



«CONSTITUTIONAL CHANGE FOR YUKON»

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INTRODUCTORY NOTE

This report was commissioned by the Land Claims Secretariat of the Government of Yukon. It is part of a broader series of studies on Yukon constitutional development. Apart from Appendix B, which is a government document, the proposals in this study do not necessarily represent government policy. Any errors and shortcomings in the report are exclusively my own. However, I wish to express my particular gratitude to the following individuals who offered invaluable advice and help: Mr. Gordon Steele; Mr. Fred Privett; Mr. Willard Phelps; Mr. Jim Almstrom; and Mr. Mel Foster.

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1. ULTIMATE GOAL #1: A PROVINCIAL FORM OF GOVERNMENT

Central to the approach taken in this study is the proposition that a desirable ultimate constitutional goal for Yukon is some form of provincial status. Several arguments support this proposition.

First, a provincial form of government is better placed to stay closely in touch with the needs of the region it serves than a distant national government. Provincial government is a kind of regional government, based among the people for whom it is responsible. In a country with the size and diversity of Canada, proximity to the people being served is important.

Second, the main alternatives to a form of provincial-type government seem inappropriate to the Yukon situation. The present governmental system for Yukon may be aptly described as "colonial" in nature. It fails to provide Yukon citizens with sufficient control over the regional matters which affect them most directly. The American state form of regional government, with its strict separation of powers, is alien to most existing Canadian and Yukon experience. The provincial form of government, on the other hand, allows for strong local control in regional matters. It is deeply rooted in familiar British and Canadian concepts such as representative government, responsible government, ministerial responsibility, parliamentary sovereignty, and the rule of law.

Third, much of the existing Yukon constitution is already modelled on that of the provinces. For example, the analogy between the legislative powers conferred on the Yukon Commissioner in Council and those conferred on the provincial legislatures has been noted in the courts of law. Building on this kind of framework toward a more fully provincial-type government would be far easier and more consistent than attempting to replace the existing constitution with a totally novel or alien structure.

Fourth, why should the citizens of Yukon (and, indeed, of the Northwest Territories) be denied the right to representation by a provincial government when that right is freely enjoyed by all the other citizens of Canada? To deny provincial status to northern Canadians while according it to all those who live in southern Canada is to relegate residents of Yukon and Northwest Territories to a form of "second class citizenship" within the Canadian confederation on the basis of their place of residence: an arbitrary criterion and an unfair result.

Fifth, and finally, the constitutional development of Yukon should be in the direction of a provincial-type government because again and again, through their democratically elected representatives, the residents of Yukon have said that it is this form of government which they desire ultimately for Yukon.

2. ULTIMATE GOAL #2: A ONE-GOVERNMENT SYSTEM

A second proposition important to the approach taken here is that whatever the precise constitutional goal for Yukon, Yukon should not be balkanized into two, three, or more separate regional governments based on factors such as geography or race. A simple geographical subdivision would result in individual political entities with populations too small to enable them to play significant roles as partners in a Canadian confederation for some time to come. Moreover, there are few historical or geographical imperatives in the region to compel such a split. A subdivision based on racial criteria would be contrary to existing federal government policy. It would be incongruous for the Government of Canada to oppose the Bantustan, apartheid-type approach to co-existence of people of different races on the world stage while supporting similar arrangements at home. Race is an arbitrary phenomenon, beyond any individual's control. It is prima facie unjust to attach major political attributes or disabilities - such as membership in one of the regional governments of a country - to it. A subdivision based on racial criteria would be conducive to decreased interracial communication and a resulting increase in potential for misunderstanding and tension.

A racial subdivision would be difficult to effect in terms of geographical boundaries without a major social uprooting. At present, with relatively few exceptions, Yukoners of different races and cultures reside in the same general communities. Finally, a racial subdivision of Yukon would be subject to the same practical disadvantage as a simple geographical subdivision. It would result in individual political entities too small to play significant roles within the Canadian federal system.

3. POPULATION, FINANCES, AND LAND CLAIMS SETTLEMENT:
"PRECONDITIONS" OF PROVINCIAL STATUS?

It is sometimes argued that the population of Yukon is "too small" to merit its consideration for provincial or provincial-type status, or that Yukon is too financially dependent on the federal government for such status. Both of these arguments seem simplistic and misdirected. The Yukon's present population of approximately 24,000 is comparable to the population of Manitoba when Manitoba was admitted into Confederation. It is only eleven thousand less than the population of British Columbia when British Columbia became a province. The Yukon's population has been increasing steadily in recent decades. In the period from 1966 to 1976, for example, the Yukon had a higher average annual growth rate than any other territory or province in Canada. The Yukon's present modest size in terms of population is balanced by its very considerable geographical size. The Yukon is not substantially smaller than any of the provinces. It is larger than any of the Maritime provinces: seven times the size of New Brunswick, ten times the size of Nova Scotia, and ninety-five times the size of Prince Edward Island.

The financial need of a government has never in the past been considered a barrier to entering Confederation

or to staying within it. Indeed, the Consti-
tution Act, 1867, subsequent amendments to this Act,
and agreements admitting provinces to Confederation after
1867 are replete with provisions for federal grants,
subsidies or other forms of federal financial assistance
to the governments becoming provinces. Nor are the
provisions uniform and unvarying. In many cases special
guarantees are provided for individual provinces. In
any event, given the vast store of mineral, waterpower,
and other natural resources in Yukon, the present
situation of financial dependency could be considerably
changed in future decades.

There is, indeed, an ironic ring to any proposition
that the basic right to move toward the benefits of
provincial status should be denied to the people of any
major region of Canada on the basis of such factors as
small population and financial need. The real relevance
of factors such as these is surely not to the principle
or goal of provincial status, but to the timing and precise
shape of the individual components of provincial status.
As will be seen later, there is considerable room for
flexibility and gradualism in approaching these components.

It is sometimes suggested that the constitutional
development of Yukon should be postponed until the final
settlement of the Yukon Indian land claim. To the extent
that this suggestion rests on the assumption that Yukon

constitutional development and the land claim are mutually exclusive processes, it is seriously misconceived. In the first place, there is no reason why Indian settlement lands should not be protected as soon as they are identified and agreed to in the land claims forum, rather than waiting for the final ratification of a settlement. Similarly, there is no reason why transfers of administrative and other responsibilities to the Government of Yukon could not be subject to Indian interests negotiated in the land claims forum. In the second place, it can be argued that Yukon constitutional development is essential to the success of the Yukon Indian claim. No land claims settlement will be able to operate in a vacuum. A settlement will give Yukon Indian people a particularly important stake in all aspects of Yukon affairs. To help prepare Yukon for the settlement, and to help ensure that the settlement works on a continuing basis, Yukon Indian people and other Yukoners need the same kind of powers in local and regional matters that are enjoyed by all the residents of the provinces of southern Canada. The pending settlement is an added reason for conferring these powers, not a reason for denying them.

The desire for greater control of local and regional affairs has been expressed on many different occasions, in many different ways, by both native and non-native

Yukoners. It is an objective which can be met for all Yukoners through the evolution of Yukon toward provincial status.

4. THE BASIC CONSTITUTIONAL ELEMENTS OF PROVINCIAL STATUS

If provincial status for all Yukon can be assumed to be desirable at least as an ultimate constitutional goal, then, it would be useful to ask just what is a province? What are the characteristic features, if any, of provincehood?

Beyond the label "province", there is no magical formula for provincehood, no one comprehensive set of substantive characteristics. Nevertheless, most of the provinces in the Canadian federation have possessed most of the following features:

A. Legislative Features

1. full regional legislative powers (found particularly in section 92 of the Constitution Act, 1867);
2. legislative supremacy (within the boundaries set by the Constitution Act, 1867 and the Constitution Act, 1982).

B. Executive Features

1. full responsible government;
2. full administrative responsibility for subjects within legislative powers;

3. recognition of role of executive head of government as formal representative of the Crown;
4. full ownership and control of natural resources.*

C. Judicial Features

1. control over organization of regional court system and regional Attorney General.

D. External Features

1. right to participate in all Canadian inter-governmental meetings, including meetings of Canadian first ministers;
2. right to participate in amendments to the Constitution of Canada;
3. right to consent to or veto alterations to own provincial boundaries;
4. formal designation as a province, either in 1867 or by subsequent formal admission into Confederation.

* It should be noted that the prairie provinces were not granted full control and ownership of their natural resources until 1930. Nevertheless, at least in the case of Alberta and Saskatchewan, the new provinces were provided with generous federal subsidies in lieu of ownership of natural resources, and when the resources were transferred in 1930, compensation was provided for lands alienated by the federal government since the year of provincehood.

5. WHERE AND HOW DOES YUKON FALL SHORT OF PROVINCIAL STATUS?

A. Legislative Features

1. The extent to which the regional legislative powers of Government of Yukon fall short of those conferred on the provincial legislatures by section 92 (and sections 93, 94A and 95) of the Constitution Act, 1867 was detailed in the study, Some Constitutional Aspects of the Government of the Yukon Territory. As seen there, two major provincial regional powers which are not conferred in specific terms on the Yukon Commissioner in Council are the power to amend the provincial constitution (except in regard to the office of the formal head of the executive of the provincial government) and legislative power in regard to natural resources. As also seen there, there are a number of provisions in federal legislation other than the Yukon Act which effectively control the scope of the legislative jurisdiction of the Commissioner in Council. Since the writing of that study, the provinces have been given more specific and enhanced powers in relation to non-renewable natural resources, forestry

resources and electrical energy by virtue of a new section 92A of the Constitution Act, 1867. No corresponding change has been made to the legislative powers of the Government of Yukon.

2. The legislative supremacy of the provinces means that subject only to the restrictions conferred in sections 92, 92A, 93, 94A and 95 of the Constitution Act, 1867 and in the new Constitution Act, 1982, the provincial legislatures can make or unmake any law and that no other provincial body can set aside a law properly passed by the provincial legislatures. The legislature of the Government of Yukon has no such supremacy. Its powers are subordinate to federal legislation both expressly (e.g., as in the opening clause of section 16 of the Yukon Act) and by virtue of the fact that the Yukon Act - which constitutes the "written" portion of the Yukon's constitution - is itself a creation of the Parliament of Canada. To confer full legislative supremacy on the Government of Yukon would require an amendment to the Canadian constitution and would be one of the final stages of evolution toward full provincial status. On the other hand, there are a number of intermediate arrangements available which lie

between full legislative supremacy and the present full legislative subordination.

B. Executive Features

1. Full responsible government, in which elected officials are fully responsible and accountable for the direction of government, has almost been achieved by the Government of Yukon at the present time. One of the main remaining steps is to further reduce the active federal powers of the formal head of the executive, the Commissioner, until they approach the almost totally nominal powers of the Lieutenant Governor of a province. As in the provinces, some of the powers reduced would be transferred to the elected officials in charge of the regional government rather than to officials at the federal level of government. On the other hand, those of the Commissioner's present functions which would normally be exercised by the federal government in the provinces should be transferred to federal officials. After such changes are made, it would be appropriate to have the Commissioner referred to as "Lieutenant Governor".

2. In some areas, such as health, a subject matter which is under the legislative control of the Commissioner in Council is still administered by the federal government, despite the expressed willingness of the Government of Yukon to assume administrative responsibility. In the provinces subject matters under provincial legislative jurisdiction are normally provincially administered, and any arrangements to the contrary are voluntary in nature. In areas such as health, administrative control should be transferred to the Government of Yukon.
3. Before the end of the nineteenth century, it was established in the courts of law that the Lieutenant Governor of a Canadian province is as much a formal representative of Her Majesty as is the Governor General. The Commissioner of the Yukon Territory presently acts informally as a representative of Her Majesty, but has not yet been accorded formal recognition as such in the courts of law. When the Commissioner's functions are changed as in #B.1, above (and particularly after the Commissioner's remaining active federal functions are removed), this recognition should follow as a matter of course.

4. All the Canadian provinces own and control the vast majority of the natural resources within their boundaries. The Government of Yukon does not. On the other hand, ownership and control is not a sine qua non of provincial status. This is evidenced by the situation of the prairie provinces before the Natural Resources Transfer Agreements of 1930. Moreover, transfer of ownership and control of natural resources need not be effected in toto, at one single time.

C. Judicial Features

1. As indicated earlier, all the provinces exercise control over the organization of the regional court systems within their boundaries and have their own Attorneys General. The Government of Yukon lacks this control at the present time.

D. External Features

1. The Government of Yukon has played an increasingly important role at Canadian intergovernmental meetings, with one exception. To date, the Government of Canada has denied the Yukon Government the right to exercise voting privileges, to participate in discussions, or even to be present, at First Minister's meetings. The

single-conference participation privilege envisaged in section 37 of the Constitution Act, 1982 is no more than nominal.

2. The amending process in the Constitution Act, 1982 treats the Government of Yukon as if it were not a part of Canada. Although elaborate procedures have been created to ensure that federal and provincial representatives have an effective voice in amendments, the territorial representatives of the territories have been given no voice whatever.
3. Prior to the proclamation of the Constitution Act, 1982, a province could extend its boundaries into any territory, providing that its own legislature and the federal Parliament agreed to the extension. The Constitution Act, 1982 now requires that such an extension be approved at the federal level, and by two-thirds of the provinces. Neither prior to the Constitution Act, nor after it, was there any requirement for the consent of the people of the territory absorbed.
4. The Yukon lacks formal provincial status at present and has also been subjected to more onerous terms of entry than prospective territorial entrants in earlier years. Prior to the proclamation

of the Constitution Act, 1982, Parliament had the exclusive formal power to establish new provinces from the territories. Several new provinces were created pursuant to this power. The new Constitution Act, 1982 imposes on Yukon (and the Northwest Territories) a formal hurdle not imposed on earlier prospective entrants into Confederation. Admission into Confederation now requires the consent of two-thirds of the provinces as well as support at the federal level.

6. THE PARTIES TO CONSTITUTIONAL CHANGE IN YUKON

Who should have the responsibility of planning the course of constitutional change for Yukon? Of choosing the best possible plan? Of implementing it?

In the spring of 1978, the Minister of Indian Affairs and Northern Development proposed the appointment of a "Minister's Special Representative in the Yukon Territory". The Special Representative would have been selected and appointed by the Minister of Indian Affairs and Northern Development. The Special Representative would report to this Minister alone. The Special Representative's terms of reference were drafted by the federal government without input from the elected officials of the Government of Yukon. The terms of reference contained detailed prescriptions regarding the scope of the Special Representative's inquiry and the subject matter of his recommendations. The terms of reference limited Yukon input to advice only. Not surprisingly, this almost unilateral federal government approach to constitutional planning for Yukon was flatly rejected by Yukon MLA's. The proposal had ignored the fact that basic fairness and elementary common sense require that the people most affected by proposed constitutional change must - through their elected representatives - have substantial input into planning the change.

Would it be preferable, then, to have a totally opposite approach to that proposed in the spring of 1978? Would an all-Yukon approach to constitutional change be preferable? The problem with an approach of this kind is that the great majority of the constitutional changes yet remaining are changes which must be made by the federal government. For transfers from federal to Yukon control, federal agreement must be secured; for amendments to the Yukon Act and other federal legislation, the federal government must be persuaded to sponsor their passage through parliament.

What is needed, then, is a balance between the spring, 1978 proposal of the federal government and an approach to constitutional planning which precludes all federal input whatsoever. Preferably, planning proposals should originate from the Government of Yukon for consideration by the federal cabinet and Privy Council Office; federal policy concerns with the Yukon proposals should be negotiated at the political level between the Government Leader of Yukon and Prime Minister of Canada, while more technical concerns should be negotiated by the relevant administrative officials of each government with an appeal to the political forum.

While some federal input is necessary in the planning phase of constitutional development, even more federal

cooperation is necessary for the effective implementation of the plan selected. As indicated, the federal government will necessarily be a party to transfer agreements, and the federal parliament's approval will be required for the passage of the Yukon Act changes and other legislative amendments.

Within Yukon itself, of course, it is important that the general public be aware of the relevant constitutional issues and choices, and that members of the public be given ample opportunity to express their views and preferences. Except possibly in the final stage of evolution toward provincehood, referenda should normally be avoided. Referenda tend to be vulnerable to misinterpretation and misuse. They could generate divisive effects which would outweigh any formal mandate obtained. As a general rule, they are an unnecessary addition to the mechanism normally best suited for receiving and implementing the public will - the political party system.

In regard to various segments of the Yukon population, great efforts should be made to ensure that all viewpoints are heard. Interest groups, such as the Council for Yukon Indians, should be encouraged to present their positions and - in the case of matters directly relating to the Yukon Indian land claims - may be accorded special advisory input. Ultimately, of course, after the maximum

possible input is obtained from private individuals and groups in Yukon, the decisions made should respond not only to particular needs but to the interests of all Yukoners. Constitutional change of Yukon is a matter which affects all Yukoners. It should be determined ultimately - in cooperation with the federal government - by the government representing all Yukoners: the Government of Yukon. This requires that any constitutional negotiators appointed must be accountable to the Government of Yukon. Similarly, constitutional positions endorsed by the Government of Yukon should not be subject to suspension or veto by non-government interest groups.

7. WHAT CHANGE, WHEN, AND HOW?

What is required is a gradual, phased and deliberate transitional process to obtain for Yukoners more of the regional rights and benefits enjoyed by the citizens of all the Canadian provinces. The process should provide for a step-by-step transfer to Government of Yukon of the attributes of provincial status referred to in Part 4, above. At the same time, the process should provide for financial guarantees to continue the federal deficit grant for a transitional period. It should also allow for adjustments to link Yukon constitutional changes to any constitutional changes which may be made to the position of the provinces themselves.

In what order should the constitutional changes for Yukon take place?

In light of the complexity of the subject matter of many of the changes and of the fact that some of the changes will require federal legislative amendments, it would be desirable that detailed work on the substance and strategy for all changes should commence immediately.

The timing of measures to implement the required changes will depend on a number of factors, including:

- (i) the urgency of the changes in question, as indicated by Yukon public opinion and other considerations;

- (ii) the relationship of the changes to other changes desired;
- (iii) the kind of measures required to implement the changes (e.g., can they be undertaken or initiated by the Government of Yukon alone, or is federal agreement required; are amendments to federal legislation required?); and
- (iv) the political and economic circumstances prevailing at the time.

Although the precise nature and timing of individual changes will vary in response to government priorities and to the factors noted above, it is possible to envisage the overall constitutional development of Yukon as a phased process, falling roughly into three stages.

In the first stage of the process are changes which can be implemented without immediate amendments to federal legislation such as the Yukon Act, or to the Constitution Act, 1982. One group of changes within this category are measures to continue the development of responsible government in Yukon. The non-statutory advances made to date in this important area were described on page 185 of the Yukon Hansard for April 14, 1982. Further measures should include amended instructions to the Commissioner so as to draw his functions still closer to that of a

Lieutenant Governor and to further enhance the responsibility and accountability of the elected government in provincial-type matters.

In the first stage, too, should begin a systematic transfer of Yukon surface resources to the control and administration of the Government of Yukon. Such a transfer would help make land more readily available for individual Yukoners. It would enable land to be controlled by those who live in Yukon. It would be preliminary and complementary to a transfer to Yukon of subsurface and subsea resources, a move that could eventually yield significant economic benefits. As noted earlier, the land transfer can be effected without prejudice to the Yukon Indian claim, and can be carried out in tandem with the resolution of that claim.

Other measures which could be implemented without federal statutory change or constitutional amendment include the transfer to the Government of Yukon of subjects such as health which are under territorial legislative but not administrative control, agreements permitting a wider territorial role in the administration of justice, agreements providing Yukon with financial guarantees as the constitutional development process continues, and an agreement respecting Yukon participation at all Canadian intergovernmental meetings.

A second general stage of Yukon constitutional development would include changes which should or must be incorporated into federal legislation, or for some other reason may require a longer "lead-time" than those mentioned above. The most important of these fall into four main areas: responsible government, legislative authority, natural resources and finances.

Because of the relatively short history of responsible government in Yukon, and the importance of protecting existing gains, it would be desirable to enshrine the basic principles of this system into a revised Yukon Act. To allow for flexibility and continued growth, care should be taken to avoid specifying details. The office of Commissioner should be formally replaced by that of Lieutenant Governor at this time.

Amendment to the Yukon Act is also necessary to render the individual legislative powers of the Government of Yukon comparable in scope to those of the provincial legislatures. This should be accompanied by a statutory provision indicating that federal statutes do not apply within areas of Yukon legislative jurisdiction that would be exclusive if they were provincial, unless the federal statutes contain provisions expressly enabling

them to apply notwithstanding the Yukon Act. The federal reservation and disallowance powers should be put on the same basis as for the provinces. The status of the Yukon Legislative Assembly should be statutorily confirmed. On an ongoing basis, there should be a federal-territorial agreement to make further changes to the Yukon Act to reflect any major changes to the legislative authority or other aspects of the constitutional position of the provinces.

The transfer of the surface resources referred to in Stage One should be completed within the first years of operation of the new Yukon Act. For this purpose, the new Act could contain a transitional provision similar to section 46 of the existing Yukon Act.

After the initial period all public lands in Yukon should be placed under the ownership and control of the Government of Yukon, together with appropriate protections for Yukon Indian settlement interests and a resource revenue sharing provision as described below. Technically, the ownership would be vested in Her Majesty in right of Yukon, so there should be statutory recognition (either implicit or otherwise) of the capacity of the Crown in right of Yukon to own public properties.

From the time the new Act is proclaimed, the Yukon Government should be allotted a minority share of subsurface revenues to assist it in preparing for its new administrative responsibilities in regard to natural resources. After ownership and control of natural resources is transferred to the Government of Yukon, the federal government could retain until full provincial status a small minority share of subsurface resource revenues. To ensure that the Government of Yukon's share of subsurface revenues yields tangible sums, the amount accruing from this share should not be included as revenue for the purpose of calculating the amount of federal deficit grants.

At present the Schedule to the Yukon Act, read in conjunction with section 2 of the Northwest Territories Act, suggests that the Yukon Territory has no existence beyond its land mass and inland waters, and that the adjoining areas are jurisdictionally part of the Northwest Territories. This effect is anomalous and unfair. On the other hand, because the Arctic Ocean is ice-covered during most of the year and because its coastal areas can be used in many respects like the adjoining land mass, there is a compelling argument for including these areas within territorial boundaries. Accordingly, the

Schedule to the Yukon Act should be amended to make it clear that the northern boundary of the Yukon Territory extends to the outer edge of Canada's territorial sea.

The continental shelf area beyond the territorial sea is in a somewhat different position. On one hand, its size and location require the administrative resources and international expertise of the federal government. On the other hand, this area is a natural prolongation of the land mass of the Yukon. Yukoners have no less a moral claim to its resources than residents of coastal provinces have over comparable offshore areas. What is required is a new form of juristic entity, a Yukon Maritime Zone, in which the federal government and the Government of Yukon are each entitled to one-half of the revenues from subsea resources.

The resource transfers suggested above should not be regarded as sources of "instant financial self-sufficiency" for Yukon. In many cases, administrative expenses will outweigh royalties and revenues, especially initially. Subsurface revenues will vary with world demand. Subsea development is still in an early stage. It will likely require considerable time before substantial production is achieved. It is likely, therefore, that the federal deficit funding provisions referred to in regard to

Stage One will be required throughout most of the constitutional development period, and possibly during the early years of formal provincial status. To provide the economic security necessary for constitutional progress, then, there must be a guarantee that the necessary federal deficit funding will continue. Such a guarantee should be incorporated in the new Yukon Act. Other measures respecting finance could include provision for greater autonomy in regard to audits.

In addition to the changes above, there are several "external" changes to the Constitution Act, 1982 which would be desirable from the point of view of Yukon constitutional development. First, although the provision allowing a province to extend its boundary into a territory without the consent of that territory is less unqualified than its predecessor in the Constitution Act, 1871, the very concept of provincial boundary extension without the consent of the territory affected is unfair and should be abandoned. Second, the Government of Yukon should not be deprived of any role whatsoever in the national amending process, as it is under the present Constitution Act, 1982. Third, it is unfair to submit the present territorial governments to more rigorous terms of formal entry into Confederation than were imposed

on earlier territorial entrants: the formal requirement of more than majority provincial support for entry should be dropped, and replaced by an informal requirement of provincial consultation. All the above external changes require national constitutional amendment, and will be very difficult to implement. Nevertheless, the current political climate may change at some future time, permitting improvements which seem unlikely at present.

Finally, the ultimate components of provincehood, including provincial-type legislative supremacy subject to the Constitution Act, 1867 and the Constitution Act, 1982, and formal admission into Confederation, will likely take considerably longer to achieve than the initial and intermediate changes referred to above (with the exception of the external changes to the Constitution Act discussed above). These final formal changes will fall into a third general stage of constitutional development. However, if the bulk of the initial and intermediate changes have been successfully implemented, full provincial status should be little more than a formalization of what already exists in practice.

It should be emphasized that both the general sequence and the specific changes considered above will be subject to the four variables noted earlier. For example, a great many of the necessary constitutional changes require

specific federal concurrence at some point. Accordingly, the rate of constitutional change in Yukon could accelerate dramatically in response to favourable federal policies and attitudes, and vice versa. Although preliminary work should commence immediately on all the major measures discussed above (where this has not been done already), it may be considered feasible to implement some of them at an earlier or later stage than suggested and to reverse the sequence in some cases. After further study, it may be found expedient to de-emphasize or dispense with some of the above measures, and to pursue others. As indicated, though, if the bulk of the initial and intermediate changes suggested above have been successfully implemented, the Yukon will be well on the way to de facto provincehood before formal admission to Confederation is even considered.

From the discussion above, it is possible to formulate in summary form the following proposed program of constitutional change:

Proposed Program of Constitutional Change for Yukon

I. Stage One: Initial, Non-Legislative Changes

1. revised instructions to Commissioner to advance development of responsible government (see (Appendix A));

2. federal-territorial agreement respecting the systematic transfer of Yukon surface resources to the control and administration of the Government of Yukon (see Appendix B);
3. federal-territorial agreements transferring the administration of health and other subject matters which are under territorial legislative but not administrative control;
4. federal-provincial agreement to create an indigenous Yukon Court of Appeal and Attorney General for Yukon;
5. federal-provincial agreement to maintain federal deficit grant and federal capital funding at levels comparable to existing levels throughout the transitional constitutional period and thereafter until an appropriate termination date (cf. the funding guarantee in Appendix C);
6. federal consent to full participation by Government of Yukon at all Canadian inter-governmental meetings and to full non-voting participation by Government of Yukon at all meetings of Canadian First Ministers.

II. Stage Two: Intermediate Changes

1. responsible government: enshrining of basic principles of responsible government in legislation (see Appendix C);
2. responsible government: creation of office of Lieutenant Governor of Yukon, replacing that of Commissioner (see Appendix C);
3. legislative authority: replacement of the current list of legislative powers with a provision making them comparable generally to those conferred on provincial legislatures (see Appendix C);
4. legislative authority: requirement of express authorization before federal statutes can apply within areas of Yukon jurisdiction which would be exclusive if they were provincial (see Appendix C);
5. legislative authority: provision for exercise of federal powers of reservation and disallowance on same basis as for provinces (see Appendix C);
6. legislative authority: statutory recognition of powers and privileges of Yukon Legislative Assembly (see Appendix C);

7. legislative authority: federal-territorial agreement to make further changes to Yukon Act to reflect any major changes which may be made to the legislative authority or other aspects of the constitutional position of the provinces;
8. natural resources: statutory transitional provision to facilitate completion of transfer of surface resources commenced in Stage One (see Appendices B and C);
9. natural resources: statutory provision placing all public lands in Yukon under the ownership and control of the Government of Yukon (see Appendix C);
10. natural resources: statutory recognition (implicit or otherwise) of the capacity of Crown in right of Yukon to own public properties (see Appendix C);
11. natural resources: statutory provision for federal-territorial subsurface resource revenue sharing in Yukon (see Appendix C);
12. natural resources: statutory re-definition of northern boundary of Yukon Territory to include territorial sea (see Appendix C);
13. natural resources: statutory provision for federal-territorial subsea resource revenue sharing in Yukon Maritime Zone (see Appendix C);

14. finance: statutory confirmation of federal deficit funding for Government of Yukon (see Appendix C);
15. finance: provision for greater territorial audit autonomy (see Appendix C);
16. consequential amendments to territorial and other federal legislation;
17. external matters: abolition of provincial boundary extension provision in both the Constitution Act, 1982 and the Constitution Act, 1871; creation of a role for Government of Yukon in national constitutional amending process; abolition of formal constitutional requirement of greater than majority provincial support for entry into Confederation (these measures are less likely to be implemented than the others described above).

III. Stage Three: Formal Provincehood

1. conferral of provincial-type legislative sovereignty on Government of Yukon subject to the Constitution Act, 1867 and the Constitution Act, 1982;
2. federal-Yukon agreement regarding terms of entry of Yukon into Confederation;

3. constitutional amendment pursuant to subsections 38(1) and 42(1)(f) of the Constitution Act, 1982 (or to the appropriate constitutional provisions then in effect) admitting Yukon into Confederation;
4. consequential legislative amendments.

Because of the likelihood of changes in priority, delays, and other adjustments resulting from political, economic and other circumstances, and because of the fact that federal-territorial agreement is a necessary element of virtually every one of the objectives described above, it is impossible to set a precise deadline for the achievement of each individual objective. Nevertheless, it would seem reasonable at the present time to seek to complete most of Stage One and Stage Two in the next ten years, and to have laid most of the groundwork for full provincial status before the end of the following decade.

8. SAMPLE DOCUMENTS FOR IMPLEMENTING CHANGE

Appendix A contains a draft proposed letter of instructions which might be issued to the Commissioner of the Yukon Territory to implement item 1 of Stage One of the proposed program of constitutional change suggested in Part 7. The note to Appendix A, "Note on Proposed Letter of Instructions to Commissioner", outlines some of the main changes contained in this letter, and the reasons for them. In the event that the Yukon Act amendments preceeded the changes suggested in Appendix A, the proposed letter of instructions would have to be altered accordingly.

The draft Memorandum of Agreement Respecting Yukon Lands in Appendix B has already been proposed by the Government of Yukon. This draft memorandum, in conjunction with the Government of Yukon's land use policy, "Land: A Yukon Resource" (April, 1982), would implement item 2 of Stage One of the proposed program, and would set the stage for future natural resource transfers. It would be desirable to have as much as possible of this draft agreement implemented before proceeding with the more extensive natural resources changes in this area contemplated in Appendix C.

Appendix C contains a draft revised Yukon Act which would implement, inter alia, items 1 to 6 and 8 to 15 of Stage Two of the suggested general program of constitutional change. In the summer of 1979, the Government of Yukon submitted a proposal for amendments to the Yukon Act which was somewhat less extensive in scope than the one enclosed here. The proposed Act enclosed here reflects ongoing constitutional developments which have occurred since that time or should be well under way by the time the proposed Act is carried into effect. The note to Appendix C, "Note on Proposed Revised Yukon Act", outlines some of the main changes contained in this draft revision, and the reasons for them.

APPENDIX A

Dear Commissioner Bell:

I am pleased to provide you with the following instructions indicating how I would like you to carry out your responsibilities as Commissioner of the Yukon Territory.

All previous instructions by me and by my predecessors as Minister are hereby revoked. Nevertheless, I regard the present instructions as a natural extension of the movement toward greater self-government for Yukon reflected in the instructions issued in January and October of 1979 to former Commissioner Christensen and in the instructions issued to you in January of 1981.

I wish to address myself specifically to the question of constitutional development for the people and government of the Yukon Territory. In often different ways, both Indian and non-Indian Yukoners have been expressing a strong desire in recent decades for more effective control over the Yukon matters which affect them most directly. In my view, there are two aspects of the question of more effective control over Yukon affairs. First, more effective control means more responsive control of matters already under territorial jurisdiction. Second, more effective control means control over a wider spectrum of Yukon affairs than is presently the case. When both of these aspects of control have been realized, Yukoners will be well on the way to the same degree of mastery over Yukon affairs as southern Canadians have over their provincial governments.

With the growth of the Executive Committee concept and the advent of party politics during this past decade, considerable progress was made in developing a viable system of responsible government for Yukon. The instructions of January and October of 1979 and January of 1981 furthered this progress by increasing the scope and weight of advice from elected officials and by creating an all-elected Executive Council. In the present instructions, I will be continuing the Executive Council and will be describing in more detail than previously the nature of your relationship to the Executive Council and to the Council as a whole. For the first time, the Commissioner will no longer be called upon to perform the

administrative and coordination duties of an active federal public servant in the Territory. As the Yukon moves closer to the possibility of provincehood, it is fitting that I ask the Commissioner to assume responsibilities which are increasingly comparable to those of the Lieutenant Governor of a province.

1. Executive Council and Relationship Between Office of the Commissioner and Executive Council

I direct you to continue in existence the body described in my October 8, 1979 and January, 1981 instructions as the Cabinet or Executive Council. You are to appoint as chairman of this Executive Council the political party leader (to whom I shall refer henceforth as the Premier) in the Council of the Yukon Territory (to which I shall refer henceforth as the Legislative Assembly) whose Executive Council would, in your opinion, be best able to command the support of the Legislative Assembly. Although the decision as to which political leader would be able to form an Executive Council commanding this support would be entirely your own, I expect that you will be governed by such factors as relative party strengths - and, in the case of a potential minority government situation, probable cross-party agreements or coalitions - in arriving at this decision. Once you have appointed the Premier, you are to call upon him or her to advise you regarding the selection of other members of the Executive Council. The questions of the selection of the other members of the Executive Council, the allocation of portfolio responsibilities, and the total size of the Executive Council are questions for the discretion of the Premier. Nevertheless, it would be appropriate for you to confirm, at the time of the appointment of the Premier, that it is my government's continued wish that all Executive Council members should also be elected members of the Legislative Assembly. When the Premier advises you regarding the composition of the Executive Council, he should also tender to you his advice regarding assignment of departmental portfolio responsibilities to its members. Virtually always, you should accept the advice of the Premier regarding the appointment (other than his own) or removal of members and the assignment or re-assignment of portfolio responsibilities, as binding. In your relationships with the Executive Council, you should consider yourself to be bound by the advice of this body in the same general way as a Lieutenant Governor is bound by the advice of the Executive Council of a province. Accordingly, subject to these instructions, you should almost invariably consider yourself bound by the advice of the Executive Council in all matters which are placed by the Yukon Act or other federal legislation

under the jurisdiction of the Commissioner or Commissioner in Council of the Yukon Territory and you should almost invariably consider yourself bound by the advice of the Premier regarding the appointment, portfolio assignment, or dismissal of other Executive Council members and regarding the convening of sessions of the Legislative Assembly. Generally, then, although the communications from the Executive Council will issue in the form of advice, seeking your concurrence, the Executive Council under its chairman the Premier will be effectively responsible for the management and direction of the government of the Territory. The Premier may, if he or she so wishes, use the title of Government Leader, may use the title of Minister for each of the other members of the Executive Council, and may use the title of Cabinet for the Executive Council as a whole.

Section 12 of the Yukon Act contains special requirements regarding an Advisory Committee on Finance. Until they are dispensed with by statutory amendment, these requirements may be met as follows. The Premier may wish to nominate three Executive Council members to an Executive Council committee styled the Treasury Board. Treasury Board members will be members ex officio of the Advisory Committee on Finance. Their responsibilities will include the preparation of the annual expenditure and appropriation estimates. You should make appointments to this committee in accordance with the Premier's recommendations, subject to the requirement that the Premier have secured a recommendation from the Legislative Assembly in favour of his nominees. You are to comply with Treasury Board/Advisory Committee on Finance recommendations regarding the estimates.

I am charging you with a general responsibility in helping ensure that at all times there is in office an elected government which can command the support of the people of the Yukon, expressed through their elected representatives. The procedure to follow in your initial selection of an Executive Council (i.e., now, and after an election) has been outlined above. In the event that the existing members of the Executive Council are at any time unable collectively to command the confidence of the Legislative Assembly in their management and direction of territorial government, the existing Premier shall immediately inform you of this situation and tender to you his advice as to:

- a) whether the Legislative Assembly should be dissolved to permit the holding of a general election of members of the Legislative Assembly, or

- b) whether the existing Premier should be invited to advise regarding the appointment of new members to the Executive Council, or
- c) whether the resignation of the existing Premier should be accepted in order to enable you to call upon a person other than him to serve as the new Premier and to advise regarding the appointment of new members to the Executive Council.

At the present time, section 9(2) of the Yukon Act vests the power of deciding whether or not the Council (Legislative Assembly) should be dissolved, in the Governor in Council. It requires that at the very least the Governor in Council must first consult with "each of the members of the Council with whom consultation can then be effected". Until this requirement is repealed, any determination of yours as to whether or not there should be a dissolution should be made in the form of a recommendation to the Governor in Council, with a copy to me, and you should suggest to the Premier that he should send to the Governor in Council and to me copies of the advice he has tendered to you. Until section 9(2) is repealed, the Governor in Council or an agent of the Governor in Council such as myself would consider your recommendation, the Premier's advice, and the suggestions of any other Legislative Assembly members available for consultation at the time the recommendation is made, before granting or refusing to grant a dissolution. After an amendment is made to section 9(2) of the Yukon Act to end the role of the Governor in Council in granting dissolutions, your own determination regarding dissolution will be final. Whether you are making a recommendation or a final decision regarding any of the three courses of action referred to above, you may, normally should, but need not, follow the advice of the existing Premier.

In your general dealings with the Executive Council and particularly the Premier, you will be free to express in confidence your own opinions on important matters affecting the government of the Yukon Territory and to provide informal advice on such matters where it has been sought. It will be expected, of course, that these opinions and this advice will be provided in the context of complete impartiality toward territorial political affairs required by the nature of your office.

2. Relationship Between Office of Commissioner and Legislative Assembly

As the formal chief executive officer of the government of the Yukon Territory, the Commissioner of the Yukon Territory is a constituent part of the territorial legislative process. The Legislative Assembly cannot enact ordinances by itself. To be valid in law an ordinance must have been passed by the Legislative Assembly as a proposed ordinance and then assented to by the Commissioner. What is required is the combined action of the Legislature (the Commissioner in Council). By implication, the Yukon Act (and any other federal legislation conferring jurisdiction on the Commissioner in Council of the Yukon Territory) gives the Commissioner the power to assent to or refuse assent to a proposed ordinance passed by the Legislative Assembly. Although the Yukon Act does not expressly give you the power to summon and call together the Legislative Assembly, this power can be understood to fall to you implicitly, in your capacity as the formal chief executive officer of the Yukon Territory. This would also be the case with the power to dissolve the Legislative Assembly, were it not for the Yukon Act provision expressly conferring the power to dissolve the Council on the Governor in Council. Subject to this power of dissolution, which I have addressed earlier in my instructions, I hereby instruct you to follow the same general constitutional practises with respect to your relationship with the Legislative Assembly or individual members of the Legislative Assembly as are followed in comparable situations by the Lieutenant Governor of a province. Refusals by Lieutenant Governors to assent to duly passed proposed legislation are extremely rare today. I would suggest that a refusal of assent be considered only in the unlikely case of proposed legislation which if passed would be clearly and undoubtedly unconstitutional, as in the case of an attempted re-enactment of legislation already declared unconstitutional by the courts of law.

Similarly, my government intends to model its use of the power to disallow ordinances passed by the Legislature on the constitutional practices it follows in relation to provincial legislation.

In regard to the requirement in section 24 of the Yukon Act that the Commissioner must first "recommend" money Bills, etc. before they are introduced in the Legislative Assembly, the provincial practice is that the message of recommendation for any such bill is prepared by the provincial cabinet for the Lieutenant Governor's

signature (which is virtually always automatically given) and read to the legislative assembly by the individual minister responsible for it, who then introduces the bill before the assembly.

Finally, in determining when to convene sessions of the Legislative Assembly pursuant to section 11 of the Yukon Act you should be guided by the advice of the Premier.

3. Relationship Between Office of Commissioner and Government of Canada

In keeping with my government's desire to have the status and functions of the Commissioner of the Yukon Territory approximate as closely as possible those of the Lieutenant Governor, and pending the creation of the Office of Lieutenant Governor of the Government of the Yukon Territory, I shall endeavour to model future instructions to you on the general frequency and format of the instructions to the Lieutenant Governor of a province. Today, instructions to a Lieutenant Governor are issued rarely and do not attempt to require the Lieutenant Governor serve as an active agent of federal policy in the province. The logic behind this approach is clear. In a fully developed system of responsible government, the formal executive officer must act almost invariably on the advice of those in his or her government who enjoy the support of the people who have elected the government. If the formal chief executive officer were made subject to conflicting advice from another level of government, the lines of accountability for the original advice would become blurred and the formal chief executive officer could be placed in a potentially untenable position. For similar reasons, I shall be initiating procedures to have the duties of chairing the Federal Inter-departmental Co-ordinating Committee Federal Territorial Relations transferred to other individuals. Again, the administrative and technical nature of these tasks is inconsistent with the character of an office which will approximate that of representative of Her Majesty in the Yukon Territory. I shall of course continue to value most highly and to depend as before on your use of informal tact and diplomacy to help foster and maintain cooperation and good relations between my government and the government of the Yukon Territory.

In the transitional period now upon us, I foresee an important diplomatic role for the Commissioner of the Yukon Territory. I am confident that your experience in the affairs of Yukon, sensitivity to the issues involved, and deep commitment to the objective of advancing its political and constitutional development, will contribute greatly to our success.

Yours sincerely,

NOTE ON PROPOSED LETTER OF
INSTRUCTIONS TO COMMISSIONER

Especially because of its widening of the areas in which the Commissioner should follow the advice of elected officials and because of its creation for the first time of an all-elected Executive Council, the letter of instructions issued on October 8, 1979, to former Commissioner Christensen represented a significant advance for responsible government in Yukon. Although the instructions issued on January, 1981 to Commissioner Bell have not been made public, these have apparently incorporated the substance of the October, 1979 instructions.

However, there are a number of substantive changes which should be made to the October, 1979 instructions (and presumably to those issued in January, 1981). There are also a number of areas in which further advances are now due. These changes and advances should be incorporated in a new letter of instructions to the Commissioner. The following comments will be addressed to the text of the October, 1979 instructions, which is available to the public.

First, the wording of the introduction to the October, 1979 instructions appears to suggest that any legislative amendment to the Yukon Act may be made contingent on the obtaining of agreements on measures to protect the interests of Yukon Indian people and to secure their full participation in the Government of Yukon. However well intended, these stipulations seem misplaced. The right to the constitutional development of Yukon - through amendment to the Yukon Act or otherwise - is a right sought by the people of Yukon as a whole through a democratically elected government which represents all Yukoners. It is too basic a right to be made to hinge on externally imposed federal policy preferences, however well meaning. In regard to protection, the constitutional development proposals themselves contain special safeguards to protect the interests of Yukon Indian people. The Government of Yukon's proposed Memorandum of Agreement Respecting Yukon Lands would protect proposed settlements lands even before a final land claims settlement; the proposed Yukon Act would put protections for Yukon Indian interests on a statutory basis. In regard to participation, the stipulations miss the fundamental point that neither Indian or non-Indian Yukoners can participate as fully and meaningfully in Yukon affairs as they should until the constitutional development of Yukon is further advanced.

Insofar as it deals with Yukon Indian people, the proposed letter of instructions stresses the desire for self-government which both native and non-native Yukoners hold in common.

Overall, the introduction to the proposed instructions

- a) provides a rationale for increasing responsible government;
- b) indicates how responsible government reflects a desire expressed by both native and non-native Yukoners;
- c) alludes to the progress towards responsible government made in previous instructions; and
- d) outlines briefly the general character of the changes contained in the new instructions.

Second, the portion of the October, 1979 instructions under the heading "Commissioner in Council" requires a number of specific revisions. The October, 1979 instructions commence by referring to the definition of Commissioner in Council contained in section 2 of the Yukon Act. This definition is clearly concerned with the legislative capacity of the Government of the Yukon, i.e., the capacity of the Commissioner, acting together with the Council (the Yukon Legislative Assembly) to pass ordinances. The instructions, however, proceed to deal with what appear to be executive functions, directing the Commissioner to accept the advice of the Council (the Yukon Legislative Assembly)

... in all matters in the said Act which are delegated to the Commissioner in Council, provided that those matters meet the requirements of section 17 of the said Act and excepting section 46 of the said Act.

In the provinces, it is the Executive Council which provides advice to the formal head of government in executive matters, not the Legislative Assembly as a whole; to require the Commissioner to seek executive advice from the Council or Yukon Legislative Assembly as a whole is cumbersome, anomalous, and constitutionally retrogressive. For the past several years, the Government of Yukon has attempted to live with this provision by acting on the assumption that the executive advice of the Executive Council is representative of that of the Council (or Yukon Legislative Assembly) as a whole. While workable in practice

with a majority government, this approach could encounter problems in a minority government situation. In any event, the Council or Legislative Assembly should not, constitutionally speaking, be in the business of providing executive advice in the first place.

It is possible although not probable that the provisions referred to above are intended to deal with the legislative functions of the Commissioner and the Council. In that case, they should have been much more implicit in regard to the question of giving or refusing assent to ordinances.

Whether the provisions were concerned with the executive or the legislative functions of the Commissioner and Council, the reference to section 17 of the Yukon Act is redundant and there is no logical reason for excepting section 46.

The portion dealing with the Government Leader or Premier fails to indicate just how this official comes to office, other than through "the confidence of the Council". If the Premier is to have the discretion to appoint the members of his Executive Council, then, strictly speaking, it is unnecessary to prohibit the Commissioner from being a member. On the other hand, it would be useful to provide the Commissioner with more specific guidance regarding the process for one of the few important matters remaining within largely his discretion - the constitutional options available where there is a motion of want of confidence and the possibility that a new government may have to be formed.

Pages 2 to 6 of the proposed instructions attempt to correct the problems outlined above and to chart an approach to them which is more in keeping with the traditions of responsible government.

Third, under the heading "Commissioner" the October, 1979 instructions require that the Commissioner accept the recommendation "of the Council" in regard to the appointment of members of the Advisory Committee on Finance and stipulate that the Executive Council should prepare the estimates initially before referring them to the Commissioner. This provision does not go far enough to place effective control over the appointment of Advisory Committee members in the Premier; nor does it indicate how the Advisory Committee is to be involved in the preparation of the estimates, as required by the Yukon Act. The approach taken in the proposed instructions is more complex, but seeks to give more effective control over the estimates to the Premier (and relevant Executive Council members) while

complying fully with the letter of the Yukon Act. The instructions of October, 1979 make special provision for Executive Council advice regarding the designation of banks or chartered banks, something which is rendered unnecessary in the proposed instructions by the general directive that the Commissioner act on the advice of the Executive Council.

This latter point underlines an important difference between the general approach taken in the October, 1979 instructions and in the proposed instructions. Assuming that the October, 1979 instructions were amended to refer to advice of the Executive Council rather than advice of the Council, this advice would be binding on the Commissioner only in regard to matters with the jurisdiction of the Commissioner in Council under the Yukon Act, except in regard to section 46 of the Yukon Act. The corresponding part of the proposed instructions is more sweeping in scope. It states inter alia that:

... you should almost invariably consider yourself bound by the advice of the Executive Council in all matters which are placed by the Yukon Act or other federal legislation under the jurisdiction of the Commissioner or Commissioner in Council of the Yukon Territory.

Fourth, the proposed instructions attempt to provide guidance to the Commissioner on a number of additional matters not dealt with or dealt with explicitly in the October, 1979 instructions. These include:

- a) an approach to section 9(2) of the Yukon Act which would transfer effective power to the Premier pending a repeal of this section;
- b) the role of the Commissioner in regard to the giving or refusing of assents to proposed legislation;
- c) the role of the Commissioner in regard to the introduction of money bills; and
- d) the question of informal communications between the Commissioner on one hand and the Premier and Executive Council on the other.

Fifth, the October, 1979 instructions envisaged a role for the Commissioner as "an active broker and mediator in assisting me to find a mutually satisfactory accommodation of native interests within a fully responsible Yukon Territorial Government". The proposed instructions do not provide

for such a role for the Commissioner. Moreover, unlike the October, 1979 instructions, the proposed instructions indicate that the Commissioner will no longer be required to chair the Federal Inter-departmental Co-ordinating Committee or to serve on the Inter-departmental Committee on Federal Territorial Relations. Here, as elsewhere in the proposed instructions, the intent is to bring the functions of the Commissioner even closer to those of Lieutenant Governor of a province, and thereby further the advance in Yukon toward full responsible government.

MEMORANDUM OF AGREEMENT

RESPECTING YUKON LANDS

THIS AGREEMENT made the day of A.D., 1982

BETWEEN: THE GOVERNMENT OF CANADA ("Canada"), represented by the Honourable John Munro, Minister of Indian Affairs and Northern Development ("Minister")

AND: THE GOVERNMENT OF YUKON ("Yukon"), represented by the Honourable Dan Lang, Minister of Renewable Resources ("Yukon Minister"), on behalf of the Commissioner of the Yukon Territory

WHEREAS Canada and Yukon agree that it is desirable that Yukon exercise a degree of self-government in relation to the control, management and ownership of land in the Yukon Territory; and

WHEREAS Canada and Yukon agree that comprehensive land use planning is necessary to provide a sound social, economic and environmental framework for land use by Yukon residents; and

WHEREAS Canada and Yukon have agreed to establish a land use planning process which is structured, is responsive to Yukon conditions and furthers the evolution of self-government in the Yukon Territory; and

WHEREAS a forum for negotiating Yukon Indian land claims ("Land Claims Forum") has been established for the purpose of settling the aboriginal claim of the Yukon Indian people; and

WHEREAS settlement lands for Yukon Indian people are being identified and agreed to on a band by band basis as part of the settlement of their aboriginal claims in the Land Claims Forum; and

WHEREAS Canada and Yukon have a responsibility to ensure that the rights and interests of the Yukon Indian people in Yukon land are protected in the Land Claims Forum.

THE PARTIES have therefore agreed as follows:

1.0 Protection for Rural Settlement Lands

1.1 Canada shall take appropriate measures to protect the rights and interests of the Yukon Indian people in rural settlement lands as these lands are identified and agreed to in the Land Claims Forum and shall continue such measures for a period of time to be determined in the Land Claims Forum. These measures shall include:

(a) prohibiting entry on settlement lands pursuant to section 93 of the Yukon Placer Mining Act and section 13 of the Yukon Quartz Mining Act; and

(b) withdrawing settlement lands from disposal pursuant to section 19(d) of the Territorial Lands Act.

Such measures shall be without prejudice to holders of valid existing claims, rights or other interests granted pursuant to the above or other federal or territorial legislation.

2.0 Protection for Community Settlement Lands

2.1 Canada and Yukon shall transfer community settlement lands under their control in fee simple to each Yukon Indian band on a band by band basis as (i) community settlement lands have been identified and agreed to and (ii) each Yukon Indian band has signed an agreement respecting local government for its respective community(ies) in the Land Claims Forum. For the purposes of this Agreement, "band" shall be as defined in the Land Claims Forum.

3.0 Block Land Transfers for Community Lands

3.1 Immediately after Canada and Yukon have fulfilled their obligation described in section 2.1 herein, Canada shall complete block land transfers to Yukon pursuant to section 46 of the Yukon Act ("Block Land Transfers") for each of the communities for which the said obligation has been fulfilled.

4.0 Land Use Planning Process for Yukon

4.1 Canada and Yukon shall establish a comprehensive and cooperative land use planning process for the Yukon Territory as follows:

4.1.1 A Yukon Land Use Planning Board will be created in order to coordinate the planning of land in the Yukon Territory outside the existing communities as enlarged pursuant to section 2.1 herein.

4.1.2 The said Board will report to the Minister and to the Yukon Minister and will make recommendations involving:

- (a) the division of the Yukon Territory into planning districts and the development of plans for areas on a priority basis;
- (b) funding for plan development and implementation; and
- (c) terms of reference for the Yukon Land Use Planning Committee(s) established pursuant to section 4.1.4 herein.

4.1.3 The said Board will comprise eight members as follows:

- (a) two senior officials from Yukon;
- (b) two private citizens appointed by Yukon;
- (c) two senior officials from Canada;
- (d) two representatives appointed by the Council for Yukon Indians.
- (e) Yukon will appoint one of the members of the said Board as Chairman.

4.1.4 Yukon Land Use Planning Committee(s) will be created from time to time as required to meet planning needs within districts and will be responsible for recommending land use plans in their districts to the Yukon Land Use Planning Board. The said Committee(s) will normally comprise four members as follows:

- (a) one Indian representative;
- (b) one private citizen from the local community (where applicable this representative will be an elected official from the local government having an interest in the area being planned);
- (c) one representative from Canada;
- (d) one representative from Yukon.

4.1.5 An additional four representatives may be appointed from any or all of the interested parties listed in section 4.1.4 herein in order to provide flexibility and be responsive to unique conditions that may be encountered in a planning area.

4.1.6 Canada and Yukon shall provide technical advisory and support staff for the Yukon Land Use Planning Board and the Yukon Land Use Planning Committee(s) as required.

4.1.7 Canada and Yukon agree to ensure:

- (a) that individual recommendations of the Yukon Land Use Planning Board are dealt with by the Minister and the Yukon Minister as promptly as possible; and
- (b) that land use plans have been adopted for most of the Yukon Territory within ten years of signing this Agreement.

5.0 Block Land Transfers for Rural Lands

5.1 Immediately following:

- (a) the establishment of a land use planning area;
- (b) the adoption of a land use plan for that area; and
- (c) the identification of all rural settlement lands within the area and their protection pursuant to section 1.1 herein,

Canada shall complete Block Land Transfers to Yukon for the lands within the said area. For greater certainty, conditions (a) and (b) of this section shall be deemed to have been fulfilled in the areas covered by the Whitehorse North Land Management Planning Project and the Carcross Valley - Marsh/Tagish Lake - Atlin Road Land Management Planning Project.

DATED at the City of _____ in the
This _____ day of _____
A.D. 1982.

FOR CANADA:

The Honourable John Munro,
Minister of Indian Affairs
and Northern Development,
Government of Canada

Witness

FOR YUKON:

The Honourable Dan Lang,
Minister of Renewable
Resources,
Government of Yukon

Witness

APPENDIX C

DRAFT REVISED YUKON ACT

AN ACT TO PROVIDE FOR THE
GOVERNMENT OF THE YUKON TERRITORY

PREAMBLE

WHEREAS the Government of Canada recognizes the contribution to Canada of the people of the Yukon Territory and supports these people in their quest for a greater degree of self-government and regional responsibility within the Canadian federation,

The Parliament of Canada hereby enacts as follows:

SHORT TITLE

1. This Act may be cited as the Yukon Act.

INTERPRETATION

2. In this Act

"Executive Council" means the Executive Council of the Government of Yukon;

"Government of Yukon" means the government of the Yukon Territory;

"Legislative Assembly" means the Legislative Assembly of the Government of Yukon;

"Legislature" means the Lieutenant Governor and the Legislative Assembly;

"Lieutenant Governor" means the Lieutenant Governor of the Government of Yukon;

"Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of the Executive Council;

"Premier" means the person holding the recognized position of Premier of the Government of Yukon;

"Territory" means the Yukon Territory, which comprises the area described in Schedule I to this Act;

"Yukon Maritime Zone" means that part of the Arctic Ocean and seabed thereof described in Schedule II to this Act.

EXECUTIVE AUTHORITY

3. (1) Subject to this Act, sections 58, 59, 60, 61, 62 and 67 of the Constitution Act, 1867 shall extend and apply to the Government of Yukon to the same extent and in the same way that they extend and apply to the governments of the provinces of Canada.
- (2) Subject to this Act, the Lieutenant Governor shall enjoy privileges, immunities, and powers comparable to those privileges, immunities enjoyed by the Lieutenant Governors of the provinces of Canada.
4. (1) There shall be an Executive Council to advise the Lieutenant Governor and, in so doing, to manage and direct the Government of Yukon.
- (2) The Executive Council shall comprise the person appointed by the Lieutenant Governor as Executive Council chairman and Premier, who shall preside over Executive Council meetings, and such other persons as the Lieutenant Governor, acting on the advice of the Premier, appoints.
- (3) The Lieutenant Governor shall appoint as chairman of the Executive Council and Premier the political party leader who, in the opinion of the Lieutenant Governor, would be best able to command the support of the Legislative Assembly.

5. Subject to this Act, the Lieutenant Governor shall be bound by the advice of the Executive Council to the same extent as the Lieutenant Governors of the provinces of Canada are by convention bound by the advice of their respective Executive Councils.
6. The Lieutenant Governor in Council shall adopt and provide a Great Seal of the Government of Yukon, and may, from time to time, change such Seal.
7. Unless and until the Lieutenant Governor in Council of the Territory otherwise directs, the seat of government of the Territory shall be Whitehorse.

LEGISLATIVE AUTHORITY

8. (1) There shall be a Legislature for the Government of Yukon comprising the Lieutenant Governor and One House, styled the Legislative Assembly of the Government of Yukon, and functioning as the Lieutenant Governor acting by and with the advice of the Legislative Assembly.
(2) The members of the Legislative Assembly shall hold, enjoy and exercise all the privileges, immunities and powers held, enjoyed and exercised by the legislative assemblies of the provinces of Canada immediately after the commencement of the Constitution Act, 1867.
9. (1) The Lieutenant Governor shall from time to time, by instrument under the Great Seal of the Government of Yukon, summon and call together in Her Majesty's name the Legislative Assembly to meet in a session of the Legislature.
(2) There shall be at least one session of the Legislature in every calendar year so that twelve months shall not intervene between the first sitting of the Legislative Assembly in one session and its first sitting in the next session.
(3) Every Legislative Assembly shall continue for five years from the date of the return of the writs for the general election (subject to being dissolved sooner by the Lieutenant Governor), and no longer.

10. The provisions referred to in section 90 of the Constitution Act, 1867, shall extend and apply to the Government of Yukon and its Legislature to the same extent and in the same way that they are stated in section 90 of the Constitution Act, 1867, to extend and apply to the provinces and their legislatures.
11. Subject to this Act, sections 92, 92A, 94A and 95 of the Constitution Act, 1867, shall extend and apply to laws of the Legislature to the same extent and in the same way that they extend and apply to the laws of the legislatures of the provinces of Canada.
12. The Legislature may make laws in relation to education, subject to the conditions that
 - (a) any law respecting education shall always provide that a majority of the ratepayers of any district or portion of the Territory, or of any less portion or subdivision thereof, by whatever name the same is known, may establish such schools therein as they may think fit, and make the necessary assessment and collection of rates therefor; and
 - (b) the minority of ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and in such case, the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they impose upon themselves in respect thereof.
13. (1) All laws of general application in force in the Territory are, except where otherwise provided, applicable to and in respect of Eskimos in the Territory.
 - (2) Subject to subsection (3), the Legislature may make laws for the government of the Territory, in relation to the preservation of game in the Territory, that are applicable to and in respect of Indians and Eskimos, and laws made by the Legislature in relation to the preservation of game in the Territory, unless the contrary intention appears therein, are applicable to and in respect of Indians and Eskimos.

- (3) Nothing in subsection (2) shall be construed as authorizing the Legislature to make laws restricting or prohibiting Indians or Eskimos from hunting for food, on unoccupied Crown lands, game other than game declared by the Governor in Council to be in danger of becoming extinct.
14. Subject to this Act, the laws and ordinances in force in the Northwest Territories on the 13th day of June, 1898 and the laws and ordinances in force in the Territory on [the date immediately prior to the proclamation of this Act] are and remain in force in the Territory, insofar as they are applicable thereto, and insofar as they have not been or are not hereafter repealed, abolished or altered by the Parliament of Canada, or by any law of the Legislature.
15. (1) Subject to subsection (2), in the event of any question of possible inconsistency between laws of the Legislature and laws of the Parliament of Canada, the general common law principles relevant to determining if provincial legislation is inconsistent with federal legislation and to determining the effect of any such inconsistency, shall be applied.
- (2) Laws of the Parliament of Canada shall not apply in relation to subject matter under the jurisdiction of the Legislature if that subject matter would be under the exclusive jurisdiction of a provincial legislature, unless the federal laws contain provisions declaring expressly that they are to operate notwithstanding the Yukon Act.

TERRITORIAL FINANCES

16. (1) All public moneys and revenue over which the Legislature has the power of appropriation shall form a fund to be known as the Yukon Consolidated Revenue Fund.
- (2) The Lieutenant Governor shall establish, in the name of the Government of Yukon, accounts with such chartered banks as he designates for the deposit of public moneys and revenue.

17. (1) Until such time as the population of the Territory exceeds one hundred thousand persons, the Government of Canada will continue, when necessary, to supplement the revenues of the Government of Yukon with an annual deficit operating grant and special capital funds, negotiated by the Government of Canada and the Government of Yukon.
 - (2) After such time as the population of the Territory exceeds one hundred thousand persons, any supplements from the Government of Canada to the revenues of the Government of Yukon will depend on negotiations between the two governments or on general federal-provincial agreements.
 - (3) For the purposes of section 17(1), revenues accruing to the Government of Yukon as a result of section 20(6)(a) of this Act will be deemed not to be revenues of the Government of Yukon.
18. When any sum of money is granted to Her Majesty by Parliament to defray expenses for any specified public service in the Territory, the power of appropriation by the Legislature over that sum is subject to the specified purpose for which it is granted.
19. (1) A report for each fiscal year of the Government of Yukon, called the Territorial Accounts, shall be forwarded to the Legislative Assembly by the Lieutenant Governor in Council on or before such day following the termination of the fiscal year as the Legislative Assembly may fix, and the Legislative Assembly shall consider the same.
 - (2) The Territorial Accounts shall be in such form as the Lieutenant Governor in Council may direct, and shall include
 - (a) a report on the financial transactions of the fiscal year;
 - (b) a statement, certified by the Auditor General of Canada, of the expenditures and revenues of the Territory for the fiscal year;

- (c) a statement, certified by the Auditor General, or assets and liabilities as at the termination of the fiscal year; and
 - (d) such other information or statements as are required in support of the statements referred to in paragraphs (b) and (c), or as are required by law or by the Minister of Indian Affairs and Northern Development.
- (3) The fiscal year of the Government of Yukon shall be the period beginning on the 1st day of April in one year and ending on the 31st day of March in the following year.
- (4) The accounts and financial transactions of the Government of Yukon shall be examined by the Auditor General of Canada and shall report annually to the Legislative Assembly the result of his examination, and the report shall state whether in his opinion
- (a) proper books of account have been kept by the Government of Yukon;
 - (b) the financial statements of the Government of Yukon
 - (i) were prepared on a basis consistent with that of the preceding fiscal year and are in agreement with the books of account,
 - (ii) in the case of the statement of expenditures and revenue, give a true and fair view of the expenditures and revenues of the Government of Yukon for the fiscal year, and
 - (iii) in the case of the statement of assets and liabilities, give a true and fair view of the affairs of the Government of Yukon at the end of the fiscal year, and

(c) the transactions of the Government of Yukon that have come under his notice have been within the powers of the Government of Yukon under this Act and any other Act applicable to the Government of Yukon;

and the Auditor General shall call attention to any other matter falling within the scope of his examination that in his opinion should be brought to the attention of the Legislative Assembly.

- (5) The Auditor General of Canada has, in connection with his examination of the Accounts of the Government of Yukon, all the powers that the Auditor General has under the Financial Administration Act in connection with the examination of the Accounts of Canada.
- (6) Notwithstanding the above subsections, in years in which the Government of Yukon requires no deficit operating grant from the Government of Canada, the audit of the Territorial Accounts may, at the discretion of the Lieutenant Governor in Council, be carried out by an auditor other than the Auditor General of Canada.

PROPERTIES

20. (1) The following properties, namely,
- (a) lands acquired before, on or after the 1st day of April, 1955 with territorial funds;
 - (b) public lands, the administration of which has before, on or after the 1st day of April, 1955 been transferred by the Governor in Council to the Lieutenant Governor;
 - (c) all roads, streets, lanes and trails on public lands; and
 - (d) lands acquired by the Lieutenant Governor pursuant to tax sale proceedings;

are and remain vested in Her Majesty in right of Canada, but the right to the beneficial use or to the proceeds thereof is hereby appropriated

to the Lieutenant Governor and is subject to the control of the Legislature; and any such lands, roads, streets, lanes or trails may be held by and in the name of the Lieutenant Governor for the beneficial use of the Territory.

- (2) After seven years after the date on which this Act comes into force, subsection (1) shall be repeated and replaced by subsections (3) to (5), inclusive.
- (3) (a) Subject to this section, the interest of Her Majesty in right of Canada in the following properties and interests, namely,
 - (i) all public lands within the Territory,
 - (ii) all waters and water powers within the Territory, and
 - (iii) all sums due and payable for such lands, or the interests or rights in or to the use of such waters or water powers shall belong to Her Majesty in right of Yukon, and shall be subject to the administration of the Government of Yukon.
- (b) The properties and interests to which paragraph (a) refers shall be known as territorial lands.
- (4) The interest of Her Majesty in right of Yukon in territorial lands shall be subject to any trust or any interest including a land claims settlement interest of the Yukon Indian people, other than that of the Crown, in the said lands.
- (5) Sections 108 and 117 of the Constitution Act, 1867 shall extend and apply to the provinces of Canada to which they refer.
- (6) Notwithstanding the provisions of the Canada Oil and Gas Act, 1981 but subject to alteration by agreement between the Government of Canada and the Government of Yukon

- (a) for seven years after the date on which this Act comes into effect, the Government of Yukon shall be entitled to one-third of the proceeds from any royalties or other fees levied by the Government of Canada on the extraction or other use of all mines and minerals, whether solid, liquid or gaseous, that may be found to exist within, upon or under public lands in the Territory;
- (b) after seven years after the date on which this Act comes into effect, the Government of Canada shall be entitled to one-fifth of the proceeds from any royalties or other fees levied by the Government of Yukon on the extraction or other use of all mines and minerals, whether solid, liquid or gaseous, that may be found to exist within, upon or under territorial lands; and
- (c) after three years after the date on which this Act comes into effect, the Government of Yukon shall be entitled to one-half of the proceeds from any royalties or other fees levied on the extraction or other use of all mines and minerals, whether solid, liquid or gaseous, that may be found to exist within, upon or under the seabed of the Arctic Ocean within the Yukon Maritime Zone.

CUSTOMS AND TAXATION

- 21. All articles of the growth, produce or manufacture of the Territory shall be admitted free into the provinces and any other territory, and all such articles of any of the provinces and any other territory shall be admitted free into the Territory.
- 22. Section 125 of the Constitution Act, 1867 shall extend and apply to territorial lands to the same extent and in the same way that it applies to lands and properties belonging to the provinces of Canada.

JUSTICE

- 23. Sections 96, 99 and 100 of the Constitution Act, 1867 shall extend and apply to the Territory to the same extent and in the same way that they apply to the provinces of Canada.

24. The Lieutenant Governor in Council shall appoint an Attorney General for Yukon whose rights, powers and privileges shall not exceed those of the Attorneys General of the provinces of Canada.

YUKON MARITIME ZONE

25. The Government of Yukon shall exercise such jurisdictional and administrative responsibilities and enjoy such beneficial uses with respect to the Yukon Maritime Zone as is specified in this Act or determined by agreement between the Government of Canada and the Government of Yukon.

GENERAL

26. The Yukon Act, R.S.C. 1970, c.Y-2, as am., is hereby repealed.

TRANSITIONAL

27. [Not drafted].

* * * * *

[Note: This draft does not include the list of consequential amendments which will also have to be made to other federal legislation].

SCHEDULE I

The Yukon Territory shall be bounded as follows: On the south, by the Province of British Columbia and the State of Alaska; on the west by the said State of Alaska; on the north, by a line coterminous with the territorial sea of Canada in that part of the Arctic Ocean called Beaufort Sea; and on the east by a line beginning at the intersection of the north boundary of British Columbia with a line passing through a boundary pipe post set in concrete, trench and mound, numbered 600, planted by the British Columbia-Yukon-Northwest Territories Boundary Commission approximately 1 chain westerly of the left bank of the Liard River, said line having a bearing of 309° with reference to the meridian through said post; thence northwesterly along said line to a point on the line of watershed separating the streams flowing into the Liard River below the La Biche River or into the Mackenzie River from those flowing into the La Biche River, or into the Yukon River; thence northwesterly along said line of watershed to the line of watershed of the basin of Peel River; thence northerly along the line of watershed between the Peel and Mackenzie Rivers to the sixty-seventh degree of north latitude; thence westerly along the parallel of the sixty-seventh degree of north latitude to the line of watershed between the Peel and Yukon Rivers; thence northerly along the said line of watershed to the trail across the portage in McDougall Pass between Rat and Bell Rivers; thence due north to the northern limit of the Yukon Territory; the said Territory to include the islands within twenty nautical miles from the shores of the Beaufort Sea and the territorial seas of these islands as far as the aforesaid due north line from McDougall Pass.

SCHEDULE II

The Yukon Maritime Zone shall be bounded as follows: On the south, by the north boundary of the Yukon Territory; described in Schedule I, above; on the west by the northern prolongation of the boundary between the Yukon Territory and the State of Alaska; on the north by a line extending to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured; and on the east by a line at one hundred and thirty-six degrees, twenty-eight minutes west.

NOTE ON PROPOSED REVISED YUKON ACT

(a) General Comments

The objective of the proposed revised Yukon Act contained in Appendix C is to help put the legislative, executive and judicial branches of the Government of Yukon into a constitutional position which is as close as possible to that of the Canadian provincial governments. Once all the provisions of the revised Act have been implemented, the only remaining steps toward full provincial status will be legislative supremacy within the limits of territorial jurisdiction, and formal admission into Confederation as a province.

One of the most significant features of the Act is to transfer Yukon natural resources to the Government of Yukon. The Act provides for (a) a "section 46"-type transfer during an initial period; (b) a general transfer of ownership and control after the initial period; (c) federal-territorial subsurface revenue sharing during and after the initial period; and (d) federal-territorial subsea revenue sharing in respect of a newly created Yukon Maritime Zone.

A second major feature of the Act is to give statutory recognition to the principle of responsible government. In keeping with traditional British constitutional practice, this recognition is brief, and does little more than give formal acknowledgement to a process which will have been achieved by non-statutory means. Nevertheless, because responsible government is a relatively recent phenomenon in Yukon, there is somewhat more specific reference in this Act than in the Constitution Act, 1867 to some of the basic elements of responsible government, so as to provide guidance which may be lacking in local precedent.

A third major feature of the Act is to give to the Government of Yukon the same scope of legislative jurisdiction as is exercised by the provincial governments. This includes the grant of power in relation to the management and sale of public lands referred to above, a power to amend the territorial constitution except in relation to the office of Lieutenant Governor, and a power shared with the federal government in relation to immigration.

Most of the remainder of the Act makes various individual changes to the legislative, executive, and judicial branches of the Government of Yukon to bring them closer to those of the provincial governments.

(b) Specific Comments on Individual Provisions

1. general format of changes: Because of the number of changes proposed to the existing Yukon Act, it was thought preferable to have it repealed altogether and replaced by the Act here, rather than altered piecemeal through a number of individual amendments (see also comment on new section 26).
2. preamble: The existing Yukon Act has no preamble. It was thought that the inclusion of a short preamble would assist in the interpretation of the general intention of the revised Act by summarizing its intended purpose.
3. section 2: It was thought that with the achievement of full responsible government, the statutory terms "Commissioner" and "Commissioner in Council" are no longer appropriate; they are replaced with "Lieutenant Governor" and "Legislature" respectively. The term "Executive Council" designates the cabinet formerly informally known as the Executive Committee. The new term "Lieutenant Governor in Council" is introduced to designate executive actions of the Lieutenant Governor acting on the advice of the cabinet. The reference to "Premier" has analogies in provincial constitutions. The substitution of "Legislative Assembly" for "Council" reflects the fact that this body is indeed a legislative assembly. "Government of Yukon" gives a short statutory title to the government of the Yukon Territory and confirms that the Yukon Territory does have a formal government as such. The repeal of existing section 12 respecting the Advisory Committee on Finance and of existing section 48 respecting intoxicating liquors renders definitions of these terms unnecessary. The Supreme Court of the Yukon Territory and the Minister of Indian Affairs and Northern Development do not appear frequently enough in the new Act to merit special definition. The "Yukon Maritime Zone" is defined in Schedule II to the Act. Section 20(6)(c) provides for subsea resource revenue sharing within this Zone. Section 25 provides a statutory framework for agreements going beyond the provisions in section 20(6)(c).

4. section 3: Although it would have been possible to describe the nature of the office of Lieutenant Governor specifically, it was felt that it would be more appropriate in a government seeking ultimate provincial status to describe the nature of the office by reference to that created in the Constitution Act, 1867 for the Lieutenant Governor. Incorporating by reference the brief provisions of the Constitution Act, 1867 has the additional advantage of avoiding excessive detail which could cause undue rigidity and prevent the adoption and development of the appropriate constitutional conventions. Sections 58, 59, 60, 61, 62 and 67 of the Constitution Act, deal respectively with the appointment (58), tenure (59), salaries (60), and oaths (61) of Lieutenant Governors, and with their temporary replacements (62) and (67). For greater certainty, section 3(2) confirms that the status of the Yukon Lieutenant Governor is comparable to that of a provincial Lieutenant Governor, a situation which will have been achieved in practice if full responsible government is in place before the revised Act is passed. With the passage of the revised Act, the instructions referred to in existing section 4 would emanate on a non-statutory basis from the Governor General, as is the case for the provincial Lieutenant Governors.
5. sections 4 and 5: These provisions put the existing Executive Council on a statutory basis, outline briefly the manner in which it is created, and indicate that the relationship of the Lieutenant Governor to his Executive Council is to be comparable to that of the provincial Lieutenant Governors and their Executive Councils. These provisions combined with section 4, are slightly more detailed than the corresponding provisions relating to the operation of responsible government in the provinces. It was felt that somewhat more guidance would be useful in the case of the Yukon, where responsible government has not been in place for a long time. Nevertheless, the provisions have been kept as brief as possible in order to provide maximum scope for the reception and development of constitutional conventions in this area.

6. section 6: Uses of this formal instrument of the Lieutenant Governor would include the summoning of the Legislative Assembly to meet in a session of the Legislature.
7. section 7: Cf. section 68 of the Constitution Act, 1867. The existing section 8 of the Yukon Act leaves the location of the seat of government of the Territory to the discretion of the Governor in Council.
8. section 8: Section 8(1): cf. sections 69 and 71 of the Constitution Act, 1867. Section 8(2): the Legislative Assembly has for some time claimed the privileges vested in an elected legislative body by virtue of the common law; section 8(2) would confirm these privileges on a statutory basis and define them by reference to the privileges of the provincial legislative assemblies. The restrictions on the size of the Council in existing section 9.1 (not fewer than 12 members and not greater than 20) have been removed for the Legislative Assembly.
9. section 9: The duration of Legislative Assemblies is extended from four years to five, on the model of provincial legislative assemblies; the power to grant dissolution is transferred from the Governor in Council to the Lieutenant Governor. Note that existing section 12 respecting the Advisory Committee on Finance is repealed, as this institution is incompatible with the principle that the management and direction of the finances of the Government of Yukon should be the responsibility of the Executive Council under the Premier. The existing provisions regarding oaths of office and allegiance (s.10); the Speaker (s.12.1); quorums (s.13); qualifications of electors and candidates and reasons for disqualification of elected representatives (s.14); and indemnities (s.15) are all repealed: these can be provided for in territorial legislation enacted pursuant to the revised Yukon Act.
10. section 10: Under this section, the provisions of the Constitution Act, 1867 relating to appropriation and tax bills (ss.53 and 90); the recommendation of money votes (ss.54 and 90); the assent to bills (ss.55 and 90); the

disallowance of Acts (ss.56 and 90) and signification of pleasure on bills reserved (ss.57 and 90) in regard to the provinces and their legislatures, also apply to the Government of Yukon and its Legislature. The incorporation of these statutory provisions affecting the provinces should facilitate the application of the relevant constitutional conventions (e.g., the negative convention of non-use in regard to the disallowance power) to legislation of the Government of Yukon.

11. section 11: This gives to the Legislature of the Government of Yukon the same scope of legislative jurisdiction (except in regard to education, which is dealt with separately) as the provincial legislatures. Among the more significant legislative additions effected by this section are power in relation to the management and sale of public lands (s.92(5) of the Constitution Act, 1867); the amendment of the constitution of the territory (province) except in regard to the office of Lieutenant Governor (s.92(1) of the Constitution Act, 1867); and (concurrent with the federal Parliament) immigration (s.95 of the Constitution Act, 1867). Section 11, together with the repeal of existing section 16, also puts an end to a number of provisions which were similar in intent to their provincial counterparts in section 92 of the Constitution Act, 1867 but different in wording. The opening phrase of section 11 of the new Act, "Subject to this Act", makes allowance for special constraints on legislative jurisdiction still remaining in the Yukon Act, and for section 15(2) of the Act which reflects the subordinate nature of territorial legislation as compared to federal legislation.
12. section 12: Because the provisions regarding education in the provinces are not standard, it was thought advisable to continue the special provisions regarding territorial power in relation to education in substantially the same form as in the existing Yukon Act.
13. section 13: This section continues and consolidates the special existing sections of the Yukon Act (ss.17(2), 17(3), and 22(2)). It is comparable although not identical to corresponding provisions in the Natural Resources Transfer Agreements for Alberta, Saskatchewan, and Manitoba.

14. section 14: Cf. existing section 22(1) of Yukon Act.
15. section 15: There is a need to strike some balance between the fact that Government of Yukon will possess legislative powers which are provincial in scope but still subordinate in status to legislation of the Parliament of Canada. Section 15(1) enables the courts to take advantage of existing common law paramounting rules for normal cases of conflict between federal and territorial legislation. However, until such time as the Government of Yukon is supreme within its legislative boundaries, the federal Parliament cannot be prevented from legislating in areas of territorial legislative competence if it so chooses. Nevertheless, the federal Parliament can lay down a general "statement of intent" to guide courts in interpreting federal statutes which might appear to invade territorial jurisdiction. Section 15(2) indicates that such invasions are to be construed as intentional if the relevant federal statute declares specifically that it is to operate notwithstanding the Yukon Act. By implication, federal subordinate legislation and federal legislation lacking a specific notwithstanding provision would not normally be construed as intending any such invasion.
16. section 16: Section 16(1): cf. existing section 23(1) of Yukon Act and section 126 of Constitution Act, 1867. Section 16(2): cf. existing section 23(2) of Yukon Act.
17. section 17: Although the constitutional development of Yukon should not be tied rigidly to changes in its financial situation, it is reasonable, nevertheless, that the Government of Yukon ultimately assume greater fiscal responsibility for balancing its own revenues and expenditures. On the other hand, it is conceivable that for some time after it has acquired full ownership and control over its natural resources, and probably even for some time after full provincehood, the Government of Yukon may require annual deficit operating grants similar to those received at present. Recognition for the need for a special financial relationship with the federal government is also contained in

the federal audit provisions of section 19 and the resource-sharing provisions of section 20 of the new Yukon Act. Although the one hundred thousand population figure is an arbitrary one, it was thought that at this figure, revenues from territorial income tax could become significant in relation to the overall territorial budget. For a comment respecting section 17(3), see the note on section 20(6) (a).

18. section 18: Cf. existing section 25 of Yukon Act.
19. section 19: It was thought that as long as the federal government is defraying an annual territorial deficit, the Territorial Accounts should be examined by the Auditor General of Canada as under the existing Yukon Act. However, in years for which there is no annual territorial deficit, the Government of Yukon should be able to select its own auditor: provision is made for this in section 19(6).
20. section 20: Section 20(1) is almost identical to section 46 of the existing Yukon Act, with changes in terminology to reflect the institutions of responsible government referred to in the new Act. Section 20(1) would be in effect for the first seven years of the operation of the new Act. The reasons for this transitional period are to accommodate the Yukon Indian settlement interest protections and land use planning provisions contained in Appendix B. Additional settlement interest protection which would apply beyond this transitional period is contained in section 20(4). In the event that the transitional period expired before land use plans had been developed for all areas of Yukon, the Government of Yukon could agree to postpone alienations in the remaining areas until the adoption of the relevant land use plans. The general transfer provision in section 20(3) is modelled on some of the corresponding provisions of the Natural Resources Transfer Agreements of 1930. Section 20(4) is similar to the proviso at the end of section 109 of the Constitution Act, 1867, but gives specific recognition to settlement interests of the Yukon Indian people in the relevant lands. The federal works and property in Yukon which are reserved to the federal government by virtue of section 20(5) of the proposed Act are:

1. canals, with lands and water power connected to them;
2. public harbours;
3. lighthouses and piers;
4. steamboats, dredges, and public vessels;
5. rivers and lake improvements;
6. railways and railway stocks, mortgages, and other debts due by railway companies;
7. military roads;
8. custom houses, post offices, and all other public buildings, except such as the Government of Canada appropriate for the use of the Yukon Legislative Assembly and Government of Yukon; and
9. any lands or public property which the Government of Canada requires for fortifications or for the defence of Canada.

Section 20(6)(a) provides for a transitional subsurface resource-sharing arrangement between the federal and territorial governments. For seven years after the coming into effect of the revised Yukon Act, the Government of Yukon will be allotted one-third of the subsurface revenues from public lands in Yukon. In order that these revenues may be applied directly to assist the Yukon Government to prepare for its additional resource responsibilities at the end of the seven year period, they will not be considered to be "revenues of the Government of Yukon" for the purposes of calculating federal deficit funding: see section 17(3). After the general transfer to Government of Yukon at the end of the seven year period, it is proposed in section 20(6)(b) that the federal government be allotted a one-fifth share of subsurface revenues from public lands in Yukon. This share would reflect the fact that continued federal administrative support and general deficit funding will likely be required throughout the constitutional development period. The subsea

resource sharing arrangement in section 20(6)(c) would come into operation at a relatively early time: three years after the Act comes into effect. The revenues resulting from the operation of this provision would be considered "revenues of the Government of Yukon" for the purposes of calculating federal deficit funding and, over a period of time, could significantly reduce Yukon dependence on this funding. Resources under the Arctic Ocean but within the territorial sea would be considered part of the Yukon Territory and would be subject to section 20(6)(b) rather than section 20(6)(c).

21. section 21: Cf. s.121 of Constitution Act, 1867.
22. section 22: The effect of this provision is to render property of the Government of Yukon immune from taxation by the federal government, just as provincially owned property is immune from taxation by the federal government.
23. section 23: This section replaces existing sections 26.1; 27(2); 29; 32; 33(2); 35(5); 36; 38; and 41(3) of the Yukon Act. Section 96 of the Constitution Act, 1867 provides for federal appointment of the judges of the superior, district, and county courts in a province; section 99 governs the tenure and retirement age of superior court judges; and section 100 of the Constitution Act, 1867 provides that the salaries of superior, district, and county court judges shall be fixed and provided for by the Parliament of Canada.
24. section 24: The Government of Yukon at present lacks an Attorney General of its own. This section will permit prosecutions for Criminal Code and territorial offences to be directed by an Attorney General for Yukon.
25. section 25: This is an enabling provision facilitating future administrative, beneficial use, and revenue transfers to the Government of Yukon in the Yukon Maritime Zone.
26. section 26: The repeal of the Yukon Act would permit the introduction of the twenty-eight sections and new Schedule of this revised Act. It would

also put an end to many individual provisions which are anachronistic or are more appropriately objects of Yukon jurisdiction. Examples include the provisions in the last part of the existing Yukon Act which deal with confinement of prisoners; reindeer; intoxicants; mentally disordered persons; neglected children; archaeological sites; offences and penalties; and export of gold.

27. section 27: A provision maintaining the force of unrepealed ordinances was included in section 14. However, other transitional provisions will be necessary to ensure continuity with the Yukon Act, R.S.C. 1970, c.Y-2, as am. Some of the individual sections above may require modification to ensure this. For example, one transitional provision might provide that a statutory reference to the "Council" under the Yukon Act, R.S.C. 1970, c.Y-2 shall be deemed to be a reference to the "Legislative Assembly" under the revised Act. Consequential amendments will also have to be made to other federal legislation.
28. schedule: The description of the Yukon Territory is amended to clarify its northern boundary and to extend this boundary to the outer edge of the territorial sea. The northern boundary of the Yukon Maritime Zone follows the northern boundary of the Canada Lands described in the Canada Oil and Gas Act. It should be noted that the baselines for measuring the precise location of Canada's twelve-mile territorial sea in this area have not yet been charted: this should be done as soon as possible.

