made the creatures of the Province in terms of the constitutional order of 1867, the British North America Act; and denounces what it characterizes as the "omnipresent federal intervention" in the domain of municipal affairs. It asserts that the constitutional competence of the Quebec government in municipal affairs is not negotiable; and it also asks that the respective responsibilities of the Quebec government and the federal government under the Canadian federal system be clearly identified and defined in the constitution. Posing as the alternative policy options in regard to municipal government for the future *either* centralization which it considers could be effected either in Quebec or in Ottawa *or* decentralization, the paper declares that the Quebec government chooses "decentralization and the consolidation of local power". This latter, the paper promises, involves the Quebec government's establishing a:

"...priority objective to transfer back to the citizen and his elected local administrators the exercise of certain responsibilities, and it intends, in the near future, to proceed to an important decentralization of its activities, in such a way as to make the centres of decision-making as accessible as possible to citizens."

The paper points out that whereas, in the past, the great majority of Quebecers were established in rural areas, today 73% of the Quebec population live in agglomerations of 5,000 inhabitants and more; and that this tendency to urbanization is projected to continue. The paper's main complaints against the federal government, going beyond what it calls the "permanent temptation on the part of Ottawa to centralization", go to charges that the federal government intrusions in municipal affairs are often counter to the true needs of Quebecers. The specific examples cited include the housing policies applied for thirty years by the Central Mortgage and Housing Authority which, it is asserted, have favoured the multiplication in Quebec, since the Second World War, of suburbs of weak population density where the single family bungalow dominates, with the problems resulting therefrom: waste of energy for heating and transport; difficulty in establishing an effective common transport system, above all in the suburbs; exorbitant cost of the infrastructures assumed in large part by the municipalities; loss of the best agricultural lands. It would have been possible, the paper suggests, to favour a less dense form of habitation: citizens and municipalities would, in the result, have had to

face costs of urbanization, and therefore municipal taxes, much lower than is the case today.

The new International Airport at Mirabel is offered as an example of a federal intrusion in municipal affairs against the true needs of the Quebec population. Recalling that the choice of Mirabel as the site of the new Montreal airport was made against the wishes of the Quebec government of the day which would - for long range economic reasons - have preferred a location on the South Bank of the St. Lawrence, in the triangle of economic development already constituted by the towns of Montreal, Quebec, and Sherbrooke, the paper points to a series of problems created by the construction at Mirabel for which Quebec must bear the cost: the overly ambitious expropriation of land in the area; the loss of part of the best agricultural land in Quebec; the need, now, to construct, at exorbitant costs, a transport network to serve the airport. It also blames the federal government for favouring Toronto's airport and so failing to live up to its obligation to assure Mirabel of its real vocation as an international airport.

The paper is particularly critical of federal government policies in the Ottawa region: to realize the integration of Hull into the Ottawa region and so to create the National Capital of tomorrow, the federal government simply purchased 25% of the Hull territory, thereby giving the National Capital Commission, an organism named by the federal government, an effective control of affairs in Hull. This integration of Hull into Ottawa is described as particularly brutal, involving the construction over a short period of time of enormous federal government office buildings in the centre of Hull and so creating a radical change in the condition and style of life in the area; massive demolitions; and in particular, shameful problems of lodging and housing for the people living there. Worse still, this new downtown Hull, intimately linked to Ottawa, is acquiring an increasingly Anglophone character, resulting quite naturally from the fact that the majority of the civil servants working there are English-speaking.

Finally, the federal Ministry of Urban Affairs' project for the Old Port of Quebec (Urbex-Quebec) is identified as a key example of a hastily improvised, often modified, and in the end incoherent federal government planning project, harmful, in the result, to the spirit of initiative of those who are truly responsible for urban questions in Quebec.

It is to be noted that the Quebec Minister of Urban Affairs position paper on federal government policies and policy administration in regard to urban affairs was given many months before the announcement of the projected abolition of that federal ministry.²

B. QUEBEC'S PERSPECTIVE ON THE STATUS OF
MUNICIPALITIES UNDER THE BRITISH NORTH AMERICA ACT

QUEBEC'S VIEWS ON THE STATUS OF MUNICIPALITIES

It would be a serious mistake to isolate the urban constitutional issue from the whole Canadian constitutional problem of which it is an element. They have arisen from the same source, and both have contributed to the current crisis. In Quebec, the urban constitutional issue has caused frustration for decades, and has had a negative influence on the federalist cause.

Now that Quebec is preparing to provide her Canadian partners with a series of proposals for constitutional reform, it seems timely to try to provide details of Quebec's viewpoint on the status and powers of municipalities, the place they should occupy in our political structure, and the type of association they can maintain with senior governments. As we will see, this perspective is markedly similar to the traditional attitudes adopted in many other spheres. It is an autonomist, indeed nationalist, position, and is particularly hostile to the federal government's unilateral powers which have engendered imbalances in the Canadian federal system.

Quebec has always believed that the federal government exceeded its jurisdiction whenever it intervened in the municipal sector. The statements made by Quebec Premiers and Ministers of Municipal Affairs, as well as by commissions of inquiry or task forces which reflect this traditional position are too numerous to list. But they can be summarized in the following assumption: Quebec has full and complete jurisdiction over its municipalities and is definitely not prepared to relinquish that power to Ottawa. In its black paper entitled "*L'évolution et les conséquences de l'intervention fédérale dans le domaine des affaires urbaines et municipales*" (The evolution and consequences of federal intervention in the area of urban and municipal affairs) in February 1978, the Quebec Minister for Municipal Affairs had the following to say on this issue:

"For many years, the position of the various governments of Quebec has been virtually identical, regardless of the party in power: no federal interference in municipal and urban affairs. In recent years, there has been some relaxation in this regard, but the basic position remains unchanged."¹

The black paper quotes an excerpt from a speech made in 1965 in British Columbia by Premier Lesage who expressed opinions which were subsequently endorsed by all succeeding Quebec Premiers. As early as 1965, the Government of Quebec proclaimed the provinces' indisputable autonomy

in the sphere of municipal administration. The Government also stated its opposition to the proposed establishment of a federal Ministry of Urban Affairs, to the federal government's intrusion in municipal spheres, and its misgivings with regard to direct relations between the federal government and municipalities. As Mr. Lesage said:

"We wish to reaffirm here that, by virtue of the B.N.A. Act, authority in matters of municipal administration is vested exclusively in the provinces. I know that here in British Columbia you are as sensitive as we are about this relationship. I also know that, at the recent meeting of the Ministers of Municipal Affairs in Quebec, the participants firmly reiterated their wish that the federal government scrupulously respect the provinces' autonomy in this particular sphere.

At the same time, I believe, there were indications that the federal government was contemplating the creation of a Ministry of Municipal Affairs. Ottawa immediately denied it, but I hope that it was not merely a trial balloon, or an initial and discreet declaration of interest. In our view, the existence of such a Ministry would be entirely unconstitutional and would only increase intergovernmental problems in a Canada which already has enough of them! The best way to prevent the federal government's being tempted to adopt such a measure is to ensure that it leaves the responsibility for municipal affairs wholly to the provinces, that it leaves the municipal sector in which it has become involved, and that it allocates to the provinces the funds currently allocated for these purposes.

In the same vein, I wish to add that we observe with some concern a Canadian association of municipalities which turns continually towards the federal government to direct its attention to problems which are undoubtedly serious, but whose solution rests entirely with the provinces. We prefer to undertake discussions with our own provincial groups, one of which you visited last year, the Union of Quebec Municipalities, whose vitality and competence you could see."²

When Mr. Lesage spoke of provincial autonomy in municipal affairs, he referred specifically to section 92, paragraph 8 of the B.N.A. Act which recognizes the provinces' exclusive jurisdiction to legislate for municipal institutions. This provision includes authority to create, if the provinces so desire, municipal institutions, to define their territorial and political structures, the powers which they may exercise by delegation and their relations with senior governments. Legally speaking, municipalities have always been considered as emanations or creatures of the Government of Quebec representing regional decentralization of the provincial administration. Municipal autonomy has always been mentioned in political terms, but never in legal terms. Municipalities are seen as subordinate bodies, subject to the control, when necessary, of

the Government of Quebec. They possess only the powers transmitted by the laws governing them. Thus, municipalities cannot exercise powers which are not possessed by the provincial legislatures.

In other words, the municipalities of Quebec cannot claim to settle all the problems which may arise within the region under their jurisdiction; they must limit their activities to matters delegated to them by the provincial authority and to those which do not come under federal jurisdiction. The question is, therefore, not to determine, for the purposes of attributing legislative competence for a given activity, whether the activity is included within the municipal spatial framework, but rather to determine whether it falls under federal or provincial legislative jurisdiction. In Quebec, the existence of federal powers of intervention in the municipal sector has never been questioned; what has been challenged, as we shall see, is the excessive and unilateral nature of federal intervention.

On this point, Professor Jacques Lèveillé remarked:

"After reading the Canadian constitution from an "urban" perspective, it is clear that the provinces' powers of intervention in urban affairs cannot be exercised effectively without acknowledging and having recourse to certain jurisdictions retained by the federal government. (...) On the one hand, the federal government possesses, by law, sectoral jurisdictions which have a potentially determinant impact on the urban sector. On the other hand, the provincial government theoretically possesses, through its power of administrative decentralization, or directly, all necessary legal instruments for planning internal spaces in the urban units in its territory, and the relations among those units. Moreover, neither the federal government nor the provincial governments can find support in the text of the constitution to justify their assumption of an incontestable responsibility for planning in all the urban units comprising a system on Canadian territory."³

In this paper, we will not examine Parliament's different powers of sectoral intervention in urban matters; these have previously been the object of published studies⁴ which demonstrate that no level of government can claim to have a monopoly in issuing regulations on urban development. In this sphere, as in others, Quebec acknowledges the existence of legislative concurrence.

However, this does not mean that Quebec has agreed to accept the federal authorities' subtle distinction between municipal matters and urban matters. Quebec has only accepted the federal framework of analysis which placed the former under provincial jurisdiction, and the latter under federal jurisdiction. It never accepted a "dialectic" interpretation of their relationship whereby the concept of "urban affairs" would embrace a new reality corresponding to new problems exceeding the limits of urban

units and which would therefore interest Canada as a whole. Quebec has never accepted the view that the federal government, because it is empowered to act in the urban sector by virtue of its sectoral authority, can create a Ministry of urban affairs (since dissolved) or that it can assume leadership in the area of housing and planning. The report prepared by the task force on housing (the Castonguay Report) in February, 1976, examined the federal government's interventions in urban affairs and noted the extreme difficulty encountered in drafting a comprehensive list of all federal policies and programs with potential impact on the urban sector. The Report also contained an analysis of the basis for these interventions, and went on to say:

"We must first note that the federal government does not explicitly challenge the provinces' jurisdiction over municipal institutions. However, some aspects associated with urbanization have given rise to debate on matters previously considered to be local in nature. Besides strictly municipal matters, there are now urban questions. Beyond a strictly institutional approach, questions are identified also in their relationship to contemporary reality. It is in this reality that the federal government is interested."⁵

The Castonguay Report, of which large extracts are included in the black paper of the Ministry of Municipal Affairs (February, 1978) does not maintain, however, that the federal government is recommending this approach only to encroach upon provincial jurisdiction in matters pertaining to local institutions. Rather, it notes that Ottawa has only decided to direct its urban interventions in the urban sector in "desirable" directions, and to consider that "some questions must no longer be perceived as uniquely provincial but must also be dealt with at the national level". (p. 328) On this point, the Report was supported by a statement of the Honourable Barney Danson who, in April 1975, said that the federal government had at its disposal numerous "appropriate and powerful" instruments which it was prepared to use "in order to attain new objectives reflecting new values". Among these new objectives, the Minister cited the development of a national policy and of an "urban strategy for Canada, in consultation with the provinces, their municipalities, and all Canadians". The questions which the Minister intended to resolve referred to population distribution in urban communities and urban growth, matters which are obviously primarily of provincial interest.

The Report reviewed the federal government's participation in a number of sectors (housing, transportation, economic development, the Hull region) and noted the effects of these interventions on matters under provincial jurisdiction (development of infrastructures, construction standards, regional planning, inter- and intra-urban transport, subsidies to municipalities for winter works). It went on to state that the federal government was "omnipresent in Quebec urban and local affairs" (p. 337), because of its property ownership in urban areas, the location of branches of its departments and parks, the exercise of various jurisdictions and the adoption of local initiatives and new horizons programs. According to the Report, this presence was inevitably of great significance. The report added:

"We must bear in mind that the fact cannot be ignored that cities are the spatial expression of the economic and social organization adopted by a society in order to achieve its objectives. In the past, Quebec society has insisted on determining this framework for itself. Despite the drawbacks that this attitude may entail, it is essential that, in the future, our society should be able to continue to assume this fundamental responsibility." (p. 337)

This part of the Report, which the present Government of Quebec accepts, was followed by a commentary in which the Task Force expressed its regret at the political pressure exercised by the federal government on local administrations through subsidy programs, and at the begging position in which the municipalities and the government of Quebec have been placed. Without rejecting the so-called indirect intervention of the federal government in urban affairs (for example, in locating an airport or federal government services) - with respect to these, the Report recommends that Quebec urban policy take them into account and derive the greatest advantage from them - the Report concluded that direct federal intervention should come to an end. (By direct intervention, the Report meant sectors under provincial jurisdiction and of a local nature: for example, arterial roads, parking facilities, regional planning, etc.):

"As for direct federal intervention, we believe that it is totally unjustified, and that the government of Quebec must use every means at its disposal to see to it that it ends, even if, in the short term, such a position may mean the loss of some grants. The government of Quebec must also emphatically insist that the federal government reduce the taxes devoted to these ends. This would leave a larger financial margin particularly for municipal and urban administration and also...for the average taxpayer." p. 338.

Autonomist Views and Criticisms

We have made extensive use of the Castonguay Report because, to us, it seemed to present the most detailed analysis of Quebec's views on these matters and because this Report has been accorded widespread credibility. Also, the document raises the question of the difference between theoretical responsibilities on the constitutional level, and effective responsibilities on the practical level in the urban sector. It also reveals that the federal government is at the helm, and that Quebec has followed Ottawa, the latter setting the conditions of its participation or rather the rules of the game concerning urban development, regional planning, transport, etc. It is true, however, that Quebec's abstention from the establishment of an urban policy has encouraged federal intervention.

The problem of the difference between responsibility and taxation had been raised in the Report of the Royal Commission of Inquiry on Constitutional Problems (the Tremblay Report of 1956) which cited excessive taxation by the federal government. This, the Report said, left Quebec little room to manoeuvre in order to assist its municipalities in meeting their responsibilities, since the population was already heavily

taxed. Moreover, the Report was critical of various programs for conditional subsidies set up by the federal authorities.⁶

Indeed, the Province's strict autonomist position has, on several occasions, resulted in the loss of federal funds. The Province has refused to participate in such federal programs as the housing assistance programs, the home insulation program, and loans or grants to municipalities. This autonomist attitude was reflected in a statement made by Premier Johnson at the Federal-Provincial Conference on Housing and Urban Development held in Ottawa on December 11-12, 1967:

"The provinces and their municipalities are in the best position to determine the needs of Canadians from the point of view of housing as well as urban planning and to link these to other social needs such as education, health, welfare, etc.

Meanwhile, in sectors where inter-governmental co-operation could be necessary, we hope that this will take place on the basis of the principles contained in the above-mentioned committee report, so that the government of Quebec or its agencies will be the only co-discussants of the federal government and its agencies. Nevertheless, there are some areas where initiative and responsibility should rest solely with the provinces; this is the case, for example, with respect to municipal structures, the powers of municipalities, and regional planning. In these areas, Quebec will not tolerate any direct or indirect federal intervention; if federal funds or credits become available in these spheres, Quebec will demand that it receive equivalent benefits.

Quebec has its own housing and urban planning policies. It intends to exercise all its responsibilities in this domain. However, the problems which it must face are not unique. This is why it welcomes the opportunity to become acquainted with the federal government's point of view as convener of this conference, and with the points of view of the other provinces which share similar concerns."⁷

In November 1972, at the Tri-Level Conference held in Toronto, the provinces, Quebec among them, recognized the regional character of urbanization, and affirmed their desire to be free to determine their own programs. Under the Bourassa government, these autonomist views prevailed. The literature produced by the present government maintains the same hostile stance with respect to the federal presence in urban affairs. The available documentation issued by the P.Q. government (for example, the black paper mentioned above) adopts an unyielding and accusatory tone, proposing flatly that Ottawa withdraw from the whole sphere of urban affairs. The Quebec document reviews the arguments used by the federal government to justify its activities in urban affairs and rejects them all (arguments

stating that the provinces are too small, that Ottawa has the funds to resolve the great problems facing Canadian society, that the area of urban affairs is not clearly defined, that the federal government has invested a great deal in cities, etc.). It maintains that the federal programs do not respect provincial priorities, that they are improvised and paternalistic, that they are contrary to the real needs of Quebec, and that they lack the desired continuity.

In recent years, the present Premier of Quebec has opposed various federal initiatives, among others in the housing sector, home insulation, and grants to municipalities. His objections, at time perceived as "crises" by the written media, have had some well-known results: namely, the removal of unilateral conditions fixed by the federal government which, according to Quebec, constituted federal interference in the provincial sphere (for example, the reduction of time limits in the home insulation program) and permitted Ottawa to deal directly with municipalities. We could, of course, speak of "provincial" victories in these three areas, but not of "P.Q." victories, because the present Premier was merely defending Quebec's traditional positions.

We should also note that government and doctoral literature in Quebec is very critical of federal intervention in areas traditionally considered as falling within provincial jurisdiction. In some cases, the literature acknowledges that the federal authorities did not lack legitimate power or justification to act. On the whole, however, a balance sheet of Quebec attitudes on federal action in the urban sector paints a negative picture, especially since federal objectives were pursued by means of the federal spending power, something to which there is great objection in Quebec. Of course, if federal action had been taken in conjunction and in consultation with the provincial authorities, criticism would have been less severe and also less universal. In the Castonguay Report⁸ and in the Legault Report,⁹ we find a somewhat negative assessment of the Central Mortgage and Housing Corporation's activities in Quebec.

Much of the literature on urban problems recognizes the federal government's leadership rôle in the area of urban development. Ottawa is acknowledged as the team captain which can even issue regulations on zoning, road width, etc. In spite of itself, Quebec has accepted this leadership because it cannot withstand the pressure exerted by municipalities and by citizens who need the money made available through various federal programs. For example, no one would challenge the validity of the following assessment by Professors Divay and Godbout:

"In the area of housing, and of urban affairs in general, the federal philosophy acknowledges, in principle, pre-eminence on the provincial level; in reality, however, the federal government exerts the determining influences. Until now, provincial action has not challenged the existing federal-provincial-municipal hierarchy."¹⁰

One way of correcting the imbalance which is in the process of being implemented,¹¹ and which had been suggested in the Castonguay Report, consists of providing Quebec with urban and regional planning policies. Constitutionally speaking, the federal authorities are not bound by this

sort of policy, but, according to our sources, Quebec would oppose all federal intervention not compatible with Quebec policy. According to some sources, this would be the only way to render Quebec's policy credible.

A Strengthening of Local Autonomy

Urban affairs is, therefore, an important area of disagreement in federal-provincial relations. The Quebec Government's approach does not appear to pursue the objective of evicting the federal government from the scene in favour of increased centralization of authority in the hands of the Government of Quebec. Municipal autonomy and decentralization are values which are enjoying a period of increased recognition. It is difficult to envisage a reduction of municipal power. The following excerpts from two government reports illustrate the philosophy favouring the strengthening of municipal autonomy:

Castonguay Report: (previously cited)

"Because of their political role, and because their responsibilities are closely linked to the immediate living environment of the inhabitants, municipalities constitute a level of government which must play a primary role in our democratic system. As already stated, in our opinion, it is essential that the government of Quebec recognize municipalities as such and grant them the necessary resources to perform their role adequately, both in relation to their political and administrative functions(...)

Consequently, we believe that urban structures must be adjusted to contemporary reality by revalidating and reinforcing the value of local political and administrative authorities." (pp. 136-7)

Legault Report on Housing: (previously cited)

"The Task Force on Housing maintains that local authorities (municipal or regional) are in a better position than anyone else to recognize particular needs at the local level in the area of housing and to meet the needs of the community effectively. Therefore, it is essential that local authorities be granted a primary role in the area of housing, and that they receive the autonomy and funds necessary for them to carry out their responsibilities fully." (p. 75)

These quotations reflect the attitudes now prevalent in Quebec on this matter.

A DEFINITION OF THEIR LEGISLATIVE POWERS

In Quebec, it seems that there is not a dominant school of thought which challenges the role and position of the municipalities. Rather, and

this is also the position of the present government, discussion focuses on a consolidation of the municipalities and the need to strike a balance between the taxation powers and the responsibilities of municipalities. The language now in fashion, and the one which is politically profitable, is that of decentralization: the need to bring the citizen closer to the decision-making process which directly affects him, neighbourhood democracy, etc. Furthermore, a large segment of public opinion agrees that the provincial administration is too centralized and that there is a need to transfer power to local and regional administrative levels. In short, at the present time, Quebec is not experiencing a period in which municipal power is being eroded, even though we may observe, on the other hand, the implementation of more rigorous governmental supervision and control of municipal activity.

A description of the range of legislative powers transferred to the municipalities falls largely outside this mandate. This, in any case, has already been done (among others, see A. Tremblay and R. Savoie, "Précis de droit municipal"¹² and the Castonguay Report and Appendices). We should note however, that municipal powers in Quebec are not inherent powers, but rather delegated powers. The rule is that the municipalities possess only those powers delegated to them by the provincial authorities, and they can neither extend nor exceed those powers. The provincial legislator is not bound by any authority to any pre-established plan when delegating powers to municipal corporations. His limitation, besides political factors, is constitutional in nature: he cannot delegate more power than he already possesses, and he cannot abdicate his power or create a new legislative body to replace the National Assembly of Quebec. This also applies in other Canadian provinces.

In reality, the Quebec legislator has not endowed Quebec's urban municipalities with uniform powers. Rural municipalities, on the other hand, are governed by the Municipal Code and possess only the powers provided for by that Code. Cities and towns (urban municipalities) are *in principle* governed by the *Loi des cités et villes* (the Cities and Towns Act),¹³ except for the cities of Montreal and Quebec which have special comprehensive charters which take the place of the *Loi des cités et villes*. This Act, therefore, is the general law governing the urban sector. However, one must not lose sight of the fact that more than half of the cities and towns of Quebec (there are about 280 in all) have acquired particular powers through special charters from the National Assembly. These charters detract from the *Loi des cités et villes*. The extent of these special powers generally varies depending on the importance of the city (according to the Act, one should speak only of cities). Unfortunately, in the past it has been customary to request exceptions to the general rule from Quebec; now, the recourse to special charters is declining.

The range of municipal powers in the urban sector is not, therefore, uniform. Despite this fact, the core powers common to all cities are the most important, and are incorporated in the Municipal Code. These powers refer to matters of a local or private nature, to property, and to civil rights (Section 92, paragraphs 13 and 16 B.N.A. Act). First, they refer to local public order or to the means possessed by the municipalities to establish local public peace (traffic, riot, noise, indecency, sanitation, etc.). Secondly, they refer to the protection

of the person and of property (health, police, fire, pollution, building sanitation, commerce, industry, industrial development, etc.). In a third category are powers concerning the various services which municipalities may provide (aqueducts, sewers, sewage treatment, municipal works, transport, recreation, etc.). Finally, the last category of powers is aimed at regulating property and regional planning (zoning, construction, subdivision, housing, etc.).

Municipal functions in Quebec are numerous and costly, but, with some exceptions (city police departments, the overseeing and holding of elections, the appointment of some officials), they are not obligatory in that municipalities are not required to exercise the powers delegated to them. It is the municipal council which decides on the level of service that will be available and on the extent of its regulation of the areas under its jurisdiction. Therefore, a municipality's activity is often in direct proportion to the wealth of its population.

It is clear that these functions are of immediate concern to the citizen, and that the local government, because of the nature of its activities, can maintain direct and very close relations with the citizens.

These factors (importance and cost of municipal functions, proximity of the local government to citizens, failure to regulate municipal authorities) have generally contributed, in varying degrees, to the senior governments' assumption of functions which formerly belonged to the municipalities. Thus, for example, the provincial government has progressively substituted for municipal action in the areas of health, social security, roads, environment, agricultural zoning, housing, transport, pollution, etc.). For its part, the federal government, through its many programs, has also intervened in many municipal regulatory sectors: housing, construction, urban renewal, municipal infrastructures and facilities, sewage treatment, industrial development, transport, parks, etc. In short, the municipal sector has become the object of competition between the two senior levels of government, and the power exercised by the municipal council over its traditional sphere, which everyone would like to protect, depends substantially on federal and provincial policies. The range of its powers has no permanence and overlaps with that of the other two levels of government which exert a marked influence upon it.

THEIR POWERS OF TAXATION

In recent years, municipal taxation in Quebec has been the subject of a number of reliable descriptive and critical studies. These include the Castonguay Report and appendices, and the two background papers prepared by the Ministry of Municipal Affairs tabled by the Socio-Economic Conference Secretariat at the Quebec Municipalities' Conference held in Quebec on June 9-11, 1978. The purpose is not to repeat those descriptions, but rather to point out the salient aspects of this taxation system and the major reform elements which will soon be introduced.

The municipal taxation framework is established entirely by provincial legislation; it alone defines the sources of taxation available to municipal authorities. The National Assembly can delegate its legislative powers to municipal corporations with respect to "direct taxation

within the province in order to raise revenue for provincial purposes" (Section 92, paragraph 2 of the B.N.A. Act). In theory, municipal corporations could, with the permission of the provincial legislature, collect direct taxes on personal and corporate incomes, as also they could be deprived of access to property taxes: two rather unlikely hypotheses.

As mentioned at the beginning of the report, the areas of taxation at the disposal of the municipalities are proving insufficient to allow them to balance their budgets. In recent years there has occurred, on the one hand, a gradual diminution of the financial autonomy of municipalities and, on the other, a greater dependence of municipalities on government revenues. In 1976, for example, approximately 75% of municipal budgets were covered by local sources, the other 25% from transfer payments (conditional and unconditional transfers drawn on the sales tax and from grants).¹⁴

The so-called autonomous revenues of municipalities included:

a) General and special property tax

This represents approximately 40% of municipal budgets. It is levied by virtue of the *Loi sur l'évaluation foncière* (Property Assessment Tax Act) of 1971¹⁵ on all taxable real estate with the exclusion of those properties not included in the assessment register or which are tax exempt. While the revenues derived from the general property tax must normally be used to cover general administration costs, those derived from special property taxes (or local improvements) are used to finance specific capital expenditures, for example the construction of roads and sidewalks in a given ward. Everyone seems to agree that the property tax is regressive, particularly for those on low incomes. There is, however, no question of abandoning it. This type of tax can, in some municipalities, be set aside because the budget may be covered by revenues from transfer payments alone.

b) Service taxes

Legally speaking, these taxes are payments for services rendered to consumers and the revenues derived from them cannot therefore, without provisions to the contrary, exceed the expenditures incurred in operating the services involved. In the strict sense, they are not taxes at all, barring provisions to the contrary. These "taxes", which represent a little more than 10% of municipal budgets, include charges for water, sewer, garbage collection, and snow removal. Service taxes are not applied uniformly throughout Quebec.

c) Business taxes, licenses and permits

These taxes, which municipalities are not required to collect, mainly include the tax on the rental value of industrial and commercial buildings which may be taxed by cities; rural municipalities cannot do this. Rather than levy a tax on rental value, all municipalities can issue licenses and permits, something which yields much less than tax on rental value.

Taken together, these taxes represent a little more than 6% of municipal budgets.

d) Other revenues from local sources

These represent approximately 17% of the total revenues of municipalities. Included are the tax on tenants, (of very little value), compensations in lieu of taxes, various fees collected by the municipalities, (interest, fines and penalties, fees for entertainment, gifts, etc.).

Revenues from transfer payments include the portion of the sales tax which by law goes to the municipalities and which is apportioned to them by the provincial authorities; this makes up 16% of municipal budgets as a whole. They also include unconditional grants to the municipalities (for example: *la Loi de 1977 sur les subventions aux municipalités de 10,000 habitants ou plus* - the 1977 Act on grants to municipalities with 10,000 or more inhabitants)¹⁶. These unconditional grants represent approximately 5% of total revenues. As for conditional grants, which are of the same relative importance, they are generally intended for capital investment purposes, mainly municipal water and sewage facilities.

All these revenues from transfer payments are generally subjected to considerable criticism because they are incompatible with the concepts of municipal autonomy and fiscal responsibility. The present government has proposed a reform which moves toward a better balance between local taxes and revenues on the one hand and expenditures relating to the cost of municipal services on the other.

"The relations between Quebec and its municipalities may be established on the basis of two general schemes based on one of the following two options: that of the gradual absorption by the province of traditionally municipal functions or that of an affirmation of local autonomy. The solutions to municipal fiscal problems will vary considerably depending on the extent to which one accepts one or the other option, even if the aim remains the same: that is, to give the municipalities adequate financial resources to exercise their designated responsibilities.

The first option, that of the absorption of traditionally municipal functions by the province, would gradually lead to the taking over by the government of certain local functions such as public transport, police, recreation, etc., to mention only a few.

The second option, that of an affirmation of local autonomy, would require that the municipality be able to count on its own fiscal base and on a limitation of government intervention in municipal sectors. This implies a further obligation on the part of the municipality and its inhabitants to define their priorities and to find the local funds necessary for their realization with a redistributed fiscal framework.

In a general sense one could say that, in the past, the first option has been favoured by the Government of Quebec and by most of the provincial governments of Canada. However, for some time now, local communities and the provincial governments themselves seem to be concluding

that this option - over the medium and long-term - involves both a weakening of the legitimate functions of municipal administrations and a rapid, if not excessive, increase in the cost of the services being "absorbed". Moreover, such an option could have a negative impact on local democracy. It could be prejudicial to citizens' participation in the decision-making process concerning them. Therefore, there is a risk that those decisions taken would not correspond to the citizens' desires.

Besides, all consultations and studies undertaken in recent years favour the option of local autonomy. For these reasons, the government has chosen to base fiscal reform on the option which affirms local autonomy.¹⁷

At the Quebec-Municipalities Conference, where the government tabled a detailed draft proposal for the reform of municipal taxation, a joint committee consisting of representatives from the Ministry of Municipal Affairs, the Union of Municipalities, the Union of County Councils, the Mayors' Conference of Suburban Montreal, the urban and regional communities, and the cities of Quebec was established. This committee studied the government's draft in detail, and proposed several changes. Within the committee, agreement was reached on the principle that municipal expenditures should be based on local resources. In other words, a agreement was reached on the principle of municipal fiscal autonomy: full responsibility of the municipal administration for its revenues and expenditures, and an end to pilgrimages to Quebec in order to obtain grants.

In his 1979-80 budget speech, delivered on March 29, 1979, the Quebec Minister of Finance announced that the government had adopted most of the conclusions arrived at by the joint committee and that the following aspects of reform would take effect in January 1980:

- abolition of the standard school tax; municipalities will thus be free to collect the desired property taxes in this area;
- expansion of the property taxation base by eliminating exemptions allowed under the *Loi de l'évaluation foncière* (Property Assessment Act) and by the taxing (at 80%) of government buildings, hospitals, universities, etc.;
- retention of the business tax by municipalities;
- abolition of revenues from transfer payments (sales tax, conditional and unconditional grants), except for the odd subsidy program which is part of government policy;
- creation of an equalization fund (intermunicipal mutual aid) to help less prosperous municipalities;
- setting up a property tax credit to benefit low-income households.¹⁸

REACTIONS AND COMPLAINTS ARISING FROM THE PRESENT SITUATION

These rearrangements in municipal taxation follow complaints voiced on numerous occasions by municipal representatives, who have called for the translation of the basic principles of municipal autonomy and fiscal responsibility into concrete terms. It is anticipated that these arrangements will eliminate a good number of the contentious matters between Quebec and the municipalities concerning the position of the latter. On the other hand, relations between Quebec and the municipalities were not, in general, strained. For example, a survey taken in 1974 for the Union of Quebec Municipalities by the University of Montreal's Opinion Poll Centre (Centre de sondage de l'Université de Montréal), found that 42% of those who responded were satisfied with the relations between the municipalities and the provincial government, 38% were more or less satisfied, and only 20% were dissatisfied. In spite of the coming to power of the Parti Québécois and the federalist stance of the Quebec mayors, we believe that these figures have not changed very much. There is nothing significant that would lead us to argue otherwise.

Moreover, the same opinion poll found that Quebec municipalities are less satisfied with the federal government: 28% of those in positions of responsibility were satisfied with those relations, 43% were more or less satisfied, and 29% were dissatisfied. The survey report adds:

"If one considers federal-provincial relations with respect to municipal matters, dissatisfaction is high. Three respondents are dissatisfied for every one who is satisfied (47% against 15%). More than one third of those who responded are more or less satisfied. We may conclude, therefore, that persons in positions of municipal responsibility are more satisfied in relation to inter-governmental relations in which they are called upon to play a larger role." (p.4)

Federal-provincial relations concerning municipal matters are inadequate, and municipal administrators are accordingly dissatisfied.

Finally, the opinion poll shows that municipalities do in fact maintain relations with the federal government, but that these are only one fifth as frequent as are their contacts with provincial bodies. As we shall see, the provincial government tends to urge municipalities to go through its agencies when dealing with the federal government. On this point the report concludes:

"While municipalities are prepared to maintain that, as far as they are con-

cerned, federal-provincial relations seem the most unsatisfactory, it may also be true that they cannot reach a consensus on the most appropriate formula for relations between the municipal and federal levels of government because of their perception of the provincial government's wishes." (p.14)

Since the provincial government's position is that municipalities should not become involved in federal-provincial relations, and that they should avoid establishing a direct dialogue with federal agencies, municipal officials tend to act with great prudence in these matters. It is worth noting, for example, that the Union of Municipalities and the Union of County Councils of Quebec have not gone on record concerning their official position on the constitutional question.¹⁹

In fact, one finds a pragmatic attitude on the part of municipal leaders who do not oppose a direct compromise with the federal government. They take what is available. They try to obtain the money from federal programs - which they do not reject - so that their electors may benefit. At the same time, they respect provincial directives. It is the provincial government that is quarrelsome, that complains, that reacts, etc. The municipalities merely look on with regret.

We found that municipal leaders have made few decisions. One of the most important decisions taken is that of the Mayor of Montreal who, in March 1974, said that Ottawa's centralization tendencies were dangerous. He went on to reproach municipalities for their complacency towards federal intrusion in the urban sector. He also reproached them for their venality and stated that Ottawa did not feel bound by the constitution and could let the municipalities down at will because it has no constitutional responsibility towards them.²⁰

NEW PROPOSALS FOR THE DIVISION OF FISCAL RESOURCES BETWEEN THE FEDERAL AND PROVINCIAL GOVERNMENTS

While, in Quebec, fiscal reform is proceeding at the municipal level, it is doubtful whether federal-provincial fiscal relations will result in new jurisdictional arrangements. Quebec's positions on fiscal matters, joint programs, and conditional subsidies from the federal government have been stated and restated. These are listed in the collection of documents prepared by the Canadian Intergovernmental Conference Secretariat. The title of this collection is "Propositions constitutionnelles 1971-78/Constitutional Proposals 1971-1978".²¹ Quebec has always asked, among other things, for the following:

- a new fiscal sharing agreement adapted to the province's needs;

- the abolition of grants, subsidies and conditional transfer payments;
- the abolition of federal grants for housing and urban planning;
- fiscal equivalence for joint programs in which Quebec does not wish to participate - this equivalence to be paid to the provincial government;
- the limitation of federal spending power in matters under federal or concurrent jurisdiction or, at the very least, better control over this power.

At the Federal-Provincial Conference of Prime Ministers on the Constitution held on February 5-6, 1979, Quebec reiterated these views. No agreement was reached with respect to federal spending power. Ottawa wished to continue paying conditional grants to the provinces if a majority of them agreed, the fiscal equivalent being paid directly to individuals in the non-participating provinces. No agreement was reached regarding the other elements of the fiscal question. The federal government was prepared to authorize the provinces to levy direct taxes under certain conditions (the removal of obstacles to inter-provincial commerce and the non-taxing of persons residing outside the province). The provinces preferred to study the matter which was referred to the federal-provincial inter-ministerial committee.²²

CONSTITUTIONALIZING THE STATUS OF THE MUNICIPALITIES AND THE CONSTITUTIONAL DELIMITATION OF THEIR POWERS

The preceding pages indicate in themselves that it would be illusory to believe that Quebec would accept specific mention of municipalities in a constitution where they would be given their own constitutional powers. To mention municipalities in the country's constitution would mean enshrining their status. This would have no concrete significance other than to guarantee, in a constitutional sense, certain areas of jurisdiction for municipalities, such as, for example, local matters traditionally assigned to local authorities. It would also mean constitutional recognition of a third level of government which would logically no longer retain its present subordinate status in relation to the provincial government. Such an arrangement would also imply the possibility of direct relations between the federal government and the municipalities, and of tri-level conferences (federal-provincial-municipal) like the one held in Toronto in November 1972.

An examination of Quebec's political climate leads us to conclude that this hypothesis has no chance of being adopted, at least not as long as agreement on constitutional reform has not been reached, especially with respect to the points considered

essential by those governments which have come to power since 1960. No political party is prepared to defend a position which would involve serious electoral risks.

The positions adopted in principle by Premiers Lesage, Johnson and L vesque, among others, are unambiguous: Quebec will not tolerate direct relations between the federal government and municipalities, and does not want to participate in any tri-level conferences, which renders the proposal infeasible. At best, the government of Quebec is prepared to accept the inclusion of municipal representatives in provincial delegations participating in intergovernmental conferences.

Quebec's present climate is not conducive to any diminution of that province's legislative jurisdictions. Since the federal presence in municipal and urban affairs is widely challenged, any proposal which would give access to Quebec's preserves and legitimize federal action which traditionally has been denounced would risk the political suicide of its proponent. The latter would undoubtedly be accused of recognizing the federal thesis according to which urban affairs are national in scope, and of wanting to institutionalize governmental competition and lobbying at the municipal level.

In the past, Quebec has departed from this position on rare occasions, notably when it agreed to participate in the tri-level conference in November, 1972. Subsequently, however, it indicated clearly that it would not participate in that type of conference again. The Minister of Municipal Affairs of Quebec expressed his views on this point in a letter of February 10, 1975, addressed to his counterpart, the Honourable Brian Peckford of Newfoundland:

"The Government of Quebec, while fully supportive of the federal system and of the unity of Canada and anxious to maintain good relations with the federal government, remains opposed to the tri-level mechanism on a national basis and maintains its position of refusing to participate in national tri-level conferences and in the task force on public finance.

The basic reason for our position is only in small measure an objection to the representativity of the Canadian Federation of Mayors and Municipalities. The fundamental factor is our feeling that municipalities as such are totally under provincial authority and that a tri-level mechanism creates a false situation, in addition to fostering direct conversations between them and the federal government."

With some reservations, the present Quebec government subscribes to this position.

Our examination of the correspondence exchanged by the Prime Minister of Canada and Premier Robert Bourassa shows that, with respect to urban affairs, Premier Bourassa believed that there should be "bilateral" discussions".²³

On July 15, 1975, Quebec's Minister of Urban Affairs advised his Newfoundland colleague:

"I am obliged to reiterate that the Province of Quebec will not attend a national tri-level conference, but will gladly participate in a federal-provincial conference and will include municipalities among its delegation."

This attitude does not coincide with the federal approach which is more open towards the municipalities. Thus, on the occasion of the 1972 tri-level conference the Honourable Don Jamieson pleaded in favour of direct communication between the cities and the federal government. He said:

"I believe that the history of my Ministry has shown that we are prepared and indeed have been forced to the conclusion that tri-level consultation is necessary in almost everything we do."²⁴

His colleague the Honourable Ron Basford, Co-chairman of the Conference, shared this point of view. An internal document (for limited circulation) prepared in October, 1977, by the federal Ministry of Urban Affairs for the tri-level conference is in complete agreement.²⁵ In that document, the rôles of the three levels of government in urbanization are set out. It recommends the establishment of permanent tri-level mechanisms to deal with urban problems identified as being national in scope, and affirms the need for direct relations between the federal government and the municipalities.

In Quebec, the project for the constitutionalization of the municipalities is seen as originating with the Federation of Canadian Municipalities. It has the support neither of the Union of Municipalities nor of the Union of County Councils.²⁶

At the present time, the Quebec political climate favours the province's traditional approach. Moreover, the municipalities scarcely have a choice in the matter. They are solidly and legally boxed in, direct relations with the federal government being virtually forbidden (cf. Bill 56, July, 1971). To realise this, one need only consider, among other things, the acts governing the Quebec Housing Corporation (1966-67 Act, ch. 55) and the Ministry of Intergovernmental Affairs (1974 Act, ch. 15). In the first Act, the principle of jurisdictional autonomy is implemented in such a way that municipalities are forbidden to deal directly with the federal

government in the areas of urban renewal and public housing. This principle is also applied in order to affirm the municipalities' important responsibilities in this area. As for the Act of the Ministry of Intergovernmental Affairs, the content of section 20 illustrates Quebec's policy:

Section 20: -Except where explicitly provided by law, no school board, regional council, municipal corporation, urban community or regional community may, under risk of invalidation, negotiate or conclude agreements with the Government of Canada, with that of another province, with a foreign government, or with a department or agency of any of the said governments.

Given this attitude, one can understand the reaction of provincial authorities when, last spring, the federal government tried to pay subsidies directly to the municipalities. Discussions took place between Quebec and the federal government. The conclusion was reached that federal aid to the municipalities would pass through the Province.²⁷

In conclusion, we would say that, whatever happens in Quebec, the position of that Province on the subject of federal-provincial relations and of provincial-municipal relations will be based on the four broad principles established at the Provincial Premier's Conference of August 1972:

- 1) in the area of municipal and urban affairs, the rôle of the provinces is of primary importance;
- 2) the rôle of the federal government...is to support the initiatives, priorities and programs defined at the provincial-municipal level;
- 3) when implementing programs bearing on the municipal sector, the federal government must act through the intermediary of the provincial governments;
- 4) all participation by the federal government...must conform to the plans established at the provincial-municipal level.²⁸

C. SUPPLEMENTARY TEXT

Since April, 1979, both in Quebec and in Canada, important legislative, political and constitutional events have occurred which may have a significant effect on the very direction of our task force report. Noteworthy in recent developments is the active pursuit of expanded municipal autonomy in the fiscal field, notably in Quebec. Another characteristic is the increased involvement of provincial authorities in the sphere of land development. Finally, there have been discernible political and constitutional developments which, if they were translated into constitutional amendments, would result in increased clarification of provincial powers in the municipal sector and in their reinforcement.

LEGISLATIVE EVOLUTION

The outstanding event on the legislative scene in Quebec, and one which has a special significance for our chapter was the adoption by the National Assembly of Quebec and subsequent enactment, on December 21, 1979, of Bill 57, the "Municipal Finance Act". Under this Bill, already discussed in Chapter 2 (b), the National Assembly passed (with some changes) the proposal for municipal fiscal reform introduced by the provincial government at the time its last budget was tabled. Its purpose was to make the principle of municipal fiscal autonomy more specific. Another major legislative event of 1979 was the public discussion of Bill 125 on planning and urban development. During November, 1979, the National Assembly passed this important Bill which clearly showed the provincial government's interest in a global policy for land development. It should be noted, however, that under the terms of this Act the municipalities were subject to additional constraints in this sphere. In effect, municipalities will not, in the future, enjoy the same freedom to exert their authority in the fields of land development and zoning. Plans for land development will have to be adopted by regional municipalities in conformity with the criteria stipulated in the Act. Once the plans are adopted, the local municipalities must adopt an urban development plan and regulations governing zoning, lot division and construction which conform to the objectives of the overall plans. This Act indicates the provincial government's wish to provide itself with an urban strategy and to control closely the development of its land in accordance with certain specific predispositions. The Act could have repercussions on federal-provincial relations since it inevitably restricts the opportunities for manoeuvring for federal initiatives relating to land development. What this Act means, in effect, is that it will be increasingly difficult for the federal government to subvert the province's territorial actions which come within the new Act's authority. We might add that Bill 90 relating to agriculture and zoning to which we

have previously referred in Chapter 2(b), is in the same political context. It indicates the provincial government's desire for exclusive control over land development in Quebec. This attitude is not unrelated to constitutional matters.

POLITICAL EVOLUTION

We have pointed out that Quebec has always insisted on being the sole authority in the definition of urban policies affecting the province and its territory. It is principally from this viewpoint that we must examine the most recent Acts adopted by the National Assembly. It is enough merely to recall the 1977 federal-provincial conference of Ministers of Municipal Affairs, during the course of which the ministers noted that the solution of municipal problems should be the responsibility, above all, of the provincial governments.¹ This interprovincial solidarity had, and will have, an impact on the redirection of federal policies relating to urban matters, as this will involve a change in politicians' attitudes. In this connection, we have only to recall the federal government's withdrawal on the issue of community service grants to municipalities.

This attitude of interprovincial solidarity is related to the abolition of the Ministry of State for Urban Affairs. (It is noteworthy that the abolition of this Ministry has not significantly reduced federal activity in the urban sphere.) Nor is this attitude unrelated to federal plans to restore to Quebec land which had been expropriated for the airport at Mirabel. Moreover, it is clear that this shared viewpoint has inspired a change in the federal government's attitude, and that it is linked to the plan to abolish the Canada Mortgage and Housing Corporation. It largely explains the more conciliatory attitude with which the federal government has been viewing provincial demands. In short, there is a recent awareness in Quebec of a determination to eliminate the causes of friction between the two levels of government.

On the other hand, we must bear in mind the present situation which is the product of earlier events. There are existing contracts between the government of Quebec and the federal government in the field of municipal affairs. We could cite, for example, current contracts between the Quebec Housing Corporation and the federal government.

It is clear that these contracts, signed more than ten years ago, inaugurated an improvement in federal-provincial relations in the sense that they prevented the federal government from using its spending power to intervene directly in areas of provincial responsibility. Conversely, these contracts recognized, in their way, the existence of an imbalance in the division of fiscal powers between the federal government and the provincial governments. Had true fiscal autonomy existed at the provincial level, the province

would not have needed recourse to this kind of contractual agreement to accomplish what the constitution authorised it to do. If this autonomy existed, municipalities would not necessarily have less money, but the available resources would be raised locally, thanks to the expanded fiscal base which would complete the equalisation payments.

In essence, that means that the two levels of government have a continuing interest in municipal affairs. It also means that the three levels of government - municipal, federal and provincial - should have constant contact and discussion among themselves. Finally, it means that municipal officials in Quebec should maintain an association at least for information purposes with the federal bureaucracy and with federal politicians. Our enquiries indicate the existence of constant direct relations between federal and municipal administrations although the municipalities continue to accord priority to the conduct of business with the provincial governments.

The problem posed by these contracts between municipal and federal authorities arises essentially from the fact that they took place following a federal intrusion in a sphere of provincial responsibility. According to the hypothesis whereby constitutional reform would see a province endowed with all the financial resources necessary to discharge fully the powers consigned to it, this difficulty would disappear and contracts between the municipalities and the central power would be confined to those federal activities which clearly lay within federal jurisdiction. In such a context, these contacts, however desirable, would take place in another atmosphere. They would influence the federal government's decisions in areas over which it had jurisdiction, and in matters with implications for municipal life. Matters such as the installation of post offices and of harbour and airport infrastructures come to mind in this regard.

CONSTITUTIONAL EVOLUTION

For some years, the emergence of a strong regionalist movement has been discernible in Canada and has developed dramatically in Quebec. This regionalist movement markedly exceeds the phenomenon of provincial autonomy. It coincides with the increased importance of basic communities which, increasingly, are enjoying the favour, not say the fervour, of citizens. More and more citizens reproach the provincial governments and the federal government for excessive expansion; they wish to reduce the size of governments, to return to basic community units, to local governments in which they have a greater chance to express their views. Unquestionably, this movement will have a major effect on the orientation of government policies and even on the structure of governments themselves. It will encourage local governments which should become the privileged governments of the next decades. Even

if, understandably the white paper on sovereignty-association issued by the Parti Québécois does not deal with this specific issue, the document recently issued by the constitutional committee of the Quebec Liberal party contains references to both the status and powers of municipalities.

THE QUEBEC GOVERNMENT'S WHITE PAPER ON SOVEREIGNTY-ASSOCIATION

This document which is clearly important in the constitutional debate does not deal with municipal questions as such. This is not surprising. In fact, the paper, given the fundamental position which it reflects, makes only passing references to traditional jurisdictional areas. Chapter II, entitled "The Experience of Federalism" pauses, in an historical perspective, to outline in some jurisdictional areas (reflecting the current government's position), the centralising impetus which has been established in some spheres of responsibility, the municipal sector among them. Thus, under the title "The Invasion in Municipal Affairs", the document notes the federal presence in this sphere. It emphasises that, through the advantage gained by bestowing direct federal grants, the central authority has been able to become involved in such traditionally provincial concerns as housing, public transport, environment and even recreation. Detailed reference is made to the report of a task force on urban development chaired by Mr. Claude Castonguay, to whose work we referred in Chapter 2(b). The white paper, then, echoes the traditional Quebec complaint that, through the positive reaction to direct grants to municipalities and by means of other involvement techniques, the central government has been able to assume a very important *rôle* in spheres whose jurisdiction is not only provincial but essentially municipal. For the white paper, that represents a palpable blow to the principle of fiscal responsibility.

While the white paper thus refers to municipal affairs, it is only in an historic context and to elaborate its basic message to the effect that current federalism, even including a renewed federalism, leads inevitably to growth of the central authority and to an emasculation of provincial powers, which will necessarily prevent the province from fulfilling the *rôle* it should play in Quebec. The document's fundamental position consists in its claiming all powers for a sovereign Quebec. It was scarcely conceivable that such a paper would pause to provide even a summary discussion of traditional divisions of responsibility.

The "sovereignty" screen is completed, in this same paper, by the screen of "association". This is explained as a proposal for the joint understanding of some activities, notably in the economic sector. From this viewpoint, the matter of municipal affairs would not be involved since that sphere is clearly a trump card in the sovereignty envisaged for Quebec.

THE JANUARY, 1980 REPORT OF THE LIBERAL PARTY OF QUEBEC'S
CONSTITUTIONAL COMMITTEE: A NEW CANADIAN FEDERATION

The report of the constitutional committee of the Quebec Liberal Party is based on two principles which differ fundamentally from those of the white paper. It could be said that, apart from some basic principles, the authors have sought to propose a very different kind of federalism from that which we know at present. The federal structures established in 1867 foresaw a division of sovereignty between the two levels of government but allowed the federal government to acquire a jurisdiction such that it became the superior government. The document of the Liberal Party of Quebec proposes a more classical type of federalism in which the two types of government are equal and not subordinate. To accomplish this result, the authors suggest a more equitable reworking of the division of powers by limiting the exercise of certain federal powers which could produce an imbalance in the federal union. While according the central state significant powers, especially in the economic and international sectors which favour the existence of a more integrated Canadian economy, the authors emphasize traditionally provincial powers, clarifying their division and bestowing on the provinces certain powers hitherto exercised by the federal government. Thus, in the municipal field, and in that of land planning (which the report discusses specifically), there is, so to speak, a reinforcement of the provinces' traditional powers.

Let us examine some basic principles of the document which explain the position taken by its authors, especially in the municipal sector. First, the rights of citizens are clearly affirmed throughout the document. They establish objectives which consist in bringing government closer to the citizen, and in reducing the size of governments. These rights will be integrated into a constitutional charter of rights and liberties traditionally recognized as fundamental, an enumeration of linguistic rights which would express the basic equality of the founding peoples. Some of these fundamental rights could have implications for the municipal sector. Thus, the constitutional recognition of certain judicial rights could have ramifications at the level of municipal courts. Moreover, linguistic rights in the schools, the right of every individual to have access to health and social services in his language, French or English, wherever the numbers justify it, could certainly have consequences for municipal activities. The document does not confine itself to the dimension of individual rights. It seeks to endow Quebec and the provinces with sufficient powers to enable them to carry out their responsibilities in an autonomous fashion. This is emphasised in the chapter on municipal institutions.

The document notes that the municipal affairs sphere,

which it links closely with land management, is essentially a field which should come under provincial jurisdiction. It deplores federal activities, unfortunately too numerous, in this area. Thus, such important fields as housing, renewal, zoning, infrastructure and urban transport are identified as appropriate subjects for provincial jurisdiction. According to the report, it should be clearly established that the territorial activities of the federal government which touch on subjects within provincial jurisdiction should coincide with provincial laws, in general, and especially with existing development plans. As land is essentially a provincial consideration, the report suggests the following general rule: the federal government's authority to be a landowner should be limited to cases where such ownership is essential to the discharge of duties within its jurisdiction. Another major feature of the report is its anticipation of the end of Crown privileges. As in fiscal matters, the report suggests that the two types of government have access to all modes of taxation (except for tariffs and customs duties which remain within federal jurisdiction) but that the field of property tax be the exclusive responsibility of the province. This means that the municipalities, which occupy that area, can impose property taxes on the federal government and on provincial governments. The constitutional recognition of such a rule would obviously have major repercussions in the municipal sector.

Finally, the document recommends (and this is the expression of the necessity for bringing government closer to the people and reducing its size) that the constitution of Quebec recognise the status and powers of municipalities and guarantee their financial autonomy. The report does not specifically state how the province could amend its internal constitution, but one may suppose that the amendment would require, at the least, a qualified majority vote to avoid the important parts of the provincial constitution being carelessly amended. Constitutional recognition of the guarantee of fiscal autonomy for municipalities is only the expression at the local level of the fundamental principle of fiscal responsibility upheld by the report. This principle, applied in relations between the federal level and the provincial level, permits provincial governments to have the necessary reserves to carry out their responsibilities in an autonomous manner.

With the adoption of this principle, the necessity for any level of government to beg money from another level is avoided, thus eliminating a source of friction.

CONCLUSION

It is clear that developments in Quebec during the last year largely favour the realization of the objectives of the Federation of Canadian Municipalities. On the one hand, the status of municipalities and their fiscal autonomy are

now evolving towards constitutional enshrinement. On the other hand, the abolition of Crown exemptions would permit municipalities to tax government property, federal as well as provincial. If, as one might expect, the principle of fiscal autonomy for the provinces were also enshrined in the constitution, the context of federal-provincial relations would be considerably changed, and the whole question of relations among the three levels of government could be considered in a spirit of openness.

We believe that the Federation of Canadian Municipalities study of constitutional reform has evolved positively in that it reflects the Federation's concerns. But it is essential that the Federation continue to study this subject closely.

CHAPTER 3

CANADA: POLICIES AND PRACTICES IN ATLANTIC CANADA, ONTARIO, AND THE WEST

In two briefs to the Pepin-Robarts Task Force¹ the Federation of Canadian Municipalities stated its position that "...municipalities be recognized as a distinct level of government under the new constitution."²

This chapter provides a detailed elaboration of the positions of the provinces of Saskatchewan, Alberta, British Columbia and Ontario. As has been previously reported³ the positions of three of these provinces as to the role of municipalities in a reformed British North America Act have not been articulated as has the policy of the Province of Quebec. In fact, with the exception of Saskatchewan no province has given a specific public response to the FCM position. Quebec's position has not altered.⁴ The absence of an articulated, specific policy position by any provincial government should not be taken, however, as an indication that these provinces either, are: 1) any more flexible on the issue than is Quebec, or 2) lacking in a policy.

The agreed-upon approach was to conduct on-site interviews in Saskatchewan, Alberta, British Columbia and Ontario with officials from relevant municipal associations and provincial intergovernmental affairs officers. In addition, primary and secondary documentation where available has been reviewed. Much of the information is derived from interviews with civil servants. Thus, direct attribution is not possible.

A telephone survey in late January, 1980, of senior provincial, and/or municipal officials in New Brunswick, Nova Scotia and Newfoundland shows that the policy position of these three provinces does not differ from the others. Indeed, they, along with Ontario, Alberta and British Columbia have not made any formal statements. In Nova Scotia, it was acknowledged that there was no enthusiasm for the FCM position, and, indeed, it was described as a "non-question". As has been seen with some other provinces, Nova Scotia will invite the nominee of the Union of Nova Scotia Municipalities to attend any constitutional conferences with the provincial delegation as an observer.

The chapter is in two distinct sections: the first part deals with the substantive policy position of each of Saskatchewan, Alberta, British Columbia and Ontario on three key issues:

- 1) municipal involvement in discussions leading to constitutional change,
- 2) municipal recognition in the federal constitution itself, and
- 3) provincial "constitutionalization" of municipal government.

The second section deals with what has been termed the political atmosphere which has a bearing on the substantive issue.

PROVINCIAL GOVERNMENT POLICY POSITIONS VIS A VIS MUNICIPALITIES AND THE CONSTITUTION

Saskatchewan

The Government of Saskatchewan is the only provincial government covered by this paper which has taken an explicit public position against any form of municipal recognition in the Constitution.

The Government's position was presented by Attorney General Roy Romanow in January 1979:

"I am aware of proposals - from the Federation of Canadian Municipalities, for example - that municipalities be recognized in the constitution as a third level of government...

I think that proposition is fraught with difficulties. In my view, there are good reasons for continuing provincial responsibility for municipal institutions. They have to do with the diversified nature of Canada. And the need for flexibility, to set up municipal structures that are tailored to the specific needs of each part of the country...

As I see it, constitutional status for municipalities would impose uniformities and rigidities of structures and powers that would be inappropriate and harmful."⁵

Saskatchewan's position is that there are two sovereign powers in Canada and that it would be inappropriate and excessively rigid to divide sovereign power further than it already is.

Although its position is not set out in legislation as it is in Quebec, Saskatchewan takes a very firm position on federal involvement with local government insisting that the only legitimate relationships are federal-provincial and provincial-municipal.

Saskatchewan has included representatives of its two municipal associations (Saskatchewan Urban Municipalities Association and Saskatchewan Association of Rural Municipalities) in its delegations to Federal-Provincial constitutional conferences. This position is based on a recognition of grass roots political views, revenue sharing arrangements and interest rather than on any recognized independent legitimacy. Formal involvement in constitutional talks and decision-making has been rejected.

Although Saskatchewan has taken the strongest and most explicit position against municipal recognition in the constitution apart from Quebec, it has gone some distance in the development of what for lack of a more precise phrase can be termed a "quasi-constitutional" status for municipalities within the Province.

While Saskatchewan is one of three provinces with legislated revenue sharing, it would not be willing to consider entrenching those relationships in any way. Symbolic of its desire to ensure that sovereignty is not divided at the provincial level is the fact that the Government of Saskatchewan pays neither local taxes nor grants in lieu as is done in most other Provinces. Crown corporations pay full taxes. Thus whatever may be considered a partial gain under "quasi-constitutional" status is not matched by the same predictability and questions of certainty that would flow from legislated measures on the opening of revenue resources to municipalities.

Alberta

As is the case in British Columbia, the Province of Alberta's formal position on the constitution, "Harmony in Diversity", makes no reference to municipalities. Again, as was found in British Columbia, the omission is conscious. Therefore its absence must be interpreted as meaning that a position has been developed on the issue of municipal recognition in the Canadian constitution but it is not deemed necessary to be explicit. The omission was specifically mandated by the Minister of Federal and Intergovernmental Affairs and reflects Alberta's satisfaction with the current status of municipalities as subordinates to the Province.

After a number of years of tension between Alberta and the Federal Government over urban-related issues,⁶ Alberta now shares the view expressed in the Third Report of the Western Premiers' Task Force that this area of Alberta subscribes generally to the view expressed in that report, namely that relationships between federal and municipal governments should be carried on through the provincial government. On specific issues, a direct relationship between the federal government and municipal governments will be permitted so long as the Alberta government is kept informed.⁷

Alberta has made a practice of including representatives of the two municipal organizations (Alberta Urban Municipalities Association and Alberta Association of Municipal Districts and Counties) as observers in its delegation to the open Federal-Provincial meetings on the constitution. Such representation has not been formalized, however, and will continue on an *ad hoc* basis related to presumed interest in the subject matter under discussion.

Alberta is opposed to any formal recognition of municipal government and entrenchment of rights and responsibilities in either a Federal or an Alberta constitution. There is little prospect of support from Alberta for recognition in a Federal document.

Alberta is in full support of the Western Premiers' Task Force position against direct federal-municipal relationships. And regarding constitutionalization of the position of municipalities within Alberta, such a move is rejected primarily on the grounds that it would reduce flexibility both for municipalities and for the province.

Alberta has not gone as far as either Saskatchewan or British Columbia in the quasi-constitutional area of legislated revenue sharing. The Government prefers the flexibility which an administratively determined grants system offers.

British Columbia

The formal position of the Government of British Columbia⁸ presented to the First Ministers' Conference on the constitution in October, 1978, makes no mention of any rôle for local government⁹ in the Constitution. The fact that a potential rôle for municipalities in the constitution is not mentioned is deliberate.

The issue is not "on the table" at the moment, nor is there any pressure from either the provinces or the federal government to bring it forward. Second, any change in the present subordinate status of municipal governments to anything approximating a separate sovereign status would suggest that an independent relationship between the federal government and local government could develop. Such a change would be resisted by British Columbia as an intrusion by the federal government into an area of traditional provincial sovereignty.

British Columbia subscribes fully to the views expressed in the reports of the Western Premiers' Task Force on Constitutional Trends. With respect to local government, the thrust of the series of reports has been to document and resist federal "intrusions" into areas of provincial jurisdiction such as housing, land use and urban affairs generally.

The first report, published in May, 1977, lays out

clearly the joint western position:

"Relations with respect to housing, urban affairs and land use should be bi-level, and not tri-level. Bilateral relations should proceed between the provincial and federal governments, and between the provincial and local governments. The federal government should relate to local government *through* the provincial governments.¹⁰

The problem of financing local government should be discussed at the provincial-municipal level."¹¹

It and subsequent reports set out several specific areas of conflict: direct federal grants to municipalities; housing programs; urban land development programs; national guidelines for land use policy; Aeronautics Act amendments; flood way and reduction program; the Canadian Home Insulation Program (CHIP); and the Federal-Provincial Community Services Program.

The atmosphere in this area changed dramatically between May, 1977, and the date of the final report in March, 1979.

"This area has undergone a major transformation in federal policy since the First Report of the Task Force on Constitutional Trends. The principle of global funding and the abolition of the Ministry of State for Urban Affairs, in particular, are likely to reduce instances of federal intrusion and, consequently, to remove many of the sources of federal-provincial conflict."¹²

The reasons for this change are discussed in more depth subsequently. Nevertheless, the limiting of the federal *rôle* in urban affairs as constituted by the demise of MSUA contributes significantly to the feeling not only in British Columbia but also in the Western Provinces generally that urban affairs is a resolved issue. After having argued for years that the federal government has no direct *rôle* with respect to local government, now with the abolition of the Ministry of State for Urban Affairs the feeling is that they have succeeded. There is little interest from these provinces in bringing the issue back onto the table, albeit in a different form.

With respect to local government involvement in constitutional *discussions*, British Columbia has not been prepared to grant any formal recognition to its municipalities in general or to the Union of British Columbia Municipalities (UBCM) as its representative. Municipal representatives have in the past been invited as observers to the open Federal-

Provincial Constitutional Conferences. Such participation is seen, however, as a matter of convenience rather than of legitimacy.

The relationship between the province and local governments in British Columbia is defined in a wide range of legislation generally similar to that which is to be found in the other provinces. There is a separate Act for Vancouver and the Regional Districts but other legislation is omnibus in nature. British Columbia goes somewhat further, however, than any other provinces, except for Saskatchewan and Manitoba, in granting guaranteed revenue sharing by legislation.

The British Columbia Government has attached some significance to these legislative grants of power and revenue and to the need for municipal involvement in the development and amendment of the relevant legislation. At present, UBCM representatives are playing a key role in a review of the Municipal Act. But the government of the Province of British Columbia is not prepared to go beyond legislated guarantees and consultation to a formal entrenchment of powers and division of sovereignty.

Ontario

As with Alberta and British Columbia, Ontario has no articulated formal position on the constitutional position of municipalities. However, unlike those two provinces, Ontario has made no formal public submission of its position in the constitutional change debate from which such a position could even be inferred.

While Ontario has not spoken directly in its constitutional position papers on this issue, other policy statements detail a clear stance. Alberta allows specific actions to be interpreted as policy.

In a recently published study which dealt specifically with case studies affecting planning and issues relating to urban growth policies in Alberta and Ontario the following conclusion was reached:

Ontario "went by the book" in the sense that it articulated policies in a series of statements of intent. The visible results of these policies, aside from the establishment of a series of regional governments, are difficult to pinpoint. Alberta, on the other hand, articulated its policy stance through a series of decisions. Ideal models of policy-making aside, the articulation of policy through specific decisions appears somewhat more efficacious than using a statement of intent.¹³

But the cumulative effect of Ontario's policy statements was

that there was not a role for the federal government in provincial affairs relating to matters of urban growth. By inference the position on broader issues is likely consonant.

Despite this apparent vagueness on the constitutional issue, it would be unreasonable to assume that Ontario's position is substantially different from that of the three western provinces reviewed. The same problems - division of authority, logistics for constitutional change, diversity, rigidity - that led Saskatchewan to its position are raised as concerns in Ontario. In addition, Ontario argues that further fragmentation of fiscal authority through constitutionally guaranteed local access to tax sources would hamper the already difficult task of managing the Canadian economy.

As far as Ontario is concerned, municipal institutions are not on the constitutional agenda; it therefore has no need to develop a formal position. Furthermore, it would not expect them to move onto the agenda in the future.

Ontario's position with respect to federal-municipal relationships is similar to Alberta's. After having taken a leading position in opposition to the federal government's intrusions into areas of provincial jurisdiction via the Ministry of State for Urban Affairs, Ontario is satisfied with the federal retreat in this area. Further, it is prepared to tolerate a federal-municipal relationship on limited, specific issues, provided that Ontario is kept fully informed of any dealings between "Ottawa" and a municipality.¹⁴ As long as the Government of Canada is diplomatically correct in its behaviour towards the subordinate level of government in Ontario, there should be no problems. There can be no doubt, based on past actions and statements, this relatively soft position would harden if the federal government were to show any signs of increasing its level of activity.

Because of both Ontario's size and diversity and the number of municipal associations¹⁵ in existence in the province, Ontario has established a permanent forum for communication between municipalities and the provincial government, the Provincial-Municipal Liaison Committee.

Ontario has included the municipal co-chairman of the P.M.L.C. as a full member of its delegations to Federal-Provincial First Ministers' Conferences on the Constitution. This rôle has included full participation in all preparatory briefings. Although such a special position in the Ontario delegation is unique, it is accorded only a "degree" of legitimacy - it is still granted rather than recognized by Ontario.

Constitutionalization of municipal institutions and taxation powers at the provincial level has been considered and

rejected. This position extends to quasi-constitutional arrangements like legislated revenue sharing. Ontario was the first province to recognize municipalities' need for a guarantee of available resources through the so-called Edmonton Commitment of 1973.¹⁶ Since 1977, it has retreated steadily from that position. On the specific issue of reducing uncertainty, Ontario argues that to reduce municipalities' uncertainty about their revenues is simply to increase its own.¹⁷ As a result of increased uncertainty about its own revenues, Ontario in 1979 has suspended its normal September announcement of its planned grant funding levels for the following fiscal year which caused the temporary suspension of activities of the P.M.L.C. Provincial-municipal finance arrangements are at present a source of considerable ongoing tension.

PROVINCIAL POSITIONS ON LOCAL INVOLVEMENT IN THE CANADIAN CONSTITUTION - AN ASSESSMENT

The first section demonstrates that there is little encouragement for local government constitutional recognition in provincial government positions on the issue. The atmosphere is negative.

There is a variety of contributing factors that both produce and sustain this pessimistic outlook. Among these are:

- ✓ 92(8) of the British North America Act which gives force to the inelegant view of municipalities as "creatures of the province".
- ✓ The B.N.A. Act position whereby when the federal government and provinces deal with each other it is in hierarchical terms a relationship of "equal to equal"¹⁸ whereas province and local governments is one of "superior to subordinate."¹⁸
- Legitimacy in constitutional discussions is, and perhaps has to be, limited to governments recognized as sovereign under the B.N.A. Act.
- The diversity in terms of size and resources (fiscal and administrative) of municipalities and municipal structures that have evolved both between and within provinces.
- The major proponents of municipal recognition in the constitution have failed to produce realistic concrete proposals. (A position obviously the creation of the FCM Task Force is designed to rectify.)
- The varying positions of provincial-municipal associations on the issue.
- The simultaneous changes in the relative importance of

urban issues on the national scene and in the federal-provincial balance of power on those issues; and

--- The delicate relationship between this issue and the key issue of the position of Quebec in Canada.

The first two points are self-evident and do not require any amplification or discussion. The remaining six require some elaboration to assist in any future discussion of the issue.

Diversity

Each of the four provinces reviewed in this paper considers the diversity of municipalities, in terms of size, structure and responsibilities to be a critical obstacle to the legitimization of municipal involvement in constitutional change discussions and any subsequent amending formula.

Sheer numbers pose severe logistical problems. There are 837¹⁹ municipalities in Ontario alone (with 89.4 % of them having a population of under 25,000); over 4600 municipalities across Canada. Just as there is no single institution called "the province" in Canada but ten separate provincial governments, one cannot talk about "municipalities" in the abstract as a single institution.

This very obvious fact has given both Ontario and Saskatchewan on occasion the opportunity to stress this point and raise critical questions. Who sits at the table? Who decides who sits at the table?

Saskatchewan's Attorney General Romanow put it this way:

"If the powers and responsibilities of municipalities were spelled out in the constitution, any substantial change would be extremely difficult to accomplish. Think of the difficulty we have with eleven governments; in 112 years the Federal and Provincial Governments have not even been able to agree on a procedure for amending the B.N.A. Act. To add municipalities as full participants would end all future prospect of change simply because of the number of actors involved."²⁰

Another problem relates to the difficulties inherent in trying to say something in the constitution that would be specific enough to be meaningful, while still applying to all municipalities. Every province has a situation analagous to British Columbia's City of Vancouver and District of Central Saanich, or Ontario's Municipality of Metropolitan Toronto and Town of Blenheim problem. And if constitutional recognition

is to be granted only to certain municipalities; - what municipalities? on what criteria?

In addition to these practical problems related to size, the very fact that municipalities in Canada have evolved as "creatures" of their provinces has created a second dimension of diversity. Municipalities are not the same everywhere. For example, municipal government in Quebec, New Brunswick, Newfoundland and Prince Edward Island has very limited responsibility for human services or social policy, whereas municipalities have at least broad administrative responsibility in those areas in Ontario and Saskatchewan.

This does not simply mean that it would be difficult to define municipal powers for the whole country. It also means that there is bound to be disagreement about what aspects of constitutional change even concern municipalities.

This diversity resulting from size and political evolution leads directly to the assertion by the provinces that municipalities are best served by the flexibility offered by the current practice of specifying municipal powers in provincial legislation. It can be and is argued that such flexibility in response to diversity would not be possible in any constitution that attempted to go beyond symbolism in the treatment of local government.

The Constitutional Forum

It is natural in a federal structure that the participants in discussions of changes in that structure be those governments already recognized as sovereign. In effect, the B.N.A. Act not only defines the distribution of powers in our federal system but also determines who the players are to be in discussions about reform. As long as the basic framework is retained (and change continues to be either evolutionary or consensual) constitutional change in this country is almost guaranteed to be the result of negotiations amongst the sovereign governments already recognized in the constitution.

Only extraordinary pressure is likely to be able to force an opening up of the process. In the absence of such pressure, municipalities are forced to try to find a "friend in court" to put their case.

The Absence of Concrete Proposals

To date, the position advanced by those in Canada who favour recognition of a third level of government in the constitution has not gone much beyond the simple assertion that there should be such recognition. However, it must be acknowledged that the traditional municipal position - accept recognition in principle, and then we'll sit down at the table

with you and work out how - has not been and is unlikely to be accepted by the provinces.

All of the provincial officials interviewed for this paper raised logistical, technical and conceptual problems as obstacles to their province considering any constitutional proposal regarding local government. A serious and specific proposal dealing with those problems is a necessary condition for even a hearing for the issue.

Positions of Provincial-Municipal Associations

Under the B.N.A. Act, municipalities deal legitimately only with provincial governments. As a practical consequence, associations of municipalities at the provincial level are the only municipal groupings considered by the province as legitimate spokesmen for "their" municipalities. This, of course, begs the whole range of serious questions about the *rôle* of associations. For example, if resolutions of associations are not binding or enforceable then whom does the association speak for? Does it take on an existence separate from its members?

At the provincial/municipal association level, support for municipal recognition in the constitution is not strong. The Alberta Urban Municipalities Association and the Union of British Columbia Municipalities pass the standard resolutions in support of such a stance; in Ontario they don't. In Saskatchewan, the Saskatchewan Urban Municipalities Association has no position while the Saskatchewan Association of Rural Municipalities supports the provincial government on the issues, i.e. there is no place for municipalities in the constitutional reform issue.

All of the provincial officials interviewed noted that there was no pressure from municipalities in their provinces to accept a constitutional *rôle* for local government. Ontario noted that the constitution has never been put on the agenda of its P.M.L.C. following an FCM convention. Even in Alberta and British Columbia where the key cities of Edmonton and Vancouver have taken leading *rôles* in pushing for constitutional recognition, the provincial perception is that support does not go beyond passing resolutions in support of the general concept.

Indeed, constitutional change does not rank very high on most municipalities' list of priorities at the provincial level. Financial issues specific to the province's concern tend to overwhelm others in the provincial-municipal relationship. Only those municipalities of population size of 100,000 or over are likely to express independent concern about the question. When a direct issue arises which impinges on the activities of any one municipality, no matter what its size, it may temporarily become exercised. When the issue fades so does interest in constitutional change.

Alberta, British Columbia and Ontario all contrasted the position of municipalities with that of native people. Native people have had their right to involvement accepted in principle partly on substantive grounds but also because there has been coherently applied pressure on both provincial and federal governments for a role for native people.

From the provincial perspective, constitutional change is primarily a concern of the large municipalities, seen as the only local governments that stand to gain from an enhanced constitutional role. To embrace the idea of a constitutional role for municipalities would be perceived as support for large municipalities at the expense of small. In Alberta, officials suggested that acceptance of such a position would be perceived as an anti-rural move.

Any serious proposal would have to make distinctions between different types of municipalities. Provincial governments raise the legitimate question: why should they be the ones to make such distinctions and bear the resulting political consequences?

The dominance of the provincial-municipal relationship in current constitutional arrangements suggests that there may be some problems of the legitimacy of the FCM in the eyes of some provincial governments. While not as openly hostile²¹ as the government of Quebec to the idea of a national municipal organization, all of the interview respondents contacted from the provinces raise questions about the FCM's role that go beyond the obvious problem of its membership depth and breadth.

The argument is that logically the FCM, as a national organization, should relate to the federal level of government leaving provincial relationships to the provincial-municipal associations. However, events of the past ten years (the rise and fall of M.S.U.A.) in the area of urban affairs have been to reduce federal influence, they argue, in this area to the point now where most provinces appear to be satisfied that it is virtually non-existent. This is an extremely pernicious and short-sighted argument based on the, at the best, tenuous hypothesis, that a "federal interest" relied on the existence of a separate department or ministry to provide legitimacy. Thus, since that agency has been abolished the Federal interest has evaporated. History, if nothing else, demonstrates the emptiness of this view. The Government of Canada's interest in housing has not altered substantially now that C.M.H.C. no longer reports through M.S.U.A. but through Public Works.

As a result, these provincial officials suggest that there is no obvious role for FCM as a national spokesman for local government. While there may be urban issues which are national in the sense that they appear in all provinces, there are no national municipal issues as defined by the scope of the federal government's accepted powers.

Urban Issues at the National Level: Lower Priority and a Changed Balance of Power

It is ironic that the single most important event affecting federal-provincial relationships in Canada - the escalation of world energy prices - was beginning at the time of the 1973 Tri-level Conference in Edmonton. With hindsight, it is arguable that the Edmonton Conference was the peak of the urban-issue phenomenon at the national level in Canada. The escalation of the price of oil begun in 1973 has transformed Canadian federalism and swept urban issues from centre stage at the national level. There are two aspects to this change. First, energy matters assumed a greater objective significance than urban matters. Second, the balance of power in Canadian federalism began to drift from urban industrial Ontario to resource-rich western Canada and now in 1980 possibly to Newfoundland. Such a change in the balance of power necessarily affects the agenda.

These changes alone were bound to affect the role of the federal government. Urban issues (under provincial jurisdiction) were replaced by energy resource issues (also under provincial jurisdiction) as the object of national debate. The federal government had retreated on urban affairs at least to the extent of dismantling M.S.U.A. and focussed on energy and resources and the national economy.

Another important factor in the reduced importance of urban affairs and the federal government's diminished *rôle* has been the poor performance of the national economy and the resultant scarcity of public funds. The federal government involved itself in urban affairs mostly through the exercise of its spending power. With funds becoming increasingly scarce, the scope for exercising that power was diminished and spending was redirected into more politically visible areas.

The two consequences of this change in the national political climate for the issue of local government recognition in the constitution are: first, that it has become increasingly difficult to bring political pressure to bear on the issue; and the second, that the national government is no longer seeking to exercise independent influence and therefore is in a poor position to "sponsor" initiatives in the area. Even though during election campaigns specific urban matters become the substance of promises: mortgage payment deductability, urban transit support, development of housing on urban central city lands.

CONCLUSION

This assessment of these four provincial positions on the role of municipalities in constitutional change is not optimistic.

All of the provinces are concerned with the preservation or enhancement of their constitutional role and that of the federal government. Questions of responsibility for the economy and energy leaves little room or enthusiasm for discussion of the municipal issue unless the position is carefully structured and phrased.

If the place of municipalities in any discussion of the constitution is to even make it to the table, it will not happen without massive and articulate political pressure on provincial governments *from outside* those governments.

To date, the political pressure has been neither massive nor articulate. To compound the problem as the position is made more articulate - by developing concrete proposals which deal seriously and realistically with the logistical and conceptual problems - massive political support will be harder to mobilize.

CHAPTER 4

COMPARATIVE CONSTITUTIONAL LAW EXCURSUS: THE EXPERIENCE OF OTHER MAJOR FEDERAL SYSTEMS (WEST GERMANY, THE UNITED STATES)

An element in the current constitutional "great debate" in Canada has been the reference to foreign constitutions, and claimed foreign constitutional experience as the source of paradigms or models for changes, for the future, in our own Canadian federal system. It matters not, perhaps, that this invocation of foreign constitutional law has been, too often, casual and episodic - the product of hasty or superficial research that has, too often, been confined to the abstract constitutional texts, as written, without so much as a corrective glance at the concrete constitutional practice, or constitutional law-in-action. One of the more curious aspects of this recourse to comparative constitutional law has been that it has been highly selective; and that the most unlikely candidates among foreign constitutional governmental institutions for transfer to contemporary Canada, have been invoked by assorted political or pressure group spokesmen on the constitution. Thus, the celebrated "Bundesrat caper"¹ - the projecting of this highly specialized West German federal institution - with its own distinctive historical roots going back to Imperial Wilhelminian Germany and before that, to the princely conclaves of the Holy Roman Empire - as the main institutional reform in any "renewed" Canadian federal system apparently on the basis that its literal translation to Canada would mean that the appointment of federal Senators would shift from federal government patronage to provincial government patronage. It should be recognized that the basic canon of comparative constitutional law as to the non-transferability of the institutions of one legal system to another legal system, unless the underlining societal conditions are the same in respect to each legal system, applies.

a) West Germany

A more likely candidate for constitutional eclecticism - if we are looking for models from West German federal constitutional experience - would be the dispositions of the Bonn Constitution of 1949 covering local government. In addition to the strictly federal-provincial (Bund-Länder) constitutional arrangements, there are also express constitu-

tional stipulations as to the rôle of local government organs (Kreise, Gemeinden). One preliminary observation: for a combination of reasons - in part, historical reasons dating back to the old Free Cities, and in part more contemporary pragmatic, policy considerations going to the felt need to ensure a greater political equilibrium or balance in the post-war federal system,² - two of the great West German cities, Hamburg and Bremen, are themselves constituted as member states or provinces (Länder) under the Bonn Constitution of 1949. If we add to these two city-provinces, West Berlin which, because of its special international law status going back to the Four-Power Allied military control established by virtue of the Potsdam Agreement of 1945, could not be legally incorporated in the new West German state in 1949, but which for all practical purposes is treated by the Bonn government as if it were a province (Land),³ three of the eleven West German provinces are in fact city-states, ranking equally, legally, with other provinces, and exercising essentially the same rights and privileges as these other provinces. (*Grundgesetz*, 1949, Preamble and Art. 23). (West Berlin, as a special case, sends 22 members to the federal lower house (Bundestag), though these members have restricted voting rights only; and four non-voting members to the other federal chamber, the Bundesrat.)

Under Article 28 of the Bonn Constitution of 1949, positive obligations of constitutional order (verfassungsmässige Ordnung) are imposed on local government bodies: "the people must be represented by a body chosen in general, direct, free, equal, and secret elections."⁴ Correlatively, however, the local government bodies are constitutionally guaranteed the right of self-government (*Recht der Selbstverwaltung*): "the right to regulate on their own responsibility all the affairs of the local community within the limits set by law."⁵ It is a constitutional right with teeth in it: under Article 91 of the Statute of the Federal Constitutional Court (Bundesverfassungsgericht), the local government authorities have the legal right to launch a special constitutional process (Verfassungsbeschwerde) before the highest court invoking, as grounds for constitutional annulment, a violation by either the federal government (Bund) or the provincial governments (Länder), in their legislation, the provisions of Article 28 of the Constitution.⁶

The concept of self-administration (Selbstverwaltung), with its implication of a constitutionally autonomous, self-contained area of local self-government, free from over-all state intervention or control, has strong roots in German political and legal theory going back, in its strictly philosophical aspects, to Kant and more recently to von Ihering and Stammler. In applied administrative terms, we can trace it back, historically, to the governmental reforms initiated by Stein in 1808 in the attempt to link the emerging liberated interest group to the state.⁷ After a short-lived revival, under the Weimar

Republic established in 1919, the principle of local self-administration was systematically trampled on or perverted during the Nazi régime. What is interesting, in terms of contemporary constitutional ventures in Canada, is that the Bonn constitution-makers of 1949 consciously chose to stress the principle of local self-government in their new federal system by formally proclaiming it in the new constitutional charter and by giving the *third* level of government a constitutional status *in pari materia* with the federal and the provincial. The constitutional parameters of this right of local government and its reconciliation with countervailing federal and provincial assertions of law-making competence in concrete problem-situations, are to be determined, as the Statute of the Federal Constitutional Court envisages,⁸ on an empirical, case-by-case basis if the ordinary processes of policy coordination through intergovernmental discussion and negotiations (trilateral or bilateral, as the case may be) cannot be achieved.

The Bonn Constitution of 1949 also establishes, in precise and unequivocal legal terms, an appropriate financial base for this constitutional right of local self-government. Under Article 106(5) of the constitution, a share of the revenue from Income Tax (a joint Bund/Länder competence) must accrue to local government - to be passed on by the Länder to the local government bodies "on the basis of income taxes paid by the inhabitants" of those local areas. The modalities of this compulsory allocation of Income Tax revenue to local government are fixed by federal statute.

In addition, Article 106(6) of the constitution provides that revenue from taxes on Real Property and Businesses is to accrue to local government, as well as revenue from local excise taxes. The local government bodies are further authorized to assess the local government percentages of real property and business within the framework of existing laws.

Beyond this, under Article 106(7) of the constitution, an overall percentage of the Land share of joint (Bund/Länder) tax revenue,⁹ to be determined by Land legislation, is to accrue to local governments.

There is also express constitutional provision, in the same Article, for federal government direct financial compensation to local government for expenditures incurred or losses sustained by local government in establishing special facilities on behalf of the federal government.¹⁰

This constitutionally entrenched grant of a reserved financial, taxation domain for local government is viewed by German jurists as an integral element of the principle of self-administration.¹¹ In practice, like the other more generalized stipulations as to taxation, in the Bonn Constitution, with their emphasis on tax-sharing, rather than tax competition, between the

different (Bund/Länder) levels of government, the exact modalities of tax revenue allocation are determined by inter-governmental negotiation. Since the rates of all major taxes are fixed by federal legislation, the issues in such negotiations have not been rates of taxation, but apportionment of taxation revenues. (The local government authorities do not now have any statutory power themselves to affect the rates of Income Taxes or to levy any additional amount of Income Tax themselves, though Article 106(5) of the Constitution does authorize the federal government to legislate to permit that.)¹²

After complaints by local government representatives throughout the 1960's as to the restrictions on their revenues, a major intergovernmental compromise effected in 1969 guaranteed to local government 14% of the total proceeds of all income tax, this quota to be paid to the local government authorities prior to the division (on a 50/50 basis), as between federal government and the Länder, of the balance.¹³ The 1969 agreement was combined with a provision under which 40% of the trading tax accruing to local government was to be paid over to the Länder (for subsequent equal sharing between federal government and the Länder). The net effect of the increase in local government revenues from its share of Income Tax is understood to have more than compensated for the local government surrender of part of a tax with very unequal incidence and yield.¹⁴

b) The United States

Although local government, as such, is not mentioned in the United States Constitution, its development has been strongly influenced by historical factors, including English "levelling" constitutional ideas traceable to the original Massachusetts Bay Colony founded by the Puritans in the 17th Century. Local popular assemblies, symbolized by the New England Town Meeting and reflecting the popularity of Social Contract theories of government, afforded the towns in Massachusetts the opportunity to exercise a maximum of independence from the General Court (state legislature). Although, after the outbreak of the Revolutionary War, the establishment of a state government upon the adoption of the Massachusetts Constitution in 1780 brought centralized control over the towns,¹⁵ the influence of the older, "original" constitutional theory remained as a general intellectual influence.

One happy feature of the American constitutional system, from the viewpoint of functional efficacy in community policy-making and policy administration, - and something that differentiates the American constitutional system sharply from our Canadian system as judicially interpreted by the highest courts - is the absence of major constitutional barriers or legal impediments to intergovernmental delegation or reference of powers. The American courts have, in effect, held that the

giving, by the central legislative body, of extensive law-making powers with reference to local matters to subordinate governmental bodies is a "received" Anglo-Saxon constitutional practice, antedating the adoption of the American constitution in 1787; and that the right of local self-government being so fundamental to the American system of politics, constitutions (the United States Constitution, and the various state constitutions equally) are, in the absence of any express prohibitions to the contrary, to be construed as permitting it.¹⁶ As a New England state Supreme Court remarked:

"It seems to be generally conceded that powers of local legislation may be granted to cities, towns, and other municipal corporations and it would require strong reasons to satisfy us that it could have been the design of the framers of our Constitution to take from the legislature the power which has been exercised in Europe by governments of all classes from the earliest history, and the exercise of which has probably done more to promote civilisation than all the other causes combined; which has been constantly exercised in every part of our country from its earliest settlement, and which has raised up among us many of the most valuable institutions."¹⁷

The concept of *Constitutional Home Rule* for local government in the United States today denotes the relative autonomy or freedom of legal action exercised by the municipalities. Initially, courts in a number of states - Michigan, Indiana, Iowa, Kentucky and Texas, for example - followed Judge Cooley's celebrated ruling that municipalities possess certain *inherent* powers of local self-government. This has given way, however,¹⁸ to the notion of constitutionally derived powers, with the courts' invoking what is called "Dillon's Rule"¹⁹ and applying principles of statutory construction to interpret constitutional and statutory Home Rule provisions and the scope of the grant of powers to local governments contained therein. Constitutional Home Rule, as so defined, is the legal right granted by state governments to local governments, themselves to draft, adopt and amend their constitutional charters, and generally to govern their own affairs without legislative interference by the state governments. The first state to adopt the Constitutional Home Rule for local government was the State of Missouri in 1875: the provision of Home Rule was then limited to cities with a population in excess of 100,000, which meant that only St. Louis so qualified. Since that time, the grant of Home Rule to local government has become general, with two different approaches influencing the modalities of its application.

The first approach is associated with the National Municipal League which, in 1921, proposed a model Home Rule

constitutional provision based upon a type of "federalism-within-the-state", with governmental powers divided between the state and local governments. This particular model for Home Rule would establish, in effect, an *imperium in imperio*, or state within a state.²⁰ Where it has been adopted, the effectiveness of the National Municipal League model has tended to be limited by rather narrow judicial interpretation of the scope of local affairs.²¹

The second approach is based upon the model constitutional Home Rule provision of the American Municipal Association (now the National League of Cities), drafted by Dean Jefferson Fordham²² of the University of Pennsylvania Law School in 1953. The Fordham model concedes that what is *local* cannot, in *a priori* constitutional legal terms, be divorced completely from what is *State*; and so it rejects the other division-of-governmental-powers approach, and would remove from the judiciary the difficult responsibility of trying to determine the precise dividing line between state and local powers. In terms of the Fordham model, the state legislature would delegate to local governments all powers capable of delegation, subject to preemption by general law. A special law might be enacted by the state legislature only upon the request of the governing body of the relevant local government or upon the recommendation of the state governor and approval by an extraordinary majority of the state legislature. It is suggested in favour of the Fordham model, that it would tend to facilitate the solution of difficult metropolitan-wide problems that cry out for broader, more comprehensive remedies and planning - such as sewage and rubbish disposal, control of water pollution, water supply, public health, inter-urban transportation - since the state legislature may preempt these fields.²³

While the Fordham model has not been adopted, as yet, *in toto* by any state, all states adopting constitutional Home Rule amendments to their state constitutions since the issuance of the Fordham Report in 1953 have generally followed its recommendations that local governments be authorized to exercise any power the state legislature is capable of devolving, subject to preemption or supersession by general law. Any such general preemptive law would, in the spirit of the Fordham Plan, be forbidden to the state legislature unless its enactment had been specifically requested by the relevant local government unit. While state supreme courts have variously interpreted Fordham-style Home Rule grants by state legislatures to local government, the more liberal, pragmatic trend in judicial interpretation is perhaps reflected in the ruling of the Massachusetts Supreme Court in 1973:

"...In the absence of any express legislative intent to forbid local activities consistent with the purpose of the state's...legislation, and in the absence of any circumstances indicating that any legislative purpose

would be frustrated and from which, therefore, a legislative intent to preempt the field would have to be inferred, the ordinance in question was, as a whole, valid and authorized by law."²⁴

The necessary correlative of *constitutional* Home Rule for local government is, of course, *financial* Home Rule. The principal argument advanced in favour of financial Home Rule is based upon the proposition that the unit mandating a public expenditure should be responsible for financing the expenditure. Those who oppose the inclusion of financial Home Rule provisions in the state constitution argue as to the dangers involved in introducing rigid constitutional provisions as to State government-local government relations and as to local government finance in an age when rapid decisions are often needed: the remedy, on this view, is more fundamental reform of the State government tax structure, revision of State government aid programs, and the like.²⁵

CHAPTER 5

PROVINCIAL-MUNICIPAL TAX AND REVENUE SHARING IN THE 1970s REFORMS ACCOMPLISHED, 1978 COMPARED WITH 1971

INTRODUCTION

This paper presents an overview of the various Provincial-Municipal transfer systems that evolved during the period 1971 to 1978. While comments will be made on more recent developments, the lack of published data precludes statistical analysis for 1979. A better understanding of the strengths and weaknesses of the various provincial-municipal transfer systems may suggest an approach for the municipal sector in the continuing debate on this issue. The type and structure of transfer system used also provides insight into the status that municipalities have been accorded as distinct levels of government in each province.

The topic of transfer systems overwhelms other issues as the focus of inter-governmental relations at the provincial-municipal level. The continuing importance of this dialogue, from a municipal perspective, centers on three considerations:

1. Transfer payments affect the day to day operations of most municipal programs since the types and amounts of grants received from the province often dictate the specifics of municipal program delivery.
2. The mechanisms used to determine the total amount of transfers to the municipal sector, the annual increase in payment and the process of entitlement and distribution is at the heart of provincial-municipal relations. The treatment of these factors projects considerations of fairness, equity, status, co-operation, consultation and other measures so important in inter-governmental relationships.
3. At the conceptual level, the mere existence of transfer payments violates the concept of municipalities as autonomous government units which are responsible for the taxing consequences of decisions taken and accountable to voters at election time for the wisdom of actions pursued.

Throughout the 1960's, tax reform was much studied and the subject of commission reports in a number of Provinces.

Thus, the "Carter Commission" reported in 1966 on the Federal tax system; the "Smith Committee" in 1967 reported in Ontario; Quebec had the "Belanger Commission" which reported in 1965; the "Byrne Commission" in New Brunswick reported in 1963 and in 1964 the "Michener Commission" reported in Manitoba.

The consideration of these studies served as the basis for a renewed desire by municipalities to have the principles of taxation applied also to the local level of the public finance system. Therefore, it is not surprising that the municipal sector in a number of provinces advocated that municipal government taxing authority should be commensurate with the responsibilities assigned to the municipal level. This in turn suggested that additional tax fields should be made available to municipal government, or as a minimum the province should consider tax sharing with the municipal sector. The conclusion reached was that transfer systems for the most part were undesirable, and that additional tax fields should be made available to municipalities for the purposes of supplementing the property tax.

The initial tactic assumed by the municipal sector was to push for tri-level consultive machinery that would afford the municipal sector a more legitimate role in the inter-governmental reform process. It was hoped that the case for additional tax sources to supplement the property tax would receive a more sympathetic hearing at a tri-level forum. If new tax sources could not be made available then the use of tax-sharing as practised in the federal-provincial sphere represented an acceptable fall-back position.

In parallel with the thrust for tri-level machinery in Canada, an announcement of a new scheme for revenue sharing with the municipalities was made by the federal government in the United States. The initial enthusiasm demonstrated for revenue-sharing by the municipal sector in the United States rubbed off on their Canadian counterparts. The result was a municipal call for revenue-sharing at the last and only tri-level meeting convened to discuss the issue of public finance. The remainder of this paper documents the effectiveness of the municipal sector during the 1970's in accomplishing tax sharing and revenue sharing.

INTER-GOVERNMENTAL TRANSFERS - AN OVERVIEW

Municipal sector options and actions in inter-governmental relations are conditioned by the fact that Canada is a Federal system. The British North America Act specified a division of responsibility and taxing authority, which over time required adjustment for changed conditions. The increased demand for public sector goods accompanied by a substantial change in the composition of these goods and services presented a series of inter-governmental issues.

Responsibilities assigned to the respective levels of government were no longer in balance with their fiscal resources - fiscal imbalance resulted. Responses to emerging issues which did not fit neatly into the traditional jurisdictional division of responsibilities produced a blurring of responsibilities - the consequence, jurisdictional gray areas. Growth in public spending focused attention on the equity with which the public finance system delivered a common denominator of services to the entire population - disparities in service levels and tax burdens had to be addressed.

These issues were common in both federal-provincial relations and provincial-municipal relations. The manner used to address these issues however, differed at the two respective levels. In part, this is understandable because the two parties in the federal-provincial sphere derive their power and authority from the same constitutional source. In the provincial-municipal relationship, power and authority of the parties is derived from differing sources.

Federal-Provincial Transfers

Federal-provincial fiscal relations have been characterized by substantial and fundamental change since the 1940's. The war period, and post-war period to 1961 was dominated by tax rental agreements whereby the provinces (with the exception of Quebec) rented their right to levy personal and corporate income taxes to the federal government in return for general purpose transfer payments. Tax rental was followed by a tax collection agreement that reinstated provincial income taxes, but had the Federal Government as collection agency. A number of changes were made to this system which by 1978 was composed of these four main elements:

1. Tax collection agreements under which the federal government collected all corporate income taxes for the provinces, with the exception of Quebec and Ontario, and all the personal income taxes for the provinces, with the exception of Quebec. Under the provisions of these agreements, the provinces determine the rates of provincial taxation;
2. An equalization system used by the federal government to equalize revenue capacity *per capita* in each province to a minimum national average. Although Ontario is entitled to equalization payments in 1979, Alberta and British Columbia have a revenue capacity above the national average and do not qualify;
3. The Established Program Financing which is in effect an unconditional transfer, although it relates generally to health and post-secondary education;
4. And the Canadian Assistance Plan which remains as the one

and only major conditional grant in the system. This program involves a 50% sharing of provincial welfare expenditures by the federal government.

Reference to Table 1 which summarizes the federal-provincial transfer system for the years 1971 and 1978 illustrates a number of interesting points:

Provincial reliance on transfer payments from the federal government has decreased from 25.4% in 1971 to 20.7% in 1978.

A significant shift to unconditional transfers occurred due to the re-negotiation of Established Program Financing. General purpose transfers were 15.1% of total provincial revenue in 1978, an increase from 9.1% in 1971.

In percentage terms, 64.0% of the grants were specific purpose and 36% were general purpose in 1971. By 1978, the reverse case existed, 27% of transfers were specific purpose and 73% were general purpose.

Own source revenue provided 79.3% of provincial requirements in 1978 compared with 74.6% in 1971.

Tax sharing is a central feature of the federal-provincial system with both governments determining rates, levying on the same tax base, establishing rebate programs and mutually determining administrative features of the collection system. A comprehensive equalization system forms the backbone of the transfer system which is now predominantly unconditional.

In summary, tax sharing and unconditional transfers address the fiscal imbalance question, cost shared programs represent a response to problems presented by jurisdictional gray areas, and a comprehensive equalization system acknowledges the need to smooth out regional disparities. A reasoned response - at least on the surface.

Much of the mechanics of the system described above was worked out in a spirit of partnership between two levels of government through a process of bilateral agreements. A case in point, and a major change in the federal-provincial transfer system during the 1970's was the agreement on Established Program Financing which replaced the shared cost programs in the fields of health and post-secondary education. Under this agreement which took effect in 1977, the federal government transferred to the provinces 13.5 points of personal income tax and 1 point of corporate income tax, plus the approximate value of these points in the form of a cash payment. This new program achieved for the federal government its objective of containment of expenditures in health and education to rates approximating growth in the gross national product.

TABLE 1
FEDERAL-PROVINCIAL TRANSFERS
GROSS GENERAL REVENUE OF PROVINCIAL GOVERNMENT
1971/1972

	NFLD	PEI	NS	NB millions of dollars	QUE millions of dollars	ONT	MAN	SASK	ALTA	BC	TOTAL	% OF TOTAL
Revenue from Own Source	187.7	46.4	302.3	275.3	3829.0	4556.0	466.5	388.7	991.1	1351.3	12,394.6	74.6
Federal Specific Purpose Transfers	119.4	28.5	119.7	118.6	450.4	1056.6	173.9	136.6	277.2	290.6	2,771.5	16.7
Federal General Purpose Transfers	132.2	23.0	132.9	111.3	814.1	40.8	66.3	112.4	16.8	3.0	1,452.8	8.7
Total Gross Revenue ¹	\$ 439.3	97.9	554.9	505.5	5093.5	5653.4	706.7	637.7	1285.1	1644.9	16,618.9	100.0

1. Exclusive of \$45.8 million in local transfers to the Provinces.

Source: Statistics Canada, Provincial Government Finance, Catalogue 68-207, 1971.

FEDERAL-PROVINCIAL TRANSFERS
GROSS GENERAL REVENUE ESTIMATES OF PROVINCIAL GOVERNMENT
1978/1979

	NFLD	PEI	NS	NB millions of dollars	QUE millions of dollars	ONT	MAN	SASK	ALTA	BC	TOTAL	% OF TOTAL
Revenue from Own Source	599.3	121.0	762.8	670.0	10,943.2	11,696.6	1,138.7	1,637.8	5,975.7	4,058.0	37,603.1	79.3
Federal Specific Purpose Transfers	118.1	44.9	111.2	162.2	543.8	706.5	142.1	122.7	468.2	239.7	2,659.4	5.6
Federal General Purpose Transfers ¹	461.7	102.5	598.1	472.7	2,511.3	1,598.3	460.3	239.3	182.7	514.8	7,141.7	15.1
Total Gross Revenue ²	\$1,179.1	268.4	1,472.1	1,304.9	13,998.3	14,001.4	1,741.1	1,999.8	6,626.6	4,812.5	47,404.2	100.0

1 Established Program Financing treated as General Purpose Transfers.

2 Exclusive of \$40.8 million in local transfers to the Province.

3 Established Program Financing estimated by the author.

Source: Statistics Canada, Provincial Government Finance (Estimates), Catalogue 68-205, 1978.
Canadian Tax Foundation, Provincial and Municipal Finances, 1979.

TABLE 2
PROVINCIAL-MUNICIPAL TRANSFERS
LOCAL GOVERNMENT GENERAL REVENUE (ACTUAL)
BY PROVINCE 1971

	NFLD	PEI	NS	NB millions of dollars	QUE	ONT	MAN	SASK	ALTA	BC	TOTAL	% OF TOTAL
Revenue from Own Source	18.3	9.4	116.6	24.8	1,195.8	1,966.8	227.0	222.0	414.0	510.2	4,705.0	53.5%
Provincial Specific Purpose Transfers	8.5	12.3	114.6	.6	909.0	1,656.9	162.4	164.2	348.8	339.5	3,716.9	42.1%
Provincial General Purpose Transfers	3.9	.5	5.6	17.1	170.5	68.7	7.3	3.0	38.0	-	314.7	3.6%
Federal Specific Purpose Transfers ¹	30.7	22.2	236.8	42.5	2,275.3	3,692.4	396.7	389.2	800.8	849.7	8,736.6	
Total General Revenue	5.4	.4	5.2	3.0	20.1	32.4	3.9	3.0	4.6	10.0	88.0	1.0%
	\$ 36.1	22.6	242.0	45.5	2,295.4	3,724.8	400.6	392.2	805.4	859.7	8,824.6	100.0%

(1) Relates mostly to housing and environmental protection.

Source: Statistics Canada, Local Government Finance, Catalogue 68-204, 1971.

PROVINCIAL-MUNICIPAL TRANSFERS
LOCAL GOVERNMENT GENERAL REVENUE (ESTIMATES)
BY PROVINCE 1978

	NFLD	PEI	NS	NB millions of dollars	QUE	ONT	MAN	SASK	ALTA	BC	TOTAL	% OF TOTAL
Revenue from Own Source	65.0	9.0	228.8	82.5	2,395.9	4,160.8	538.5	445.1	1,076.0	1,402.6	10,404.2	51.7
Provincial Specific Purpose Transfers	13.9	43.1	297.8	11.2	2,575.4	3,180.1	285.9	364.8	953.7	541.4	8,267.3	41.0
Provincial General Purpose Transfers	8.6	2.0	63.7	48.1	461.7	439.8	20.0	36.2	66.9	115.7	1,262.7	6.3
Federal Specific Purpose Transfers ¹	87.5	54.1	590.3	141.8	5,433.0	7,780.7	844.4	846.1	2,096.6	2,059.7	19,934.2	
Total General Revenue	16.3	3.0	16.0	15.2	40.8	50.1	4.8	19.2	16.5	26.1	208.0	1.0
	\$103.8	57.1	606.3	157.0	5,473.8	7,830.8	849.2	865.3	2,113.1	2,085.8	20,142.2	100.0

¹ Relates to recreation and environmental protection.

Source: Statistics Canada, Local Government Finance - Preliminary and Estimates, Catalogue 68-203, 1977 and 1978

It also achieved for the provinces increased flexibility by detaching the amount of federal transfer payments from provincial spending patterns. The provinces were now free to adjust their delivery systems in the education and health fields to take advantage of low cost alternatives without financial penalty. Everyone gained. A similar bilateral discussion of the Canadian Assistance Plan did not produce comparable results. The existing provisions of the Canada Assistance Program were unilaterally extended by the Federal government.

Provincial-Municipal Transfers

Unlike the two senior levels of government, municipalities were not assigned responsibilities in the constitution, nor were they accorded any constitutional fields of taxation. Being creatures of the provinces, the municipal sector in each province has been molded by the style, philosophy and legislative characteristics of the respective provincial governments.

It is difficult to make inter-provincial comparisons about the provincial-municipal transfer systems because the size, composition and responsibility of the municipalities vis-à-vis the provincial sector varies from province to province. In addition, the tax structure and the tax yields differ among the provinces. For example, the resource producing provinces in the West derive significant revenue from natural resource activity, while the remaining provinces continue to rely on income taxes and sales taxes for the bulk of revenue. Nevertheless, it is useful to review the change in aggregate municipal figures and contrast this with the changes that occurred in the provincial-federal analysis presented above.

Table 2 presents the principal statistics on provincial-municipal transfer systems. This table includes municipal and school board expenditures and is calculated on a basis that includes all spending, both capital and current.

In contrast to the federal-provincial experience the importance of transfers in the provincial-municipal fiscal system has not declined since 1971, but has increased from 46 to 47 per cent of total revenue requirements.

With education expenditures included, there has been no significant move towards deconditionalization. General purpose grants which provided 4% of local government revenue in 1971 provided only 6% in 1978.

Specific purpose or conditional grants which represented 42% of local government revenue in 1971, still represent 41% in 1978. Own source revenue provided 53% of local government requirements in 1971 produced 52% in 1978.

It is apparent from Table 2 that the 1970's when viewed from a global perspective produced little change in substance in the sphere of provincial-municipal finance.

However, education represents a significant portion of local government spending and accounts for approximately 70% of the aggregate specific purpose transfer payment in both 1971 (\$2,640.9 million) and in 1978 (\$5,844.2 million). Before discussing the details of the provincial-municipal transfer systems that exist in each province, it is useful to eliminate education transfers and taxes from the aggregate local government statistics, and review the figures from a purely municipal perspective. This is done in Table 3 which isolates municipal government transfers and revenue requirements exclusive of education. This calculation presents a clearer picture of the issue we are trying to assess in this paper.

Municipal governments relied on provincial transfers for 32% of their revenue requirements in 1971, and still relied on transfers for 33% of revenue in 1978. This finding parallels the experience for the local government sector in total (as illustrated in Table 2), but is in contrast to the decreased reliance on transfers in the federal-provincial sphere.

Transfers from the federal government to municipalities have remained constant at 2% during the period 1971 to 1978.

While no significant change towards deconditionalization occurred it is apparent that some progress has been made in the right direction. General purpose transfers which accounted for 7% of municipal revenue in 1971 accounted for 11% by 1978.

As a per centage of total transfer payments, general purpose transfers represented 23% of the total in 1971 but by 1978 had increased to 34%.

Conditional or specific purpose transfers continue to dominate the overall system in 1978 representing 22% of total municipal revenue requirements, and accounting for 66% of the total transfer money received from the provincial governments.

Property taxes have neither produced, nor have been relied upon to generate revenue commensurate with responsibilities. While accounting for 44% of total revenue in 1971, property taxation now accounts for only 42% of required revenue. This fact exists even though property tax rebate programs exist in a number of provinces.

In summary, constructive reform in the total provincial-municipal transfer system during the period 1971 to 1978 have been negligible for the most part. The overall system is:

TABLE 3
LOCAL GOVERNMENT SECTOR
GENERAL REVENUE BY SOURCE 1971
EXCLUSIVE OF EDUCATION
millions of dollars

Transfers from Provincial Government:			
General Purpose Transfers		\$ 314.7	7%
Specific Purpose Transfers	3716.9		
Less Education	<u>2640.00</u>	<u>1,076.0</u>	<u>25%</u>
Total Provincial Transfers		\$ 1,390.7	32%
Total Federal Transfers		88.0	2%
Grants in Lieu of Taxes		121.5	3%
Sale of Goods & Services		506.4	11%
Other Sources		350.1	8%
Property Taxation	3726.7		
Less Education	<u>1823.1</u>	<u>1,903.6</u>	<u>44%</u>
Total General Revenue (Exclusive of Education)		<u>\$ 4,360.3</u>	<u>100%</u>

Source: Statistics Canada, Local Government Finance, 68-204.
Statistics Canada, Financial Statistics of Education, 81-208.

LOCAL GOVERNMENT SECTOR
GENERAL REVENUE ESTIMATES BY SOURCE 1978
EXCLUSIVE OF EDUCATION
millions of dollars

Transfers from Provincial Government:			
General Purpose Transfers		\$ 1,262.7	11%
Specific Purpose Transfers	8267.3		
Less Education	<u>5844.2</u>	<u>2,423.1</u>	<u>22%</u>
Total Provincial Transfers		3,685.8	33%
Total Federal Transfers		208.0	2%
Grants in Lieu of Taxes		416.5	4%
Sale of Goods & Services		1,387.9	12%
Other Sources		733.7	7%
Property Taxation	7865.9		
Less Education	<u>3131.9</u>	<u>4,734.0</u>	<u>42%</u>
Total General Revenue (Exclusive of Education)		<u>\$11,165.9</u>	<u>100%</u>

Source: Statistics Canada, Local Government Finance, 68-203.
Statistics Canada, Advance Statistics of Education, 81-220.

Larger, with more reliance instead of less reliance, being placed on the transfer system.

No significant shift has occurred from specific purpose transfers to general purpose transfers.

Taxes and own source revenue generate less of the total revenue requirements than they did in 1971.

However, before passing final judgment on what the seventies have produced for provincial-municipal finance, it is necessary to modify or reinforce these general conclusions with the experience of changes that have actually occurred in each province. There has been significant change in a number of provinces although the aggregate figures for the municipal sector tends to mask individual changes.

PROVINCIAL-MUNICIPAL TRANSFER SYSTEMS 1978: A SUMMARY BY PROVINCE¹

NEWFOUNDLAND

Size of Municipal Sector

There were 300 incorporated municipalities in Newfoundland in 1978, compared with 215 municipal units in 1971. Reference to Table 4 shows that the municipal sector is relatively small in Newfoundland. Municipal revenue requirements were only 8% of provincial revenue requirements in 1971, and 8.8% in 1978.

Service Provision

The administration of justice, health and hospitalization, education and social welfare are provided entirely by the province. Police is a shared responsibility in some instances. In St. John's, firefighting is also paid for by the province. Assessment is conducted by the province for most of the municipalities, except for St. John's and Corner Brook where assessment is a local responsibility.

Transfer System

General Purpose Grants:

- payable to all municipalities, and based on the amount of own source revenue raised (taxes, service fees, water rates, etc.)
- municipalities that raise \$1,000 or less receive \$2 in revenue grants for every \$1 of local source revenue. The ratio of grant per dollar of own source revenue is reduced on a sliding scale as the amount of own source revenue increases to the point where municipalities that generate

over \$25,000 receive only 50 cents per \$1 of own source revenue up to a maximum of \$150,000.

- both St. John's and Corner Brook receive additional general purpose grants from the province.

Specific Purpose Grants:

- Most of the municipal services, such as firefighting, recreation, roads maintenance and construction, transit, and sewer and water qualify under various criteria for conditional grants.

What the 1970's produced: 1971 and 1978

Although the relative size of the municipal sector has not changed, there has been a perceptible change in the composition of local government revenue sources. While the provincial-municipal transfer system is still dominated by specific purpose transfers, total transfers as a proportion of municipal revenue have decreased from 35% in 1971 to 23% in 1978. Property taxation and own source revenue which accounted for 50% of municipal revenue requirements in 1971 provided for 63% of revenue in 1978. Total federal transfers have remained in the range of 15 to 17 per cent.

TABLE 4
NEWFOUNDLAND MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 3.9	11%	\$ 8.6	9%
Specific Purpose Transfers	8.5	24	13.9	14
Less Education	-	-	-	-
TOTAL PROVINCIAL TRANSFERS	12.4	35%	22.5	23%
Total Federal Transfers	5.4	15	16.3	17
Property Taxation	13.0		42.7	
Less Education	.6		4.4	
Municipal Property Taxation	12.4	35	38.3	38
Other Own Source Revenue	5.3	15	22.2	22
TOTAL GENERAL REVENUE	\$35.5	100%	\$99.3	100%
Municipal Rev/Provincial Rev		8%		8%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

Weaknesses:

- there is no legislated provincial-municipal transfer system.
- the provincial-municipal transfer system is still dominated by specific purpose transfers which accounted for 62% of the transfer payments in 1978.
- the sliding scale used for determination of general purpose grant entitlement appears arbitrary.

Strengths:

- general purpose transfers are related to municipal need as expressed by own source revenue generated.
- the transfer system recognizes different municipal classes and thereby treats St. John's and Corner Brook differently from the rest of the municipal sector.

PRINCE EDWARD ISLAND

Size of Municipal Sector

In 1971 there were 32 municipalities and 12 community improvement committees which are designated as municipalities for taxation purposes. By 1978 the municipal figures were 38 and 39 respectively. Local government revenue requirements represent approximately 6% of total provincial revenue requirements.

Service Provision

The administration of justice, education, social welfare and health and hospitals are provincial responsibilities. Police protection is provided municipally in Charlottetown and Summerside and some of the other towns and villages. Assessment and tax collection are provincial functions. Municipal property taxes are guaranteed 100% by the province, regardless of collection experience. The province uses its own property tax levy to help pay for education, and municipalities make a nominal contribution to capital costs.

The Transfer System

General Purpose Grants:

- in 1974 the *per capita* grant was combined with a number of existing conditional grant programs (fire, roads, etc.) to enhance and rationalize the unconditional *per capita* grant system.

--- entitlement in 1978 is calculated as follows: Charlottetown \$48.34 *per capita*, Summerside \$37.80 *per capita*, towns \$21.00 *per capita*, villages \$14.00 *per capita*.

--- an equalization grant is also available to municipalities with equalized assessment *per capita* below the provincial average.

Specific Purpose Grants:

--- the only significant conditional grant program that remained after 1974 was applied towards the capital cost of sewage facilities. This program continued because of the tripartite agreement flowing out of DREE and CMHC financing.

--- the community improvement committees are eligible for grants equal to 25% of their approved budgets for local services provided.

What the 1970's Produced: 1971 and 1978

There has been no change in the relative size of the municipal sector vis-à-vis the province when measured in revenue terms. There has been a substantial increase in municipal reliance on provincial transfers from 15% of requirements in 1971 to 20% in 1978. Approximately 70% of transfers were unconditional in 1978. Significantly, federal specific purpose transfers increased from 7% to 20% of total municipal requirements by 1978. Municipal property taxation provided 51% of municipal revenue requirements in 1971 and only 36% of the requirements in 1978.

TABLE 5
PRINCE EDWARD ISLAND MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$.5	9%	\$ 2.0	14%
Specific Purpose Transfers	12.3		43.0	
Less Education	11.9	6	42.1	6
TOTAL PROVINCIAL TRANSFERS	.9	15%	2.9	20%
Total Federal Transfers	.4	7	3.0	20
Property Taxation	7.8		5.4	
Less Education	4.7		-	
Municipal Property Taxation	3.1	51%	5.4	36%
Other Own Source Revenue	1.6	27%	3.6	24%
TOTAL GENERAL REVENUE	\$ 6.0	100%	\$14.9	100%
Municipal Rev/Provincial Rev		6%		6%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

Weaknesses:

- the unconditional transfer system relies heavily on a *per capita* formula. Declining population presents a problem especially in the face of growth in households and high inflation rates.
- the graduated *per capita* formula may produce inequities in the distribution of general purpose transfers.
- there does not appear to be a direct link between municipal spending needs and grant entitlement.
- there is no formalized revenue sharing process or agreement
- the transfer base and the annual increase in the transfer package is unilaterally determined by the provincial government.
- provincial services in kind to municipalities are not properly accounted for in the system.

Strengths:

- the transfer system is now predominantly unconditional with general purpose transfers accounting for over two thirds of the total transfer payment.
- an explicit equalization factor based on deficiency in *per capita* assessment form part of the system.
- there is recognition that the entire municipal sector is not homogeneous and four classes of municipalities are recognized for grant purposes.
- the conditional grants system has been totally rationalized and there now remains essentially only one conditional grant.

NOVA SCOTIA

Size of Municipal Sector

The number of municipalities has increased from 65 in 1971 to 91 in 1978 including village commissions. In 1978, the municipal sector is approximately 26% the size of the provincial sector as measured by gross revenue. This is three times the size of the municipal sector in Prince Edward Island and Newfoundland.

Service Provision

In Nova Scotia, the province is responsible for health services, the administration of justice, police, education, social assistance and welfare. Hospitals are a

shared responsibility between the municipalities and the province. Assessment is a provincial responsibility, but property taxation rests with the municipalities.

The Transfer System

General Purpose Transfers:

- there are seven unconditional grants in total.
- the *per capita* grants are calculated on a graduated scale for 1978 as follows: \$3.73 *per capita* for cities, \$3.30 *per capita* for towns, and \$1.37 *per capita* for rural municipalities.
- four general purpose grants exist as compensation to municipalities for provincially granted property tax exemptions, and the abolition of the poll tax. The transfers, for the most part, are frozen at levels equivalent to the amount of revenue generated by these taxes in the year prior to their abolition.
 - Agricultural personal property: 1966 level
 - Fisheries personal property: 1966 level
 - Farmland: \$1.00 per acre to escalate at 5% per year
 - Poll Tax: 1971 level
- an unconditional transfer is made to rural municipalities equivalent to 15% of the timber dues generated from provincial licence fees.
- the final general purpose grant is for education property tax relief, which is equivalent to the annual portion of shareable education expenditures of 20%, which is raised through property taxes. The net effect is that all education costs are paid out of the general revenues of the province.

Specific Purpose Transfers:

- numerous specific purpose transfers exist
 - Social assistance: 75% of cost
 - Welfare: 50% of cost
 - Police and regional libraries are paid on a *per capita* formula
 - Fire, garbage, recreation, roads and a number of other services are shared on the basis of a percentage of eligible costs.

What the 1970's Produced: 1971 and 1978

The municipal sector vis-à-vis the province, when measured in terms of revenue requirements, has shown a relative

growth of three percentage points and in 1978 was equivalent to 26% of the size of the provincial sector. The municipal sector in Nova Scotia has placed increased reliance on provincial transfers during the period 1971 to 1978. Provincial transfers in 1978 accounted for 48% of municipal revenue while the comparable contribution in 1971 was 41%. There has been a significant shift to unconditional transfers. General purpose transfers were 12% of total transfers in 1971, but had grown to account for 40% of total transfers by 1978. Property taxes have maintained a constant proportion of municipal revenue during the 1970's. Other own source revenue has decreased as a result of the removal of the poll tax as a source of municipal revenue, and the substitution of an unconditional transfer in its place.

TABLE 6
NOVA SCOTIA MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 5.6	5%	\$ 63.7	19%
Specific Purpose Transfers	114.6		297.8	
Less Education	72.1	36%	199.2	29%
TOTAL PROVINCIAL TRANSFERS	48.1	41%	162.3	48%
Total Federal Transfers	5.2	5	16.0	5
Property Taxation	89.3		175.0	
Less Education	52.9		68.7	
Municipal Property Taxation	36.4	31%	106.3	31%
Other Own Source Revenue	27.3	23%	53.4	15%
TOTAL GENERAL REVENUE	\$117.0	100%	\$338.0	100%

Municipal Rev/Provincial Rev	23%	26%
Source:	Statistics Canada, 68-203, 68-204, 81-208, 81-220.	

Weaknesses and Strengths of the System

Weaknesses:

- specific purpose transfers still dominate the system.
- there exists a proliferation of conditional grants that relates to almost every service responsibility of municipal government.
- the transfer system does not contain a fundamental equalization formula.
- there is no tax sharing or legislated revenue sharing.

- the province unilaterally determines the base of transfers and the annual increase in each subsequent year.

Strengths:

- education financing raised through property taxation is returned in the form of general purpose grants.
- the transfer systems provide a significant amount of revenue.

NEW BRUNSWICK

Size of the Municipal Sector

There were 115 municipalities in New Brunswick in 1978. The municipal sector in 1978 was approximately 12% of the size of the provincial sector, when measured in terms of revenue requirements.

Service Provision

The administration of justice, education, health, hospitals, social assistance and welfare are all provincial responsibilities. Property assessment and tax collection are also a provincial responsibilities. Municipal property tax is returned 100% to the municipality. Police is primarily a local responsibility in cities and towns.

The Transfer System

General Purpose Transfers:

The Municipal Assistance Act, Chapter M-19, provides legislation for the unconditional grant formula in use in New Brunswick.

- the formula used for arriving at the grant percentage for individual municipalities is a function of:
 - an equalization adjustment based on a deficiency from the average *per capita* taxable assessment in the province.
 - an equalization factor based on assessment per road mile in recognition of the area of the municipality.
 - a third equalization adjustment for municipalities with a population of over 5,000 that is used to adjust for the costs of urban services in larger urban centres.
- the grant percentage for a municipality is multiplied by shareable expenditure for a municipality to determine the grant received. The shareable expenditure is increased each year by an amount equal to the forecast of the per-

centage change in provincial net revenues.

- spending above the shareable level is financed solely by property taxation.
- the Municipal Assistance Act provides for "partnership budgeting" whereby the Minister has the power to refuse to approve any part of a municipal budget he deems excessive.
- a budget review board is established by legislation to hear appeals.
- it must be noted that local service districts receive a flat 45% of net spending as general purpose grants.

Specific Purpose Grants:

- conditional grants are available in recreation, sewage treatment, transportation and under the Neighbourhood Improvement Program.

What the 1970's Produced: 1971 and 1978

In relative terms, the municipal sector in New Brunswick has increased in size during the 1970's when compared with the province. Municipal revenue requirements were 9% of provincial requirements in 1971 and had increased to 12% by 1978. Total transfers to the municipal sector as a proportion of total revenue requirements have remained constant at 38% during the period 1971 to 1978. There has been a shift back to increased reliance on conditional transfers. In 1971, 97% of the provincial transfer was general purpose as compared to 81% in 1978. Federal transfers to the New Brunswick municipal sector have shown a slight increase from 7% to a 1978 figure of 10%. Increased reliance has been placed on property taxation as a source of revenue although other own source revenue has declined somewhat. On balance, provincial transfers showed no relative increase, federal transfers exhibited a slight relative increase and municipal taxation and other own source revenue declined slightly compared with other revenue sources.

TABLE 7

NEW BRUNSWICK MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$17.1	37%	\$ 48.1	31%
Specific Purpose Transfers	.5	1	11.2	7
Less Education	-	-	-	-
TOTAL PROVINCIAL TRANSFERS	17.6	38%	59.3	38%
Total Federal Transfers	3.0	7	15.2	10
Property Taxation	15.4		56.8	
Less Education	-		.05	
Municipal Property Taxation	15.4	34%	56.75	36%
Other Own Source Revenue	9.4	21%	25.77	16%
TOTAL GENERAL REVENUE	\$45.4	100%	\$157.02	100%
Municipal Rev/Provincial Rev		9%		12%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

Weaknesses:

--- there has been some back-sliding towards increased reliance on conditional transfers.

Strengths:

--- the transfer system in use is legislated in the Municipal Assistance Act.

--- the transfer system can legitimately be called a revenue sharing system.

--- the transfer system is predominantly unconditional.

--- municipal entitlement is based on measures of municipal need expressed by assessment, road miles, population and municipal spending. The transfer system incorporates an explicit equalization formula.

--- there is differentiation within the municipal sector based on size and type of municipal unit.

--- the provincial-municipal transfer system in New Brunswick is a superior system which incorporates many of the elements of a desirable, rational and equitable transfer system when viewed from the municipal perspective.

QUEBEC

Size of the Municipal Sector

Quebec has some 1,517 municipal units of various classifications. The municipal sector in 1978 was approximately 19% of the size of the provincial sector when measured in terms of revenue requirements.

Service Provision

The administration of justice, social services and welfare is supplied by the province. Education, health, police and other services are shared responsibilities. Real property assessment and taxation are functions of local government.

Transfer System

General Purpose Transfers:

--- the system in Quebec in 1978 consisted of four basic unconditional grant programs:

- a municipal consolidation grant existed to promote administrative and financial efficiency. The amount of funds available to the consolidated unit was restricted to \$15.00 *per capita* and was paid over 5 years.
- a *per capita* subsidy for municipalities with populations over 10,000 was on a graduated scale that increased payments according to size. The ratio of these payments ranged from \$6.40 *per capita* for populations between ten and twenty thousand, increasing on a graduated scale to \$23.50 *per capita* for populations over 150,000. For 1977 and subsequent years, the *per capita* amounts were indexed to the Consumer Price Index for Montreal.
- for municipalities with less than 10,000 population, there was an unconditional grant available at the discretion of the province in order to balance municipal budgets. In practice, monies under this program were made available in a variety of circumstances.
- an unconditional grant was established as compensation for loss of authority to levy retail sales taxes. Approximately 15% of the sales tax collected in an economic region is shared by the municipalities in the region on the basis of population. Cities of more than 150,000 population also received 50% of the meal and hotel taxes collected in their jurisdiction. In addition, there was sharing of provincial income taxes from gas and telecommunication companies as compensation for the abolition of the right to levy municipal taxes on these utilities.

--- it must be noted that the government of Quebec announced a major new initiative for the reform of municipal taxation in the 1979-80 budget of the Province of Quebec. Although the system has yet to be implemented, some brief comments will be made about the proposed system in a later section of the paper.

Specific Purpose Transfers:

A large number of conditional grants was available to assist municipalities in the functions of parks, recreation, libraries, roads, transit, sewer, water and fire protection.

What the 1970's Produced: 1971 and 1978

The period between 1971 and 1978 was marked by a slight decline in municipal sector importance compared with that of the province when measured by revenue requirements. Total provincial transfers, exclusive of education, increased from 22% of total revenue requirements in 1971 to 31% by 1978. The importance of specific purpose transfers nearly doubled from 24% of total provincial transfers in 1971 to 43% by 1978. Property taxation and own source revenue both declined in relative importance during the period from 75% of revenue in 1971 to 67% in 1978. The gist of the new announcement for property tax reform in Quebec would be to remove education entirely from the property tax base, allow the municipal sector to fully occupy the property tax room vacated, and eliminate all general and a number of specific purpose provincial transfers to the municipal sector.

TABLE 8
QUEBEC MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 170.6	17%	\$ 461.7	18%
Specific Purpose Transfers	909.0		2575.4	
Less Education	855.6	5%	2236.4	13%
TOTAL PROVINCIAL TRANSFERS	224.0	22%	800.7	31%
Total Federal Transfers	21.0	3	40.9	2
Property Taxation	923.1		1764.6	
Less Education	440.0		697.8	
Municipal Property Taxation	483.1	48%	1066.8	42%
Other Own Source Revenue	272.7	27%	631.3	25%
TOTAL GENERAL REVENUE	\$1000.8	100%	\$2539.7	100%
Municipal Rev/Provincial Rev		21%		19%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

Weaknesses:

- the system is characterized by a proliferation of conditional and unconditional grants. The transfer system is dominated by conditional grants.
- municipal taxing authority that existed in the sales tax area and on gas and telecommunication companies was replaced with grant programs.
- no rational equalization mechanism was included in the system.
- the budget balancing grants were allocated at the discretion of the province.

Strengths:

- *Per capita* unconditional rates were indexed to the Consumer Price Index thus maintaining the real dollar value of this transfer.

Recent Developments

The proposed reform of municipal taxation announced in the 1979-80 provincial budget will do much to simplify the method used for financing municipal responsibilities. Although it is too early to pass judgment on the system, a few general comments can be made. While the municipal sector can now totally occupy the property tax field, access to other sources of revenue and access to other taxes has been effectively removed from municipal reach. The additional tax room made available for the implementation of the proposed reform will soon disappear as a result of inflation. The result may be total reliance by the municipal sector on a tax base which is the most inelastic of the major tax sources in the Canadian public finance system. The other major reservation with the proposed reform package is that it removes the last direct link between local government responsibilities and the delivery of educational services.

ONTARIO

Size of the Municipal Sector

The municipal sector in Ontario consisted of 837 municipalities. The municipal sector in Ontario in 1978 was about one third the size of the provincial government sector when compared on the basis of revenue requirements.

Service Provision

The administration of justice and hospitals is a

purely provincial responsibility as is the process of property assessment. Health, police, social assistance and welfare, and education all represent shared responsibilities.

The Transfer System

General Purpose Transfers:

--- the unconditional grant system consists of six separate grant packages in Ontario. These six grant packages use three basic formulae for the distribution of money.

Per Capita Grants - a general *per capita* grant is available to all municipalities in the province. Entitlement is calculated on the basis of total population on a graduated scale that increases from \$7.00 *per capita* at the low end, to \$9.00 *per capita* at the top end. All regional municipalities in the province receive a flat \$10.00 *per capita*.

A police *per capita* grant is available to any municipality with a police force. The rate is \$10.00 *per capita* for most municipalities while regional government jurisdictions that provide consolidated regional police forces receive \$15.00 *per capita*.

A density *per capita* grant is also available to municipalities in regional government units with densities less than .75 households per acre. The grant starts at \$5.00 *per capita* at densities less than .15 households per acre and drops in increments of \$1.00 *per capita* to a low of \$1.00 at densities of .75 households per acre.

Grants Based on Municipal Own Source Revenue - a general support grant that is computed as 6% of the municipalities' previous year's own source revenue is paid to all municipalities.

A special support grant is paid to municipalities in Northern Ontario that is equivalent to 18% of the previous year's net general levy (own source revenue). When combined with the general support grant, all municipalities in Northern Ontario receive a grant equivalent to 24% of their previous year's own source revenue.

Equalization Grants - a resource equalization grant is paid to strengthen the financial capacity of municipalities where the tax base is below the provincial average. The amount of the grant is the lesser of 60% of the relative deficiency multiplied by the net general levy, or 25% of the net general levy.

Specific Purpose Grants:

--- there are in excess of 80 conditional grants for various operating and capital programs available to municipalities in the province of Ontario. The more significant grants are as follows:

- Social Services: 80% of eligible costs
- Welfare: 80% of eligible costs
- Health: 75% of eligible costs
- Roads: 50% of eligible costs
- Transit: 75% of capital spending, plus a sliding scale grant for operating costs based on ridership revenue.

--- It must be noted that each grant has its own entitlement rules, its own methods of calculation and many have built-in attempts at equalization.

What the 1970's Produced: 1971 and 1978

The municipal sector in 1971 had revenue requirements equal to 38% of provincial requirements, but by 1978 the relative size of municipal requirements was only 33% of provincial revenue requirements. The relative size of the municipal sector in Ontario vis-à-vis the province exceeds that of the municipal sector in all other provinces. Provincial transfers to the municipal sector provided 35% of municipal revenue requirements in 1971, a figure which had increased to 40% by 1978. Significant growth in provincial transfers occurred in the mid 1970's in Ontario.

The transfer system is predominantly conditional in form. In 1971, 90% of the transfers were received in conditional form. Although some progress has been made towards increased use of general purpose transfers, 73% of the payments remained in conditional form in 1978. The increased provision of transfer payments to the municipal sector had the stated provincial objective of reducing the burden on property taxes. Accordingly, property taxes which provided 47% of municipal revenue requirements in 1971, provided only 39% of total revenue in 1978. Other own source revenue provided 16% of total requirements in 1971 and 20% in 1978.

The government of Ontario attempted two major initiatives towards reform of the transfer system during the 1970's. The most celebrated initiative was the so-called "Edmonton Commitment", a pronouncement made by the Ontario Treasurer at a tri-level finance meeting in Edmonton in 1973 that henceforth the province of Ontario would increase transfers to the local sector at the rate of growth in provincial revenues. This represented one of the first responses by a provincial government to pressures exerted by the municipal sector for tax and revenue sharing. From the municipal perspective, this commitment was not honoured and in 1978 it was abandoned in an atmosphere of frustration on both sides.

In 1976, a joint provincial-municipal grants reform committee was established to review the existing system of transfer payments and to study the possibility and feasibility of altering the system in whole or in part. The recommendations of this committee have not been acted upon to date by the government of Ontario.

TABLE 9
ONTARIO MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 68.7	4%	\$ 439.8	11%
Specific Purpose Transfers	1656.9		3180.1	
Less Education	1065.8	31%	1970.2	29%
TOTAL PROVINCIAL TRANSFERS	659.8	35%	1649.7	40%
Total Federal Transfers	32.4	2	50.1	1
Property Taxation	1656.6		3339.6	
Less Education	749.2		1731.1	
Municipal Property Taxation	907.4	47%	1608.5	39%
Other Own Source Revenue	310.1	16%	821.2	20%
TOTAL GENERAL REVENUE	\$1909.7	100%	\$4129.5	100%
Municipal Rev/Provincial Rev		38%		33%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

- the system is totally dominated by conditional grants both in dollar value and in any number of grants.
- the unconditional grants program places too much dependence on *per capita* entitlements as the basis for distribution. In the face of stabilizing population and rapid inflation, the real contribution of these grants has diminished considerably.
- *per capita* grants are not indexed.
- too many general purpose grants exist.
- although an explicit equalization formula is part of the system, too many attempts have been made implicitly to equalize fiscal capacity with the use of individual conditional grants.
- revenue sharing has been abandoned.
- no legislated formula or agreement exists.
- there is no process to determine the annual increment growth in the municipal transfers.
- outdated and inequitable assessment values are in use as the basis for many of the transfer decisions.

Strengths:

- the mechanics of a good unconditional transfer system are in place but inadequate use has been made of general purpose grants. Equalization, recognition of municipal need and revenue sharing were all incorporated in the general purpose transfer system at one time.
- many of the programs differentiate between municipal sizes.

MANITOBA

Size of the Municipal Sector

There are 202 municipalities in Manitoba consisting of 185 municipal units and 17 local government districts. In terms of revenue requirements, the municipal sector is 28% of the size of the provincial sector.

Service Provision

The administration of justice, health and assessment is a provincial responsibility. Education, social services and police are shared responsibilities. Hospitals are a municipal responsibility. The City of Winnipeg is the exception to the general rule - it has its own police, does its own assessment, and provides its own health services, but does not finance hospitals.

The Transfer System

General Purpose Transfers:

The "Provincial-Municipal Tax Sharing Act" was introduced in Manitoba in 1976. This act provided for tax sharing legislation whereby the municipalities receive revenues yielded by 2.2 points of personal income tax and 1 point of corporation income tax. The legislation also contained a permissive clause that allowed municipalities to impose taxes within the municipality on hotel and motel accommodations, meals, liquor, the transfer of land, and any other form of tax approved by the Lieutenant-Governor in Council.

The revenues were distributed as follows for 1979:

- a basic grant of \$19.25 *per capita*
- a special police and urban services grant of an additional \$1.00 *per capita* for municipalities of less than 7,500 population, and \$2.00 *per capita* for municipalities with over 7,500 population.

Specific Purpose Grants:

A large number of specific purpose grants are provided

to the municipal sector for assistance in social services, highways, water, sewers, recreation, libraries, and parks.

What the 1970's Produced: 1971 and 1978

The size of the municipal sector remained a stable 28% to 30% of the size of the provincial sector when measured by revenue requirements during the period 1971 to 1978. The municipal sector in 1971 received 22% of its revenue from transfers, and in 1978 received 25% from this source. Surprisingly, the introduction of the "Provincial-Municipal Tax Sharing Act" produced no noticeable change in the contribution of general purpose transfers which were 4% of revenue in 1971, and remained at 4% in 1978. The transfer system is still dominated by conditional transfers, which accounted for 82% of the total transfers made in both 1971 and in 1978. In fact, the picture of general revenue by source in 1978 bears a very close resemblance to the 1971 analysis. Property taxation as a source of revenue has remained constant at 41% to 42%. Other own source revenue has not increased which illustrates that the municipal sector has not been successful in getting the Lieutenant-Governor in Council to approve new municipal tax sources.

TABLE 10
MANITOBA MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 7.3	4%	\$ 20.0	4%
Specific Purpose Transfers	162.4		285.9	
Less Education	126.0	18%	190.3	21%
TOTAL PROVINCIAL TRANSFERS	43.7	22%	115.6	25%
Total Federal Transfers	3.9	2	4.8	1
Property Taxation	157.3		393.7	
Less Education	77.5		205.0	
Municipal Property Taxation	79.8	41%	188.7	42%
Other Own Source Revenue	69.8	35%	144.8	32%
TOTAL GENERAL REVENUE	\$197.2	100%	\$453.9	100%
Municipal Rev/Provincial Rev		30%		28%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

Weaknesses:

- there is total reliance on a *per capita* formula for the distribution of unconditional transfers.

- the system is still dominated by conditional transfers. There are a large number of specific purpose transfers each with unique entitlement provisions.
- there is no explicit equalization formula.
- the municipal sector has not gained access to new tax sources in spite of the permissive legislation.

Strengths:

- provincial legislation defines the unconditional transfer entitlement.
- there is a legislated commitment to sharing of personal and corporate income taxes with municipalities.
- permissive legislation exists for the municipal sector to use taxes other than the property tax to generate revenue.
- Winnipeg is treated differently than the rest of the municipal sector.

SASKATCHEWAN

Size of the Municipal Sector

Saskatchewan is divided up into rural municipalities, villages, towns and cities. There are 794 municipal units in Saskatchewan which includes 347 villages and 137 towns. Municipal revenue as a proportion of provincial revenue decreased to 28% in 1978.

Service Provision

Nearly all municipal responsibilities are shared with the province of Saskatchewan. The administration of justice, policing, transportation, health, recreation and culture is a shared responsibility. Assessment also rests with the province with the exception of assessment in Regina, Saskatoon, and Moose Jaw. Welfare is a provincial responsibility.

The Transfer System

The government of Saskatchewan passed the "Municipal Revenue Sharing Act" in 1978. This act states that the province will determine which existing grant programs and new grant programs will be covered by revenue sharing. Urban municipalities and rural municipalities are treated differently for grant purposes. The revenue pool or base level of transfers will be indexed by an escalator that is the weighted average of change in four tax bases:

slight increase in the proportion of municipal revenue accounted for by transfer payments during the period. The new revenue sharing act in 1978 produced a significant shift to unconditional transfers but the change was not anticipated or reflected in the data available for this study. Federal transfers increased to the municipal sector. The reliance on property taxation showed a decline from 38% of total revenue in 1971 to 32% in 1978.

TABLE 11
SASKATCHEWAN MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 3.0	1%	\$ 36.2	7%
Specific Purpose Transfers	164.2		364.8	
Less Education	86.1	35%	205.0	31%
TOTAL PROVINCIAL TRANSFERS	81.1	36%	196.0	38%
Total Federal Transfers	3.0	1	19.2	4
Property Taxation	168.1		312.9	
Less Education	82.3		147.0	
Municipal Property Taxation	85.8	38%	165.9	32%
Other Own Source Revenue	53.9	25%	132.2	26%
TOTAL GENERAL REVENUE	\$223.8	100%	\$513.3	100%
Municipal Rev/Provincial Rev		40%		28%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the System

Weaknesses:

- the base or pool for urban and rural transfers is determined unilaterally by the province.
- it is not clear what growth rates will result from the indexing formula which uses growth in the tax base as opposed to yield from taxes.
- resource based revenue in Saskatchewan is effectively excluded from the escalator.
- there is a heavy reliance on *per capita* grants for the distribution of unconditional money.

Strengths:

- the Government of Saskatchewan has committed its provincial-municipal transfer system to legislation in the Municipal Revenue Sharing Act.

- the legislation is comprehensive.
- an explicit equalization formula is incorporated in the transfer system. The new transfer system is predominantly unconditional, especially for urban municipalities.
- the escalator used to index the base is defined in legislation.
- the distribution formula for grants as specified in regulations will be phased in over two years.
- when services are added to the municipal sector, additional money will be injected into the transfer system in support of the services.
- there is a distinction between urban and rural municipalities and the equalization formula classifies municipalities by size and incorporates elements of need as reflected by the average cost of providing services.

ALBERTA

Size of the Municipal Sector

Alberta had some 350 municipal units in 1978. The size of the municipal sector in Alberta, when measured on the basis of revenue requirements, was 21% of the size of the provincial sector in 1978. However, because of the budget surplus situation of the province, this measure underestimates somewhat the relative size of the municipal sector and its importance in providing public goods and services.

Service Provision

The province of Alberta pays 100% of the health and hospital costs although the health services are locally administered. Remaining services such as social assistance, the administration of justice, and police are shared responsibilities. Assessment is a municipal responsibility in Alberta. The cities do their own assessing, while most of the rural municipalities pay the province to do assessment on their behalf.

The Transfer System

The "Alberta Property Tax Reduction Act" in 1973 exempted municipalities from local tax levies for health units and hospitals. This act also removed the cost of education from residential property taxes. In 1979, the "Municipal Debt Reduction Act" was passed. This Act became effective on April 1, 1979, and provided for a grant of \$500 *per capita* for municipal debt reduction on a one time only basis. From this

legislation, \$642,000,000 in municipal debt was identified for retirement. An additional \$356,000,000 in unconditional grants was paid to municipalities that had debt less than \$500 *per capita*. The total value of this program to the municipal sector was in the order of one billion dollars. These figures, of course, are not reflected in the data used in the analysis below.

General Purpose Grants:

Equalization grant - the municipal sector is divided into four classifications based on population size. The equalization formula is calculated using the *per capita* assessment deficiency which is determined as the amount by which the municipality assessment falls below the average for the municipal classification within which it is contained.

per capita grant - there is a flat \$2 *per capita* grant paid to all municipalities.

Road grants to rural municipalities - an unconditional road grant is made to rural municipalities on the basis of \$20 per road mile contained in the municipality.

Specific Purpose Grants:

There are 30 conditional grant programs in existence in programs such as sewage treatment, water works, water management, land assembly, recreation, social assistance, policing and transportation.

What the 1970's Produced: 1971 and 1978

During the period 1971 to 1978 municipal reliance on transfer payments from the province decreased somewhat. Transfers from the federal government to the municipal sector remained constant at 1%. Property taxation provided 51% of municipal revenue requirements in both 1971 and 1978, while other own source revenue increased slightly to 31% of revenue requirements. Little change occurred in the relative sources of municipal revenue in Alberta during the period 1971 to 1978. The apparent decrease in the significance of municipal revenues when compared with provincial revenues reflects the rapid increase in resource revenue to the provincial government. This phenomenon may also be at play in the Saskatchewan and British Columbia statistics.

TABLE 12
ALBERTA MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ 38.0	8%	\$ 66.9	5%
Specific Purpose Transfers	348.8		953.8	
Less Education	211.4	31%	528.0	32%
TOTAL PROVINCIAL TRANSFERS	175.4	39%	492.7	37%
Total Federal Transfers	4.6	1	16.5	1
Property Taxation	282.8		679.8	
Less Education	145.3		273.9	
Municipal Property Taxation	137.5	31%	405.9	31%
Other Own Source Revenue	131.2	29%	396.2	31%
TOTAL GENERAL REVENUE	\$448.7	100%	\$1311.3	100%
Municipal Rev/Provincial Rev		40%		21%

Source: Statistics Canada, 68-203, 68-204, 81-208, 81-220.

Weaknesses and Strengths of the Transfer System

Weaknesses:

- the amount of transfers and the annual increase in transfers depends on the largesse of the provinces.
- the system is predominantly conditional.
- the system is characterized by a proliferation of conditional grants.
- there is no formal bilateral process to discuss Provincial-Municipal transfers.
- the municipal sector is dependent on the largesse of the Government of Alberta.

Strengths:

- the equalization provision in the unconditional transfer system is explicit.
- little reliance is placed on population as a method for transferring unconditional money.
- the 1979 reduction of long-term debt charges in the municipal sector is opportune.

BRITISH COLUMBIA

Size of the Municipal Sector

There are 168 cities, districts, towns, villages and regional districts in the province of British Columbia. The municipal sector was approximately 25% of the size of the provincial sector in 1978 when measured in terms of revenue requirements.

Provision of Service

The administration of justice is a provincial responsibility. Education, welfare, social assistance and health are all shared responsibilities. The provincial government is responsible for property assessment.

The Transfer System

The government of British Columbia introduced "The Revenue Sharing Act" in 1977. This Act specified the basic structure of the provincial-municipal transfer system and incorporated elements of both conditional and unconditional transfers for the distribution of payments. The Revenue Sharing Act specified the base for provincial transfers as:

- 1 percentage point of individual income tax
- 1% of corporate taxable income
- 6% of the sales taxes on renewable and non renewable resources

The money is distributed through eight principal programs as follows:

- basic grant
- water facilities assistance
- housing starts
- municipal incentive grant
- highways grant
- planning grant
- regional district grant
- an unconditional residual grant

General Purpose Transfers:

- a basic grant of \$30,000 is paid to each municipality. If the \$30,000 is greater than 50% of last year's tax revenue, the excess must be put in a reserve fund.
- regional districts receive the \$30,000 basic grant, plus an administrative grant of \$10,000, plus a planning grant of 20 cents *per capita*.
- the remaining grants listed above are conditional, but any monies not distributed by these mechanisms are distributed as follows until the total municipal entitlement under the

Revenue Sharing Act is exhausted:

- 80% of the residual is prorated by population.
- 20% of the residual is prorated by relative expenditures times assessment.

Specific Purpose Grants:

The Revenue Sharing Act designates specific purpose grants for water facilities, housing starts, municipal incentives, highway grants, and planning grants. In addition, conditional grants exist for sewage, highways, hospitals, social allowance, recreation, libraries and regional parks.

What the 1970's Produced: 1971 and 1978

The size of the municipal sector compared to the size of the provincial sector decreased from 39% to 25% between 1971 and 1978 when measured by gross revenue. The rapid growth in resource revenue accruing to the province may explain part of this change. Municipal sector reliance on provincial transfers as a source of revenue decreased in the period from 21% to 16%. Total federal transfers to the municipal sector remained constant at 2%. The provincial-municipal transfer system changed from one that was totally conditional in nature in 1971 to a position where 16% of the transfers were unconditional in 1978. Municipal property taxes as a source of revenue increased from 44% to 55% of total revenue requirements during the period. Other own source revenue represented 33% of revenue in 1971 and 27% in 1978.

The provincial government has recently announced a new initiative in the field of urban transit. Under this announcement, municipalities were given authority to levy a surcharge on gasoline, on power utilities, or to increase the property tax to help finance transit costs. It is interesting to note that the gasoline surcharge is fixed at 3 cents per gallon. This factor may produce the consequence that in periods of required conservation of energy when increased reliance on municipal transit may be necessary, revenue produced from this tax will decrease. Thus, when the need for spending on transit become more acute, the yield from the gasoline tax per gallon will fall.

TABLE 13
BRITISH COLUMBIA MUNICIPAL SECTOR
GENERAL REVENUE BY SOURCE
1971 AND 1978

	1971		1978	
	\$millions	%	\$millions	%
General Purpose Transfers	\$ -		\$ 115.7	10%
Specific Purpose Transfers	339.5		541.3	
Less Education	212.1	21%	473.0	6%
TOTAL PROVINCIAL TRANSFERS	127.4	21%	184.0	16%
Total Federal Transfers	10.0	2	26.1	2
Property Taxation	413.2		1095.5	
Less Education	151.1		462.7	
Municipal Property Taxation	262.1	44%	632.8	55%
Other Own Source Revenue	194.0	33%	307.1	27%
TOTAL GENERAL REVENUE	\$593.5	100%	\$1150.0	100%
Municipal Rev/Provincial Rev		39%		25%

Source: Statistics Canada, 68-302, 68-204, 81-208, 81-220.

Weaknesses and Strengths

Weaknesses:

- there are two systems of transfer payments in the province. The Revenue Sharing Act covers one, and there exists an unconditional grant program outside of the Revenue Sharing Act.
- the equalization provision in the Revenue Sharing Act appears unduly complicated and its equity is difficult to assess.

Strengths:

- the province has committed to legislation the major part of the provincial-municipal transfer system.
- the B.C. system is the only system in which actual tax sharing occurs. The base amount of revenue available to the municipal sector is determined by the yield from the taxes specified in the act.
- the Revenue Sharing Act permits municipal sharing of resource revenue, a feature not common in the other western provinces.
- the escalator is determined along with the base each year automatically from the yield produced by the taxes being shared.

SUMMARY AND CONCLUSIONS

There has been reform in the provincial-municipal transfer systems during the 1970's. New Brunswick, Manitoba, Saskatchewan and British Columbia legislated provincial-municipal transfer systems. Prince Edward Island rationalized its transfers to municipalities and changed to a predominantly unconditional grant system. Tinkering has occurred in most of the other provinces.

The aggregate analysis in Table 2 did not show a substantive change in own source revenue, or in transfer payments in total to the municipal sector. The lack of change between 1971 and 1978 may indicate a certain equilibrium in the total transfer system and/or the lack of substantive reform. Generally, from a municipal perspective, the system would be considered improved if:

1. The municipal sector had held its own or grown relative to the provincial sector;
2. The municipal sector did not have to place an increased reliance on provincial transfers as a source of revenue;
3. The province transferred an increasing proportion of grants in unconditional form;
4. The property tax burden had not increased unduly in proportion to other municipal revenue sources.

The principal statistics that measure these variables in each province are presented below in Table 14. This table also shows the level of government responsible for major public services. The percentage figures are for 1978, and the plus and minus signs behind the figures indicate the direction of change that has occurred since 1971.

1. The relative size of the municipal sector vis-à-vis the provincial sector when compared by general revenue requirements has:
 - remained constant in Newfoundland and Prince Edward Island
 - increased in Nova Scotia and New Brunswick
 - decreased in Quebec, Ontario, and in all the western provinces.

The relative size of the municipal sector is larger in Ontario than in any other province. Newfoundland, Prince Edward Island and New Brunswick have very small municipal sectors by the measures used in this study. The size of the municipal sector in Nova Scotia, Ontario, Manitoba, Saskatchewan and British Columbia is three to four times the size of that found in Newfoundland, Prince Edward and New Brunswick. Quebec and Alberta are in an intermediate class by themselves.

Reforms of municipal governments and transfer systems have not enhanced or strengthened the *rôle* of municipal government in Canada.

2. The dependence on transfers from the province as a source of municipal revenue:

TABLE 14
SUMMARY OF PRINCIPAL FINANCIAL CHARACTERISTICS
MUNICIPAL SECTOR BY PROVINCE
1978

	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC
Service Provision										
Health	P	P	P	P	P/M	P/M	P	P/M	P	P/M
Hospital	P	P	P/M	P	P/M	P	M	P/M	P	P/M
Social Assistance	P	P	P	P	P	P/M	P/M	P	P/M	P/M
Education	P	P	P	P	P/M	P/M	P/M	P/M	P	P/M
Municipal Revenue %										
Provincial Revenue	8%NC	6%NC	26%+	12%+	19%+	33%+	28%+	28%+	21%+	25%+
Provincial Transfers as % of Municipal Revenue	23%+	20%+	48%+	38%NC	31%+	40%+	25%+	38%+	37%+	16%+
General Purpose Transfers as % of Total Transfers	38%+	68%+	39%+	81%+	58%+	27%+	17%NC	18%+	14%+	63%+
Property Taxes as % of Total Revenue	38%+	36%+	31%+	36%+	42%+	39%+	42%+	32%+	31%NC	55%+

NC = No Change
P = Province
M = Municipal
+ or - = Direction of Change since 1971

- remained constant in New Brunswick
- increased in Prince Edward Island, Nova Scotia, Quebec, Ontario, Manitoba and Saskatchewan
- decreased in Newfoundland, Alberta and British Columbia.

Nova Scotia municipalities receive the highest proportion of their revenue requirements from provincial transfers 48% in 1978. New Brunswick, Ontario, Saskatchewan and Alberta municipalities received approximately 40% of their revenue requirements in provincial transfers. British Columbia municipalities rely on provincial transfers for only 16% of their revenue requirements.

Attempts at reforming provincial-municipal transfer systems have accomplished little in terms of decreasing the dependence on transfer systems as a source of revenue for the municipal sector.

3. The proportion of the provincial-municipal transfer system that is unconditional

- remained constant in Quebec and Manitoba
- increased in Prince Edward Island, Nova Scotia, Ontario, Saskatchewan and British Columbia
- decreased in Newfoundland, New Brunswick and Alberta.

Prince Edward Island, New Brunswick and British Columbia transfer systems are by far the most unconditional. However, these systems are among the smallest in terms of size of transfers made. The 1978 statistics on Manitoba, Saskatchewan and Alberta show the transfer systems in these provinces contain the smallest portion of unconditional payments. It must be noted that the 1978 data are estimated and therefore do not reflect some of the recent initiatives. In Manitoba, the transfer system for Winnipeg has been deconditionalized. Saskatchewan announced a new Revenue Sharing Act in 1978, which altered the ratio of general purpose and specific purpose grants and Alberta introduced the debt reduction program in 1979.

The one feature of the transfer system that has achieved significant reform is the proportion of transfer payments that is now general purpose when compared with the situation in 1971. Progress has been made on this front in all provinces except Newfoundland.

4. During the period 1971 to 1978, property taxes as a proportion of total municipal revenue have

- remained constant in Manitoba and Alberta (decreased in Alberta in 1979)
- increased in Newfoundland and British Columbia
- decreased in all other provinces.

It is not possible to comment on the property tax burden from this analysis. However, it is obvious that one

general feature of the reforms that occurred during the period 1971 to 1978 was less reliance by municipalities on the property tax as a source of revenue. Accomplishing this by increasing transfers brings into question the value of this action.

Municipal attempts at tax and revenue sharing have produced numerous and varied responses from the provinces. This review of provincial-municipal reform activity does isolate a number of features worthy of incorporation in any subsequent reform.

Legislated transfer agreements exist in New Brunswick, Manitoba, Saskatchewan and British Columbia. This feature is a fundamental requirement since it gives a degree of certainty and continuity to the transfer system that is often lacking in the absence of legislation where total reliance must be placed on regulations. Regulations tend to get bogged down in detail, develop inconsistencies and are moulded to preferences of provincial civil servants, often to the detriment of municipalities. Legislation puts the issue of the provincial-municipal transfer system into the provincial legislature where it should be.

The amount of total transfers is determined by tax sharing in Manitoba and British Columbia. In these provinces, personal and corporate income taxes and a limited number of other taxes were designated for use in the transfer system. This tax sharing feature is different from revenue sharing because it is specific to a limited number of tax sources, and because it implies that the municipal sector can change the rate structure. In practice this has not happened.

One important advantage of tax sharing is that it automatically determines the transfer base or pool of transfer funds to be used. Tax sharing therefore eliminates the contentious definitional problem of determining the transfer base that will be used for all subsequent adjustments. When the total amount of the transfer is not determined by tax sharing, it is imperative that a partnership process be established to determine the base level of transfer payment and how the base is to change with the introduction or elimination of grant programs and/or responsibilities.

The third advantage of using tax sharing is that it also eliminates the problem of having to index the transfer system to some other variable. The increase is a direct function of revenue yield of the tax shared.

Indexing Transfers is a problem in the transfer system used in all provinces except Manitoba and British Columbia. New Brunswick and Saskatchewan are committed to increased transfers at the rate of growth in selected provincial revenue sources. Ontario tried this process but has since abandoned it. In most of the other provinces, the annual increase in transfer payments

depends on the largesse of the province. If tax sharing does not exist, then a bilateral determination of the indexing mechanism should be part of the legislation.

The distribution of transfer payments is the part of the transfer system that has the least standardization across the country. Strengths can be found in the distribution mechanisms used in all of the provinces, but the most rational and comprehensive model that exists at the present time is the one used in the province of New Brunswick. Although the municipal sector is small in New Brunswick, and therefore may lend itself better to this treatment, the theoretical construct of the New Brunswick system is superior to that in most other provinces at this time.

The 1970's produced some significant reforms in provincial-municipal transfer systems. Most of the issues that must be resolved in determining the mechanisms to be used in provincial-municipal transfer systems had been addressed in one or more of the provinces by 1978. The major strengths of each system should be incorporated where feasible in subsequent reforms

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NOTES

CHAPTER 1

1. (1867) 30 and 31, Vict. c.3, s. 92(8). The Charlottetown Conference agreed to provincial responsibility over "municipal laws". This was changed to "municipal institutions" in the first draft considered by the Quebec Conference in October, 1864, and remained virtually unchanged thereafter until the passage of the *B.N.A. Act*: G. P. Browne, *Documents on the Confederation of British North America*, Toronto, Carleton Library, 1969. The "Confederation Debates" of the Legislature of Canada in 1865 made no reference to this head of jurisdiction: *Parliamentary Debates on Confederation of the British North American Provinces*, Ottawa, Queen's Printer, 1951.
2. *Dinner v. Humberstone* (1896) 26 S.C.R. 252(S.C.C.). See: *Report of Advisory Commission on the Development of Government in the Northwest Territories*, Vol. I, Ottawa, Queen's Printer, 1966, at p.50 ff.
3. *Samson v. Drolet* (1928) S.C.R. 96(S.C.C.).
4. *Ladore v. Bennett* (1939) A.C. 469 (P.C.); *Day v. Victoria* (1938) 3 W.W.R. 161 (B.C.C.A.); *Quebec Municipal Commission v. Aylmer* (1933) 2 D.L.R. 38 (Que. S.C.).
5. Per Armour, J. in *Re Harris and Hamilton* (1879) 44 U.C.Q.B. 641, at 644 (U.C.Q.B.). See also *Re Slavin and Orillia* (1875) 36 U.C.Q.B. 159 (U.C.C.A.); and *Huson v. South Norwich* (1895) 24 S.C.R. 145, at 150 per Strong, C.J.C.
6. *A.-G. Ontario v. A.G. Canada and Distillers and Brewers Association of Ontario* (1896) A.C. 348, at 363-4 (P.C.).
7. Section 92(10). e.g.: *Smith v. London* (1909) 20 O.L.R. 133 (Ont. C.A.)
8. Section 93. e.g.: *Jones v. Trustees of Edmonton Catholic School District Number 7* (1977) 70 D.L.R. (3d) 1 (S.C.C.).
9. Section 92(14). e.g.: *Re Charlottetown Police* (1977) 74 D.L.R. (3d) 422 (P.E.I.S.C.)
10. Section 92(6).
11. Section 92(7).
12. Section 92(9). See *infra*, at note 113.
13. Section 92(2). See *infra*, at note 103.

14. Section 92(13). e.g.: *Cal Investments Ltd. v. Winnipeg* (1978) 84 D.L.R. (3d) 699 (Man.C.A.) - re massage parlours.
15. Section 92(16). e.g.: *Re Nova Scotia Board of Censors and McNeil* (1978) 84 D.L.R. (3d) 1(S.C.C.) - re film censorship and *A.G. Canada v. Dupond* (1978) 84 D.L.R. (3d) 420(S.C.C.) - parades and demonstrations.
16. Section 92(15). e.g.: *Re Nakashima* (1975) 51 D.L.R. (3d) 378 (B.C.S.C.) - Re Noise By-Law. It should be noted that this power is restricted to those sources of provincial jurisdiction which are founded on Section 92 itself; does not apply to other heads of provincial jurisdiction, such as education.
17. See Note 2, *supra*.
18. *Munro v. National Capital Commission* (1966) 57 D.L.R. (2d) 753(S.C.C.).
19. *Johannesson v. West St. Paul* (1952) 1 S.C.R. 292(S.C.C.).
20. *Toronto v. Bell Telephone Company* (1905) A.C. 52(P.C.).
21. Section 91(7).
22. Section 91(28).
23. Section 91(5).
24. Section 91(24).
25. Section 91(27).
26. *R. v. McKay* (1966) 53 D.L.R. (2d) 532(S.C.C.).
27. See *infra* at note 118.
28. Section 125. See *infra* at note 90.
29. For a thorough examination of the cases see: I. M. Rogers, *The Law of Canadian Municipal Corporations* (2d), Vol. I, p. 311 ff.
30. (1939) A.C. 468, at 482-3(P.C.).
31. Section 91(21).
32. Section 91(19).
33. (1940) A.C. 513(P.C.).
34. Page 531.
35. Page 531-2.
36. J. R. Mallory, *Social Credit and the Federal Power in Canada*, Toronto, Un. of Toronto Press, 1954, Chapter 6.

37. R. S. C. 1970, c.L13.
38. Section 91(27).
39. *A.-G. Ontario v. Hamilton Street Railway* (1903) A.C. 524(P.C.). This has also been held to be the case where enforced closing on other religious holidays is involved: *Birks v. Montreal* (1955) 5 D.L.R. 321(S.C.C.).
40. *R. v. Boardwalk Merchandise Mart Ltd.* (1973) 31 D.L.R. (3d) 452 (Alta. S.C.-app. D.); *Robertson and Rosetanni v. R.* (1964) 41 D.L.R. (2d) 485(S.C.C.). The latter case also held that the statute does not interfere with the "freedom of religion" protected by the *Canadian Bill of Rights*.
41. *Leiberman v. R.* (1964) 41 D.L.R. (2d) 125(S.C.C.). Some provincial legislation has also been upheld on the ground that it merely permits certain Sunday activities which the federal Act leaves to provincial option: *Lord's Day Alliance v. A.-G. British Columbia* (1959) S.C.R. 497(S.C.C.).
42. *Re Nova Scotia Board of Censors and McNeil* (1978) 84 D.L.R. (3d) 1(S.C.C.) per Ritchie, J. at p. 28. A municipal by-law pertaining to the dress of massage parlour operators was upheld on similar grounds in *Cal Investments Ltd. v. Winnipeg* (1978) 84 D.L.R. (3d) 699 (Man. C.A.).
43. *A.G. Canada v. Dupond* (1978) 84 D.L.R. (3d) 420(S.C.C.).
44. Per Beetz J., at p. 435.
45. Per Beetz J., at p. 437.
46. *Birks v. Montreal* (1955) 5 D.L.R. 321(S.C.C.); *Switzman v. Elbling* (1957) 7 D.L.R. (2d) 337(S.C.C.).
47. *Kent v. Storgoff* (1962) 38 D.L.R. (2d) 362(B.S.C.S.).
48. See *infra*, note 49.
49. Page 436. A contrary opinion in the dissenting reasons for judgment of Laskin C.J.C. is much more persuasive (p. 426).
50. Page 437-8. His argument that the by-law was valid because it prevented *all* assemblies, regardless of purpose or effect, was devastatingly critized by Laskin C.J.C. at p. 427-8.
51. *Re Nova Scotia Board of Censors and McNeil* (1978) 84 D.L.R. (3d) 1, at 27-8(S.C.C.).
52. *City of Regina v. Sharley* (1912) 5D.L.R. 877 (Sask. Mag. Ct.). The magistrate also found an absence of authorization in the provincial and enabling legislation. See also *Re By-Law No. 3587 of Vancouver* (1956) 60 L.R. (2d) 221(B.C.S.C.).

53. (1963) 1 C.C.C. 108 (Ont. Mag. Ct.).
54. (1974) 42 D.L.R. (3d) 622 (Ont. C.A.).
55. In the *McNeil* case, *supra* note 51, one portion of the regulation, which was found to conflict with the obscenity provisions of the *Criminal Code*, was held to be constitutionally valid, but severable from the remainder of the regulations.
56. *Ross v. Registrar Motor Vehicles* (1974) 42 D.L.R. (3d) 68(S.C.C.).
57. Section 129 of the *B.N.A. Act* provides for the continuation of pre-Confederation laws until altered by the appropriate legislature.
58. I. M. Rogers, *The Law of Canadian Municipal Corporations* (2d ed.) Vol. I, Toronto, Carswell, p.111 ff.
59. *Ibid.*
60. (1906) 12 O.L.R. 290 (Ont. C.A.).
61. Rogers, *supra*, note 58, s. 63.32 offers several examples.
62. (1956) 115 C.C.C. 366(N.B.S.C. - App. D.).
63. (1929) 1 W.W.R. 30(B.C.S.C. - App.).
64. *British Railways Board v. Pickin* (1974) 1 All E.R. 609(H.L.).
65. There are, of course, presumptions of interpretation which sometimes assist the courts to avoid unfair or discriminatory application of a statute. *The Canadian Bill of Rights*, S.C. 1960, c.44, also provides a degree of protection. Neither of these types of protection places very difficult obstacles in the way of a determined legislature, however.
66. *Re Burns* (1965) 52 D.L.R. (2d) 101 (Ont. C.A.).
67. *Re Ostron and Sidney* (1888) 15 O.A.R. 372 (Ont. C.A.).
68. *Re Howard and Swansea* (1947) 3 D.L.R. 597 (Ont. C.A.).
69. *Re Angus and Widdifield* (1911) 24 O.L.R. 318(Ont. C.A.). I. M. Rogers, *The Law of Canadian Municipal Corporations*, (2d ed.), Vol. II, s.193.52 points out that unreasonableness is seldom used any longer as a ground for invalidating by-laws and that it has, in fact, been legislatively abolished in some jurisdictions.
70. Rogers, *supra*, note 69, s. 193.1 ff., contains a useful compendium of cases on the subject.
71. *Hodge v. R.* (1883-4) 9 A.C. 118(P.C.).

72. (1959) 16 D.L.R. (2d) 624 (Ont. C.A.), per Roach J. A., at p.639; affirmed on other grounds (1960) S.C.R. 307(S.C.C.).
73. *Ibid.*
74. *Ibid.*, per Roach J. A., at p. 644.
75. See: P. Blache, "Délégation et Fédéralisme Canadien" (1976) *U. Sherbrooke Revue de Droit*, 237.
76. "Counsel for the appellant and for the Attorney-General of Ontario invited the Court to express an opinion as to the validity of the... statute...but I do not think that we ought to do this...The dismissal of the appeal does not, of course, constitute an affirmation...on the constitutional point.": per Cartwright J., (1960) S.C.R. 307, at 314(S.C.C.).
77. *A.-G. Nova Scotia v. A.G. Canada* (1951) S.C.R. 31(S.C.C.).
78. Rogers, *supra*, note 69, p. 312.
79. *Prince Edward Island Potato Marketing Board v. Willis* (1952) S.C.R. 392(S.C.C.), at p. 395, per Rinfret C.J.C.
80. *Re Dunne* (1962) 33 D.L.R. (2d) 190(Ont. H.C.); *Re M. and M.* (1977) 72 D.L.R. (3d) 472(Ont. P.C.).
81. Rogers, *supra*, note 78, mentions a *dictum* to this effect by Sedgwick J. of the Supreme Court of Canada in *Re Prohibitory Liquor Laws* (1895) 24 S.C.R. 170, at 247. The Supreme Court decision was subsequently overruled by the Privy Council without reference to this point, however: (1896) A.C. 348(P.C.). It is perhaps worth noting that in addition to the technique mentioned in the text, the courts have also permitted legislatures to use techniques of "incorporation by reference" and "conditional legislation", which often achieve virtually the same result as outright delegation.
82. *Grand Trunk Railway Company v. Toronto* (1900) 32 O.R. 120 at 125(Ont. H.C.).
83. The contrary argument could not, as a matter of logic, be made that Parliament has, as a necessarily incidental part of its jurisdiction over the subject in question, the power to create or confer capacity upon municipal bodies.
84. (1938) A.C. 415(P.C.).
85. Rogers, *supra*, note 69, at p. 333 ff., seems to accept this interpretation. It is persuasively rejected by P.W. Hogg, *Constitutional Law of Canada*, 1977, Toronto, Carswell, p. 136-7.
86. *Jones v. Edmonton* (1977) 70 D.L.R. (3d) 1(S.C.C.), at 16-18.
87. Hogg, *supra*, note 85, at p. 137.

88. Rogers, *supra*, note 85, refers to many such cases.
89. See, generally, D. Gibson, "Interjurisdictional Immunity in Canadian Federalism" (1969) 47 Can. Bar Rev. 40, and C.H.H. McNairn, *Governmental and Intergovernmental Immunity in Australia and Canada*, 1977, Toronto, U. of Toronto Press.
90. See: McNairn, *supra*, note 89, p. 126 ff.
91. *Minister of Justice v. Levis* (1919) A.C. 505(P.C.).
92. *R. v. Breton* (1967) 65 D.L.R. (2d) 176(S.C.C.).
93. *Re Provincial Municipal Assessor and R.M. of Harrison* (1971) 20 D.L.R. (3d) 208(Man. Q.B.). Similar problems are examined in *G.V. La Forest, The Allocation of Taxing Power under the Canadian Constitution*, 1967, Toronto, Canada Tax Foundation, p. 150 ff.
94. *A.-G. Saskatchewan v. C.P.R.* (1953) A.C. 594(P.C.).
95. *Hudson's Bay Company v. Bratts Lake R.M.* (1919) A.C. 1006(P.C.).
96. Another restriction on the taxing power, which does not seem to have much significance so far as local government is concerned, however, is s. 121 of the *B.N.A. Act* which prohibits import and export duties on products moving from one province to another. See: *la Forest, supra*, note 93, on this and generally.
97. Pertaining federal statute.
98. *Johannesson v. West St. Paul* (1952) S.C.R. 292(S.C.C.).
99. A contrary conclusion was reached in *R. v. New Westminster, Ex.p. Canadian Wire Vision Limited* (1966) 55 D.L.R. (2d) 613(B.C.C.A.). This decision should, however, be treated as overruled by *Re Public Service Board and Dionne* (1978) 83 D.L.R. (3d) 178(S.C.C.).
100. *Toronto v. Bell Telephone Company* (1905) A.C. 52(P.C.).
101. *R. v. C.S.L. Ltd.* (1960) O.W.N. 227(Ont. C.C.).
102. *C.P.R. v. Notre Dame de Bonsecours* (1899) A.C. 367(P.C.).
103. *Hamilton Harbour Commissioners v. Hamilton* (1976) 1 M.P.L.R. 133 (Ont. H.C.).
104. Section 91(3). See, generally: *La Forest, supra*, note 93.
105. Section 92(2).
106. Section 125. See, *supra*, at note 90.
107. See *La Forest, supra*, note 93, at p. 90 ff.

108. Section 121. This restriction applies to federal legislation as well as provincial.
109. This test was borrowed from the classical political economist John Stuart Mill in: *Bank of Toronto v. Lambe* (1887) 12 A.C. 575(P.C.).
110. The mere fact that a tax would cause a general increase in the overhead of the business in question, with resulting effects on prices, is not enough to render a tax "indirect". There must be a quite proximate relationship between the tax and the resulting price increase to satisfy the test.
111. This technique received judicial approval in *Atlantic Smoke Shops Ltd. v. Conlon* (1943) A.C. 550(P.C.).
112. See, for example, *Tobacco Tax Act*, R.S.M. 1970 c.T80.
113. *Halifax v. Fairbanks* (1928) A.C. 117(P.C.).
114. Section 92(9). The wording was not varied much during the discussions (see Browne, *Documents on the Confederation of British North America*, 1969, Toronto, Carleton Library) and provoked no comment during the debates in the Canadian Legislature (see *Parliamentary Debates on Confederation of British North American Provinces*, 1951, Ottawa, Queen's Printer).

CHAPTER 2(A)

1. Guy Tardif, L'évolution et les conséquences de l'intervention fédérale dans le domaine des Affaires municipales et urbaines, 10 *Municipalité* 3(March, 1978).
2. Claude Masson, Editorial, La disparition des Affaires urbaines, *La Revue Municipale*, p. 5 (March, 1979).

CHAPTER 2(B)

1. "L'évolution et les conséquences de l'intervention fédérale dans le domaine des affaires urbaines et municipales", Government of Quebec, Municipal Affairs, 1978, p.5.
2. Id., p.6.
3. "Developpement urbain et politiques gouvernementales urbaines dans l'agglomération montréalaise 1945-1975", Political Science Collections, Vol. 1, Canadian Political Science Association, Montreal, 1978, pp. 378-81.

4. See F. R. SCOTT et W. R. LEDERMAN, "A Memorandum Concerning Housing, Urban Development and the Constitution of Canada", (1972) 12 Plan Canada 33; G. L'ECUYER, "La compétence législative en matière d'habitation", (1975), 16 Cahiers de Droit, 217; D. GIBSON, "Constitutional Jurisdiction Over Environmental Management in Canada", (1973), 23 University of Toronto Law Journal 54; Rapport de la commission provinciale d'urbanisme, Rapport LaHaye, Quebec, 1968.
5. Report of the Task Force on Urbanization "L'urbanisation au Quebec", Official Printer of Quebec, 1976, p. 327.
6. Report of the Royal Commission on Constitutional Problems, Quebec, Government of Quebec, 1956, Vol. III, Tome II.
7. See Conference proceedings.
8. *Op. cit.*, note 5, pp. 209 to 215.
9. Report of the Task Force on Housing, "Habiter au Quebec", Quebec, Government of Quebec, 1976, pp. 64-5.
10. "Une politique du logement au Québec?" (1973), Les Cahiers du C.R.U.R., no. 5, Quebec University Press, p. 257.
11. Bill 90 Agricultural Land Protection Act (in force) and Bill 125 Planning and Urbanisation Act (not in force) of 1978 are important facets of the new policies in Quebec.
12. Montreal, Wilson and Lafleur, 1973.
13. S.R.Q. 1964, ch. 193 and amendments.
14. See documents prepared by the Ministry of Municipal Affairs previously mentioned in the text.
15. L.Q. 1971, ch. 71.
16. L.Q. 1977, ch. 54.
17. See background document prepared by the Ministry of Municipal Affairs for the Conference "Québec-Municipalités" entitled: "La revalorisation du pouvoir municipal - Réforme fiscale: fondements et principes", pp. 25-6.
18. Ministère des finances, Gouvernement du Québec, pp. 34 et seq.
19. From conversations with officials of these organizations.
20. *La Presse*, March 20, 1974.
21. The Canadian Intergovernmental Conference Secretariat, Ottawa, 1978.
22. See Conference proceedings.

23. Letter dated May 7, 1975.
24. See page 175 ff. of Conference proceedings.
25. "Discussion Paper - Tri-Level Consultation on Urban Affairs", Ottawa, Ministry of State for Urban Affairs.
26. From conversations with officials of these organizations.
27. See *La Presse*, Montreal, May 18, 1978 et *La Presse*, Montreal June 15, 1978. The proposals of the Minister of State for Urban Affairs with regard to direct transfers to municipalities of about \$150 million, of which \$47 million would be for Quebec.
28. From a document prepared by the Quebec Ministry of Intergovernmental Affairs for the Conference of Ministers of Municipal Affairs in Kingston, August 15-18, 1976.

CHAPTER 2(C)

1. *Municipalités*, March, 1978, p. 48.

CHAPTER 3

1. Briefs of FCM to Task Force on Canadian Unity, March 2, 1978 and August 18, 1978.
2. Transcript: August 18, 1978, p.3.
3. Lionel D. Feldman, *Canada: Policies and Practices in Atlantic Canada, Ontario, and the West*, FCM, May, 1980.
4. Indeed, it is interesting that the Constitutional Committee of the Quebec Liberal Party in its 1980 publication, *A New Canadian Federation* has a section, Chapter 25, "Municipal Affairs, Land and Public Works," pp. 115-117. The Liberal position is succinctly expressed by the following: "...we believe that Quebec's internal constitution should recognize the existence of municipal powers and guarantee the financial autonomy of municipal bodies. This should also be the case for local governments entrusted with the administration of school systems." p.116.
5. Speech to 1979 Convention of the Saskatchewan Urban Municipalities Association.
6. For a discussion of some of these issues relative to planning matters see Lionel D. Feldman and Katherine A. Graham, *Bargaining For Cities: Municipalities and Intergovernmental Relations An Assessment*, Toronto, Butterworth & Co. (Canada) Ltd., 1979, pp. 71-79.
7. *Ibid.*, p.72.
8. British Columbia's Constitutional Proposals, Executive Council, 1978.

9. In this paper "local government" and "municipalities" are used interchangeably rather than in the more restrictive sense of the latter. Precisely, local government is the totality of local institutions, including as well as the municipality, school board and other special purpose bodies.
10. First Report, section 7, p. 12.
11. *Ibid.*, p.13.
12. Third Report, Western Premiers' Task Force, p.21.
13. Lionel D. Feldman and Katherine A. Graham, *Intergovernmental Relations and Urban Growth - A Canadian View* 5(1) *Local Government Studies* (January, 1979) p.84.
14. Indeed, when Ontario found on the Pickering Airport issue in the early 70's that MSUA could not follow through with its commitments, very quickly it ceased to take the Ministry seriously and reverted to its past practice of close liaison with the PCO, Department of Finance and other major spending Departments. *Ibid.*, pp.81-82.
15. There are five associations that represent municipal governments: Association of Municipalities of Ontario, Association of Counties and Regions of Ontario, Rural Ontario Municipal Association, Federation of Northern Ontario Municipalities and Northwest Ontario Municipal Association - six if one includes the Municipal Liaison Committee.
16. By the Edmonton Commitment, the government of the Province of Ontario in 1973 pledged with the fiscal year 1974 to pass on to municipalities a proportionate share of any provincial revenue gains from the federal government. By 1977 the Edmonton Commitment had been abrogated by the province.
17. The question of property tax reform, a recurring theme for over a decade in Ontario, provides an opportunity to document clearly the Province of Ontario's position vis à vis municipalities. The transference of this stance on finance to constitutional reform is a straight line projection. Frank S. Miller, Treasurer of Ontario, in a letter dated November 23, 1979 to John Sewell, Mayor of the City of Toronto, "I am concerned that any adaption of the property tax for purposes other than revenue generation raises the possibility of a number of undesirable consequences..." In short, property tax is not a legitimate vehicle for policy making by a municipality. Even less is there a place for a municipal voice on the Constitution.
18. J. Stefan Dupré, *Intergovernmental Finance in Ontario: A Provincial-Local Perspective*. Ontario. Queen's Printer, 1968, p.1.
19. Municipal Directory, 1979. Ontario. Ministry of Intergovernmental Affairs, p.100.
20. 1979. R. Romanow, Speech to SUMA, January, 1979, p.15.

21. Feldman and Graham, *Bargaining For Cities*, *op. cit.* p.24.

CHAPTER 4

1. E. McWhinney, *Quebec and the Constitution, 1960-78* (1979) (Toronto, University of Toronto Press) pp. 126, 135.
2. C. J. Friedrich, *Rebuilding the German Constitution*, 43 *Am. Pol. Sci. Rev.* 461 (1949); C. J. Friedrich & H. J. Spiro, *The Constitution of the German Federal Republic*, in *Governing Postwar Germany* (E. H. Litchfield (ed.) (1953)), Ithaca, N.Y., Cornell University Press, at 117 *et seq.*
3. R. H. Wells, *State Government*, in *Governing Postwar Germany* (E. H. Litchfield (ed.)) 57, at 115-6.
4. *Grundgesetz*, 1949, Art. 28(1).
5. *Ibid.*, Art. 28(2).
6. *BVerfGG*, Art. 91. And see H. Lechner, *Kommentar: Bundesverfassungsgerichtsgesetz* (1954), Munich & Berlin, C. H. Beck Verlagsbuchhandlung; K. Hesse, *Grundzüge des Verfassungsrecht der Bundesrepublik Deutschland*, (2nd ed., 1968), Karlsruhe, Verlag C. F. Müller, 135.
7. G. Leibholz & H. J. Rinck, *Grundgesetz für die Bundesrepublik Deutschland* (4th ed., 1971), Cologne-Marienburg, Verlag Dr. Otto Schmidt KG, at 484 *et seq.* And see also K. Doehring, *Das Staatsrecht der Bundesrepublik Deutschland* (1976), Frankfurt-am-Main, Alfred Metzner Verlag GmbH, at 352 *et seq.*; K. Hesse, *op. cit.* 114, 176.
8. Lechner, *op. cit.*, 269-271; Hesse, *op. cit.*, 135. And see also Lechner, *Kommentar: Gesetz zur Änderung des Gesetzes über das Bundesverfassungsgericht* (1957), Munich & Berlin, C. H. Beck, 80.
9. *GG*, Art. 106(1) & (2).
10. *GG*, Art. 106(8).
11. Leibholz & Rinck, *op. cit.*, 487.
12. Leibholz & Rinck, *op. cit.*, 789-791.
13. N. Johnson, *Federalism & Decentralization in the Federal Republic of Germany* (1973) (London, HMSO), 33-5.
14. *Ibid.*
15. J. F. Zimmerman, *The State Role in Metropolitan Governance in the U.S. Federal System*, 1 *Planning & Administration* 75 (1974).
16. W. W. Willoughby, *Principles of the Constitutional Law of the United States* (1938), New York, Baker, Voorhis, p. 693.

17. *State v. Noyes*, 30 N.H. 279. And see Judge Cooley's discussion, T. M. Cooley, *Constitutional Limitations* (7th ed.) p. 163.
18. See *City of Trenton v. New Jersey*, 262 U.S. 182 (1923).
19. *City of Clinton v. Cedar Rapids & Missouri Railroad Co.*, 24 Iowa 455 (1868).
20. Zimmerman, *op. cit.*, *supra*, foot-note 15, at p. 76; *State Mandating of Local Expenditures*. (Advisory Commission on Intergovernmental Relations), Washington, D. C. (July, 1978), p. 17.
21. See, for example, *Robertson v. Zimmerman*, 268 N.Y. 52; 196 N.E. 742 (1953).
22. J. B. Fordham *Model Constitutional Provisions for Municipal Home Rule*, (American Municipal Association, Chicago, Illinois) (1953).
23. Zimmerman, *op. cit.*, p. 76; *State Mandating of Local Expenditures* (July, 1978), pp. 17-18.
24. *Bloom v. City of Worcester*, 293 N.E. (2d) 268 (1973); and compare *Del Duca v. Town Administration of Methuen*, 329 N.E. (2d) 748 (1975). And see generally *Pragmatic Federalism: The Reassignment of Functional Responsibility* (Advisory Commission on Intergovernmental Relations, Washington, D.C. (July, 1976), pp. 1-2.
25. Compare *Restricting to Application of State Laws Adding to Local Government Costs* (Massachusetts Legislative Research Bureau, Boston, Massachusetts, (1975), p. 97 *et seq.* And see generally *State Mandating of Local Expenditures*. (A.C.I.R., Washington, D.C. (July, 1978), pp. 18-19.

CHAPTER 5

1. The information on service provision comes from the Canadian Tax Foundation, *Provincial and Municipal Finances*, 1979, Toronto, Canadian Tax Foundation, 1979.

APPENDIX I

Resolution on Constitutional Reform

Adopted by the 42nd Annual Conference of
The Federation of Canadian Municipalities

Quebec City, June 3-6, 1979

RESOLUTION 1 CONSTITUTIONAL REFORM

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1. The Federation is convinced of the need for appropriate participation by municipal government in the on going inter-governmental discussions and negotiations on constitutional reform.
 2. The Federation is equally convinced of the need to strengthen the constitutional position of municipal government in Canada, as regards both law-making powers and financial capabilities, recognizing, however, that the modalities by which this may be appropriately achieved range from entrenchment in the federal or provincial constitutions to purely statutory or other less formal arrangements.
 3. The Federation authorizes the continuation of the Resource Task Force on Constitutional Reform, with appropriate financial support, during the forthcoming year, and directs the Task Force to continue its studies of the constitutional position of municipal government, including the following matters:
 - a) appropriate methods of achieving or improving upon "home rule" for Canadian municipalities;
 - b) appropriate methods of achieving or improving upon revenue guarantees for Canadian municipalities;
 - c) improved techniques of inter-governmental consultation involving all three levels of government; and
 - d) removal of the immunity of the federal and provincial governments and enterprises under their jurisdiction from regulation and taxation by municipal governments.
 4. The recommendations forthcoming from the Resource Task Force on Constitutional Reform should be submitted to FCM member municipal councils by February 28, 1980, with a request that local councils formally debate, by way of resolution, the proposals prior to the 1980 Convention.

CARRIED.

RESOLUTION 2 CONSTITUTIONAL REFORM

WHEREAS the Government of Canada has prepared a document entitled "A Time for Action: Toward the Renewal of the Canadian Federation" detailing recommended steps for the implementation of a new constitution for Canada; and

WHEREAS a new Constitutional Amendment Bill was likewise prepared by the said government intended to encourage public discussion of the proposed changes to the new constitution: and

WHEREAS no reference is made in the said documents to the role of municipalities in the new Federation relative to the other levels of government:

NOW THEREFORE BE IT RESOLVED that the Federation of Canadian Municipalities establish a task force consisting of no more than twelve (12) members to present a proposal for the involvement of municipalities in the new Federation with the other levels of government.

CARRIED.

(Originally proposed by the City of Grande Prairie, Alberta)

RESOLUTION 3 CONSTITUTIONAL REFORM

BE IT RESOLVED that the Federation of Canadian Municipalities adopt the following position regarding the future of government in Canada:

- a) any specific discussions concerning the constitutional framework of Canada that are convened by the federal government should have representation from municipalities;
- b) municipal jurisdictions should be clearly defined and written in new constitutional form so that the place of municipalities will be firmly established and entrenched in the structure of Canadian government; and
- c) a new national financial arrangement must be formulated and must include income tax room for Canadian municipalities.

BE IT FURTHER RESOLVED that this position be conveyed to the federal government, all provincial governments, and all municipal governments in Canada and the people we represent.

CARRIED

This resolution was presented by North York, Ontario, to the Plenary Session on Constitutional Reform.

APPENDIX II

Draft Resolution on the Constitutional position of
Municipal Government in a new Canadian federal system

BE IT RESOLVED that the following principles should apply to the position and status of the Municipalities in any new, or "renewed", Canadian federal system:

1. The Constitution of Canada should expressly recognise and protect Municipal government within the general system of federal constitutional government established thereunder.
2. It is understood that, within the federal constitutional system, Municipal government should fall within Provincial jurisdiction.
3. The Constitutions of the Provinces, within the federal constitutional system, should expressly recognise and protect the autonomy of Municipal government as to the following areas:

(a) Law-making autonomy: Each Municipality should have independent law-making powers in defined areas, which should not be withdrawn or varied by the Provincial governments except by the ordinary legal processes and procedures applicable to the amendment of Provincial Constitutions;

(b) Fiscal autonomy: Each Municipality should have access to the financial resources appropriate to the carrying out of its governmental responsibilities, and, to that end and without limiting the foregoing, should have power to improve Real Property, Licence, Amusements, and Rental taxes; and, subject to appropriate Provincial-Municipal tax-sharing arrangements, Income Tax.

(c) Institutional autonomy: Each Municipality should have the power, subject to conformity to the general principles of democratic constitutionalism set out in the Constitution of Canada and also in relevant Provincial Constitution, to determine and review its own Municipal Charter.

APPENDIX III

New Brunswick: Municipal Assistance Act. Chapter M-19, 1977.

Manitoba: The Provincial-Municipal Tax Sharing Act, 1976.

Saskatchewan: The Municipal Revenue Sharing Act, 1978.

British Columbia: Revenue Sharing Act, 1977.

CHAPTER M-19

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1 In this Act

"Board" means the Budget Review Board established under Section 10;

"fiscal year" means the period commencing on the first day of April of a year and ending on the thirty-first day of March of the following year; 1977, c. 34, s. 1.

"fully-adjusted municipal grant base" means,

(a) for a municipality having a population of 5,000 or fewer, the partially-adjusted municipal grant base, and

(b) for a municipality having a population in excess of 5,000, the sum of the partially-adjusted municipal grant base and the graded population adjustment;

"graded population adjustment" means the amount determined by multiplying the partially-adjusted municipal grant base by the excess of a municipality's population above 5,000 and dividing the product by 200,000;

"initial municipal grant base" means one per cent of the municipal assessment base;

"Minister" means the Minister of Municipal Affairs and includes anyone designated by him to act on his behalf;

"municipal assessment base" means

(a) the total assessed value of all real property and business assessment liable to taxation under the *Assessment Act* in a municipality excluding

(i) real property owned by the municipality,

(ii) real property of utility commissions owned by the municipality,

(b) the assessed value of all real property owned by the Crown in right of New Brunswick upon which payments in lieu of taxes are made,

(c) the proportion of the assessed value of real property owned by the Crown in right of Canada that the payment in lieu of taxes made in respect of that property is of the taxes that would have been paid on that property if it were subject to taxation,

(d) the assessed value of real property used primarily for educational purposes and owned by private schools providing elementary or secondary education, and

(e) the assessed value of real property used primarily for educational purposes and owned by universities and affiliated colleges, less any reductions determined by a committee under section 8;

"municipal assessment per capita" means the quotient resulting from dividing the municipal assessment base of a municipality by the population of the municipality;

"municipal assessment per road kilometre" means the quotient resulting from dividing the municipal assessment base of a municipality by the road kilometres of the municipality;

"net municipal budget" means the total expenditure of a municipality less any non-tax revenue; 1977,c.34,s.1.

"net municipal expenditure" Repealed. 1977,c.34,s.1.

"non-tax revenue" means revenue other than

- (a) taxes levied on real property and business assessment,
 - (b) grants computed under paragraph 4(1)(a) and subsection 4(2),
 - (c) payments in lieu of taxes made by the Crown in right of New Brunswick,
 - (d) payments in lieu of taxes made by the Crown in right of Canada;
- Am. (b), 1977,c.34,s.1.

"overall assessment per road kilometre" means the quotient resulting from dividing the total of the municipal assessment bases of all municipalities by the total road kilometres of all municipalities;

"overall average assessment per capita" means the quotient resulting from dividing the total of the municipal assessment bases of all municipalities by the total population of all municipalities;

"partially-adjusted municipal grant base" means the result obtained from

- (a) multiplying the initial municipal grant base by the quotient resulting from dividing the overall average assessment per capita by the municipal assessment per capita, and

- (b) multiplying the initial municipal grant base by the quotient resulting from dividing the overall assessment per road kilometre by the municipal assesement per road kilometre, and

- (c) adding together the amount determined under paragraph (a), and one-quarter of the amount determined under paragraph (b) or such greater fraction of that amount as may be fixed for all municipalities by the Lieutenant-Governor in Council;

"partnership budgeting" Repealed. 1977,c.34,s.1.

"percentage of grant support" means the quotient resulting from dividing the product of the fully-adjusted municipal grant base and one hundred by the sum of the initial municipal grant base and the fully-adjusted municipal grant base;

"road kilometres" means the sum of

- (a) one half the kilometres of those highways located within the territorial limits of the municipality that have been designated by the Minister of Transportation under section 15 of the *Highway Act* and classified by him under section 14 of that Act, and
- (b) the total kilometres of other municipal roads and streets; Am.(a), 1977,c.34,s.1.

"unconditional grant" means the grant computed pursuant to paragraph 4(1)(a) and subsection 4(2), 1973,c.13,s.1; 1977,c.M-11.1,s.18.

2 The Minister shall administer this Act and may designate persons to act on his behalf. 1973,c13,s.2.

3(1) When in accordance with subsection 87(2) of the *Municipalities Act*, a municipality has submitted to the Minister the proposed municipal budget for the next year, the Minister shall, subject to section 9, approve the proposed municipal budget and determine that portion of the net municipal budget eligible for unconditional grant support. 1977,c.34,s.2.

3(2) In this section

"municipal budget" means the general fund revenue and expenditure budget;

"provincial net revenues" means the net ordinary provincial revenues consisting of

(a) provincial own source revenues, and

(b) unconditional grants to the Province from the Government of Canada,

as determined by the Minister of Finance for each fiscal year. 1977,c.34,s.2.

3(3) The shareable expenditure applicable for determining an unconditional grant to any municipality for any year is the lesser of that portion of the net municipal budget of that municipality for that year determined by the Minister to be eligible for unconditional grant support or

(a) for the year 1978

(i) that portion of the net municipal expenditure of the municipality for the year 1977 approved by the Minister for unconditional grant support,

(ii) an amount equal to the product of the forecasted percentage change in provincial net revenues for the 1978 fiscal year and the amount determined under subparagraph (i), and

(iii) an amount equal to the net expenditures on approved first time and unusual expenditures prescribed by regulations; and

(b) for the year 1979 and subsequent years

(i) the prior year's shareable expenditure,

(ii) an amount equal to the product of the forecasted percentage change in provincial net revenues for that fiscal year and the prior year's shareable expenditure, and

(iii) an amount equal to the net expenditures on approved first time and unusual expenditures prescribed by regulation. 1977,c.34,s.2.

3(4) Notwithstanding subsection (3), the shareable expenditure applicable for determining an unconditional grant for a municipality incorporated under paragraph 14(1)(a) of the *Municipalities Act* for the first year of operation is that portion of the net municipal budget for that year determined by the Minister to be eligible for unconditional grant support. 1973,c.13,s.3; 1975,c.87,s.1;1977,c.34,s.2.

3.1(1) Subject to subsection 4(2), the total amount of unconditional grant for all municipalities shall be determined as follows:

(a) for the year 1978, an amount as prescribed by the Lieutenant-Governor in Council;

(b) for the year 1979

(i) an amount equal to the 1978 unconditional grant prescribed under paragraph (a), and

- (ii) an amount determined by multiplying the 1978 unconditional grant prescribed under paragraph (a) by the forecasted percentage change in provincial net revenues for the fiscal year 1979;
- (c) for the year 1980 and subsequent years
 - (i) an amount equal to the unconditional grant for the prior year, and
 - (ii) an amount determined by multiplying the revised unconditional grant for the prior year by the forecasted percentage change in provincial net revenues for the fiscal year. 1975,c.87,s.2.

3.1(2) Where, in any year, a variation exists between the forecasted provincial net revenues and the revised provincial net revenues in the prior fiscal year or between the revised provincial net revenues and the actual provincial net revenues for the second prior fiscal year, the Minister shall adjust the total unconditional grant payable for that year to reflect such variation. 1975,c.87,s.2; 1977,c.34,s.3.

3.2(1) The forecasted percentage change in provincial net revenues for any fiscal year is the ratio that the difference between

- (a) the forecasted provincial net revenues for that fiscal year, and
- (b) the revised provincial net revenues for the prior fiscal year,

bears to the revised provincial net revenues of the prior fiscal year.

3.2.(2) The forecasted provincial net revenues for any fiscal year is that amount determined by the Minister of Finance on or before September 1 of the prior year to best represent the provincial net revenue for that fiscal year.

3.2.(3) The revised provincial net revenues for any fiscal year is that amount determined by the Minister of Finance on or before September 1 of that year to best represent the provincial net revenues for that fiscal year.

3.2.(4) The actual provincial net revenues for any fiscal year is that amount determined pursuant to the *Financial Administration Act* on or before the first day of July in the following fiscal year. 1975,c.87,s.2; 1977,c.34,s.3.

3.3(1) Repealed. 1977,c.34,s.3.

3.3(2) Repealed. 1977,c.34,s.3; 1975,c.87,s.2.

3.4(1) Repealed. 1977,c.34,s.3.

3.4(2) Repealed. 1977,c.34,s.3; 1975,c.87,s.2.

3.5 Repealed. 1977,c.34,s.3; 1975,c.87,s.2.

4(1) Each year the Minister shall compute for each municipality the following grant and payment subject to subsection (2):

(a) an unconditional grant determined

(i) by multiplying the shareable expenditure of the municipality for that year by the percentage of grant support for the municipality, and

(ii) by adjusting the amount determined in subparagraph (i) by multiplying it by the quotient obtained by dividing the total amount of unconditional grants for all municipalities for that year as calculated in section 3.1 by the total of the amounts calculated for all municipalities under subparagraph (i);

(b) a payment in lieu of taxes equivalent to the full municipal tax that, if the real property were subject to taxation, would be payable with respect to real property within the municipality assessed in the name of

(i) the Crown in right of New Brunswick,

(ii) a Crown Corporation,

(iii) a private school providing primary or secondary education, if the real property is used primarily for educational purposes, and

(iv) a university or affiliated college, if the real property is used primarily for educational purposes, subject to reductions determined by the committee under section 8. 1977,c.34,s.4.

4(2) Where the Province transfers an expenditure responsibility to a municipality, an amount equal to that net expenditure multiplied by the percentage of grant support of the municipality and adjusted by multiplying that amount by the quotient obtained under subparagraph (1)(a)(ii) may be included in the municipalities unconditional grant for that year and if so added shall be added to the total amount of unconditional grants for all municipalities under section 3.1 for subsequent years. 1977,c.34,s.4.

4(3) The Minister shall advise each municipality of the amounts computed under subsections (1) and (2) before the municipality adopts its annual warrant. 1973,c.13,s.4; 1977,c.34,s.4.

5(1) Each year the Minister shall compute and credit to each local service district the following grant and payment:

(a) a grant equal to forty-five per cent of the net expenditure of that local service district for that year; and

(b) a payment in lieu of taxes equivalent to the full local service district tax that, if the real property were subject to taxation, would be payable with respect to real property within the local service district assessed in the name of

(i) the Crown in right of New Brunswick,

(ii) a Crown Corporation,

(iii) a private school providing primary or secondary education, if the real property is used primarily for educational purposes, and

(iv) a university or affiliated college, if the real property is used primarily for educational purposes, subject to reductions determined by the committee under section 8.

5(2) The Minister shall credit to a local service district any payment in lieu of taxes made by the Crown in right of Canada in respect of real property located in the local service district. 1973,c.13,s.5.

6(1) On or before the first day of each month in each year, the Minister shall pay to each municipality

(a) one-twelfth of the grant and payment computed under section 4 for the municipality;

(b) subject to subsection 6(2) of the *Real Property Tax Act*, one-twelfth of the amount to be raised under paragraph 5(2)(a) of that Act; and

(c) subject to subsection 6(2) of the *Real Property Tax Act*, one-twelfth of any payment in lieu of taxes made to the Province by the Crown in right of Canada in respect of real property located in the municipality.

6(2) Notwithstanding subsection (1), the Minister may increase the amount of any monthly payment but in each year the total of the payments shall be the total of the amounts under subsection (1). 1973,c.13,s.6.

7(1) For the purpose of calculating the percentage of grant support for a municipality, the population of the municipality shall be determined by the Minister in accordance with this section.

7(2) Subject to subsection (3), the population figure available from the latest official census of Statistics Canada shall be adopted.

7(3) In the third year after a census is taken by Statistics Canada, the Minister shall determine by taking an actual count and adopt the population figure for the municipality until the next official population figure is available from Statistics Canada.

7(4) Where a census of Statistics Canada does not provide a population figure for a municipality the Minister shall determine and adopt a population figure for the municipality, and notwithstanding subsection (3) the population figure so obtained may be used by the Minister until a population figure is available from Statistics Canada. 1973,c.13,s.7.

8(1) There shall be a committee appointed in accordance with subsection (2) for each municipality and local service district in which is located real property assessed in the name of a university or affiliated college.

8(2) A committee shall consist of a chairman designated by the university or affiliated college, a member designated by the Minister and a member designated by the municipality or the local service district.

8(3) The committee shall determine the reduction applicable to the assessed value of the real property of the university or affiliated

college as a result of the reduced demand for services by the university or affiliated college.

8(4) The reductions, determined by the committees under this section, shall be applied by the Minister in computing the payments under subparagraphs 4(1)(b)(iv) and 5(1)(b)(iv), 1973, c.13,s.8.

9(1) Where the Minister requires, a municipality shall participate in partnership budgeting wherein the municipality shall provide the Minister with a full explanation and justification of its projected revenues and proposed expenditures. 1977,c.34,s.5.

9(2) Where the Minister requires partnership budgeting pursuant to subsection (1), the Minister may refuse to approve any part of the proposed municipal budget that he considers excessive, having regard to the standard of services provided by the municipality in previous years and the proposed development and improvement of services in the municipality. 1977,c.34,s.5.

9(3) Repealed. 1977,c.34,s.5.

9(4) Repealed. 1977,c.34,s.5. 1973,c.13,s.9.

10(1) There shall be a Budget Review Board that shall hear appeals by municipalities from the decision of the Minister not to approve a part of the proposed municipal budget for a municipality that has been made subject to partnership budgeting pursuant to section 9. 1977,c.34,s.6.

10(2) A municipality may, in accordance with the regulations, submit to the Board an appeal from the decision of the Minister.

10(3) After hearing the appeal the Board shall state whether it agrees or disagrees with the decision of the Minister; and where the Board disagrees with the decision, it shall make recommendations to the Minister, whereupon the Minister shall reconsider his decision having regard to those recommendations and shall either confirm or vary his decision.

10(4) All hearings of the Board shall be open to the public and at a hearing the Minister and the municipality may appear and be represented by counsel. 1973,c.13,s.10.

11(1) The Budget Review Board shall consist of the deputy minister of finance as chairman and two other members to be appointed by the Lieutenant-Governor in Council in accordance with the provisions of this section.

11(2) One member of the Board shall be a representative of the municipalities nominated by the municipal appointees of the Provincial Municipal Council Incorporated, and the other a person who possesses the qualifications required of an auditor under subsection 82(1) of the *Municipalities Act*, and they shall hold office for a term of three years and are eligible for reappointment.

11(3) The Lieutenant-Governor in Council may appoint a person possessing the qualifications required of an auditor under subsection (2) or nominated in accordance with subsection (2) to act in the stead of a member of the Board who by reason of illness, absence from the Province or interest is unable to act.

11(4) The chairman may designate the assistant deputy minister of finance to act in his place at a meeting of the Board.

11(5) The chairman of the Board shall serve without remuneration and the members of the Board may be paid such remuneration as is fixed by the Lieutenant-Governor in Council. 1973,c.13,s.11.

11.1 Repealed. 1977,c.34,s.7. 1975,c.87,s.3.

12(1) When pursuant to section 14 of the *Municipalities Act*

(a) two or more municipalities are amalgamated,

(b) a contiguous area is annexed to a municipality, or

(c) there is an amalgamation of two or more municipalities and an annexation of a contiguous area thereto,

the Lieutenant-Governor in Council may pay to the enlarged municipality a one-time administrative reorganization grant.

12(2) The reorganization grant shall be an amount calculated at a rate fixed by regulation, not exceeding ten dollars per person added to the municipality having the greatest population.

12(3) For the purposes of determining the amount of an unconditional grant under paragraph 4(1)(a),

(a) a reorganization grant shall not form part of non-tax revenue, and

(b) expenditures of a reorganization grant shall be deemed not to be part of the net municipal expenditure. 1973,c.13,s.12.

13(1) The Lieutenant-Governor in Council may pay to a municipality or credit to a local service district a stimulation grant to assist the municipality or local service district in developing or improving the standard of a service or facility.

13(2) A grant paid or credited under subsection (1) may be either current or capital in nature but if the grant is capital in nature, it shall be used by the municipality or the Minister to reduce any capital borrowing related to the service or facility for which the grant is made unless the Lieutenant-Governor in Council agrees to pay or credit an annual grant related to the amortization and maintenance costs of a project in lieu of a grant to be used to reduce the capital borrowing. *Am. 1974, c. 32 (Supp.) s. 1.*

13(3) The Lieutenant-Governor in Council may attach terms and conditions to a stimulation grant.

13(4) The total amount of stimulation grants to be paid in any year may

be fixed by order of the Lieutenant-Governor in Council and shall not exceed fifteen per cent of the total of

- (a) the grants calculated under paragraph 5(1)(a), and
- (b) the amounts required to be paid under paragraph 6(1)(a).

13(5) Stimulation grants paid to municipalities upon an amalgamation or annexation are not subject to the limitation provided in subsection (4).

13(6) A stimulation grant may be paid or credited in one or more annual instalments not exceeding ten, but where a stimulation grant is being paid or credited in respect of a service or facility the costs of which are to be met on an amortized basis in relation to principal and interest, the stimulation grant may be paid or credited in whole or in part in conjunction with the schedule of amortization. 175,c.39,s.1.

13(7) For the purposes of this section, a corporation created under section 9 of the *Water Act* shall be deemed to be a municipality. 1973,c.13,s.13; Am.1974,c.32(Supp.), s.1.

14 The Lieutenant-Governor in Council may, on the terms and conditions agreed upon, grant to a municipality that is in financial difficulty such assistance by way of loan, guarantee, grant or otherwise as he considers necessary, 1973,c.13,s.14.

15 The Lieutenant-Governor in Council may make regulations

- (a) prescribing the time, form and manner in which an appeal may be submitted to the Budget Review Board;
- (b) prescribing rules governing the procedure to be followed in hearings of the Budget Review Board;
- (c) fixing the amount per capita to be applied in calculating an administrative reorganization grant under section 12;
- (c.1) respecting first time or unusual expenditures for the purpose of this Act;
- (d) prescribing the method of accounting for and reporting on a reorganization grant; and
- (e) generally for carrying any of the purposes or provisions of the Act into effect. 1973,c.13,s.15; Am(c.1), 1977,c.34,s.8.

N.B. This Act is consolidated to September 6, 1977.

An Act to Amend the
Municipal Assistance Act

Assented to May 31, 1979

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1. *Section 3 of the Municipal Assistance Act, chapter M-19 of the Revised Statutes, 1973, is amended by adding immediately after subsection (4) thereof the following subsection:*

3(5) For the purposes of calculating its shareable expenditure for the year 1980, a municipality may increase its prior year's shareable expenditure by including an amount equal to the net proceeds, or a portion thereof, of the sale of a capital asset credited to its municipal budget in the year 1979.

2. *Section 7 of the said Act is repealed and the following substituted therefor:*

7(1) For the purposes of calculating the percentage of grant support for a municipality, the population of the municipality shall be determined by the Minister by adopting the final population figure from the latest official census of Statistics Canada or in such other manner as is prescribed by regulation.

7(2) The Lieutenant-Governor in Council, where he considers it necessary, may determine the population figures of a municipality in the case of an incorporation, amalgamation, annexation or decrement.

3. *Section 12 of the said Act is repealed.*

4. *Paragraphs 15(c) and (d) of the said Act are repealed.*

BILL 90

THE PROVINCIAL-MUNICIPAL TAX SHARING ACT

(Assented to June 11, 1976)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definition.

1 In this Act

- (a) "municipality" includes a local government district;
- (b) "transfer of land" includes a conveyance, deed, grant, or other instrument whereby any land is granted, assigned, conveyed, or otherwise transferred.

Allocation of certain income tax revenues to municipalities.

2 The amount of tax revenue realized by the government by the 2.0 per cent mentioned in sub-clause 4(3)(i)(ii) and 1.0 per cent mentioned in clause 5(1.1)(b) of The Income Tax Act (Manitoba) shall be allocated to municipalities and distributed in such manner as may be provided by order made by the Lieutenant Governor in Council.

Municipality may impose taxes.

3 The council of a municipality or in the case of a local government district, the resident administrator thereof, may pass by-laws imposing such forms of taxes as it deems advisable within the municipality and without restricting the generality of the foregoing, it may impose a tax on persons in the municipality who purchase or consume motel and hotel accommodation, or meals at a restaurant or dining room, or liquor, or on the transfer of land.

4(1) A by-law under section 3 shall

- (a) set out the rate or amount of tax imposed;
- (b) state the product or services the sale or consumption of which is subject to the tax;
- (c) prescribe the manner of collecting the tax imposed;
- (d) provide for the appointment or designation of persons as collectors and fix the rate of commissions, if any, to be paid to collectors;

and may prescribe or authorize

- (e) full or partial exemptions from the tax imposed under this Act;
- (f) penalties for the violation of any provisions of the by-law; or
- (g) the municipality to enter into agreements with the government with respect to the collection of tax imposed by the municipality under this Act.

By-law approved by L. G. in C.

4(2) A by-law under subsection (1) has no force until it is approved by the Lieutenant Governor in Council.

Agreement to collect tax.

5 The government and a municipality may enter into an agreement whereby the government would collect the tax imposed by the municipality for remission to the municipality, subject to such terms and conditions as the agreement may provide.

Continuing Consolidation.

6 This Act may be referred to as chapter T5 in the Continuing Consolidation of the Statutes of Manitoba.

Commencement of Act

7 This Act comes into force on the day it receives the royal assent.

FIFTH SESSION

EIGHTEENTH LEGISLATURE

SASKATCHEWAN

BILL

No. 59 of 1978

An Act respecting Provincial-Municipal
Revenue Sharing.

BILL

No. 59 of 1978

An Act respecting Provincial-Municipal Revenue
Sharing

(Assented to 1978)

Her Majesty, by and with the advice and consent of the
Legislative Assembly of Saskatchewan, enacts as follows:

- | | |
|-------------------------|--|
| Short Title | 1. This Act may be cited as <i>The Municipal Revenue Sharing Act</i> , 1978. |
| Interpre-
tation | 2. In this Act
(a) "assessment" means an equalized assessment determined by the minister, |
| "escalator
index" | (b) "escalator index" means the weighted average, as determined in accordance with the regulations, of the increases and the decreases in the value of:
(i) the corporate income tax base;
(ii) The Education and Health Tax base;
(iii) the fuel petroleum products use tax base;
(iv) the personal income tax base; and
(v) any other tax bases or revenue sources that may be prescribed in the regulations; |
| "fiscal year" | (c) "fiscal year" means the period commencing on the first day of April in one calendar year and ending on the thirty-first day of March in the next calendar year, both dates inclusive; |
| "minister" | (d) "minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned; |
| "municipality" | (e) "municipality" means an urban or rural municipality; |
| "organized
hamlet" | (f) "organized hamlet" means an organized hamlet as defined in <i>The Rural Municipality Act</i> , 1972; |
| "rural
municipality" | (g) "rural municipality" means a municipality within the meaning of <i>The Rural Municipality Act</i> , 1972, but does not include The Northern Municipal Council; |
| "urban
municipality" | (h) "urban municipality" means a municipality within the meaning of <i>The Urban Municipality Act</i> , 1970, but does not include the Town of Creighton, the Town of La Ronge or The Municipal Corporation of Uranium City and District. |

- Revenue sharing base and escalator index
3. (1) The minister may make grants to municipalities for any of the purposes authorized by this Act.
- (2) Grants payable pursuant to subsection (1) with respect to: (a) the 1978-79 and 1979-80 fiscal years shall be paid out of moneys appropriated by the Legislature for the purpose;
- (b) the 1980-81 fiscal year and each fiscal year thereafter shall be paid out of the consolidated fund, but, subject to section 4, the total amount that may be paid in grants shall be the amount determined by multiplying the total amount available for the payment of such grants at the beginning of the immediately preceding fiscal year by the escalator index.
- Provision for larger revenue sharing base
4. The Legislative Assembly may, at any time, appropriate additional amounts for the purpose of this Act with respect to any particular fiscal year, and any such amounts shall be added to the amount available for grants at the beginning of that fiscal year and the resulting sum shall constitute the amount by which the escalator index shall be multiplied in accordance with clause (b) of sub-section (2) of section 3.
- Grants to urban municipalities
5. In each fiscal year there shall be paid to each urban municipality:
- (a) a basic grant as provided for in the regulations
- (b) a per capita grant as provided for in the regulations
- (c) a foundation grant as provided for in section 6; and
- (d) any other grants as provided for in section 7.
- Foundation grant
6. (1) For the purpose of calculating the foundation grant to be paid to an urban municipality, the minister shall determine:
- (a) an amount, hereinafter called the "recognized local expenditure", consisting of:
- (i) any amounts for the provision of police services, if applicable, and any other municipal services, that may be determined in the regulations; and
- (ii) any other amounts in addition to, or for services other than, those mentioned in sub-clause (i), that may be recognized by the minister or prescribed in the regulations; and
- (b) an amount, hereinafter called the "recognized local revenue", consisting of:
- (i) the product obtained when the assessment of the urban municipality is multiplied by a computational mill rate prescribed in the regulations; and
- (ii) any other local revenue that may be recognized by the minister or prescribed in the regulations.

(2) The foundation grant payable to an urban municipality is the product obtained when the amount by which the recognized local expenditure exceeds the recognized local revenue is multiplied by a factor prescribed in the regulations.

(3) Where the recognized local revenue of an urban municipality exceeds its recognized local expenditure, no foundation grant is payable.

General
grants

7. The minister may make grants to any municipality:
- (a) for the provision of road ambulance services in accordance with the terms and conditions prescribed in the regulations; and
 - (b) for any programs involving co-operation between two or more municipalities that may be provided for in the regulations.

Grants to
rural muni-
cipalities

8. In each fiscal year there shall be paid to each rural municipality:
- (a) a basic grant which shall be equal to the product obtained when the annual service cost determined in accordance with clause (a) of subsection (1) of section 9 is multiplied by a factor prescribed in the regulations;
 - (b) an equalization grant as provided for in section 9;
 - (c) any grants prescribed in the regulations, for:
 - (i) the construction of super grid roads;
 - (ii) the construction of main farm access roads;
 - (iii) the maintenance of grid roads;
 - (iv) the construction and repair of grid bridges and municipal bridges;
 - (v) the provision of any other services that may be prescribed in the regulations; and
 - d) any other grants as provided for in section 7.

Equalization
grant

9. (1) For the purpose of calculating the equalization grant to be paid to a rural municipality, the minister shall determine:
- (a) an amount, hereinafter called the "annual service cost" consisting of:
 - (i) any amounts for municipal administration, road construction and maintenance, snow removal, the construction and maintenance of bridges or any other municipal services that may be prescribed in the regulations, less any grants in lieu of taxes received by the rural municipality; and
 - (ii) any other amounts in addition to, or for

services other than, those mentioned in sub-clause (i), that may be recognized by the minister or prescribed in the regulations; and

(b) an amount, hereinafter called the "recognized local revenue", consisting of:

(i) the product obtained when the assessment of the rural municipality is multiplied by a computational mill rate prescribed in the regulations; and

(ii) any other local revenue that may be recognized by the minister or prescribed in the regulations.

(2) The equalization grant payable to a rural municipality is the product obtained when the amount by which the annual service cost exceeds the recognized local revenue is multiplied by a factor prescribed in the regulations.

(3) Where the recognized local revenue of a rural municipality exceeds its annual service cost, no equalization grant is payable.

Grants to
organized
hamlet

10 (1) Notwithstanding any other provision of this Act, each organized hamlet shall be entitled to a basic grant and a per capita grant in accordance with clauses (a) and (b) of section 5, as if it were an urban municipality, but nothing in this section shall in any way affect the amount of any grants that may be paid to a rural municipality, pursuant to this Act, within which an organized hamlet is located.

(2) The grant payable in respect of an organized hamlet shall be paid to the rural municipality in which it is located.

Minimum and
maximum
grants

11 Notwithstanding any other provision of this Act, the Lieutenant Governor in Council may prescribe the minimum or maximum amount of any grant or grants payable pursuant to this Act.

Annual
report

12 (1) The minister shall, in each fiscal year, in accordance with *The Tabling of Documents Act, 1973*, submit to the Lieutenant Governor in Council a report respecting the disbursement of funds pursuant to this Act.

(2) The minister shall, in accordance with *The Tabling of Documents Act, 1973*, lay before the Legislative Assembly each report submitted to the Lieutenant Governor in Council pursuant to subsection (1).

Regulations

13 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in

Council may make regulations that are ancillary to and are not inconsistent with this Act, and every regulation made under this section has the force of law and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations:

- (a) defining any word or expression used in this Act but not defined in this Act;
- (b) prescribing additional tax bases or revenue sources for the purposes of calculating the escalator index;
- (c) defining the tax base for any tax mentioned in this Act or the regulations;
- (d) prescribing the basic grant and the per capita grant to be made available to each urban municipality pursuant to section 5;
- (e) prescribing the amount to be used in calculating the recognized local expenditure for an urban municipality and the annual service cost for a rural municipality;
- (f) prescribing computational mill rates and types of local revenue for the purposes of calculating the recognized local revenue for a municipality;
- (g) prescribing a factor for the purposes of subsection (2) of section 6, clause (a) of section 8 and subsection (2) of section 9;
- (h) prescribing the terms and conditions under which payments may be made to any municipality for the provision of road ambulance services;
- (i) prescribing the terms and conditions under which payments may be made to any municipality for the purposes described in clause (b) of section 7;
- (j) prescribing the terms and conditions under which grants may be made available to any rural municipality for any of the purposes described in clause (c) of section 8;
- (k) determining municipal services that are eligible for financial assistance pursuant to subclause (v) of clause (c) of section 8;
- (l) prescribing the minimum or maximum amount of any grant payable pursuant to this Act;
- (m) respecting any matter he considers necessary or advisable to carry out effectively the intent and purpose of this Act.

Coming into
force

14 This Act comes into force on the day of assent but is retroactive and is deemed to have been in force on and from the first day of January, 1978.

Second Session, Thirty-first Parliament

25-26 Elizabeth II, 1977

Legislative Assembly of British Columbia

BILL 58

REVENUE SHARING ACT

EXPLANATORY NOTES

The purpose of this Bill is to provide the municipalities and regional districts with a defined proportion of shareable revenue of the Province. This is expressed as a formula for assigning the annual yield of one individual income tax point, one corporation income tax point and 6% of renewable resource, non-renewable resource and sales tax revenues to municipal and regional district grants. The Bill provides for identifying the sources, calculating the amounts and determining the distribution of grants under the revenue sharing program.

Sections 3 and 3A of the *Municipalities Aid Act*, dealing with existing per capita and catch-up grants, respectively, will be repealed when this Act comes into operation in respect of the 1978/79 fiscal year. Thereafter the annual level of municipal and regional district grants will be determined by the formula provided in sections 2, 3 and 4. A new fund to be known as the "Revenue Sharing Fund" will be established as the mechanism for distributing the shared revenue generated by that formula.

1977

BILL

No. 58

Revenue Sharing Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpre-
tation

1. In this Act

"fiscal year" means a period of 12 months ending on March 31;

"fund" means the Revenue Sharing Fund established by section 3;

"minister" means that member of the Executive Council charged by order of the Lieutenant-Governor in Council with the administration of this Act;

"one point of individual income tax" means, for a fiscal year, 1% of the tax payable under the Federal Act for that fiscal year pursuant to the *Income Tax Act*;

"one point of corporation income tax" means, for a fiscal year, 1% of corporation taxable income earned in the year in British Columbia pursuant to the *Income Tax Act*;

"shareable revenue" means, for a fiscal year, the sum of

(i) the net revenue received by the Government in that fiscal year under the

- (A) *Social Services Tax Act*,
- (B) *Gasoline Tax Act*, 1948,
- (C) *Coloured Gasoline Tax Act*,
- (D) *Motive-fuel Use Tax Act*, and
- (E) *Fuel-oil Tax Act*,

(ii) the net revenue from lands and forests as reported in the Public Accounts of British Columbia for the fiscal year, consisting of net revenues received by the Government in that fiscal year in respect of

- (A) grazing permits and fees under the *Grazing Act*
- (B) land lease rentals and fees under the *Land Act*
- (C) logging tax under the *Logging Tax Act*, and
- (D) timber lease rentals and fees, timber berth rentals and fees, timber licence rentals and fees, timber royalties, timber sales, rentals and fees and timber sales stumpage under the *Ministry of Forests Act*,

(iii) the net revenue from minerals as reported in the Public Accounts of British Columbia for the fiscal year, consisting of net revenues received by the Government in that fiscal year in respect of

- (A) royalties, licences, permits, fees and rentals under the *Coal Act*, *Mineral Act*, *Placer Mining Act* and *Petroleum and Natural Gas Act*, 1965,
- (B) mining tax under the *Mining Tax Act*,
- (C) mineral land tax under the *Mineral Land Tax Act*, and
- (D) mineral resource tax under the *Mineral Resource Tax Act*, and

(iv) the money received for the fiscal year from the British Columbia Petroleum Corporation established under the *Petroleum Corporation Act*, in respect of net proceeds from the sale of natural gas;

"tax payable under the Federal Act" has the meaning given it under section 4(4) of the *Income Tax Act*.

"taxable income earned in the year in British Columbia" has the meaning given it under section 5(3) of the *Income Tax Act*.

Calculation
of amount
available
for grants

2. Beginning with the fiscal year ending March 31, 1979, the Minister of Finance shall determine an amount for each fiscal year by adding the estimated revenue received by the Government from one point of individual income tax and one point of corporation income tax to 6% of the estimated shareable revenue.

Fund
established

3. (1) Beginning with the fiscal year ending March 31, 1979, the Minister of Finance shall, in each fiscal year, pay from the Consolidated Revenue Fund into a fund called the "Revenue Sharing Fund" the amount determined for that fiscal year by him under section 2, plus or minus adjustments representing the difference between the amount determined under section 2 and the actual revenue received by the Government from

- (a) one point of individual income tax
- (b) one point of corporation income tax, and
- (c) 6% of the shareable revenue

in that fiscal year or previous fiscal years.

(2) Notwithstanding the *Revenue Act* and the appropriate *Supply Act*, any part of the money remaining unexpended in the fund at the end of a fiscal year remains in the fund and shall be paid out for the purposes of this Act in the succeeding year.

Grants to
municipal-
ities and
regional
districts

4. (1) in the fiscal year ending March 31, 1979, and in each subsequent fiscal year, the minister may make grants from the fund to all municipalities and regional districts that qualify under the regulations, and the grants

- (a) may be conditional or unconditional,
- (b) shall be distributed among the municipalities and

regional districts in accordance with the regulations, and

(c) shall not, in the aggregate, exceed the amount determined for that fiscal year by the Minister of Finance under section 2, plus or minus adjustments in respect of over-payments or under-payments representing the difference between the grants paid under this section and the actual yield from

- (i) one point of individual income tax,
 - (ii) one point of corporation income tax, and
 - (iii) 6% of the shareable revenue
- in that fiscal year or previous fiscal years.

(2) Conditional grants may be made in accordance with the regulations and may include a grant

- (a) of a fixed amount
 - (i) for general housing incentives, or
 - (ii) for regional district planning or administrative purposes or
 - (b) of an amount calculated pursuant to a prescribed formula
 - (i) for water facilities, or
 - (ii) for major municipal highways,
- or any combination of those grants or for any other prescribed purpose.

(3) Unconditional grants may be made in accordance with the regulations and distributed on the basis of

- (a) the population of a municipality or regional district, or
- (b) the total annual expenditures of a municipality or regional district, or
- (c) a fixed amount for each municipality or regional district, or
- (d) a fixed amount for new housing construction, or
- (e) any other prescribed basis.

Regulations 5. The Lieutenant-Governor in Council may make regulations.

R.S.B.C. 6. Sections 3 and 3A of the *Municipalities Aid Act* are
1960 c.259 repealed on a day to be fixed by Proclamation.
ss.3 and 3A

Transitional 7. (1) Notwithstanding the definitions of "one point of individual income tax", "one point of corporation income tax" and "shareable revenue", or any other provision of this Act, the amount determined under section 2 does not include revenue attributable to

- (a) a period prior to February 1, 1978, in respect of individual income tax, or
- (b) a corporation taxation year ending prior to February 1, 1978, in respect of corporation income tax, or
- (c) a taxation year ending prior to April 1, 1978, in respect of logging tax under the *Logging Tax Act* or mining tax under the *Mining Tax Act*.

(2) For the purpose of this section "taxation year" means a taxation year as defined in the appropriate Act.

Appropriation

8. Notwithstanding section 4(1)(c), in respect of the fiscal year ending March 31, 1979, in addition to the money referred to in section 3, there may be paid out of the Consolidated Revenue Fund an amount not exceeding \$4 million for the purpose of grants in accordance with section 4.

APPENDIX IV

Model Constitutional Articles,

Federal and Provincial

1. Model Article for inclusion in a new or renewed Constitution of Canada

"Municipal Government constitutes a third level of government, in addition to federal government and provincial government, within the Canadian federal system, and has its own autonomous areas of law-making and fiscal powers. Within the federal system, Municipal government falls under Provincial legislative jurisdiction, and the concrete application and incidents of Municipal law-making and fiscal autonomy are to be determined according to Provincial constitutional law and Provincial legislation."

2. Model Article for inclusion in a Provincial Constitution: The constitutional status and powers of Municipalities

1. Law-making autonomy: Municipalities within the Province shall have law-making powers as to matters appropriate to the carrying out of their governmental responsibilities, and without in any way limiting the generality of the foregoing, shall have law-making power, specifically, as to the following matters:-

- (a) --- *(The Committee has not, in its discussions, adverted*
- (b) --- *to concrete examples of municipal powers which might*
- (c) --- *be enshrined in a new or "renewed" Canadian Constitution.*
- (c) --- *Decisions on these points would be premature.)*

These provisions shall not be withdrawn or varied except by the legal procedures applicable to the amendment of the Constitution of the Province.

2. Fiscal autonomy: Municipalities within the Province shall have access to financial resources appropriate to the carrying out of their governmental responsibilities, and without in any way limiting the generality of the foregoing, shall power, specifically, to impose taxes as to:-

- (a) real property;
- (b) licences;
- (c) amusements;
- (d) rentals;
- (e) and, (subject to the conclusion of appropriate Provincial-Municipal tax-sharing agreements), income.

These provisions shall not be withdrawn or varied except by the legal procedures applicable to the amendment of the Constitution of the Province.

3. Institutional autonomy: Municipalities within the Province shall have the power, subject to conformity to the general principles of constitutional government in the Constitution of Canada and also in the Constitution of the Province, to establish, amend or revise their own Municipal Charters.

These provisions shall not be withdrawn or varied except by the legal procedures applicable to the amendment of the Constitution of the Province.