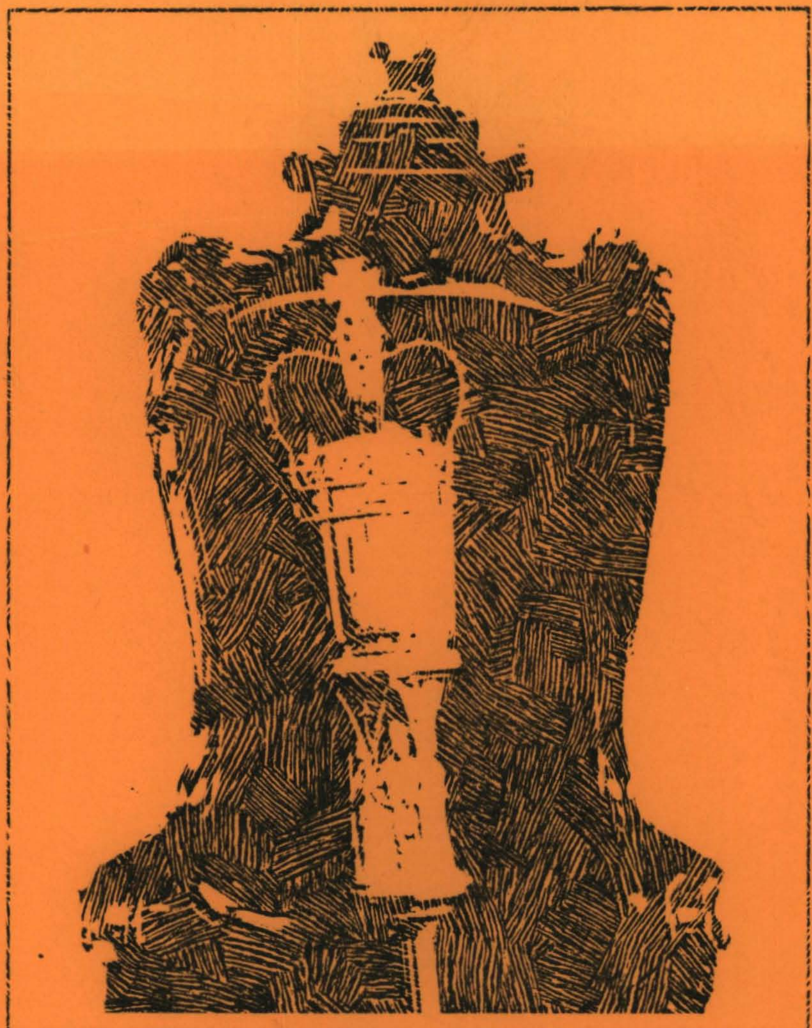

Financial Aspects of Constitutional Development in Yukon

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FINANCIAL ASPECTS OF

CONSTITUTIONAL DEVELOPMENT IN YUKON

Mel Foster

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Summary and Conclusions

A DIAND discussion paper of October, 1978 provides a detailed study of the status quo of federal-territorial financial relations. This emphasis upon the status quo overlooks the evolutionary nature of these relations and the discussion paper fails to recognize that Yukon is well on its way to an independent relationship with the federal Department of Finance and Treasury Board.

Review of federal funding alternatives in the DIAND discussion paper shows that a provincial rate of increase approach (Alternative #2) is most desirable for Yukon if applied in a flexible manner. However, the suggestion that Yukon enter the commercial loan market for capital funds is premature and this step should occur as a final stage of evolution in federal-territorial financial relations.

A 1977 Proposed Yukon Act endorsed by the legislature is incomplete and is not a satisfactory basis for constitutional development in financial matters. The entries of Alberta and Newfoundland into the Canadian Confederation have scant relevance for Yukon and instead concentration upon preserving present financial arrangements is strongly recommended.

A March, 1979 Government of N.W.T. proposal is also incomplete as it fails to face up to the realities of their deficit position. Recommended multiyear funding appears to have little practical validity for annual deficit funding in respect of operations and maintenance expenditures although an appropriate mechanism for capital fund transfers.

From a Yukon perspective irksome or frustrating aspects of past and present financial arrangements should not be allowed to obscure the existing reasonably generous level of federal support to the territory. This level of support must be retained and that basic objective must be pursued rather than false analogies with other new provinces.

The considerable deficit position of the Government of Yukon for the foreseeable future must be clearly recognized and acknowledged. Natural resource revenues or transit pipeline taxation offer no realistic alleviation of the deficit position. In these circumstances preservation of existing federal funding levels is even more essential.

A concluding chapter includes a draft outline of financial provisions designed to formalize existing federal support levels. Specific factors relevant to a Province of Yukon are incorporated in the draft provisions. Financial constitutional development on the lines of these proposals will enable a Province of Yukon to commence on a reasonable financial footing.

1. Overview of DIAND Discussion Paper

a. Introduction

The topic of revised federal-territorial financial relations is considered at some length in a recent Department of Indian Affairs and Northern Development study.[1] The DIAND discussion paper focuses on the status quo but nevertheless provides a useful starting point for a broader consideration of this most critical aspect of constitutional development in Yukon. The DIAND paper recognizes the emerging political input by elected representatives into financial matters at the territorial level but only within the framework of an unchanging, dominant role fulfilled by DIAND,

> "The federal officials would meet as an interdepartmental committee to prepare detailed advice for the Minister, DIAND, who would then meet with the territorial politicians on a 'government to government' basis to reach the broader agreements on federal funding."[2]

This internal view of matters on the part of DIAND fails to recognize that, as the northern territories evolve toward provincial status, the territories automatically begin to deal directly with and on more of an equal footing with the federal Department of Finance and Treasury Board, with consequent inevitable lessening of the dominant role of DIAND. This automatic shifting between the parties to fiscal negotiations is sketched overleaf in Schedule 1 and outlined in the following section.

b. Evolution of Financial Relations

To fully appraise the status quo of federal-territorial financial relations it is necessary to briefly consider the prior nature of

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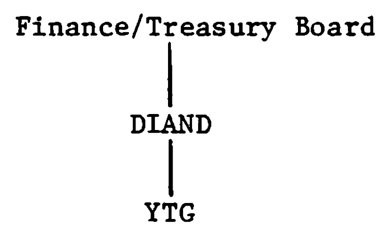
1. "Federal/Territorial Financial Relations", DIAND, Ottawa, June 28, 1978.
2. Ibid.,page 17.

Schedule 1

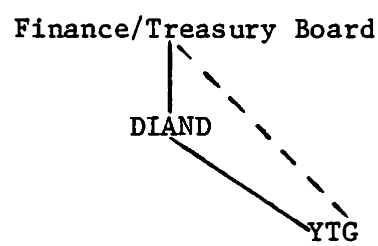
Evolution of Financial Relations

Yukon-Federal Government

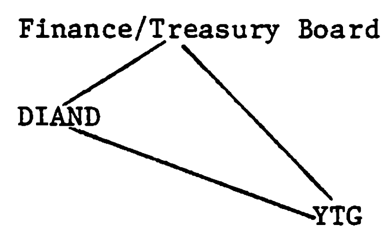
1. Departmental



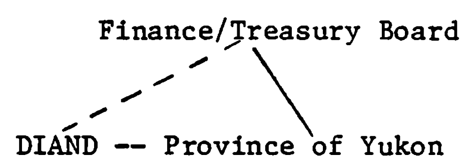
2. Semi-Responsible Government



3. Responsible Government



4. Provincial Status



these relations and, most importantly, the ultimate evolution of federal-territorial financial relations. Schedule 1 sketches in simplified, abstract fashion the various stages of financial relations between the federal and Yukon governments.

Stage 1 is termed "departmental" and recognizes that prior to the political evolution of recent years the administration of the Yukon Territory constituted by and large a departmental function of DIAND. At this stage Yukon had little if any input into budgetary negotiations with the federal Department of Finance and Treasury Board and was entirely a sub-section of DIAND.

The large strides towards responsible government in Yukon during the early and mid 1970's are recognized in Stage 2. Under what may be characterized "semi-responsible government" the Government of Yukon has achieved recognition as a participant in the budgetary bargaining process. While still under formal DIAND direction some measure of independence and responsibility in the financial process has been established in recent years.

Stage 3, "responsible government", illustrates the situation that is currently emerging. While still something of a junior partner the Government of Yukon approaches a more equal footing with the other parties in the financial negotiations. Although federal financial transfers are still nominally routed through DIAND, in actual fact Yukon is gaining an amount of autonomy in financial negotiations consistent with its actual financial strength and resources.

The reality of DIAND's diminishing role as responsible government comes into effect in Stage 3 is amply documented within the discussion paper,

> "While no new or formal status has been conferred on the (intergovernmental) committee, records of its more recent proceedings indicate that it has assumed much increased authority, and that the Treasury Board representative is carrying the principal responsibility for deciding the level of federal grants in line with current federal spending policies. Its decisions now appear to be reached largely through bargaining procedures which produce a compromise between territorial demands and federal (Treasury Board) willingness to provide funds. The committee's review of the overall territorial financial position, territorial revenues, and other factors which would indicate the level of territorial need and justify the level of federal funding in response to that need appears to receive much reduced attention than previously".[3]

Provincial status (Stage 4) brings direct transfer of federal funding under financial arrangements for the creation of a Province of Yukon. At this stage DIAND's role is reduced to a purely advisory one and this end result must be recognized as the inevitable outcome of the evolutionary process which is well underway in respect of financial relations between Yukon and Canada.

Before this final stage is actually reached it is important to recognize in outline the overall process so that the specifics of that process can be related to the total picture and the inevitable final stage. The DIAND study does not venture beyond the confines of the status quo and consequently fails to recognize the much broader implications of recent and pending shifts in the arrangements under which federal-territorial financial relations are

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3. Ibid., page 3.

conducted between the respective parties. While it obviously was not the intent of the DIAND study to detail this overall pattern, to ignore the total process entirely fails to take into account the full dynamics of these shifting relationships.

c. Basic Objectives

The evolution of financial relations between the Yukon and federal governments may also be viewed in terms of the basic objectives of DIAND as set out in the discussion paper,

"a) to arrange federal funding of territorial governments on an orderly and justifiable basis in line with changing federal and territorial responsibilities under the Yukon and N.W.T. Acts;

b) to foster increased financial responsibility and independence by the territorial governments in keeping with their constitutional development".[4]

Part a of the above objectives may be said to correspond to the departmental and semi-responsible government stages of evolution sketched in the preceding section. The increased financial responsibility and independence referred to in part b of the objectives parallel the responsible government and provincial status stages in the evolution of financial relations between Yukon and the federal government described previously.

While the stated DIAND objectives are uncontroversial in content, a dichotomy does exist between Parts a and b. Part a refers to changing

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4. Ibid., page 2.

federal and territorial responsibilities in terms of the Yukon Act, implying a maintenance of the status quo in the absence of revision of the statutory provisions presently in force. In contrast part b emphasizes increased territorial responsibility and independence which clearly indicates a trend away from the status quo situation of part a towards the responsible government and provincial status stages of the evolution of financial relations between Yukon and Canada.

Thus DIAND's basic objective under Part a must be deemed inadequate or inapplicable in a changing situation such as at present. It is the basic objective under Part b which must predominate in order to adequately meet the existing and emerging circumstances of steadily increasing responsibility and independence on the part of Yukon in its financial affairs

2. Federal Funding Alternatives

a. Introduction

Turning from the broader aspects of the DIAND discussion paper dealt with in the previous chapter it is pertinent to consider in detail the funding alternatives for Yukon which are outlined in the DIAND paper. The existing problem is stated as follows,

> "at present, no agreed procedure is being followed. For 1978-79 and 1979-80, the territorial governments prepared their submissions on the basis of the Fiscal Framework approach (see alternative #1) but the Intergovernmental Committee recommended federal grants based on the Treasury Board scale of percentage increase which has no direct reference to the territorial requests. A more consistent and rational procedure is needed to maintain the credibility of the federal/territorial financial agreements."[1]

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1. *Ibid.*, pages 1 - 2.

The discussion paper includes four funding alternatives - fiscal framework, provincial rate of increase, federal rate of change and GNP rate of increase. Advantages and disadvantages of each alternative are scheduled and a choice is made of the preferred alternative. It is appropriate to review the foregoing exercise from a Yukon viewpoint and the alternatives and the expressed preference are considered in turn in the following sections. Capital funding is an important, integral part of the arrangements for federal funding and a separate section is devoted to ramifications of the alternatives in regard to making capital funds available to Yukon.

It should be emphasized that the topic of federal funding alternatives is concerned with the methodology of funding rather than the determination of levels of funding - generous, reasonable, restrictive, onerous, etc. This latter prime aspect of federal funding is taken up in Chapter 5.

b. Fiscal Framework

As noted above the fiscal framework approach has been in use in recent years for territorial submissions of funding requirements to the federal government. The fiscal framework approach isolates "factors of change" which justify additional and increased territorial operating requirements which are added to the existing base of total expenditures to determine a new base for the following fiscal year.

The DIAND discussion paper notes the several disadvantages of the fiscal framework approach,

" - no justification for amount of operating grant ...
- requires committee scrutiny of level of territorial revenues
- no recognition of changing territorial responsibilities
- not suitable to negotiation at political level."[2]

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2. *Ibid.*, page 9.

Clearly the fiscal framework approach has outlived its usefulness. As the northern territories enter the responsible government stage of constitutional development the financial straitjacket of the fiscal framework must be set aside. With the territorial government and the federal Treasury Board advocating a change, for however different reasons, DIAND caught somewhere in the middle must move to accommodate these reasonable calls for revision of federal funding procedures. The fiscal framework approach was adequate at the departmental stage of territorial-federal financial relations, less so entering the semi-responsible government stage and, as the territories move towards responsible government and provincial status, a different financial arrangement is required.

c. Provincial Rate of Increase

Alternative #2 in the DIAND discussion paper has obvious appeal on the general ground that it provides treatment as a province to the territories. Appendix E to the discussion paper compares rates of increase in the provinces with Yukon. These data suggest that Yukon percentage increases are in line with provincial rates although Yukon increases show a greater fluctuation over the past several years. Thus Alternative #2 has obvious merit from an overall standpoint.

In contrast to Appendix E, Appendix D shows a rather different situation. Using the 1972 fiscal year as a base period Appendix D projects operating grants on a provincial rate of increase basis and compares the projection with actual data. By fiscal 1980 provincial-style grants have fallen markedly behind actual grants - $39.1 million versus $50.6 million - from a virtually equal starting point eight years earlier.

The above projected shortfall in the operating grant is largely explainable by the use of a low expenditure base period, fiscal 1972.

However, this type of projection clearly illustrates the inherent shortcomings of any fixed formula and the distinct need for genuinely flexible arrangements for financing operating deficits for Yukon.

The definite requirement for flexibility in the application of the Alternative #2 formula cannot be overemphasized. Various situations will make exceptions to strict application of the formula mandatory. For example, territorial takeover of federal programs with considerable budgets such as the Yukon Forest Service will occasion a permanent upward adjustment in the annual deficit. Other adjustments will be necessitated by natural disasters, major developments etc. The DIAND discussion paper recognizes the latter factors within its text but as a practical matter these significant adjustments need to be built into any formula which is to fully serve its intended function. This approach is adopted in the framing of financial constitutional proposals in the concluding chapter of this paper.

The key provision under Alternative #2 is that, having determined an Operations and Maintenance expenditure level for the coming fiscal year, a negotiated percentage representing the agreed federal share is applied to that expenditure level to determine the federal operating grant. The balance of the O & M expenditure level must be met by territorial revenues and the respective legislatures are then free to determine the exact composition of their revenues. The distinct step forward under this provision is the formalization of a negotiated political agreement between the territory and federal government (with the appointment of an elected territorial Minister of Finance representing a key additional step in this process). The ending of direct scrutiny of territorial revenues by federal officials is an added evolutionary aspect of Alternative #2.

A highly significant advantage of Alternative #2 is that it allows for, "higher territorial per capita costs (Yukon 122%, N.W.T. 179% in 1978) built into base".[3] This inclusion constitutes a clear recognition of the inevitably higher costs of government services in the sparsely-populated and huge northern territories. As some higher level of costs in the north is a permanent and continuing facet of government operations it is entirely appropriate that this recognition be incorporated in the formula for federal funding assistance.

d. Other Rates of Increase

Before considering some wider implications of Alternative #2 the remaining alternatives in the DIAND discussion paper must be considered. Alternative #3 utilizes the federal rate of change and Alternative #4 the GNP rate of increase.

Alternative #3 would apply a federal Treasury Board guideline percentage increase to the existing level of territorial O & M expenditures. This alternative would represent a large step backwards with Yukon reclassified as a department of the federal government, the exact opposite of measured progress towards an independent status and eventual provincial status. Alternative #3 can reasonably be rejected out of hand at the territorial level.

Alternative #4 suffers the fundamental weakness that there is no necessary correlation or comparability between the national economic growth rate as measured in the Gross Natural Product and the level of requirements for government services in Yukon. The provincial rate of increase in government spending is obviously a considerably more appropriate parallel for territorial financing arrangements than either Treasury Board guidelines or GNP growth rates.

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3. *Ibid.*, page 10.

With respect to Operations and Maintenance funding, the conclusion of the DIAND discussion paper can be readily endorsed,

> "reasonable criteria must be used to determine the level of federal funding. Territorial financial requirements are becoming more closely identified with provincial government responsibilities and patterns of spending and a guideline based on provincial experience would be preferable to an adaptation of the guidelines used for federal departments".[4]

e. Capital Funding

All federal funding alternatives involve capital funding as well as O & M funding and it is useful to segregate for separate review the important topic of capital funding. Yukon presently lacks the capability to raise capital funds on its own account leaving the territory wholly dependent upon the federal government in this regard. This current reality forms the backdrop for any review of capital funding alternatives.

Schedule 2 overleaf summarizes the capital funding alternatives as stated in the DIAND discussion paper. The provisions under "Capital" show #2 and #4 to be variations upon the existing #1, with #3 the clearly unsatisfactory substitution of an automatic federal guideline percentage increase. The provisions under "Loan Capital" indicate an either/or choice between federal and commercial loans but subject to federal approval, and presumably federal guarantee, in all cases.

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4. *Ibid.*, page 7.

[illegible]dul[illegible]

CAPITAL FUNDING ALTERNATIVES

Alternative	Capital	Loan Capital
#1 - Fiscal Framework	- Minor capital increased per Construction Price Index - Major capital (over $1 million) justified on individual project basis)	- Federal funds with Governor in Council approval.
#2 - Provincial Rate of Increase	- Replacement capital increased on formula basis - Minor capital increased per Construction Price Index - Major capital (over $1 million) justified on individual project basis within five-year forecast	- Commercial loans with Governor in Council approval.
#3 - Federal Rate of Change	- Current year grant times Treasury Board guideline percentage equals new year federal capital grant	- Federal funds with Governor in Council approval.
#4 - GNP Rate of Increase	- Minor capital increased per Construction Price Index - Major capital (over $1 million) justified on individual project basis within five-year forecast.	- Either federal or commercial loan funds with Governor in Council approval.

Source - "Federal/Territorial Financial Relations", DIAND, Ottawa, June 28, 1978.

In respect of capital funding the significant proposed innovation is the inclusion of a five-year forecast framework. This addition is an appropriate one although it may take a considerable period of time and more stable economic conditions before this planning tool becomes particularly effective. In an era of mammoth development project proposals in the Canadian north, little of which actually come to pass, any five-year forecast must incorporate numerous assumptions and be subject to inaccuracy due to various factors.

One key change desirable at the present time is elimination of the following situation:

> "There appears to be further inconsistency in that the Treasury Board retains the right to withhold approval for the Commissioner to let contracts for major capital projects for which funds have been voted in territorial estimates."[5]

In operational terms the above restriction causes avoidable delays and uncertainties in calling tenders for the brief northern construction season, tends to increase costs and can delay projects until the next year. In constitutional terms the restriction intrudes upon the independence of the territorial legislatures and delays, when deemed necessary, should result from inter-governmental negotiation and agreement rather than federal decree.

While Alternative #2 is generally desirable in respect of O & M expenditures it is not necessarily appropriate for loan capital. Commercial loans even with a federal guarantee would incur slightly

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5. Ibid., page 4.

higher interest rates. An extra one-eighth or one-quarter of a percentage point of the interest rate represents a considerable added cost over the life of a long-term loan. For a fledgling province or a territory achieving the stage of responsible government added burdens of this type would be particularly onerous and are to be avoided if at all possible. As a practical matter the suggestion of commercial loans for Yukon must be deemed premature for the foreseeable future.

As with O & M funding the conclusions of the DIAND discussion paper regarding capital funding can be readily endorsed,

> "Guidelines or annual percentage increases in capital funding cannot be expected to cope with the fluctuating capital requirements of the territorial governments for major projects. A combination of formula control for minor capital and project by project review of major capital items would appear to be the fairest and best understood approach".[6]

Some wider aspects of capital funding are discussed in Chapter 5. Before turning to approaches to a financial agreement for a Province of Yukon it is pertinent to consider alternative funding proposals and an approach endorsed by the previous Yukon legislature is the subject of the next chapter.

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6. Ibid., page 7.

3. Precedents for Funding New Provinces

a. Introduction

It has been suggested that the most recent entries into the Canadian Confederation provide precedents for federal funding of a Province of Yukon,

> "18.(1) Financial guarantees or compensation to the Province of Yukon (shall be negotiated on a similar basis as provided by Sections 18, 19 and 20 et seq. of the Alberta Act, 1905).
>
> (2) In addition to those financial guarantees or compensation mentioned in subsection (1), a ten-year start-up grant of $__________ shall be provided to the Province of Yukon. (Similar to that as provided by the Government of Canada to the Province of Newfoundland)."[1]

Some detailed review of the contentions embodied above is appropriate and the following sections critically examine the historical precedents in the perspective of present-day financial arrangements between Yukon and Canada and judge their overall applicability or lack thereof.

b. The Alberta Act, 1905

Reference back to the western prairies of 1905 requires a quantum leap of the imagination to replace the present-day world-scale prosperity of oil-rich Alberta with the rudimentary agricultural economy of the early years of the century. This considerable time span, in terms of Canadian history, immediately suggests a rather limited analogy with the emergence of a new province in the north some 80 years later.

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1. Second Report of the Standing Committee on Constitutional Development for Yukon, A Proposed Replacement for the Yukon Act, Yukon Legislative Assembly, December 5, 1977.

(1) Subsidies

The dollar amounts in the relevant legislation also reflect the passage of time and the inroads of inflation,

> "The following amounts shall be allowed as an annual subsidy to the province of Alberta and shall be paid by the Government of Canada, by half-yearly instalments in advance, to the said province, that is to say: -
>
> (a) for the support of the Government and legislature, fifty thousand dollars;
>
> (b) On an estimated population of two hundred and fifty thousand, at eighty cents per head, two hundred thousand dollars, subject to be increased as hereinafter mentioned ... the amount of the said allowance shall be increased accordingly, and so on until the population has reached eight hundred thousand souls."[2]

The $50,000 subsidy to support the Alberta government and legislature, even after all due allowance for inflation, constitutes a minor sum in terms of Yukon budgets in excess of $100 million. This provision perhaps reflected the absence of fiscal resources available to the new Alberta government at the time (ironic though this may seem in view of Alberta's contemporary wealth). In any event a Province of Yukon will enjoy considerable tax revenue potential from its own sources and one of the prime commitments thereof might reasonably be the support and maintenance of its legislature as a truly independent body.

The per capita subsidy guaranteed the annual sum of $200,000 to the fledgling prairie province and set a maximum of $640,000 with the population limit of 800,000 souls. A present-day equivalent of 80 cents per head on the much

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2. The Alberta Act, 4 & 5 Edw. VII, c.3 (Can.), s. 18.

smaller Yukon population would yield only a modest amount in relation to the total budget for Yukon.

Per capita funding persists as a source of funding at the municipal level and Whitehorse, Faro and Dawson derive significant funding from the Government of Yukon based on census formulas. However, flat rate per capita subsidies are obsolescent at the federal-provincial level as major means of basic support, having been superseded by grants for specific purposes.

Since 1905, the range of taxation sources available to the provinces has expanded enormously - personal and corporation income taxes, retail sales tax, etc. In these radically altered circumstances there appears little justification or actual need for minor flat rate subsidies to a new province.

(2) Capital Debt

The Province of Alberta began with a financial position comparable to its present affluence,

> "Inasmuch as the said province is not in debt, it shall be entitled to be paid and to receive from the Government of Canada, by half-yearly payments in advance, an annual sum of four hundred and five thousand three hundred and seventy-five dollars, being the equivalent of interest at the rate of five per cent per annum on the sum of eight million one hundred and seven thousand five hundred dollars."[3]

Thus the new province received an annual capital subsidy of $405,375 on an imputed debt of $8,107,500, a considerable assistance to the establishment of capital funding for Alberta (although the province later defaulted on various of

3. Ibid., s. 19

its capital obligations during the depths of the Depression in the mid-1930's)

As the Government of Yukon is deep in debt to the federal government, Section 19 of The Alberta Act of 1905 provides no present-day anaology or precedent. Capital loans from Canada in the amount of $42.9 million have been effectively frozen since March 31, 1976 and cancellation of this debt is discussed in a following section. Clearly the Alberta capital subsidy of 1905 cannot reasonably be construed as providing any valid precedent in this regard.

(3) Public Lands

Compensation in respect of lack of control over land and natural resources by the new province of Alberta was provided in some detail,

> "Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquiennial census thereof, as follows:-
>
> > The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars; ....
> >
> > Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;
> >
> > And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars."[4]

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4. Ibid., s. 20(1).

As with previously discussed provisions of The Alberta Act, the population, dollar amounts and overall circumstances of Alberta in 1905 bear very limited comparison to Yukon's present modest population, considerable budget and established revenue resources. Further it might be fairly argued that due compensation for federal retention of control over most Crown lands in Yukon is already included in the present large and expanding annual deficit grant from the federal government to Yukon.

(4) Public Buildings

Interim funding for construction of public buildings was also provided for the new capital of Edmonton,

> "As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five years from the time this Act comes into force, to provide for the construction of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars."[5]

Again a substantive parallel is not in evidence. The seat of the N.W.T. government was in Regina prior to the creation of the provinces of Alberta and Saskatchewan and the splitting of the N.W.T. administration. The capital of Yukon has already been transferred from Dawson to Whitehorse for a quarter of a century.

Major construction of public buildings may have been necessary in Edmonton prior to World War I but the Government of Yukon building is only three years old, having been financed by federal loans of $10 million. Additional construction of public buildings in Yukon may be justified in the not-too-distant future, e.g., a second administration

5. Ibid., s. 20(2).

building, a courthouse, but proposals for these facilities will more appropriately be related to current space requirements and available funding in the normal manner than strained analogies to the construction of the Alberta Legislature and other public buildings in Edmonton in the early years of the century.

(5) Summary

The passage of three quarters of a century with its attendant transformation of the role of provincial governments, development of complex taxation regimes and massive inflation renders The Alberta Act of 1905 an extremely limited and dubious guide to the establishment of financial arrangements for a new Canadian province in the late 20th Century. Pursuit of specific parallels to the working of Sections 18, 19 and 20 of the 1905 legislation can offer only negligible results at best and tends to divert attention from more financially significant matters.

Alberta's initial population was already ten times that of Yukon diluting the effect of any per capita formulas. Yukon already has a considerable capital debt, a relocated capital, substantial public buildings, etc. Future inflation would quickly dilute the benefits of any fixed dollar amount provisions. In conclusion too much time has elapsed since the creation of Alberta and Saskatchewan to provide any genuinely meaningful guidelines for financial arrangements for a Province of Yukon.

c. Union of Newfoundland with Canada

The entry of Newfoundland into the Canadian Confederation in 1949 provides a much more recent example of financial arrangements between

Canada and a new province. However, again sufficient time has elapsed and circumstances differ markedly enough to severely limit the appropriateness of analogies between Newfoundland and Yukon.

(1) Transitional Grants

The Terms of Union of Newfoundland with Canada included the following start-up grant,

"In order to facilitate the adjustment of Newfoundland to the status of a province of Canada and the development by the Province of Newfoundland of revenue-producing services, Canada will pay to the Province of Newfoundland each year during the first twelve years after the date of Union a transitional grant as follows, payment in each year to be made in equal quarterly instalments commencing on the first day of April, namely,

First Year	$6,500,000
Second Year	6,500,000
Third Year	6,500,000
Fourth Year	5,650,000
Fifth Year	4,800,000
Sixth Year	3,950,000
Seventh Year	3,100,000
Eighth Year	2,250,000
Ninth Year	1,400,000
Tenth Year	1,050,000
Eleventh Year	700,000
Twelfth Year	350,000"[6]

The stated reasons for the start-up grant do not provide parallels with the present situation in Yukon. Newfoundland needed considerable assistance to commence the transition from an economically backward British Crown Colony to a Canadian province enjoying national standards of social services and other government activities. Yukoners already receive and take as a matter of course a level of government

6. The British North America Act, 1949, 12 & 13 Geo. VI, c.22 (Imp.), term 28(1).

service of at least comparable standards to the northern areas of the western provinces. Thus there is no general case for a "catch-up" type of grant for Yukon. (Start-up grants of a more specific nature are considered in the concluding section of this chapter.)

The other justification for a general start-up grant for Newfoundland also appears to have little applicability to Yukon. Yukon's present revenue sources appear to be relatively well-developed compared to colonial Newfoundland and it must be concluded that the process of developing revenue-producing services has already occurred to a considerable extent and will continue to develop in the immediate future, viz., a territorial income tax in 1980.

(2) Additional Financial Assistance

The above schedule of transitional grants was superseded by a provision for review of Newfoundland's subsequent financial position,

> "In view of the difficulty of predicting with sufficient accuracy the financial consequences to Newfoundland of becoming a province of Canada, the Government of Canada will appoint a Royal Commission within eight years from the date of Union to review the financial position of the Province of Newfoundland and to recommend the form and scale of additional financial assistance, if any, that may be required by the Government of the Province of Newfoundland to enable it to continue public services at the levels and standards reached subsequent to the date of Union, without resorting to taxation more burdensome, having regard to capacity to pay, than that obtaining generally in the region comprising the Maritime Provinces of Nova Scotia, New Brunswick, and Prince Edward Island."[7]

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7. *Ibid.*, term 29.

This provision for possible additional financial assistance was subsequently effected as follows,

> "In addition to all other payments, grants, subsidies and allowances payable to the Province of Newfoundland ... the Government of Canada, shall ... cause to be paid to the Province of Newfoundland in the fiscal year commencing on the 1st day of April 1967 and in each and every fiscal year thereafter ... an annual amount, by way of additional financial assistance as contemplated by Term 29 of the Terms of Union of Newfoundland with Canada, of eight million dollars."[8]

It is this financial assistance that is sometimes cited, without reference to relevant background factors, as evidence of some special, generous treatment of the new province of Newfoundland by the federal government. To properly appraise the extent of this assistance the specific terms of reference must be clearly recognized.

The stated purpose of the additional financial assistance is to enable Newfoundland to maintain levels of public service comparable to the standards of the Maritime Provinces. As noted previously, no substantive case can be made that Yukon's levels of public service are inferior to neighbouring jurisdictions.

The additional qualifier in the terms of reference is also significant. Newfoundland taxation levels are slightly higher than those prevailing in the Maritime Provinces and these taxation levels in the Atlantic Provinces are severe and onerous compared to other provincial tax rates.[9] In contrast, Yukon taxation levels compare very favourably with the provinces, except the special case of Alberta. Thus there are no grounds for additional financial assistance to Yukon on the basis of onerous taxation levels and the alleged generous treatment of Newfoundland proves to be illusory upon examination of the realities of the situation.

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8. Newfoundland Additional Financial Assistance Act, 1966-67, c.21, s.2.
9. See, for example, Page 6, "Comparative Tax Burden in Yukon and N.W.T.", DIAND, December 7, 1978 (reproduced as Table 4-1 on Page 151, The Development of Greater Self-Government in the Yukon Territory: Finance and Economics). This table ranks Newfoundland as the most heavily taxed and Yukon the third lightest taxed of 9 provinces and 2 territories (Quebec excluded).

(3) Summary

Upon examination the economically backward Crown Colony of Newfoundland entering Confederation in 1949 provides little or no parallel with present day Yukon. The conditions of a substantial catch-up or bridging of gaps simply do not apply to Yukon as a whole.

A fair analogy might be made between the economic status of Newfoundland and the native population of Yukon. An Indian Land Claims Settlement will provide compensation for the economically disadvantaged segment of the Yukon population.

In contrast the majority of the Yukon population enjoy the highest wage levels in Canada (only partially diluted by the higher living costs in the North), a good level of government services and a moderate level of taxation. In these continuing circumstances no convincing case can be made for additional financial assistance on the Newfoundland model.

In any event the annual $8 million grant to Newfoundland is being steadily eroded by inflation and forms only a minor aspect of the island province's financial arrangements with Canada. An $8 million grant would likewise be only a minor portion of Yukon's annual funding requirements from Ottawa.

d. A Minimum Guarantee

The proposed Yukon Act goes on to provide that,

> "In no instance shall the financial guarantees or compensation mentioned in subsection (1) in relation to the expenditures and revenues of the Province of Yukon be less than (the amount that the Yukon Territory currently receives from the Government of Canada.)"[10]

10. Second Report of the Standing Committee on Constitutional Development for Yukon, December 5, 1977, s. 18(3).

This concluding sub-section regarding financial arrangements is wholly unsatisfactory. It provides only the current level of deficit grant financing whereas these grants show a rapidly escalating trend at present and any flat sum guarantee would quickly become insufficient and require renegotiation to retain any practical significance.

With respect to the Alberta provisions in Section 18(1), sub-section (3) completely engulfs the preceding provisions as far greater sums of money are involved in the annual deficit grant than could be achieved under the most imaginative rewriting of the 1905 Alberta provisions. Thus the inclusion of the Alberta provisions is rendered effectively totally redundant and in turn a Newfoundland-style ten year start-up grant would presumably be offset by comparable reductions in the annual deficit grant.

e. Debt as a Province

A previous section compares Alberta's debt-free entry into Confederation with Yukon's existing heavy indebtedness to the federal government. The incongruity of calling for a capital subsidy when deeply in debt is pointed out.

Surprisingly the proposed Yukon Act accepts the burden of Yukon's existing debt to the federal government,

> "All properties and assets of the Yukon Territory shall be vested in the Province of Yukon and the said Province shall be responsible for all debts and liabilities of the Yukon Territory".[11]

The above provision is an amazing one in view of DIAND's prior *de facto* recognition of loan debt forgiveness as a prelude to evolution towards provincial status,

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11. *Ibid*., s. 19.

"The model also assumes that the deferred debt burden would be removed in its entirety".[12]

Presumably the Government of Yukon's actual position in this matter is that it will accept cancellation of the deferred $42.9 million owing to the federal government.

f. Conclusion

Completely missing from the proposed Yukon Act is a flexible formula to ensure Yukon adequate federal financial assistance for an indefinite period. The latter must be the single goal of financial constitutional arrangements. The pursuit of dubious, strained analogies with Alberta in 1905 or Newfoundland in 1949 which offer insignificant financing is a needless diversion of attention from that central matter. The red herring of "deals like those other provinces obtained upon entering Confederation" must be set aside and it is the crucial aspects of adequately financing a new province that must be given complete attention. A Province of Yukon will require financing provisions based not on an Alberta or Newfoundland model but on a Yukon model and the final chapter of this paper outlines an approach to meeting this requirement. The Government of N.W.T. has more recently submitted its own financial constitutional proposals and these are the topic of the next chapter.

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12. Yukon Territory - Comparative Statement of Expenditure and Revenues as a Territory and as a Province for the Fiscal Years 1975-76 and 1976-77, Territorial Affairs Division, DIAND, October 15, 1976.

4. A Government of the N.W.T. Proposal

a. A Multiyear Commitment

Chapter 3 roundly rejects the approach to federal funding endorsed by the Yukon Legislative Assembly in 1977. A more recent approach endorsed by the Northwest Territories Legislative Assembly is also a questionable contribution to this topic and is critically examined below.

The second fundamental issue, after provincial status, is defined by the Government of N.W.T. as,

> "(We recommend) that financial arrangements between the GNWT and the Government of Canada be based on a multiyear commitment, in order to allow for greater fiscal autonomy in the NWT. The commitment would be negotiated on an agreed growth basis and would take into account the contribution of the NWT to the wealth of Canada through taxes, gross resource revenue and other means."[1]

It is difficult to grasp the substance of this recommendation. The Government of Canada has already made a large and continuing commitment to financing government administration and services in the N.W.T. An agreed growth basis implies automatic increases in financing per a formula which would be ineffective if pegged too low (under the GNP rate of increase of Alternative #4 of the DIAND discussion paper) or unacceptable to the federal government if pegged too high. Totally lacking in this recommendation is the crucial element of flexibility as emphasized in the previous chapter. The prospective wealth contributions of the N.W.T. pale into insignificance when compared to the size of the N.W.T. deficit grant rendering the implied offset a dubious equation.

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1. Position of the Legislative Assembly on Constitutional Development in the Northwest Territories, G.N.W.T., March 28, 1979, page 3.

b. Responsible Government

The G.N.W.T. position paper includes among four essential elements of responsible government,

> "3. If agreement was reached on a system of direct funding from the Federal Treasury, possibly negotiated by the Inter-governmental Committee on Finance, chaired by a GNWT representative. The intention would be to work towards a multiyear commitment of funds and to limit the paternal role of the Minister and Department of Indian and Northern Development in the NWT. The GNWT should also be able to deal directly with other Federal departments, such as Energy, Mines and Resources and Regional Economic Expansion".[2]

The above proposal partially parallels the evolution of financial relations between Yukon and Canada sketched in Chapter 1. Lacking is a clear view of the G.N.W.T.'s forging of direct links with the federal Department of Finance and Treasury Board as the key step in the evolution of responsible government in the financial area.

c. Provincial Status

The three basic ingredients of provincial status as defined by the G.N.W.T. position paper are fiscal autonomy, control of funds by the Assembly and the authority for the N.W.T. to amend its own constitution. Fiscal autonomy is discussed as follows,

> "The Assembly believes that it is unrealistic, in current terms, to equate Provincial status with fiscal self-sufficiency. It is recognized that, even after responsible government, non-renewable resources will remain under Federal control. It seems to us,

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2. Ibid., page 12.

however, that the Parliament of Canada cannot decide that it is in the national interest to refuse resource transfers such as that given to Alberta in 1930, and at the same time be the body that refuses the NWT an equal standing with the Provinces. A more practical concept would seem to us, therefore, to be fiscal autonomy. Under such a concept the GNWT would negotiate with Ottawa a guaranteed multiyear funding base. The number of dollars negotiated would be related to the taxes, royalties and fees taken out of the NWT, as well as the effect on the North of the Federal restrictions on land use and resource development. We realize, of course, that fiscal autonomy means that the Territories would also be obliged, and have further powers, to raise revenue. In this regard, and as a first step, the Assembly approved at its last sitting the raising of a new 'property users tax'. Additional funding would also presumably be available to the NWT, as it is to all Provinces, through the programs of the Department of Regional Economic Expansion."[3]

It is difficult to relate the quoted rambling concept of fiscal autonomy to the well-known horrendous deficit position of the N.W.T. The position paper seems to imply that full recognition of resource revenues from N.W.T. could drastically alter the G.N.W.T. deficit position which is certainly not the case at present or in the near future.[4] While multiyear funding of capital projects has considerable merit, the reference in the above quotation obviously relates primarily to Operations and Maintenance expenditures. How the realities of annual deficit financing are to be eluded is not explained or even recognized as a problem.

The reality of annual deficit financing for O & M expenditures is that the subsidy or grant from the federal government is a final

3. Ibid., pages 13 - 14.
4. A following section points out that federal operation of Yukon natural resources is presently conducted at a deficit; a similar situation likely prevails in N.W.T. In summary, the federal government recovers relatively little of its northern expenditures.

or balancing item in the annual budget. The amount of the deficit grant in any given year is the end result of all factors entering into the composition of territorial revenues, recoveries and expenditures. Consequently these annual balancing items cannot be projected over a period of a number of years with any degree of precision, certainly not in an era of exceptional inflation and with the north at a stage of potentially rapid evolution in economic, social and financial terms. With this underlying reality the concept of multiyear funding of O & M deficits does not appear a workable approach to the problem.

No mention is made in the G.N.W.T. paper of the remaining substantial deficit which remains the crux of any and all financial arrangements regarding responsible government and provincial status. Mention is made of greater territorial responsibility to raise revenue. These realities apply equally to Yukon and are emphasized in subsequent sections.

The second ingredient of Provincial status is termed, "Legislative Control of Financial Planning", in the G.N.W.T. position paper.

> "The second ingredient of Provincial status follows from fiscal autonomy. The process of negotiating the funding with Ottawa would be supervised by the Assembly, and decisions on the use of funds would be made by the Assembly and Executive. Multiyear funding would allow the Assembly a practical level of control over financial planning which is not possible at the present time."[5]

The latter sentence is entirely uninformative regarding how a partial guarantee of deficit funding allows greater financial planning. It is a comprehensive guarantee of deficit funding that will enable the northern territories to advance towards genuine provincial status. Multiyear O & M funding on the lines indicated by the G.N.W.T. position paper appears to have little or nothing to offer toward the process of financial evolution of the northern territories.

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5. Ibid., pages 14 - 15.

5. Components of a Provincial Financial Agreement

a. Objectives of a Financial Agreement

(1) Limitations of Territorial Resolutions

The recent constitutional proposals of the northern legislative assemblies have lacked substance regarding financial arrangements. The proposed Yukon Act concentrated upon obtaining everything that had apparently been given to other new provinces and failed to secure adequate Operations and Maintenance funding for Yukon while accepting a capital debt that DIAND had already effectively written off. The Government of the N.W.T. position paper labours over a vague concept of multiyear funding which is wholly insufficient for its huge deficit situation and totally fails to address the overall financing problem.

It is unfortunate that these incomplete proposals have been endorsed by the respective legislatures. The respective resolutions must now be replaced by comprehensive proposals which deal with the financial and deficit situations of the northern territories in a realistic manner.

Realistic proposals for financing arrangements for Canadian provinces in the north require a clear definition of the objectives to be attained. In political terms these objectives might be termed the best possible deal obtainable. In economic terms more precise definitions are imperative and in particular the objectives must relate to the actual and continuing financial status of the territories rather than any projected or hopeful scenario of future trends.

(2) Evolution of Existing Arrangements

Both resolutions of the territorial legislatures indicate that a new form of financing arrangement is required and then outline obviously insufficient schemes to achieve the indicated objectives. These approaches imply that present financial arrangements cannot evolve in a satisfactory manner in order to satisfy territorial ambitions. The implication does not bear up under analysis and overlooks the inevitability of future financial arrangements developing from existing arrangements rather than from some theoretical fresh starting point.

Chapter 1 sketches an evolutionary framework of fiscal relationships between Yukon and Canada. Any constititutional proposals re financing must relate to and recognize the evolving relationship. Revisions of federal legislation granting greater self-government to the north will be based on these existing, developing relationships and proposals for financial arrangements can only be within the established framework if intended for practical effect. The remainder of this paper proceeds on this assumption.

(3) Elements of a Favourable Financial Agreement

If, as suggested above and in previous chapters, some form of new deal for federal funding of the northern territories is not automatically or necessarily desirable or advantageous attention may be refocused on existing arrangements. The question then becomes whether revisions of the status quo financial arrangements cannot meet the objectives and requirements of the northern territories.

Past and present frustrations on the part of the territories relate far more to the terms than the amounts of federal funding. As those terms slowly but surely become less onerous and troublesome to territorial politicians and administrators emphasis is more properly focused on the amounts of the deficit operating and capital grants.

While the northern territories may never receive all that is requested in federal funding, few objective observers would be likely to conclude that the Canadian north has been starved of funding over the past 10 - 15 years. Rather than grasping at the straws of illusory better deals for federal funding, perhaps instead, attention is better concentrated upon preserving what are on the whole rather beneficial arrangements currently enjoyed by the northern territories.

If the existing financial arrangements are indeed advantageous to the territories then constitutional proposals should have as their prime objective preservation of such advantages. If the territories are in and will remain in substantial deficit positions for the foreseeable future enshrinement of a federal commitment to adequately meet these continuing deficits should be the cardinal objective of financial constitutional proposals. Before outlining possible approaches on these lines it is pertinent to review the financial status of the Government of Yukon.

b. Financial Status of the Government of Yukon*

(1) The Existing Deficit

Review of the Territorial Accounts of the Government of Yukon of recent years readily establishes the extent of the present dependence of the Government of Yukon on the federal government

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*This section is a digest of Chapter 8, Part B, The Development of Greater Self-Government in the Yukon Territory: Finance and Economics. The latter contains detailed coverage of the various sub-topics.

for operating and capital funds. Further, recent and pending revisions of federal - provincial financing arrangements automatically increase Yukon's annual deficit operating grant as recoveries under previous cost-sharing agreements are reduced or eliminated. These negative impacts at the same time provide greater Yukon control over spending priorities and thus on balance represent positive steps in constitutional terms.

Direct revenues raised by the Government of Yukon constitute a relatively small proportion of total Operations and Maintenance requirements. Further, these direct revenues are failing to keep pace with Operations and Maintenance expenditures. Adoption of a territorial income tax for 1980 will formally improve the proportion of direct revenues raised by Yukon.

At present Yukon is totally dependent on the federal government for capital funds and Yukon's inability to raise capital without federal guarantees must be recognized as the critical indicator of financial dependence. The extent of the financial dependence to date on the federal government must be emphasized as the starting point from which any modification might be achieved.

The annual DIAND restatement of the Territorial Accounts on a provincial basis is broadly accurate although specific items are questionable. Recognition of various programs under provincial jurisdiction serves to substantially increase the deficit position of the Government of Yukon in respect of both Operations and Maintenance and Capital.

The adjusted total deficit is projected at $51 million in fiscal 1978, $56 million in fiscal 1979, and trending higher for the foreseeable future. The foregoing total deficits are estimated at $2,250 per capita in fiscal 1978, $2,387 in fiscal 1979, and higher in succeeding years. This massive deficit position marks the point from which any significant realignment of Yukon's finances must commence and the first step in such a realignment is the clear recognition and acceptance of the existing deficit.

Review of natural resource revenues and expenditures by DIAND shows a present overall deficit on these activities due to Yukon Forest Service costs. The modest level of recent Yukon Mining Royalties and the crediting to the Northwest Territories of all Beaufort Sea petroleum revenue are factors which also contribute to this overall deficit. The fact that an immediate takeover of natural resources would at present increase rather than decrease Yukon's financial dependence must also be recognized.

(2) Revenue Prospects

Review of Yukon's taxation regime outlines its partial but developing nature. Various possible future taxation developments and revenue potentials exist. A form of provincial-style sales tax is the major untapped revenue source available to the Government of Yukon but would be administratively relatively complex and politically highly unpopular.

Examination of the taxation of non-renewable natural resources demonstrates the present very modest level of mining and gas royalties. The archaic legislation and inadequate rates of the existing Yukon Mining Royalty under the Yukon Quartz Mining Act are obvious candidates for revision. However, even mining royalties at more appropriate rates would yield only modest revenues from Yukon's existing and probable new mines, and the mining royalty does not represent any form of panacea for the Government of Yukon's deficit dilemma.

The new Kotaneelee gas field in the easternmost corner of the territory will provide a modest level of royalties over its 20 year life but no other petroleum production from mainland Yukon can be expected. Offshore, the monumental plans of Dome Petroleum provide the scenario for enormous oil and gas royalties accruing to the northern territories. An abstract projection of this scenario shows a range of potential revenue which could partially transform the deficit positions of the northern territories. On Dome's track record to date, this scenario cannot be easily dismissed.

(3) Towards Provincial Status

A detailed comparison of Yukon's position vis-a-vis the provinces is provided in a recent federal study. Critical review of the study's findings establishes that some findings are more valid than others. Comparison with P.E.I. shows the island province to be more heavily taxed on incomes only 70% of Yukon levels and receiving equalization payments per capita at only half the rate of Yukon's deficit grant per capita. Yukon is concluded to be a "have" territory in terms of incomes and a "have-not" in respect of territorial government financial resources.

With no prospect of major new revenues from the existing economic base, an added dimension would be required to lift Yukon out of its present severe deficit position. A status comparable to Alberta is the scope of the required realignment. The one possibility of such a transformation is major oil and gas production from the Beaufort Sea. Part of any move towards provincial status must include Yukon sovereignty over the waters offshore its north coast.

c. Requirements of a Provincial Financial Agreement

(1) Summation of Yukon Requirements

In Chapter 1 the evolution of financial relations between Yukon and Canada is viewed from an overall standpoint. In Chapter 2 the DIAND position paper is reviewed and its Alternative #2 recognized as providing provincial-style status in financial negotiations. Chapter 3 critically examines a 1977 Proposed Yukon Act and finds it wholly inadequate to the territory's real needs in the financial area. A Government of Northwest Territories concept of multi-year funding reviewed in Chapter 4 is similarly rejected as irrelevant to the underlying realities of N.W.T. or Yukon's deficit position.

The fact that federal funding under present arrangements cannot be construed as lacking in reasonable generosity must be emphasized and the preceding sections spell out the full dimensions of Yukon's present deficit position and the basic fact that it will continue for the forseeable future.

From the above exercise the conclusion is inescapable that the thrust of Yukon submissions and bargaining positions in respect of financial constitutional development should lie in securing the present extent of federal support on a more or less permanent basis. This thrust represents a marked departure from past concentration upon alleged parity with other new provinces and the transfer of mining royalties which prove to be relatively minor and highly cyclical upon detailed examination. The recommended departure is a sorting out of priorities and recognition that the existing rather favourable status quo in dollar and cents terms is distinctly worth preserving in basic outline while negotiating arrangements undergo systematic evolution.

If it is accepted as a starting premise that a Province of Yukon will not be able to stand on its own feet financially in any way, shape or form, then securing of an adequate support base for current and capital funding follows as the logical prime and overriding requirement of financial constitutional arrangements. This fundamental point cannot be overstated.

(2) Other Requirements

Given the required emphasis on preserving access to adequate federal deficit funding there remain other aspects of financial constitutional arrangements that should be included in a comprehensive Yukon proposal. These various aspects are considered below.

i. Natural Disasters

The DIAND discussion paper recognizes the vulnerability of Yukon to natural disasters,

> "The methodology of future financial arrangements will have to cope with special or one-time financial requirements of the territorial governments...Fire, flood and other unforseen disasters will require a response from the territorial governments which cannot be covered within their current budgets, and the federal government will have to provide supplementary assistance as the circumstance warrant."[1]

An added dimension to this problem is that Yukon will have no specific reserves or contingency funds to draw up in emergency situations. Hence there will exist a differing situation from all or most of the provinces with their varying levels of ability to meet in part the effects of natural disasters.

1. "Federal/Territorial Financial Relations", DIAND, Ottawa, June 28, 1978, page 8.

The recent flooding of Dawson and the burning of the original townsite of Faro with Whitehorse enjoying a narrow escape at the same time illustrate the distinct vulnerability of Yukon's major communities. Against this background some specific recognition of this problem is appropriate.

ii. Territorial Revenues

The DIAND discussion paper also touches upon the politically sensitive matter of revenues raised by the territories,

> "There.....appears to be a reduced concern as to whether the territorial governments are supporting a fair share of their expenditures from their own local revenues."[2]

> "(The territorial governments) must raise tax or local revenues more in line with their provincial counterparts"[3]

The Government of Northwest Territories proposal quoted previously recognizes a territorial obligation to extend its own revenue resources. More specifically the preceding summary of the Government of Yukon's financial status identifies a provincial-style sales tax as the major untapped revenue source in the north. If and when sales taxes are to play any part in the funding of government services north of 60° will be a significant financial decision in the coming decades.

The second brief quote above implies a direct comparability with the provinces which may not be wholly justified or particularly desirable from a national viewpoint in terms of development strategy. From a Yukon standpoint it is pertinent to seek some form of constitutional guarantee that future taxation in Yukon will not be markedly more onerous than at present. Any such guarantee is

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2. Ibid., page 5.
3. Ibid., page 7.

effectively a recognition of the earlier stage of development, whether economic, social or constitutional, present in the north. These gaps may narrow in coming decades but the narrowing process is to be recognized as a gradual, extended process.

iii. Major Developments

The DIAND discussion paper refers in a general way to development impacts upon territorial economies and government revenues,

> "A.....development which must be recognized is the impact that major projects such as northern pipelines...the financial impact of native claims' settlements could have on future federal/territorial relations. These developments are almost here and it will not be sufficient to rely on purely ad hoc reactions after the fact. Future federal/territorial financial relations will have to be able to withstand the impact of these developments and adjust to the new circumstances without losing sight of the basic objectives involved."[4]

Over a year later the northern pipeline and land claims settlements are no closer. Of these impacts only the land claims settlements can be assumed to be pending in the near future. The latter impact will be relatively far more significant in N.W.T. than Yukon. Assuming a Yukon settlement in the $100 million range, the investment of the annual interest thereon, say $10 million, will be a notable boost to the total economy but will drastically impact only selected areas but not Government of Yukon revenues and expenditures to a significant degree.

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4. *Ibid.*, pages 5-6.

iv. Pipeline Property Taxation

It is still widely reported that Yukon is on the verge of receiving an annual revenue of $30 million from the Alaska Highway natural gas pipeline. Reference to the Canada-U.S.A. Northern Natural Gas Pipeline Agreement shows a more modest potential:

1980	$ 5 million
1981	10 million
1982	20 million
1983 and subsequent years prior to opening of the line	25 million

The protracted delays in the pipeline make the above the more pertinent provisions of the Canada-U.S.A. agreement at the present time. In turn no legislation is currently in place to begin to assess pipeline property taxation up to the above maximums. Additionally it is uncertain whether the federal government would allow Yukon to actively pursue these maximum tax levels.

Finally there is the question of what level of pipeline property taxation Foothills would in fact accept before the company chose to abandon or shelve the project. If assured of U.S. customers onto whom it can pass these tax payments Foothills will readily enough meet such tax assessments; without such a guarantee Foothills would quickly switch options and quit its right-of-way through Yukon.

In any event actual receipts of pipeline property taxation, if, as and when they occur, will only serve to partially reduce the annual deficit position of Yukon. During any pipeline construction period the added direct costs and overall inflationary impact for the

Government of Yukon would likely largely offset the pipeline tax revenues of those years. Part of any post-construction pipeline revenues are likely to be diverted to a Yukon Heritage Fund diluting the benefit of the $30 million tax formula to general revenues.

A commitment by Foothills to provide the Government of Yukon with a $200 million line of credit at commercial loan rates earlier received considerable attention. As these terms are inferior to those enjoyed under federal funding arrangements this provision in reality offered Yukon no advantages and the line of credit arrangement has likely died a natural death.

The Alaska Highway natural gas pipeline project remains stalled due to its uneconomic price for natural gas, lack of firm markets, marginal returns to Prudhoe Bay producers and inability to finance its $20 billion requirement without U.S. federal government guarantees. Recognizing this reality it can only be concluded that pipeline property taxation is unlikely to play any meaningful role in Government of Yukon finances in the predictable future.

v. Capital Funding

Yukon requirements in respect of capital funding can be succinctly summarized as:

1) a federal write-off of the $42.9 million capital debt which has been frozen since March 31, 1976.
2) continued access to federal funds at federal borrowing rates.
3) funding arrangements on a multi-year basis.

Chapter 3 notes the surprising omission of the capital debt write-off from the 1977 Proposed Yukon Act. As DIAND's annual provincial comparative statement tacitly recognizes the write-off it can be assumed that it is essentially a formality to wipe out these past loans to Yukon.

The stated requirement that Yukon needs continued access to federal capital funds at preferred interest rates conflicts with the thrust of the DIAND discussion paper,

> "(Territorial governments') requirement for self-amortizing capital projects, such as subdivision development, third party loans, etc., could be financed by borrowing in the commercial market."[5]

> "Loan Capital - commercial loans with Governor in Council approval".[6]

The latter quotation is from the preferred Alternative #2 of the discussion paper. In Chapter 2 the added burden of higher interest rates is briefly mentioned. This topic warrants separate detailed study in order to clarify the potential adverse effects of revised loan arrangements.

Constitutional development in financial matters does not necessarily proceed in a lockstep manner. The northern territories are much closer to provincial-style operations in respect of their Operations and Maintenance expenditures than in their ability to raise capital funds in the open market as the provinces do. This distinction must be recognized and changes made only in accordance with the realities of the territories' situation. Recognizing the total dependence of the northern territories on the federal

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5. Ibid., page 7.
6. Ibid., page 10.

government for capital funding, it must be concluded that, for the foreseeable future, federal funds should be made available to meet the capital requirements of the territories.

A leading Canadian financial institution recently appraised the financial status of the Government of Yukon and its instructive conclusions are as follows,

> "On a current basis the Yukon Government has been in a perennial deficit position. The Federal Government has made grants to the Yukon government to cover this short fall. The basic strength of a government's credit is its taxing authority. Up to now the Yukon's tax base has been inadequate to generate sufficient revenues to cover expenditures. This would tend to undermine any prospects of the Yukon doing any financing on its own credit without some sort of guarantee."[7]

Thus even at the height of anticipation of a pipeline-oriented boom for the Yukon economy, the Government of Yukon had no immediate prospects of commencing to borrow on its own account. The present worsening deficit position serves to further postpone such a point in time and the status quo regarding ability to borrow must be assumed to continue for an extended period of time. Any constitutional arrangements in this regard should therefore be for a period of, say, 20-30 years.

Funding arrangements on a multi-year basis appear likely to develop during the stage of responsible government preceding provincial status. Formal recognition of any such arrangements will appropriately be included in the overall financial constitutional provisions.

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7. Letter dated May 31, 1978, from Wood Gundy, Ltd., to Director, Northern Co-Ordination and Social Development Branch, DIAND.

vi. Safeguards and Time Limits

From an overall standpoint any provincial financial agreement for Yukon will have to contain considerable safeguards and guarantees which apply for an extended period of time. The previously reviewed provisions for Alberta and Newfoundland provide only starting points in this regard and provinces in the north will require uniquely different provisions. Some general approaches in this area are outlined below.

Existing legislation provides a precedent for recognition of a key factor,

> "in recognition of the special problems of the Province of Newfoundland by reason of geography and its sparse and scattered population."[8]

The above wording is in respect of an additional annual subsidy of $1.1 million and the approach of the 1977 Proposed Yukon Act would be to seek a comparable subsidy for Yukon. However, what is actually needed is wider recognition of the above factors so that these permanent handicaps to financial self-sufficiency in the north are enshrined as a cornerstone in any provincial financial agreement.

As a practical matter limits as to time period and population may be necessary to restrict the applicability of various provisions. For illustrative purposes, limits of a population level of 100,000 and a 20 year time span are incorporated in draft financial clauses which are the topic of the following, concluding chapter.

8. The British North America Act, 1949, 12 & 13 Geo. VI, c.22 (Imp.), term 26(b).

6. Outline Financial Provisions for a Province of Yukon

> On or about the first of each month the Government of Yukon receives from Ottawa a cheque for several million dollars. This permanent deficit situation must be recognized and constitutional arrangements for a Province of Yukon must reflect this ongoing reality.

As recent proposals endorsed by the Yukon and N.W.T. legislatures prove inadequate or incomplete upon detailed examination it is pertinent to conclude this paper with a summary of a revised, more comprehensive approach to dealing with the financing requirements of a northern province. Central to this approach is a clear, unambiguous recognition of the inevitable deficit position of the new province. From this recognition it follows logically that adequate provisions for meeting such deficits are the essential component of financial constitutional arrangements.

The second most essential ingredient in this process is the setting of parameters which are flexible enough to deal with circumstances which will inevitably vary widely. Flexibility is essential because no single formula can meet these changing circumstances.

Formal recognition of the categories of special circumstances likely to require modification of the financial arrangements is highly desirable. These categories include geography, climate, sparse population, natural disasters, limited taxation base, relative stages of economic and social development and impacts of major developments.

In respect of capital funding continued access to term financing on the most favourable possible terms, viz. continuation of loans at federal interest rates, is most important. The entry of a Province of Yukon into commercial money markets should be regarded as only the final evolutionary stage of financial arrangements and can appropriately be deferred for an extended period of time.

These conclusions are incorporated in outline financial provisions for a Province of Yukon in Schedule 3. This first draft of financial constitutional requirements attempts to preserve the basic status quo of existing beneficial arrangements in order that a new province can commence upon an adequate financial foundation.

Financial constitutional arrangements for a Province of Yukon will evolve out of existing arrangements as part of a continuing process rather than some new, untried system being utilized. Yukon's financial future lies in a smooth transition of existing arrangements and continuity in present support levels rather than unsupportable analogies with Alberta or Newfoundland or unobtainable projections of natural resource revenues. The financial status quo is not to be lightly dismissed and it can and should be made to work in the long-term interests of Yukon.

Schedule 3

OUTLINE FINANCIAL PROVISIONS FOR PROVINCE OF YUKON

1. Deficit Operating Grant

a. In recognition of the budgetary position of the Province of Yukon, the Government of Canada undertakes to enter into annual negotiation with the Province of Yukon to determine the amount of an operating grant, if any, required by the Province of Yukon for its operating purposes and to pay such agreed amounts to the Province of Yukon.

b. Without restricting the general application of part a, the following factors will be taken into account in determining the amount of the annual operating grant:

i. the geography and northern location of Yukon,
ii. the sparse population of Yukon,
iii. the relative level of economic and social development in Yukon,
iv. the limited taxation base available to the Province of Yukon,
v. the interest retained by the Government of Canada in the lands and natural resources of Yukon,
vi. the level of government services provided in adjacent jurisdictions,
vii. the transfer to Yukon of any government services or activities previously supplied or performed by the Government of Canada,
viii. the impact of any pending or ongoing major economic developments in Yukon,
ix. the effect of any natural disaster or other unforeseen events which may have occurred since the immediately preceding annual negotiation,
x. the amount of the annual operating grant will not be reduced in respect of any agreed amounts set aside as part of a Yukon Heritage Fund or other such transfer.

c. The above provisions shall remain in force until the population of Yukon exceeds one hundred thousand.

2. Capital Funds

a. In recognition of the limited ability of the Province of Yukon to raise capital funds on the basis of its own credit, the Government of Canada undertakes to enter into periodic negotiation with the Province of Yukon to determine the amount of capital funding, if any, required by the Province of Yukon for its capital purposes and to advance such agreed amounts to the Province of Yukon.

b. The Government of Canada undertakes to advance such agreed amounts on those terms and conditions concerning rates of interest and terms of repayment as are applicable within the departments of the Government of Canada.

c. i. The Province of Yukon undertakes to repay capital advances of a self-amortizing nature under the agreed terms and conditions at the time of the capital advance.

ii. Repayment of capital advances not of a self-amortizing nature shall form part of the annual operating grant payable by the Government of Canada and shall not reduce the amount of any annual operating grant otherwise negotiated.

d. Any and all past capital debts owing by the Government of the Yukon Territory to the Government of Canada are hereby forgiven and dissolved.

e. The provisions of parts a, b, and c above shall remain in force for a period of twenty years from the date of Yukon becoming a province.