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REPORT
OF THE
ROYAL COMMISSION
ON THE
NATURAL RESOURCES
OF ALBERTA

HON. A. K. DYSART, *Chairman*
HON. T. M. TWEEDIE
GEORGE C. McDONALD, Esq., C.A.

OLIVER MASTER, *Secretary*



OTTAWA
J. O. PATENAUDE
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1935

OTTAWA, CANADA, March 12, 1935.

THE RIGHT HONOURABLE R. B. BENNETT,
Prime Minister of Canada.

MY DEAR PRIME MINISTER:

I have the honour to transmit herewith the report of the Royal Commission on the Natural Resources of Alberta signed by the three commissioners, Mr. George C. McDonald, Hon. T. M. Tweedie, and myself.

Your obedient servant,

(Sgd.) A. K. DYSART,
Chairman.

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CANADA

T. RINFRET

Deputy Governor General

GEORGE THE FIFTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith, Emperor of India.

TO ALL TO WHOM these Presents shall come, or whom the same may in any-wise concern,

GREETING:

WHEREAS in and by paragraph 22 of the Agreement dated December 14, 1929, between the Government of the Dominion of Canada and the Government of the Province of Alberta (set out in the schedule to Chapter 3 of the Statutes of Canada, 1930), it was agreed that the three persons therein mentioned "or if any of the foregoing cannot act, then such other person or persons as may be agreed upon" would be appointed Commissioners under Part I of the Inquiries Act to conduct the inquiry and make the report therein mentioned.

AND WHEREAS pursuant to the provisions of Part I of the Inquiries Act, Revised Statutes of Canada, 1927, Chapter 99, His Excellency the Governor General in Council by Order P.C. 1588 of the nineteenth day of July in the year of Our Lord one thousand nine hundred and thirty-four, a copy of which is hereto annexed, has authorized the appointment of Our Commissioners therein and hereinafter named to inquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph 20 of the said Agreement, should be paid to the Province of Alberta in order that the province may be placed in a position of equality with the other provinces of Confederation, with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905, with power to decide what financial or other considerations are relevant to the inquiry.

NOW KNOW YE that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable Andrew K. Dysart, Judge of the Court of King's Bench, Manitoba; the Honourable Thomas Mitchell Tweedie, Judge of the Supreme Court of Alberta; and George C. McDonald, Esquire, of the City of Montreal, in the Province of Quebec, Chartered Accountant, to be Our Commissioners to conduct such inquiry.

TO HAVE, hold, exercise and enjoy the said office, place and trust unto the said Andrew K. Dysart, Thomas Mitchell Tweedie, and George C. McDonald, together with the rights, powers, privileges and emoluments unto the said office, place and trust, of right and by law appertaining during Our pleasure.

AND the said Commissioners are authorized to engage the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they may deem necessary or advisable.

AND WE do further appoint the said the Honourable Andrew K. Dysart to be Chairman of Our said Commissioners.

IN testimony whereof We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS: Our Right Trusty and Well-beloved Counsellor the Honourable Thibaudeau Rinfret, one of the Judges of the Supreme Court of Canada and Deputy of Our Right Trusty and Right Well-beloved Cousin and Counsellor, Vere Brabazon, Earl of Bessborough, a member of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, formerly Captain in Our Territorial Army, Governor General and Commander-in-Chief of Our Dominion of Canada.

AT Our Government House in Our City of Ottawa, this nineteenth day of July, in the year of Our Lord one thousand nine hundred and thirty-four and in the twenty-fifth year of Our Reign.

By command,

E. H. COLEMAN,

Under-Secretary of State.

CHAPTER I

INTRODUCTORY

1. The Commission on the Natural Resources of Alberta was created pursuant to authorization contained in Order in Council, P.C. 1588, of July 19, 1934.

The commissioners appointed were

The Honourable Andrew K. Dysart, Judge of the Court of King's Bench, Manitoba, Chairman.

The Honourable Thomas M. Tweedie, Judge of the Supreme Court, Alberta.

George C. McDonald, Esq., Chartered Accountant, Montreal, Quebec.

A secretary for the Commission was designated in the person of

Oliver Master, Chief, Economics Division, Department of Trade and Commerce, Ottawa.

Counsel appearing before the Commission

For the Dominion of Canada were

James McGregor Stewart, K.C., Halifax, Nova Scotia.

C. P. Plaxton, K.C., Senior Advisory Counsel of the Department of Justice, Ottawa.

And for the Province of Alberta were

M. M. Porter, K.C., of Calgary, Alberta.

J. J. Frawley, K.C., Solicitor, of the Attorney-General's Department, Alberta.

Assisting at the hearings and elsewhere were responsible officials of several Departments of the Dominion and Provincial Governments.

2 *Sittings*.—Public sittings for the reception of evidence and argument were held at Ottawa where, because of the accessibility of records, the convenience of all parties was best served. Following a preliminary meeting on August 14, hearings were divided into several periods,—October 2 and 3, October 16 to 19 inclusive, November 21 and 23, December 4 to 8 inclusive, and December 11. Our sittings, it will be observed, ranged themselves into several groups, separated from one another by intervals of varying duration. These intervals were required for investigating sources of information, and for securing and preparing evidence as the same was requisitioned from time to time during the progress of the enquiry, and as issues emerged and took definite form. The task of procuring and compiling the vast and varied amount of needed information was one of great magnitude and demanded the services of many departmental officials for many weeks.

3. *The evidence* submitted to the Commission falls into two classes, (a) statements of Counsel, and (b) documentary material. The statements of Counsel are recorded in the verbatim report of the proceedings, consisting of three volumes. The documentary evidence, comprised in more than 250 exhibits, covers a wide range of material, including maps and graphs, copies of Orders in Council, extracts from public documents, quotations from the public utter-

ances of public men, synopses and analyses of records, and complicated tabulations of data. This documentary evidence, as explained and connotated by Counsel, is by far the most voluminous and important part of our evidential material.

4. *Similarity to Saskatchewan report.*—We should explain that in many sections this report follows closely, if not identically, the text of the report of the Royal Commission on the Natural Resources of Saskatchewan. This enquiry, which began when the hearings in the Saskatchewan enquiry had been completed, has had to do with problems closely paralleling those of Saskatchewan, both in respect to historical background and practical difficulties, and has been conducted by three commissioners of whom two are members of the Saskatchewan Commission. The work of the two commissions, in the later stages, has been carried on concurrently; and the reports, though separate, cover much common ground in the same or closely similar terms.

CHAPTER II

CONTROL OF NATURAL RESOURCES IN CANADA

5. *The principle.*—It seems to be a principle, widely if not universally followed in British democracies, that natural resources should be administered and controlled by the province in which they lie, for the revenue and other purposes of that province. How this principle has been applied in the Canadian provinces is a matter that closely touches the origin of the present enquiry.

6. *Dominion territory.*—Soon after Confederation, the Dominion acquired from Imperial Crown authorities all the North-West Territories and Rupert's Land, including therein all the natural resources of those regions, and it has ever since retained the control and administration of those resources to the extent that it has retained the Territories.

7. *Ontario, Quebec, Nova Scotia and New Brunswick.*—When these provinces entered Confederation in 1867, each was allowed to retain for itself, and for its sole use, what then remained unalienated or unpledged of the natural resources lying within its boundaries. The terms of that retention are set out in Section 109 of the British North America Act, 1867, thus:—

“All lands, mines, minerals, and royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts, existing in respect thereof, and to any interest other than that of the province in the same.”

In 1912, Ontario and Quebec were both enlarged to include large tracts of the North-West Territories which until then had been under Dominion control. The area so added to Ontario was nearly 100,000,000 acres, and that added to Quebec was about 164,000,000 acres. The administration and control of the natural resources in the added territory passed to these provinces.

Nova Scotia and New Brunswick have, for obvious reasons, never been enlarged.

8. *Manitoba*, which was the next province to enter Confederation, was not permitted to have administration and control of the resources lying within its boundaries. Section 30 of the Manitoba Act, 1870, reads:—

“All ungranted or waste lands in the province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.”

Nothing in lieu of that public domain was then or for some years thereafter given to Manitoba.

Manitoba's land area, originally 8,429,440 acres, was enlarged in 1881 to approximately 40,000,000 acres, and again in 1912 to approximately 140,000,000 acres. Unlike Ontario and Quebec, Manitoba did not secure the administration and control of the natural resources in the added territory. In 1885, however, the Dominion agreed to transfer to the province the swamp lands located therein, and in the course of ensuing years did accordingly transfer large tracts of such lands, part of which the province sold, and the remainder of which it re-conveyed to the Dominion as a term of the boundaries extension arrangement of 1912. In the resources settlement of 1929, all the unalienated resources in the province were transferred to the province.

9. *British Columbia*, which had been organized in 1858 and extended to its present boundary limits in 1866, was allowed to retain its public domain on entering Confederation. Section 10, of the Imperial Order in Council which admitted British Columbia into Confederation in 1871, reads:—

“The provisions of the British North America Act, 1867, shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specifically applicable to and only affect one and not the whole of the provinces now comprising the Dominion, and except so far as the same be varied by this Minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other provinces of the Dominion, and as if the Colony of British Columbia had been one of the provinces originally united by the said Act.”

There is nothing in said “minute” or elsewhere to vary or restrict the full applicability of Section 109 of the British North America Act to the Province of British Columbia. In fact the applicability is confirmed indirectly by section 11 of the said Order in Council under which the province agreed to convey to the Dominion, in aid of railway construction, certain “public lands” since known as the British Columbia “Railway Belt”—a provision predicated upon provincial ownership of the land. This Railway Belt was soon after supplemented by a large grant of land in the Peace River District. Some parts of these lands, so transferred to it, were alienated by the Dominion, but in 1930, following the report of the Royal Commission (known as the Martin Report) all the unalienated portions thereof were re-conveyed to the province. The conveyance of the land and the re-conveyance included the administration and control of natural resources.

10. *Prince Edward Island* entered the union in 1873 with no public domain whatever, the whole having been alienated many decades before. Because of these special circumstances, that province received a money subsidy in these terms:—

“That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum.....”

11. *Alberta*.—By the Alberta Act, 1905, (Dominion) a portion of the then North-West Territories was formed into the Province of Alberta, and by virtue of the same statute it became one of the provinces of Canada. The administration and control of the natural resources was retained by the Dominion, as provided for by section 21 of the Alberta Act which reads as follows:—

“All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under the Northwest Irrigation Act, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the Northwest Territories.”

In lieu of the public lands, so withheld, Alberta was granted an annual subsidy which is hereinafter referred to more specifically.

12. *Saskatchewan* was organized and brought into Confederation at the same time as Alberta and on the same terms as to natural resources. Like Alberta, it received an annual subsidy in lieu of public domain.

13. A summary of these results follows:—

	Date of Entry into Confederation	Provincial Control of Resources	Received Subsidy in lieu
Ontario	July 1, 1867	Yes	No
Quebec	July 1, 1867	Yes	No
Nova Scotia	July 1, 1867	Yes	No
New Brunswick	July 1, 1867	Yes	No
Manitoba	July 15, 1870	No	No
British Columbia	July 20, 1871	Yes	No
Prince Edward Island	July 1, 1873	None	Yes
Saskatchewan	Sept. 1, 1905	No	Yes
Alberta	Sept. 1, 1905	No	Yes

14. *Prairie Provinces in unique position.*—Thus we see that the only Canadian provinces from which the control of natural resources was withheld by the Dominion are Manitoba, Saskatchewan and Alberta. None of these three provinces had any existence as such until the moment it entered Confederation. None of them, therefore, was ever in a position to register objection to the denial of resources control until after it came into being, and by that time it was without control. All the other six provinces had legal existence as self-governing colonies before entering the union and were, therefore, able to express their wishes in the matter of the control of public domain. The natural resources of the three prairie provinces, being completely in the hands of Dominion authorities, were utilized to meet Dominion desires at a time when the Dominion, for very special national reasons, desired control of the prairie resources for federal purposes.

CHAPTER III

THE DOMINION'S CONTROL OF NATURAL RESOURCES

15. *The purposes of Canada.*—Inspired from the beginning with a determination to bring the whole of British North America under one government, the Dominion promptly set out to secure control of all unorganized territory outside of the original provinces. In 1870, it acquired the Northwest Territories and Rupert's Land by Imperial Order in Council, after the Hudson's Bay Company had surrendered its rights in those regions. The next step was to bring the colony of British Columbia into the union; and in order to meet the conditions imposed by that colony, the Dominion had to undertake to build a line of railway to connect the Pacific coast with central Canada. That undertaking, to the young Confederation, was one of colossal proportions, involving not only the building of more than 2,000 miles of railway across unsettled prairies and through rough and mountainous country, but also the colonizing and settling of the fertile areas through which the railway was to pass. Thus two great problems came into being, (1) railway construction in the West, and (2) settlement of the prairies.

16. *Railway construction.*—After casting about for some time, the Dominion eventually settled upon a policy of building the railway through the instrumentality of a private corporation aided by generous grants of land. This policy was later modified by reducing the land grants, and substituting a cash subsidy for the eliminated lands. The contract between the Dominion and the Canadian Pacific Railway Company called for a grant of 25,000,000 acres of lands to be selected by the company in alternate sections throughout the fertile area of the prairies—an arrangement which was to be still further modified before the final completion of the contract. Other benefits and privileges affecting the land, including tax exemption for twenty years after the grant from the Crown, were conferred upon the company.

As time went on, additional land subsidies were promised to the Canadian Pacific Railway for subsidiary lines, and to other railway companies for other projected lines. By 1905, more than 55,000,000 acres of prairie lands had been so pledged, but only two-thirds of this acreage was eventually earned by actual construction. Well before 1905, the policy of subsidizing railway construction by land grants had been discontinued but the process of selecting these lands so earned, and the after-math of tax exemption, remained for many years to vex the growing communities of the West.

It should be pointed out that practically the whole burden of providing land for these railway subsidies, not only for the railways within the Prairie Provinces, as set up in 1905, but for the railways to the north, as well as for portions of the Canadian Pacific lying in Western Ontario and in British Columbia, fell to the lot of the three Prairie Provinces.

17. *Colonization and settlement.*—Indissolubly linked up with railway construction, as part of a nation-building program, lay the need of settling the fertile areas of the prairie with permanent agriculturists. The Dominion met the challenge by making colonization and settlement a prominent feature of its national policy. From 1870 onward for about twenty-five years, the Dominion pressed settlement as best it could, but progress though substantial was slow. Shortly before 1900, the Dominion gave to this colonization policy a greatly increased importance in its national program, and this fact, synchronizing with very favourable world conditions, gave to western settlement a new and powerful

stimulus. By 1905, there were sufficient settlers between Manitoba and the Rockies to warrant the organization of the two provinces of Saskatchewan and Alberta with a population estimated at a quarter of a million each, and with railways constructed or under construction running into thousands of miles.

18. *Alberta started out* on its career on this full tide of immigration and settlement activity. Capital in great abundance poured into the country and provided for the construction of all kinds of communications and public services. For the first few years after 1905, the progress of colonization and development was so great as to be almost without parallel in modern history. Thereafter development slowed down, paused during the Great War, then resumed its progress intermittently. In 1930, the Dominion retired from the administration and handed over to the province the unalienated portions of the resources.

CHAPTER IV

THE ATTITUDE OF THE PRAIRIE PROVINCES

19. *In the earlier stages of the Dominion's administration, the three prairie provinces displayed no common front on the question of control of natural resources; but by the time that long administration approached its close, the three provinces were unanimous in their demand not only for transfer of the unalienated resources, but also for compensation for alleged losses resulting from the Dominion's administration. The course of development of this last attitude may now be briefly traced.*

20. *Manitoba.*—This province, having neither the public lands nor a money subsidy in lieu thereof, early began a campaign to secure the one or the other. In 1882, the province attained its first success in the form of an annual "indemnity" of \$45,000 in lieu of lands. This indemnity continued until 1885, when it was increased to \$100,000 a year, at which figure it remained until July 1, 1908. Beginning from this later date, the subsidy was raised to the same level, based on area and population, as that which prevailed for Saskatchewan and Alberta from September 1, 1905. This new arrangement was effected in 1912 but was made retroactive to 1908.

In return for raising Manitoba's subsidy to the same scale as that of Alberta and Saskatchewan, the Dominion required that an adjustment be made in respect of the swamp lands and university lands. It was agreed between the Dominion and the province that the unalienated swamp lands, under the administration and control of the province, should be re-conveyed to the Dominion. In regard to that portion of the swamp lands which had been alienated by the province, it was agreed that the principal sum of \$2,769,856 realized by the province from the sales of those lands should constitute a debt of the province to the Dominion. By this arrangement, lands transferred to the province for university purposes, and estimated to be worth \$300,000, were also taken into account—so that the total debt agreed upon as owing by the province to the Dominion in respect of swamp lands and university lands was \$3,069,856. Upon this debt, interest at the rate of five per cent per annum was to be paid, such payment to be made by deducting the amount of the interest annually from the subsidy.

The demand for control of resources, though quieted by the 1912 arrangement was not dead, was soon renewed in slightly different form, and was continued with more or less regular insistence until 1928. In that year the Government of Canada entered into an agreement with the Government of Manitoba whereby the unalienated resources were to be transferred to Manitoba, and a commission was to be appointed to enquire into and report upon the adjustment of financial terms with the view of placing the province in a position of equality with the other provinces of Confederation as from 1870. The commission was accordingly appointed, and in due course made a report, of which frequent mention is made in these pages, recommending

- (a) that the scale of subsidies adopted in 1912, effective from 1908, was adequate and should continue for all time to come;
- (b) that for the years 1870 to 1908 payment be made in cash of a sum representing the difference between the annual amounts which in the opinion of the commissioners ought to have been paid to the province during those years and the amounts which the province actually received. (During the years from 1870 to 1881 the province had received no subsidy. From 1881 to 1886 it received \$45,000 per annum; and from 1886 to 1908 it received \$100,000 per annum.)

The Manitoba Commission took advantage of the occasion to clear away the arrangement made in 1912 between Manitoba and the Dominion with respect to the swamp lands and university lands—relieving the province of the manifest anomaly of being charged for lands which under the transfer agreement were recognized as really being its own property. In the outcome, the subsidy shortages were adjusted at \$4,584,000, a sum which was actually paid to the province in 1930. And by this award, Manitoba had her subsidy brought up, without modification, to the scale of that being paid to Alberta and Saskatchewan.

21. *Alberta.*—This province was never placed in Manitoba's earlier position. Like Manitoba it was not given control of resources; but unlike Manitoba it received, from the beginning, an annual cash subsidy in lieu thereof. Although Alberta was not an actual party to the scheme of resources control, having had no existence prior to the coming into force of the arrangement itself in 1905, the province in successive provincial general elections endorsed the provincial political party which had supported the resources arrangement. In those elections, control of the resources was an important, though not the only, issue before the electorate, and the election results may properly be construed as provincial approval of the scheme.

22. *Change of Alberta's attitude.*—The records of the Legislature of Alberta indicate that, as early as 1910, a desire for some modification of the resources arrangement made in 1905 took definite form and was given official expression by the Legislature. In the session of 1910 the following resolution was carried:—

"Whereas the development of the Northern Districts of our province entails serious financial and other obligations;

"Therefore be it resolved that this House approves of the action of the Government in already opening negotiations with the Ottawa Government for the securing of the best possible arrangement with respect to the control of all such natural resources as are of purely local concern and that they be urged to continue such negotiations."

The terms of this resolution contemplated only a limited departure from the system of federal administration and control of the natural resources of Alberta. Much more far-reaching proposals were soon to follow.

23. *Movement for full provincial control.*—In 1911 a federal general election resulted in a new ministry under a new Prime Minister, who had previously gone on record as favouring the transfer of natural resources to the prairie provinces on some fair terms to be agreed upon. Prompted perhaps by these circumstances the Alberta Legislature, at the session of 1911-12, passed the following resolution:—

"Whereas the rapidly increasing population of the Province of Alberta is placing ever-increasing burdens upon the revenues of the province; and

"Whereas the Dominion Government has failed to undertake the development of, or supplying of transportation facilities to the newer portions of the province, thus forcing the province to assume these responsibilities; and

"Whereas the regulating and inspecting of coal mines and the building and maintaining of roads into the mining districts fall upon the provincial government, while the proceeds from coal lands, coal leases, and royalties go into the Federal treasury; and

"Whereas the revenue derived by the Dominion Government from the public domain within the province is greatly in excess of the cost of administering the same;

"Therefore, be it resolved, that in the opinion of this Legislature all the natural resources within the boundaries of the province should at the earliest possible date be transferred to provincial control."

Here, in marked contrast with the resolution of the preceding year, the Legislature went the full length of urging that "all the natural resources within the boundaries of the province" be handed over by the Dominion to provincial administration and control.

It is hardly necessary to set forth in detail the text of resolutions passed during subsequent years or the various steps taken in the course of negotiations to secure the transfer of the resources from the Dominion to the province. The

matter was pressed continuously for a decade or more before the transfer finally became a fact in 1930. In 1926 a transfer agreement had been reached between the Dominion and the province but failed to become effective, and it remained for the agreement dated December 14, 1929, to furnish the basis for legislation which resulted in the transfer of the resources on October 1, 1930.

24. *Saskatchewan*.—As Saskatchewan's natural resources question has been under consideration by a Royal Commission during the course of the present enquiry, it is unnecessary here to say more than that, from 1911 on, Saskatchewan's attitude in respect to the transfer of resources was no less insistent than that of Alberta. Fuller reference to Saskatchewan's attitude will be found in the report of the Saskatchewan Commission.

CHAPTER V

THE REFERENCE: ITS SCOPE AND INTENT

25. *The Reference.*—It is now necessary to turn to the Reference with a view of ascertaining precisely the questions which we are called upon to investigate. The Order in Council authorizing the Commission is a step towards fulfilment of an undertaking expressed in an agreement entered into between the Government of Canada and the Government of Alberta, dated the 14th day of December, 1929, and later approved, ratified and confirmed by necessary legislation, (a) of the province (1930, Ch. 21), (b) of the Dominion (1930, Ch. 3), and (c) of the Imperial Parliament (1930, Ch. 26).

The terms of the Reference to the Commission are:—

“To enquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph 20 of the said Agreement shall be paid to the province in order that the province may be placed in a position of equality with the other Provinces of Confederation with respect to the administration and control of its natural resources from the first day of September, 1905.”

These terms were adopted from the said Agreement of December 14, 1929, paragraph 22, which provided for the appointment of commissioners under Part One of the Inquiries Act—

“To inquire and report whether any, and if any, what consideration, in addition to the sums provided in paragraph twenty hereof, should be paid to the province in order that the province may be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905, such commissioners to be empowered to decide what financial or other considerations are relevant to the inquiry and the report to be submitted to the Parliament of Canada and to the Legislature of Alberta; and if by the said report, the payment of any additional consideration is recommended, then, upon agreement between the Governments of Canada and of the province following the submission of such report, the said Governments will respectively introduce the legislation necessary to give effect to such agreement.”

It should be noted here that shortly after the agreement between the Dominion and the Province of Alberta had been signed, a similar agreement was reached by the Dominion and the Province of Saskatchewan. In the latter case provision was made for the framing of a series of questions with a view to determining whether or not the province had, prior to its entrance into Confederation on September 1, 1905, any right to the natural resources lying within the territory which on that date became the Province of Saskatchewan. These questions were to be prepared and submitted to the Supreme Court of Canada for consideration and opinion, subject to the right of appeal to the Judicial Committee of the Privy Council. Accordingly, questions were prepared and submitted to the Supreme Court; and were answered in the negative, that is, that prior to its formation, in 1905, the province had no rights in the resources. (See 1931, Supreme Court Reports, page 263). On appeal to the Judicial Committee of the Privy Council, these answers were affirmed, (1932, Appeal Cases, page 28). These answers settled an issue which affected Alberta as well as Saskatchewan and they determined the starting point for the period to be reviewed by the present Commission, that is, September 1, 1905.

26. *For convenience of analysis*, our directions may be set out in detail as follows:—

- (a) What consideration, if any, should be paid by the Dominion to the province, in addition to the sums provided in paragraph 20 of the 1929 Resources Agreement,

- (b) in order that the province may be placed in a position of equality with the other Provinces of Confederation,
 (c) with respect to the administration and control of its natural resources,
 (d) from the first of September, 1905, till the first of October, 1930.

27. "What consideration."—The term "consideration" as here used means compensation for loss of revenue sustained by the province in respect of its natural resources.

28. "In addition to the sums contained in paragraph 20."—Said paragraph 20 follows:—

"20. In lieu of the provision made by subsection one of section twenty of *The Alberta Act*, Canada will, from and after the date of the coming into force of this agreement, pay to the province by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:

"The sum payable until the population of the said province reaches eight hundred thousand shall be five hundred and sixty-two thousand five hundred 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."

It will be noted that under the provisions of this paragraph, the subsidy can never be decreased even though the population decreases. The sum of \$562,500 a year is fixed as a minimum, to be increased to \$750,000 if and when the population increases to 800,000, and to \$1,125,000 when the population reaches 1,200,000. The value and significance of this subsidy will be discussed later. The point to be emphasized here is that the further possible compensation to the province must be over and above these subsidy payments, to the making of which the Dominion is already obligated.

29. "In a position of equality."—In any attempt to determine what is meant by the term "equality" as here used, it will be convenient to approach the subject by the process of indicating briefly some of the inequalities which are not meant to be—which cannot possibly be—overcome.

Physical inequalities among the provinces as at present constituted are first to be noted. These affect all the provinces in varying degrees, and reach into all classes of resources. The subjoined table illustrates inequalities in the acreage of all land and in the portion thereof that is estimated to be fit for agriculture—expressed in thousands of acres:—

Province	Total	
	Land Area	Arable Land
Prince Edward Island	1,397	1,258
Nova Scotia	13,275	8,092
New Brunswick	17,734	10,718
Quebec	335,062	43,745
Ontario	232,500	65,837
Manitoba	140,623	32,380
Saskatchewan	152,304	80,074
Alberta	159,232	87,450
British Columbia	223,981	22,663

Pre-Confederation inequalities. A second series of inequalities which clearly lie entirely beyond our reach are those originating prior to the entry of the various provinces into Confederation. Whether we refer to the original provinces only, or to those as well that entered the Dominion in later years, we find in every instance a material alienation of resources from the Crown, either by Imperial, Dominion or Colonial authority. And the inequalities so created are wholly beyond our responsibility to consider or our powers to remedy. In common with all other provinces—there is no exception whatever—Alberta has been subject to an alienation of lands and other resources antedating its history as a province of the Dominion; but its position in that regard is certainly no worse, and perhaps materially better, than that of some of the other provinces.

30. *Special meaning of equality.*—In discussing this question of equality, the Royal Commission on the Transfer of the Natural Resources of Manitoba drew attention repeatedly to the fact that equality does not and cannot mean equality in an unqualified sense. To quote from their report:—

"The provinces received equal treatment in this respect, that each one acquired what was left of the natural resources within its territory, however great or small the value of these resources may have been in one case or another." (p. 11).

"The equality established among these four provinces by the Confederation pact was one of method rather than of pecuniary benefit. Each province kept what it had, regardless of its value, just as it surrendered to the central government its other sources of revenue regardless of their value. But the results obtained in each case up to the present have shown that great differences exist in these respective values, because the revenue yielded annually from the natural resources is much greater in some provinces than in others." (p. 11-12).

"It appears therefore from the foregoing that the four original provinces of Confederation received equal treatment in regard to their natural resources in this respect—that each retained what it had possessed previously, regardless of natural differences of volume and value, and regardless also of all past acts of administration affecting this value." (p. 13).

"Bearing in mind the object sought to be attained by this Order in Council, which, as we understand it, is to place Manitoba, in so far as is now possible, in the position of a fully autonomous and fully endowed member of Confederation, we think it admissible to proceed by inquiring in the first place into the treatment which the province has received from the time of its creation down to the present. We can then decide whether, in view of the situation thus revealed, Manitoba is in as good financial position as she would probably have been had her right to the administration and control of her natural resources been conceded from the beginning." (p. 21).

"We have seen how, in entering the Union, each province kept what it had within its own provincial territory, for better or for worse, regardless of losses in the east which had been great in most cases, and of the superior or inferior value of the resources of other provinces." (p. 31).

The most that can be said is that, however much inequality existed among the provinces at their entry into Confederation, the provinces ought to receive from the Dominion fair and equal treatment in regard to the natural resources lying within their respective boundaries, and should be regarded as having equal opportunity to deal with their resources each in its own particular way.

31. *"The other Provinces of Confederation."*—What is meant by the other provinces? The four original provinces certainly are included—in another part of the agreement, they are expressly mentioned. Of the western provinces, British Columbia should be included,—it has had its resources from the beginning. Manitoba should be included,—its resources problem has been settled. Saskatchewan should be included only if its natural resources problem reaches final solution in terms consistent with the recommendations contained for Alberta in this report. Prince Edward Island can furnish but little that is relevant to our enquiry, but need not, in principle, be excluded. On the whole, we construe "the other provinces of Confederation" to mean all the other provinces of Canada.

32. *"With respect to the administration and control."*—The administration and control, contemplated under this heading, extends through the entire period from September 1, 1905, to October 1, 1930, and refers to every form of natural resource. It embraces every form of actual dealing with resources on the part of the Dominion, and the equal right, now retroactively to be assumed for the province, to deal with any and every part of those same resources during that same period, 1905-1930.

33. *The term "natural resources,"* as used in our commission and in paragraph 22 of the 1929 agreement, is not expressly defined. Its meaning is to be gathered therefore from the implications of other parts of the agreement, and from certain acts of Parliament dealing with natural resources. The agreement, in its recitals, refers to "lands, mines and minerals," and to "the interest of the

Crown in the waters within the province," but in its operative clause, it transfers "the interest of the Crown in all Crown lands, mines, minerals," omitting mention of the waters. All these expressions refer to natural resources. In other parts of the agreement, and in the Alberta Act, 1905, and still other acts of Parliament, natural resources are sometimes referred to as "Crown lands," "public lands" and "public domain." The British North America Act, in Section 109, describes them as "all lands, mines, minerals."

34. *The term "lands,"* in its ordinary legal sense means and includes not only the surface soil, but everything below as well as above that surface,—everything from the centre of the earth to the highest heavens. That being so, and in absence of some special reason, the constituent parts or incidentals of lands, such as mines, minerals or waters, would ordinarily be included in the term. By the same token, it would seem that, if enumeration is made of any of the parts, it should be extended to all of them; otherwise, by the rules of interpretation, the unenumerated parts would be excluded. The British North America Act, 1867, Section 109, sets the precedent of enumerating some but not all of the particulars. It mentions "lands" and follows up with "mines, minerals" as constituting the natural resources which are to be retained by the original four provinces respectively. This description of natural resources was adopted, slightly amplified, in the Alberta agreement of 1929, and we may, therefore, justly assume that the 1929 agreement intended to pass to Alberta all the resources within its boundaries as fully and completely as the British North America Act intended for the original provinces. No question has ever been raised, or at any rate effectively raised, that the original provinces retained less than all of their natural resources, not only the enumerated parts, but also unenumerated parts, such as quarries, oils, gas, forests and waters. By the same token all such should pass to Alberta. That they have passed, is not questioned, except in the case of waters and water-powers.

35. *Water and water-powers.*—Early in the course of this enquiry, doubts were expressed as to whether or not waters are included in the transfer. The doubt arises from the express mention of waters in the recitals, and the omission of any such mention in the transferring clause—a doubt which is not completely removed by the provisions relating to waters appearing in subsequent paragraphs of the agreement.

This subject was discussed by Counsel for the respective Governments and it was intimated to us that a supplementary agreement would probably be made, if considered necessary, to remove any doubts in the matter. As we have since received no more definite information, we think it proper to say that while we accept the view that waters and water-powers have passed to the province under the Resources Transfer Agreement of 1929, we do so only for the purposes of this report and not with a view to expressing an opinion on what may become a question of law for later determination. In any event, our recommendations should, in our judgment, stand unaffected. Should it later be found that the water resources have not passed, two alternatives will present themselves. First, the transfer may be effected then or soon thereafter by supplementary agreement and legislation, in which case the conditions assumed in our recommendations will be fulfilled. The second alternative is that the water resources may remain indefinitely under federal administration and control. If so, the Dominion will be carrying on, in the Province of Alberta, the administration of resources of which the burden of management, elsewhere in Canada, falls upon the provinces themselves. Inasmuch as the expense of administering the waters and water-powers in Alberta has in past years substantially exceeded the revenues therefrom, and in the absence of evidence as to what the future may disclose in this respect, we do not consider that such an outcome would afford ground for varying in any way the recommendations and conclusions which appear later in this report.

36. "*Royalties*" derivable from, and "*sums of money receivable*" in respect of natural resources, are not in themselves natural resources. They are *revenues* from resources and as such pass to the province under express assignment in the agreement.

37. *School lands*.—A suggestion has been made that these are *trust* lands and not *public* lands in the ordinary sense, and that they are therefore not included in "natural resources," and so are not within the scope of our enquiry. The unalienated portions of these lands, as forming part of "the Crown lands," mentioned in the 1929 agreement, have actually been transferred to the province; the propriety of so transferring them is not questioned. If, then, these lands were Crown lands and were a proper subject for transfer in 1930, as part of the natural resources, they must also be natural resources for the purposes of this enquiry. We, therefore, treat them as a proper subject for enquiry in respect of the administration and control of natural resources. But we have thought it essential—owing to the special provisions applying to the use of funds arising from school lands—to state our conclusions in regard to school lands claims separately from those pertaining to claims relative to other resources.

38. "*As from the first of September, 1905.*"—We have already seen that this date has, since the making of the agreement, been definitely settled as the beginning of the period under review.

39. "*Till the first of October, 1930.*"—The terminating date of this period is not mentioned in our Commission, nor in the order in council authorizing our Commission, nor even in paragraph 22 of the agreement which provided for the enquiry. In paragraph 25 of the agreement, the terminating date is fixed, moveably, upon the happening of certain events.—By a supplementary agreement entered into by the Government of the Dominion and the Government of the province, dated July 29, 1930, the terminating date was expressly fixed as October 1, 1930. And upon this date, so set, the administration and control of the province's resources were actually handed over by the Dominion and assumed by the province.

40. *The transfer is subject to pre-existing trusts and interests.*—By paragraph 1 of the 1929 agreement, the resources are transferred "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same." This provision is copied in substance from Section 109 of the British North America Act, 1867, where it is made applicable to the retention, by the original provinces, of their unalienated natural resources.

The meaning and significance of the terms "*trusts*" and "*interests*," as therein employed, were considered and determined by the Judicial Committee of the Privy Council in the case of *The Attorney-General of the Dominion vs. Attorney-General of Ontario*, reported in 1897, Appeal Cases 199. That tribunal laid it down, that

"The expressions 'subject to any trusts existing in respect thereof,' and 'subject to any interests other than that of the province,' appear to their Lordships to be intended to refer to different classes of right.

"Their Lordships are not prepared to hold that the word 'trust' was meant by the Legislature to be strictly limited to such proper trusts as a Court of Equity would undertake to administer; but, in their opinion, it must at least have been intended to signify the existence of a contractual or legal duty, incumbent upon the holder of the beneficial estate or its proceeds, to make payment, out of one or other of these, of the debt due to the creditor to whom that duty ought to be fulfilled.

"On the other hand, 'an interest other than that of the province in the same,' appears to them to denote some right or interest in a third party, independent of and capable of being vindicated in competition with the beneficial interest of the old province."

CHAPTER VI

ALBERTA'S CLAIMS—GENERAL OBSERVATIONS

41. The grounds upon which Alberta's case for additional compensation was advanced cannot be reduced to a series of specific items of claim. Counsel for the province examined in a comprehensive way the many phases of the Dominion's administration of Alberta's resources from 1905 to 1930, setting out in detail the extent and purposes of the land alienations, the practices followed in the sale and management of school lands, the methods and policies governing the administration of grazing lands, timber and mineral resources. The Dominion's revenues and expenditures were likewise subjected to close analysis. All these matters were reviewed not with the motive of calling into question the purposes or the efficiency of federal management but rather with the main intent of revealing those features of administration with which a provincial government would have dealt differently, seeking especially to obtain greater net revenues. In some instances specific amounts were mentioned by Counsel for the province as representing probable provincial increases of gross revenue or decreases of administrative costs; but the setting out of those amounts would hardly do justice to the full weight of the case advanced on behalf of the province.

In succeeding paragraphs we briefly review the major bases upon which the claim for added compensation rests, dividing them for our own purposes into four groups relating respectively to:—

- (a) The alienation of surface rights,
- (b) The alienation of under-rights,
- (c) Administrative methods,
- (d) Miscellaneous matters.

A word of explanation is required with regard to group (c). We use the term "administrative methods" to cover a rather wide range of matters upon which Counsel for the province strongly urged that a provincial administration would have departed radically both from the policies and from the detailed methods of management adopted by the Dominion. These matters relate partly to lands—chiefly school lands—and partly to resources such as grazing lands, minerals and timber which ordinarily are leased, rather than alienated outright from the Crown, and are developed under the leasehold system coupled with the payment of rentals, royalties or other dues.

42. *Alienation defined.*—The term "alienation," used so frequently in this enquiry and report, is a comprehensive one, embracing not only actual conveyances but also commitments to convey. The commitments to convey were in the nature of agreements, or undertakings, or licences, sometimes conditional, sometimes absolute, which, when acted upon by persons or companies dealing with the Crown, created in them the right to demand and receive conveyances. Conveyances were made (a) by patents, (b) by Orders in Council, or (c) by notices having the force of patents. Alienations, as we use the word, cover principally the agricultural lands which were given away or sold, plus a small acreage of lands, containing coal and bituminous sands, that were sold outright. The leasing of timber, mineral and grazing lands, under terms requiring the payment of rentals, royalties or other dues, we do not regard as comprising alienations in the full sense.

43. *Ascertainment of acreages.*—In every alienation of land, one important factor is acreage. The figures representing these acreages have been prepared on behalf of the Dominion Government from departmental records and have been accepted by the province as accurate or approximately so.

The commitments which were entered into prior to September 1, 1905, created trusts or interests which the province after 1905 would have been bound to honour, at the option of the beneficiary; and to the extent that they were not cancelled or abandoned after 1905, they were honoured, and consequently are excluded from further consideration. By the same token, commitments entered into before, but not completed by actual conveyance till after, October 1, 1930, are properly included in alienations, except so far as they might be abandoned or cancelled after October 1, 1930. Such cancellations are apportioned among the appropriate items of alienations. Our figures, therefore, represent the net acreages stated in round figures.

44. *Values.*—Counsel for the province submitted a considerable volume of data bearing upon the unit values of lands and other resources in Alberta at various periods in the history of the province. The data respecting land values were chiefly in the form of records of actual land sales and prices. This material was presented with the intent of giving some indication of the prices that could have been realized in different years from the public sale of provincial lands. Later we deal at some length with this whole question of valuation as it relates to the problem before us.

45. *Extent of surface alienations.*—Owing to the special features of Alberta's claim, it will be necessary to consider the alienations of surface rights independently of alienations of sub-surface rights. For convenience of comparison we will follow, as far as applicable, the classifications followed in the Saskatchewan Report, and deal first with the alienations of surface rights, in respect of which the province would probably have derived its principal land revenues during the period 1905-1930. These are:—

(a) To settlers,—	acres
Free homesteads	15,800,000
Pre-emptions	1,700,000
Purchased homesteads	280,000
(b) To soldiers as bounties,—	
South African Veterans.....	1,000,000
Great War Veterans.....	750,000
(c) Various other uses, including some half-breed grants.....	770,000
Total	20,300,000

From all these lands, so alienated, the province may fairly claim that it would probably have derived substantial revenues.

46. *Other surface alienations.*—There were alienations, exceeding 7,000,000 acres, patented after September 1, 1905, in fulfilment of commitments entered into prior to that date. These included large acreages of homestead lands, Hudson's Bay Company lands, sales, grants for railway subsidies and for many other purposes. For these lands, as for several million acres actually patented prior to 1905, the province can make no claim.

There is another large group of alienations made after 1905 for which the province either makes no claim at all or has no right to claim on grounds of alienation. These include:

	acres
(a) School lands, for which the province makes a claim on the grounds of administration but not of alienation...	1,240,000
(b) National parks, established and maintained by the Dominion, for which the province makes no claim.....	13,435,000
(c) Lands for various charitable, religious, and community purposes, some retentions for federal purposes, and a part of the half-breed grants.....	75,000
Total	14,750,000

47. *Comment on alienations.*—The figures given in these computations of alienations are stated roundly, but may be relied upon as approximately correct, and as presenting a fairly accurate picture of the total alienations of surface rights between 1905 and 1930. In arriving at these figures we have made but very slight allowances for cancellation after 1930 of commitments entered into prior to that date. The commitments, subject to the slight reductions for cancellation, are included. Alienations completed by conveyance before 1905, although extensive in area, are not relevant to this enquiry and therefore are not detailed here.

48. *Alienations of under-rights.*—These alienations during 1905-1930 totalled in the gross nearly 4,700,000 acres. But, of these, all except a few hundred thousand acres were in fulfilment of commitments entered into prior to September 1, 1905, and so are removed from further consideration. Although the net totals of alienations of under-rights in Alberta, when measured in terms of acres, are far below those of Manitoba and Saskatchewan during the Dominion's administration of the resources of those provinces, they exceed the alienations of such rights in those provinces when gauged in terms of actual mineral quantity and value. For this reason these mineral alienations constitute for Alberta, much more than for the two sister provinces, a basis of claim in respect of revenue lost to the province during the Dominion's administration. The mineral wealth so alienated comprised many forms, but chiefly coal, petroleum and natural gas. The claim for compensation in respect of under-rights is dealt with under the heading "mineral claims."

49. *The administrative claims.*—These have to do with the Dominion's methods and policies of handling school lands, grazing lands, and timber and mineral resources. The school lands, because of their special nature as a trust, are dealt with under a separate heading. The grazing and timber claims are based upon the contention that the province would have produced, from these resources, more revenue than the Dominion actually received. For present purposes, it is sufficient to say that the grazing leases had to do with two classes of grazing lands—(a) the reclaimed or unsold school lands, and (b) ranching lands; and that the annual rentals secured from school leases were, on the whole, nearly twice as high per acre as those secured from ranching lands. The province claims that all rentals should have been on the higher level. The timber claims are based on somewhat similar grounds. The forests were, for the greater part of the period, administered under two branches of the Department of the Interior—(a) the Timber and Grazing Branch, and (b) the Forestry Branch. The revenue secured under the Forestry Branch was apparently considerably higher per unit of timber cut than that obtained under the other branch, and here again the province would have the higher scale applied throughout. Further, as a factor affecting the net revenue from timber resources, Counsel for the province stressed the necessity, which the province would have been under, to content itself with smaller expenditures upon the protective and other services of forest management.

The claims relating to minerals are of diverse character and of major importance. Partly they have to do with the patenting of under-rights along with surface rights as dealt with in Paragraph 48. In other instances, valuable mineral lands containing coal and bituminous sands were sold—alienated for all time—at prices per acre which in the view of the province were too low. Then there were phases of mineral administration giving rise to claims of the type that we briefly designate as "administrative claims"—that is, claims based on the contention that the methods of administration followed by the Dominion would have been vitally changed by the province chiefly in the direction of more rigorous collection of revenue. The mineral claims of this type greatly exceed those connected with the actual alienation of mineral lands or under-rights. It was submitted and very strongly urged on behalf of the province that the collection of revenue from coal lands and from petroleum and natural gas areas, held under

lease, would have brought greater cash returns under provincial management than under the federal. Attention was drawn specifically to the cumulative total of the amounts owing from coal operators to the Dominion administration at the time of the resources transfer; to the arrears of rentals on petroleum and natural gas leases; and to the failure of the Dominion to impose royalty on oil production. Further, it was asserted that the province would not have followed, without pronounced modification, the practice under which the Dominion permitted oil companies to pay rentals in part by a system of allowances or credits for drilling expenditures. Taken in the aggregate these different factors form the foundation for very large claims in respect of mineral resources.

50. *The miscellaneous claims.*—Under this heading are included claims of various sorts which do not logically fall under either alienations or administrative headings. They will be dealt with in detail in another place.

51. *Before proceeding to consider the claims more particularly, we feel that we should offer some general observations upon the fundamental principles and tests to be applied to their solution. Our primary guiding principle is this—that we seek to ascertain whether or not the province is as well off as it would have been had it enjoyed the control and administration of its resources from 1905 to 1930.*

52. *Compensation for minerals.*—Reference may be made here to a claim or argument that underlies the whole question of compensation for Alberta's mineral resources. Counsel for the province pressed the view that, when the original subsidy in lieu of lands was under consideration by the Parliament of Canada in 1905, the amount of the subsidy was determined solely on the basis of the estimated value of the lands and without regard to the value of the mineral resources; and that the subsidy paid in subsequent years should be looked upon as compensation for the lands alone. According to that view, nothing has yet been paid to the province on account of mineral resources; and the Dominion should now remedy that omission by paying compensation in an amount equal to the net revenues it derived from Alberta's minerals during the period 1905-1930, plus the estimated additional sums that a provincial administration would have realized. We do not concur in the view advanced on behalf of the province. There is a good deal of obscurity regarding the manner in which the amounts of the subsidies in lieu of lands, that were provided for under the Alberta and Saskatchewan Acts, of 1905, were originally determined. But there is no doubt that the continuing subsidy which Alberta is to receive under the Transfer Agreement of 1929 was intended to be looked upon as compensation for resources, of whatever kind, alienated in past years by the Dominion in Alberta. We regard the subsidies paid in the past, as well as those to be paid in the future, as compensation for resources of all forms, including minerals and timber as well as arable or grazing lands.

53. *Alienations for revenue.*—It is urged by the province and must be conceded that, under provincial administration, policies which would probably have been adopted for settlement purposes would have been influenced by the province's need for using the lands and other resources in some measure for revenue purposes. Revenue policies and settlement policies may be combined but they cannot be completely harmonized. In their very nature, each tends to make its influence felt only at the expense of the other. Had the lands, or a substantial share of them, been made available to settlers only at prices comparable with the ruling prices for western lands during the period 1905-1930, the province would have raised considerable revenue; but, in that manner, it would automatically have placed some check upon settlement. Alienations would have been somewhat reduced. Consequently a greater area of lands would have remained for transfer to the province in 1930. As a corollary to the foregoing, it seems certain that with the restrictions in alienation and settlement imposed by revenue policies, the demand for lands would have been less, and general land prices

lower. When considering what revenue the province would probably have derived from its resources, these two consequences of revenue policies must be kept in clear view—(1) fewer alienations, (2) lower prices.

54. *Valuation for revenue.*—In appraising values, we must bear in mind that the values to be sought are of very exceptional nature. They are not values measured by market or current prices prevailing during the period, nor by the net proceeds of sales at such prices, calculated after making due allowance for all costs of or incidental to administration and sale. The values which we must seek are the values to the province for revenue purposes. The test is, how much revenue would the province have derived from those resources had it been in control of them. It was only because the province was not to have its resources “as a source of revenue,” that it received compensation by way of annual subsidy under the terms of the Alberta Act, 1905; and it was only because of the alienation or use of parts of the province’s resources by the Dominion that the subsidy is continued for all time to come as compensation under paragraph 20 of the 1929 agreement, and is now to be supplemented if, on this enquiry, the subsidy is found to be inadequate. We cannot, too strongly, emphasize that we are not concerned with the gross or aggregate value of Alberta’s lands and other resources. We are concerned only with the net revenue which the province would probably have derived from them in circumstances very different from those which actually prevailed between 1905 and 1930.

55. *Revenue equivalent.*—Had the province been in control of its resources, it would not have had the subsidy, and would have been under the necessity of securing revenue, equivalent to the subsidy, in some other way. We are by no means convinced that the province would have felt it necessary to resort wholly to the lands or other resources to find the revenue equivalent to the subsidy. It might very well have made up the deficiency, at least in part, (1) by taxation in other directions, (2) by borrowing, or (3) by reduced expenditure. To the extent to which the revenue would have been derived from the resources it would serve as a measure for additional compensation only in so far as it exceeded the actual value of the subsidy and other direct benefits.

56. *Methods of obtaining revenue.*—There are only two general methods of obtaining revenue from public lands—(1) sales, and (2) leases. If sales had been resorted to, the proceeds thereof—that is the gross price less all cost of and incidental to selling and administering—would in a sense constitute revenue; but such revenue would be a substitute for the lands so sold, and any consumption of that capital revenue would be equivalent to a corresponding loss of the lands as any further source of revenue. If such capital proceeds were invested, the interest therefrom would constitute continuing revenue. If leases were made the basis of revenue, the income therefrom would be analogous to income derived from the invested proceeds of sales. In the Dominion, any extensive scheme of securing provincial revenue by leasing agricultural lands is unknown, although it is otherwise with forests, waters, mines and grazing lands. The arable lands in the Canadian provinces have in general been in part given away free, and in part sold. Both rentals and sale prices of Crown lands have almost uniformly been moderate.

57. *Probability the only test.*—In endeavouring to determine what policies the province would have pursued when dealing with its resources, we are to be guided by a few fundamental considerations and are to seek, not what the province *might* have done, or what it *could* have done, but *only* what it *would* have done. In the absence of any conclusive evidence as to what the province would have done, we have to content ourselves with determining as best we may what the province would *probably* have done. Probability is therefore the test. It is also the test applied by the Manitoba Commission.

58. *Probable provincial attitude.*—Under the assumed provincial administration, the province would, as already pointed out, have had no subsidy as a source of revenue and would, therefore, have been under the necessity of supplying that revenue, at least in part, from the resources. The necessity would surely have created, in both the people and the Government of Alberta, an outlook far different from that which prevailed under Dominion administration. The fact that the Dominion had the responsibility of looking after these resources, and that the province was only indirectly affected by generosity in alienations, must have created in the minds of the people a certain indifference to the free and easy disposal of the lands. Had they been charged with a sense of ownership and responsibility, and with the necessity of providing some revenue from those lands, their attitude would surely have been quite different.

59. *Revenue precedents.*—The province would have had before it, from the very beginning, the example of Manitoba's policies of securing provincial revenues from the sale of its swamp lands. These swamp lands were admittedly inferior lands—designated by statute "waste lands"—and until drained were hardly fit for settlement; they had been rejected by the Manitoba South Eastern railway as not being "fairly fit for settlement." Manitoba sold those lands extensively between 1885 and 1908 for substantial prices, and used the proceeds as current revenue.

There was also the example of the school lands in Alberta and the other prairie provinces. These lands sold at high prices, under very special and favourable conditions. Although they comprise only one-eighteenth of the agricultural lands of the province and although only little more than 1,240,000 acres were sold, these lands produced very large aggregate returns. They suggest the possibilities of revenue production from other Alberta lands.

Pre-emptions and purchased homesteads, as sold by the Dominion, afford an indication of what the province would probably have done with some of the settlement lands. These lands were available only in the sub-humid areas of the province, and were regarded as much less desirable than the average of good lands; yet the Dominion, whose policies were designed for settlement and not revenue, sold 2,000,000 acres of these lands at \$3 an acre. It would seem that the province, with its desire for revenue as well as settlement, would probably have followed and greatly extended this policy of selling lands to settlers.

These examples must not be applied without reservation and qualifications adapting them to the conditions that would have prevailed under a provincial administration; but they do serve as useful guides for us in determining what the province would probably have done with its agricultural lands. In regard to other resources—notably timber and minerals—Alberta would have found a wealth of experience to draw upon in the older provinces, several of which have for many years depended upon their forests or minerals, or both, to produce steady and substantial revenues.

60. *Comparing the actual with an assumed administration.*—The Dominion's administration is to be found in actual records; the province's administration is to be based on assumptions and inferences. The one has a foundation of certainties; the other of probabilities. Stated more explicitly, the Dominion's administration is to be ascertained by examining, analysing, and classifying the actual administrative transactions of the period—a task which, although it involves an immense amount of labour and care, is simple in principle and should be fairly definite in results; the province's administration, on the other hand, is to be ascertained from assumptions based upon, and inferences drawn from a wide examination and comparison of statements and actions, both official and unofficial, of public men and public bodies within the province itself, as well as from the records of administration by the Dominion of resources in certain other provinces, and from the records of administration by other provinces of their respective resources.

When so constructed, the province's administration is to be compared with that of the Dominion; and if that comparison proves favourable to the province, the difference between the two administrations must then be appraised in dollars. Obviously, the problem is one which does not lend itself to clear-cut determinations. The most that can be hoped for is approximations.

61. *Dominion purposes, and provincial purposes.*—The Alberta Act, 1905, provided that all Alberta's resources were to be "administered by the Government of Canada for the purposes of Canada"; the 1929 agreement declares that those same resources shall now be considered to have been administered retroactively as from September 1, 1905, by the Government of Alberta for the purposes of Alberta.

The line which separates the purposes of the Dominion from those of the province is not always discernible. There is much overlapping of such purposes and very little exclusiveness. Many, if not most, of the administrative policies, methods and transactions of the period, even though initiated by the Dominion in furtherance of its own purposes, served also, in varying degrees, to meet the real needs and purposes of the province. This they did by attaining objectives which the province, had it been in control, would surely have set for itself. Moreover, it may be said that in conferring benefits on the province, the Dominion policies were, to some extent, serving purposes of the province. Such overlapping and admixture of effects are inevitable. What must be apparent is that Dominion purposes and provincial purposes do not necessarily conflict, or exclude each other. There are many purposes common to the Dominion and the province. For instance, colonization and settlement were avowed purposes of the Dominion; they would also have been purposes of a provincial administration. And by whichever administration brought about, they would necessarily have resulted in great expansion in the industrial and commercial life of the whole of Canada, including the prairie provinces themselves. This principle of overlapping purposes we regard as of fundamental importance as a guide to correct conclusions in this investigation.

62. *Onerous consequences of rapid development.*—Although the province would have sought colonization and settlement on a large scale, it would probably, early, have learned that rapid, scattered settlement entails heavy burdens on a new province for the construction and maintenance of highways, bridges, and other means of communication as well as for schools and other necessary services. It is possible that, with the burden of providing for these services, the province would have sought, in some measure, to restrain the march of the frontier line by refraining from opening up new territories for settlement until the regions already opened were comparatively well settled. By such measures, the province might have avoided some of the onerous burdens thrown upon it by the unprecedented rapidity of colonization and settlement under the Dominion rule.

63. *Revenues obtained by the Dominion.*—Notwithstanding that the main purposes of the Dominion in administering the western lands did not include the production of revenues therefrom, the federal administration did secure from the resources revenues in excess of its cost of administration. For the period under review, these revenues exceeded \$32,000,000, whereas the expenses, as charged up by the Dominion, amounted to slightly over \$30,000,000. What might have been attained under policies designed not for settlement alone, but for settlement and revenue, is difficult to estimate, but assuredly substantial increases of revenue might have been expected.

64. *Governmental methods.*—We must also keep in mind that the method followed by governments generally in administering public domain, is not to press too rigorously on pioneers and settlers, but to encourage them by generosity and by leniency. This is almost universally true, and would almost surely have affected the policies and methods of the assumed provincial administration.

65. *Economic instability of the period.*—Whatever the province may have done in formulating policies for the administration of its resources, it would have had to face, throughout the whole of the period, the same disturbing features of great fluctuations in prices of lands and commodities. The period was one of great economic instability, and was characterized by several booms at varying intervals, each followed by its inevitable depression in prices. On the rising markets—too often near the peak—purchasers secured school lands and other lands, on deferred payment plans, only to find themselves unable to meet these obligations in the periods of succeeding depressions. In many of these cases, the alternatives open to the government administration were unpleasant; either the purchaser had to be put off the land, or had to be allowed to remain without payment of his debt. It is not conceivable that a provincial administration could have escaped losses consequent on such conditions.

66. *The expropriation theory rejected.*—The suggestion that we should treat the resources as having been expropriated by the Dominion on September 1, 1905, cannot be accepted; and compensation cannot, therefore, be calculated on the basis of a conversion as of that date. Although such a method of dealing with the problem would greatly simplify our task, especially that part of it dealing with alienations, by eliminating practically all considerations except values at 1905, with perhaps interest thereon until 1930, it would preclude us from giving equal, consistent treatment to administrative questions which do not involve alienations. However desirable the suggested course might be on grounds of simplicity, it is out of harmony with, not to say adverse to, the spirit and letter of our Reference. The course laid out for us is to review along general lines, the whole actual administration by the Dominion of Alberta's resources during the period in question.

The idea of expropriation appears in the report of the Manitoba Commission but, on scrutinizing the use of the term there in its relation to the general exposition of the case, we feel justified in assuming that its use was not intended to imply anything contrary to the view that Manitoba was to be compensated only for its loss of revenue.

67. *Provincial administration since 1930.*—The policies and methods adopted and pursued by Alberta in the administration of its resources since October 1, 1930, have been brought to our attention for comparison with those of the Dominion prior to that date. It is suggested that they afford some guide to what the province would probably have done had it been in control from 1905. It is true that these provincial policies and methods display a high degree of diligence, thrift and care, and had they been applied to the administration of the resources from 1905 to 1930, would either have produced large revenues or conserved the resources. We must not, however, make the comparisons unless we bear always in mind the sharp difference that exists between general economic conditions during the years before and the years since 1930. These differences are so marked that the periods ought to be contrasted rather than compared. It should also be borne in mind that the province assumed the burden and responsibility of management only after a quarter-century of federal administration, having before it as a guide all the experience and lessons of that period. On the whole, the provincial administration since 1930 does indicate that a local "close-up" administration designed for provincial rather than national purposes, has many advantages.

68. *Alberta's unalienated resources.*—The Dominion alienated outright a very large acreage of Alberta's arable lands, and a limited acreage of mineral-bearing lands. But the remaining resources, transferred to the province in 1930, still constitute an extensive and valuable public domain. The province has acquired all the resources—coal lands, petroleum and natural gas areas, timber

and grazing lands, waters and other resources—which were not alienated in any way by the Dominion or alienated only under various systems of leasing. The other two prairie provinces have similarly come into possession of unalienated resources which in the aggregate are of great extent, subject to these differences as compared with Alberta—that in the case of Manitoba the public domain was in process of alienation by the Dominion over a much longer period, and that in Saskatchewan's case the resources, consisting in greater degree of arable lands, have in greater degree passed from the Crown.

CHAPTER VII

THE CLAIMS CONSIDERED

69. *Free homestead lands.*—In 1905 and for some years preceding, free homesteading was at very high levels. For several years after 1905, the rate continued unabated if not increased. The province was then enjoying its greatest progress in settlement, and would have been loath to abandon the free homestead policy on which that progress so much depended. This is particularly true of the earlier years of the period 1905-1930. Speaking in the Saskatchewan Legislature in 1911, Sir Frederick Haultain expressed the opinion of many public men of the day when he said:—

“No man in 1905 would have dreamt of altering the homestead policy because it was that that was so attractive to settlers. The province would have followed out the same policy and would have been in exactly the same position except that the province instead of the Dominion would have received the land revenue.”

What applies to Saskatchewan is, we believe, largely applicable to Alberta also.

But we are convinced that eventually the time would have come when, with a rapidly lessening supply of good available agricultural lands, coupled with an almost equally rapid growth in the need for revenues, the province would probably have modified the homestead policy. In all likelihood the change would not have been put into effect until after a large proportion of the homestead lands had been alienated. Examination of the records of homestead entries and cancellations for the period 1905 to 1930 reveals that, of the net area homesteaded during those years, at least forty-five per cent was entered for in the first five-year term and approximately forty per cent in the second five-year term. The first ten years account for more than four-fifths of the net area homesteaded in the entire period 1905-1930. The date at which the free homestead policy would have been modified or discontinued is a matter of speculation. At whatever date the discontinuance would have occurred, the effects of the policy would continue for three years thereafter—the entries made immediately prior to the change would have to be honoured in the next three years. How much of the fifteen or sixteen million acres of free homestead alienations would have been saved for provincial revenue is also speculative, but the acreage, whatever it might have been, would in all probability have been in part used (probably sold) for revenue, and in part would have remained a provincial asset with revenue possibilities. It is evident that the acreage that would have been devoted to revenue production would have been restricted to a comparatively small part of the whole.

It may have been with such considerations in mind that the Manitoba Commission contented itself with “placing a light appraisal on the loss to the Provincial Government (of that province) in respect to homestead lands” (page 42). The precise amount of that appraisal is not disclosed but is embodied in the general award.

70. *Pre-emptions and purchased homesteads.*—These lands are here treated together because they were sold during the same years, in the same general areas, at the same uniform price, to settlers who already were in possession of free homesteads in immediate or close proximity. The price obtained by the Dominion of \$3 an acre is irrelevant here except to indicate what the province might have secured from the lands under a revenue policy. The province claims that a higher price per acre would almost surely have been obtained for any portion of these lands that it would have sold. This claim may well be conceded, but the higher the selling price the fewer the sales. It also claims that a large part of

these lands would not have been diverted from the only use for which they were designed by nature, namely, grazing purposes. Assuming that to be so, we must not overlook the fact that any portion of these lands so left to their original grazing uses would to that extent have reduced the acreage of alienations.

The rental of grazing lands under the Dominion's administration ranged from two to four cents an acre a year. If, as the province contends, a four-cent rental was obtainable, it means, when capitalized, that the land is valued at about \$1 per acre. All things considered—part of the acreage at more than \$3 per acre and the balance at less than \$1 per acre—it is not clear that the province would have received, from these alienated pre-emptions and purchased homesteads, a gross revenue higher than that obtained by the Dominion. But the loss of that revenue, whatever the amount, is a proper claim by the province.

71. Half-breed lands.—The care of Indians was assumed by the Government under the British North America Act. In order to extinguish Indian title in the Northwest Territories, certain lands were, under treaties, set apart as reserves for full-blooded Indians, on which those Indians were to reside. Other lands were made available for half-breeds belonging to the region, and were alienated by scrip, entitling each holder, if otherwise qualified, to 240 acres of land, to be selected from available settlement lands. Most of this half-breed scrip was sold by the half-breed recipients and so passed into the hands of speculators and others, thus depriving the alienation of some part of the intended settlement element.

The question is raised as to whether or not Alberta was bound to provide lands for all the half-breeds who later secured scrip. The question is one of difficulty, and we do not pass upon it in the sense of deciding legal rights. It seems, on the whole, that had the province been in control, a substantial part of these half-breed alienations would never have been made, and the land so saved from such alienation would have been saved to the Province as assets with revenue potentialities.

72. Soldier bounties.—The province claims, and it is not disputed, that bounties to be given to soldiers were a matter of Dominion and not provincial responsibility.

As regards the alienations to South African veterans, which were authorized in 1908, the evidence indicates that the province itself would probably have granted free lands to those soldiers who were domiciled in the province, or who would undertake to settle on the land. It is impossible to say to what acreage such alienations would have extended. It seems that the province would not have adopted the policy which the Dominion pursued, of giving away lands to all veterans, irrespective of domicile or settlement intentions, and that in any event alienations would not have been made in the form of scrip, which defeated the great purpose of settlement.

As regards the grants to veterans of the Great War, rather less force, we think, is to be attached to the views urged by Counsel for the province; but even in respect of these alienations, the province would have been guided more than the Dominion was by the need of conserving its lands for provincial uses. These soldier bounties constitute a substantial ground for claim.

73. Railway land subsidies.—All alienations for railway subsidies in Alberta made by the Dominion during its administration of the province's resources were made in fulfilment of commitments entered into prior to 1905. There seems to be no exception to this statement. The only possible exception affects a small area of approximately 25,000 acres, and even in this instance the exception is not clearly established. In this respect Alberta's case differs from those of Saskatchewan and Manitoba.

We should here refer to alienations, made in favour of the Alberta Railway and Irrigation Company, of approximately 1,114,000 acres. A controversy has arisen in regard to the mineral rights in connection with approxi-

mately 682,000 acres. These alienations were authorized by a series of Orders in Council, passed several years before 1905, authorizing the alienation of surface rights including some, but not all, under-rights. Subsequently, but still before 1905, these Orders in Council were consolidated into one general Order in Council. But the consolidating order omitted to make any reservation of minerals. The patents issued pursuant to this last Order in Council conveyed all surface and all under-rights to the company. It is contended on behalf of the province that such conveyance was not authorized, and that the failure to reserve the minerals was due to an oversight in omitting from the consolidating Order in Council a reservation of the mineral rights, and that the matter should be rectified or the province compensated for the loss of these mineral rights. Whatever steps may have been taken or are yet to be taken to rectify the error, the matter is outside the scope of this inquiry, as for our purposes we have considered the alienations as completed prior to 1905.

74. *Timber claims.*—These are administrative claims. They are based on the assumption that the province would have pursued more thrifty methods of dealing with timber. Claims that depend for their validity upon an assumed higher standard of efficiency by the province than by the Dominion, in regard to the details of administration raise a question that cannot be lightly passed upon. It is a question that touches many of the claims which we have to consider. In this matter of efficiency of management—as distinct from the nature of policy involved—we are unable to accept the view that Alberta would have succeeded in reaching and maintaining a standard of efficiency materially higher than that exhibited by the Dominion or by other provinces. Undoubtedly, the Dominion's long administration was not without its defects, but we cannot conceive that a provincial administration, covering the same period and matters, would have been flawless. The Dominion's administration had also its high points of efficiency, and in attempting to appraise the administration of any particular department, we should view not only the faults but the virtues as well, and regard the administration not piecemeal but as one whole, comprehensive unit. Briefly, the claim in regard to timber is that the province would have collected as much, if not more revenue, and that it would have spent less on administration, than the Dominion did. We consider it likely—and in accord with the practices of other provinces—that Alberta would have kept its administrative costs more closely in line with its timber revenues. But we do not think that the value of the forest conservation work carried on by the Dominion should be left out of account. On the revenue side, it is doubtful whether the province would have substantially exceeded the Dominion's collections. The nearby competition of British Columbia forest products must be recognized as a definite check upon the extent to which it would have been commercially feasible to increase the timber dues in Alberta.

75. *Grazing leases.*—These are administrative claims, arising out of the grazing lands. Here again, the principles just mentioned should be applied. This claim involves an attempt to apply an assumed provincial administration to the actual facts of the Dominion's administration.

The Dominion gave to school lands, when used for grazing purposes, a rental value, uniformly throughout the province, of four cents an acre a year, and to ranch areas a rate of two cents an acre. The province says there was no good reason for such distinction in rentals and that all leases should have been at the four-cent rental level. The school lands, leased for grazing purposes, were small areas situated within or adjacent to settled communities. They afforded additional pasture lands for nearby farmers, limited in extent but adequate for the use of farmers not engaged in stock-raising on a large scale. The grazing lands, proper, were the basis of extensive ranching activities. They were leased in very large tracts and for long periods. Their use, as the foundation of the ranching industry, was decidedly different in many ways from the

use of the school lands which were available only in small blocks and under short-term leases. We do not think it was conclusively established that the higher level of rental could and probably would have been applied by the province to the grazing lands; for the province, no less than the Dominion, would no doubt have been disposed to shape its policy with close regard to the needs and representations of the ranching interests.

76. *School lands.*—This claim is in a special category, because school lands had been set apart for educational purposes of the province, and were in a sense impressed with a species of trust. The provincial claim in respect of these lands is that the province would have been more zealous and thrifty in collecting the principal and interest owing on agreements for sale, and in securing rental income from some of the unsold and revested lands. No complaint is made with regard to the acreage sold or the sale prices. Here again we have to point out that the province's claim is based on incompatible assumptions. Under provincial administration of all natural resources, the prices obtained for school lands would almost certainly have been lower than those obtained under the Dominion administration, because, as we have already pointed out, the whole level of land prices would have been lowered. We must treat this claim on the basis that, under an assumed provincial administration, either the acreage of sales or the price per acre must have been less than those shown under Dominion administration.

Although the Dominion record is not without its blemishes it makes, on the whole, an excellent showing. Of the areas of land set apart for school purposes in the province—about 3,770,000 acres—the Dominion sold about 1,570,000 acres, of which about 330,000 acres were later cancelled and revested in the Crown. The result of those net sales is that roundly 1,240,000 acres have already yielded:—

(a) current revenue (interest, rentals, etc.) paid to the province year by year, 1905-1930.....	\$10,570,000
(b) principal money on sales (transferred to the province on Oct. 1, 1930).....	\$ 9,500,000

This is the equivalent of more than \$16 an acre on the net sales, and has all been paid to the province in cash. Further, on October 1, 1930, the Dominion turned over to the province, many agreements for sale, under which there was outstanding principal exceeding \$8,000,000. Even making allowances for substantial losses in collection, these outstanding accounts should yield several dollars an acre to be added to the \$16 already mentioned.

In respect of cancelled sales, the cancellations meant the abandonment of a large part of the principal; but it also meant that all the moneys, both principal and interest, that had been paid were forfeited to the fund, and the land itself became revested in the Crown. The chief loss in these sales was confined to the right to enforce the personal covenant of the purchaser, a right which it is not the practice of governments to exercise in such circumstances, and which, even if exercised, would on the whole be of doubtful value. Another loss—often serious—was the condition of weed infestation in which some of the land was left.

The high prices which school lands commanded, averaging more than \$14 an acre, are attributable to the wisdom with which the sales were conducted. No school lands were put up for sale till the surrounding lands were well settled and a local demand established. The sales were by public auction, well advertised, and so timed as to follow good harvests. The merits of high prices carried the defect of difficulty in collecting, accentuated by the fact that many of the sales were effected in years of high land prices followed closely by periods of depressed prices. A comparison between the results of school lands sales in Alberta and those of sales in Saskatchewan during the same period, throws a

significant light upon the effect of sales at prices which, in view of subsequent conditions, proved to be unduly high. The average selling price in Saskatchewan on the gross acreage sold was several dollars higher per acre than in Alberta, but the collections per acre of net sales—that is, the gross acreage sold less the acreage of cancelled sales—proved to be virtually on a par in the two provinces. Taking a broad comprehensive view of the school land situation, we question whether a provincial administration could have attained better results on the whole.

77. Mineral claims.—We have had before us, during the course of this enquiry, a most varied and extensive range of material bearing upon the mineral resources of Alberta, upon the Dominion's administration of these resources, and upon the extent to which a provincial administration would probably have sought and succeeded in obtaining greater mineral revenues than the Dominion realized. Viewed from the standpoint of their revenue-producing possibilities, we attach exceptional importance to Alberta's minerals—coal, petroleum and natural gas areas, tar sands, and minerals of other kinds.

The evidence that we have had to examine includes a wealth of statistical data dealing with the estimated value of lands, containing coal and tar sands, that were sold by the Dominion in the earlier years after 1905; with the areas of coal lands that were later leased from year to year, and with the royalties and other revenues, collected and uncollected, pertaining to coal leases; with the areas that were under lease for purposes of petroleum and natural gas development, and with the dues, collected or uncollected, from companies engaged in such development. The whole record of the administration of mineral resources, including such highly technical questions as enter into the waiving or rebating of dues, as a policy of encouragement to oil drilling operations, was examined.

Upon all items of revenue, whether royalties, rentals, or dues of any other type associated with the administration of mineral resources, the Commission was furnished with the most complete information, including the grounds upon which the course taken by the Dominion, and varied from time to time, was adopted. We were given, also, as complete an indication as circumstances permit of the manner in which the province might have been expected to depart from the policies and methods followed by the Dominion. While we do not here segregate and review the items in detail, we are satisfied that the Dominion's administration was, on the whole, one with which there is little fault to be found from the federal standpoint; yet it embodied some features—chiefly in respect to the development of petroleum and natural gas areas—which the province, guided by its need for revenue, would probably not have followed. Taking the whole period, 1905-1930, into account, we think that a provincial administration would have succeeded in obtaining from the mineral resources, in the aggregate, a net revenue considerably larger than that which the Dominion, less intent upon revenue purposes, actually derived.

Royalties are not made the subject of a separate claim and we have included them as one of the factors taken into consideration in the foregoing statement on mineral claims. And all underrights, alienated between 1905 and 1930, which we regard as constituting a proper basis for provincial claim, have been similarly taken into account.

78. Tax exemption of railway lands.—This subject requires mention but it is hardly to be classed as one of the primary bases of provincial claim. It was introduced for consideration in respect of the losses of tax revenue sustained by the province and its municipalities as a result of unduly long delay by railway companies in obtaining the grant of their subsidy lands—the lands being exempted from taxation until granted by the Crown. The handicap complained of had its origin in commitments entered into by the Dominion prior to 1905 and even if it could be reduced to reasonably definite form, there is no ground upon which we could regard it as the basis of an assessable claim.

79. *Water and water-powers.*—These resources are not made the subject of any special claim except in so far as Counsel for the province contended that, if the resources had been under provincial management, the administrative costs would have been less than those incurred by the Dominion. Such allowance as we think might properly be made on this account is dealt with and included in our consideration of the general question of the Dominion's administration costs in the chapter relating to "Dominion Credits." In paragraph 35, we have already referred to the main questions in connection with water and water resources which directly affect our recommendation.

80. *Seed Grain liens.*—Between 1905 and 1930, the Dominion, on several occasions, directly and indirectly assisted needy farmers of Alberta by furnishing them with seed grain and fodder. This assistance took the form, in 1908, of a money loan to the province, to enable the province itself to furnish that aid; on other occasions the Dominion furnished the aid directly to the farmers through the agency of the province,—an agency which embraced both the distribution of aid and the subsequent collection of the debts. The 1908 loan, as made to the province, has been repaid; but the balance outstanding or written off on the other loans is, according to Dominion figures, roundly \$2,870,000. These loans were made on security of mortgages on patented lands, and on the security of liens on the unpatented lands. The Dominion asks that the province assume these outstanding debts of individual farmers. The contention is advanced that the Dominion undertook to furnish such aid only because the resources of Alberta were under federal rather than provincial control, and that in the financial adjustments now to be made with regard to the resources question the whole amount of approximately \$2,870,000, with interest, should stand as a credit in favour of the Dominion.

We think that this matter is placed outside the scope of our enquiry by section 17 of the 1929 agreement which reads as follows:—

"17. Every lien upon any interest in any unpatented land passing to the province under this agreement, which is now held by Canada as security for an advance made by Canada for seed grain, fodder or other relief, shall continue to be vested in Canada, but the province will, on behalf of Canada, collect the sums due in respect of such advances, except so far as the same are agreed to be uncollectible, and upon payment of any such advance, any document required to be executed to discharge the lien may be executed by such officer of the province as may be authorized by any provincial law in that behalf; the province will account for and pay to Canada all sums belonging to Canada collected hereunder, subject to such deduction to meet the expenses of collection as may be agreed upon between the Minister of the Interior and the Provincial Secretary or such other Minister of the province as may be designated in that behalf under the laws thereof."

81. *Townsites.*—During the early years of the Grand Trunk Pacific Railway, the Dominion sold the railway many relatively small parcels of land for town-sites at a price of \$3 an acre, plus one-fourth of the profits on resale. These profits, collected or uncollected, have not yet been turned over to the province—an oversight which the Dominion now offers to remedy. The collected profits due Alberta amount to approximately \$68,000.

82. *Minor adjustments.*—We have not thought it essential to mention individually every item of claim laid before us. In dealing with alienations which, in the aggregate, exceed 42,000,000 acres, and with administrative questions relating to the management of a vast public domain during a quarter of a century, we have had to omit separate and specific mention of many relatively small acreages and of numerous minor questions. All of these, nevertheless, have received consideration and have been taken into account in framing our conclusions and recommendations. We should, perhaps, mention here one matter which came to our attention after the close of our hearings but sufficiently in advance of the completion of this report to enable us to give due weight to its effect. We refer to the transfer to the province of an area of roundly 68,000 acres, previously reserved by the Dominion for defence purposes.

CHAPTER VIII

CREDITS CLAIMED BY THE DOMINION

83. *Past subsidies.*—The first and most obvious of these credits is the semi-annual payment to Alberta of subsidy in lieu of the resources made by the Dominion between September 1, 1905, and October 1, 1930. These payments amount to \$12,750,000.

84. *Future subsidies.*—Under section 20 of the 1929 agreement, these are to continue from October 1, 1930, for all time to come at a minimum of \$562,500 a year, to be increased to \$750,000 a year when Alberta's population reaches 800,000, and to be increased to the maximum of \$1,125,000 a year when the population reaches 1,200,000. These subsidies are to be paid in semi-annual instalments on January 1, and July 1, of each year.

The present value of these future payments has been calculated by capitalizing the payments. In the capitalization, two variables are encountered: (1) the rate of interest to be used in the calculation; and (2) the dates at which the subsidy will probably rise to its next level, and eventually to its maximum. The first of these will vary with the opinions of individuals as to what interest rate should be adopted. Counsel approach agreement at three per cent. At this rate, the value of these future subsidies, continued in perpetuity on the present basis but without the anticipated increase through growth of population, would amount to slightly less than \$19,000,000. As to the second factor, calculations made in accordance with the best available formulae have been placed before us, estimating the future course of population growth in Alberta and indicating when the province may be expected to attain a population figure of 800,000 and, in the more distant future, of 1,200,000. We make no prophecy on this score; but, if this probable trend of population growth be taken into account, with the accompanying increases in the amount of the subsidy, it will bring the total present value of future subsidies up to more than \$29,000,000 (again using the three per cent rate of interest). If a higher or lower rate of interest be adopted in the calculation, the amount of that value will be decreased or increased correspondingly. We do not consider that a hard-and-fast capital value should be attached to these future subsidies for there are too many uncertainties to be considered; but we quote the figures chiefly to indicate that, in any view of their actual value, the subsidies constitute a very large compensation already given to the province.

85. *Administrative expenses.*—The Dominion's statement of these expenses runs to over \$30,000,000. This total includes some items which, had the province been in control of the administration of the resources, would probably have been reduced in amount or eliminated altogether. The credit on this item should therefore be substantially below the Dominion's figure.

86. *School land revenue.*—As already pointed out (paragraph 76) the Dominion administration produced and turned over to the province from school lands (a) current revenues amounting to \$10,570,000 and (b) capital revenue of \$9,500,000, a total of actual cash already paid amounting to more than \$20,000,000, with a realizable additional sum of at least several millions of dollars from current sales.

87. *Branch Line Railways.*—Following the principle laid down in the Manitoba Report, the Dominion claims credit for the aid it gave in different forms to the construction of branch line railways in Alberta. The circumstances in

Manitoba's case differ from those in that of Alberta. Again, the Dominion acknowledges the impossibility of being accurate, but suggests several million dollars. In considering this claim we ought to keep in mind that the Dominion during the same period made large expenditures in nearly all of the other provinces for what might well be called branch line railways, and that equality of treatment would require that Alberta should not be asked to reimburse the Dominion unless other provinces were called upon to do likewise.

CHAPTER IX

CONCLUSIONS AND RECOMMENDATIONS

88. From the foregoing survey of the resources problem of Alberta, several general conclusions may be drawn:—

- A—That the Dominion administration of those resources, while inspired primarily by the needs and purposes of national development, did serve effectively to promote many of the major objectives which would have been sought by a provincial administration;
- B—That the Dominion policies, designed chiefly for purposes of settlement and development, nevertheless produced substantial revenues from the resources under administration;
- C—That a provincial administration, concerned primarily or even largely with revenue production could, and probably would, have produced a much greater amount of revenue and at the same time have assured extensive settlement and development;
- D—That in order to find sure ground for awarding any further compensation to the province it is necessary to do more than merely concede that greater net revenues would have been realized under a provincial administration. It is necessary to find also that the probable net revenues which would have been derived by the province would have exceeded the aggregate of (a) the subsidy received between 1905 and 1930; (b) the capitalized value of the continuing subsidy; and (c) all school land returns;
- E—That the exact amount of any such excess cannot possibly be ascertained by any conceivable method of treatment. As so well put in the report of the Manitoba Commission in 1929, the problem of appraisal is complicated "almost beyond the possibility of clear unanswerable solution." The amount, if any, must remain a matter on which opinions widely differ. In order to reach common ground, we must proceed upon the principle of compromise. Without compromise of opinion, settlement may not be reached. This affects the members of this Commission no less than it may effect the members of the Parliament of Canada and of the Legislature of the province, if and when they are called upon to review or approve the recommendations of this report;
- F—That in approaching the matter of making a definite recommendation as to compensation, we can find no more cogent statement of the crux of the problem than is contained in the remarks made by the Right Honourable Arthur Meighen in the House of Commons, April 25th, 1921, when, as Prime Minister of Canada, he participated in a debate on this subject. He said:—

"It is not a hard matter to scramble an egg but it is a very hard matter to unscramble it. It was not a hard matter to retain the resources, but once you have retained them for fifteen to twenty years and adjusted every phase of public policy to the fact that there was retention, then it becomes a matter of very great complexity. Indeed it becomes a matter in the solution of which you meet with obstacles at every step and to such an extent that no half-dozen men can agree on any stage."

and further, when discussing the methods of solution:—

"You may get further by one way, and one way only, by presenting some concrete proposal in figures, that will appeal to a fair-minded man as a square, bald, rough but honourable solution."

89. *Recommendation.*—We recommend that the Dominion pay to the Province of Alberta a sum of money which, when added to all the purely provincial benefits that Alberta has received or is yet to receive from the Dominion in respect of its resources will, in our judgment, balance the amount of net revenue which the province would probably have obtained from those portions of its resources alienated or otherwise disposed of by the Dominion during the course of its twenty-five year administration. The sum which we so recommend is \$5,000,000. We also recommend that this sum bear interest at the rate of five per cent per annum from October 1, 1930, to March 31, 1935, and thereafter to such date and at such rate as the two Governments may agree upon. We should make it clear that no portion of this sum is to be considered as belonging to the Alberta School Lands Fund; also that it includes all sums payable by the Dominion in respect of townsites (paragraph 81) and other minor adjustments.

The sum of money involved in this recommendation has been determined as the result of compromise and agreement as to the amount—but not by agreement as to the method of calculation. The arithmetic of the case presents so many variables that probably no two persons could ever reach a common result in precisely or even closely similar manner. Given agreement upon the result, we deem it unnecessary to set out our individual views as to the different ways in which the Dominion credits and the provincial credits, respectively, should be compiled. That problem lends itself to endless variation, and, consequently, to endless controversy.

90. *Equality with the four original provinces.*—We submit this recommendation with full appreciation of the inherent difficulty of demonstrating, clearly and conclusively, that this or any other recommendation will actually and precisely place Alberta in a position of equality with the other provinces. Our primary test on the question of equality is this—that we seek to put Alberta in the position of being as well off financially in 1930 as the province would have been had it received the control and administration of its resources in 1905. Upon the payment of the sum which we now recommend, we believe that Alberta will be placed in that position. And we feel that by this method or test alone, carried out to the best of our ability, we are meeting the requirements of our terms of reference insofar as equality between Alberta and each of the four original provinces of Confederation is concerned. We have sought to give Alberta what we think the province itself would probably have made out of its resources if it had had what each of the four older provinces had, that is, a free hand with its own public domain.

91. *Equality with the remaining provinces.*—The same method of approach should apply with respect to parity between Alberta and each of the provinces, British Columbia, Manitoba, and Saskatchewan. But, here, the situation is complicated by the fact that the Dominion had certain transactions with each of these provinces. We are satisfied that, so far as the underlying facts are comparable, what we have recommended for Alberta is consistent with what the Dominion has done in its resources transactions with these three provinces.

92. *British Columbia.*—This province presents a case with special features. By the terms under which British Columbia entered the union, the Dominion undertook to connect the seaboard of British Columbia with the railway system of Canada; and British Columbia agreed to contribute toward that project by making a conveyance to the Dominion of a belt of land along the line of railway throughout its entire length within that province. Further, and in some way connected with that conveyance, the Dominion agreed to pay to British Columbia the sum of \$100,000 per annum. Later, in addition to the Railway Belt, the Dominion obtained by transfer from the province a substantial area known as the Peace River Block. In 1930, following the report of the Martin

Commission, the Dominion returned to the province all these lands except the limited acreage that it had alienated. The payment of \$100,000 per annum continues in perpetuity.

In this transaction in railway lands in British Columbia we find little or nothing to warrant comparison with Alberta. This was a pre-union bargain made in very special circumstances, and for very special purposes, between the Dominion and a self-governing colony. It has no discernible connection with or relation to that province's natural resources, which always remained under the administration and control of the province itself. The re-adjustment made in 1930 was influenced more by considerations arising out of the early railway situation than by any subsequent dealings by the Dominion in the Railway Belt or Peace River Block. Equality between Alberta and British Columbia must be sought chiefly along the path that we have indicated with respect to the four original provinces of Confederation, that is to say, in regard to the major share of her resources British Columbia has got what she has been able to make by her own methods of administration. That, no more and certainly no less, is what we must endeavour to secure for Alberta, subject to the handicap of having to work largely by hypothesis.

93. *Manitoba.*—It is only when we come to consider Manitoba that we find a case which, although different in many important aspects from that of Alberta, presents in many other ways closely similar characteristics. We have therefore had to be especially careful to insure that what we now recommend for Alberta is founded upon full and accurate understanding of the adjustment made between the Dominion and Manitoba in 1929. From a close scrutiny of the Manitoba report, we feel justified in the belief that the same primary test was applied in that enquiry as in this—namely, that of seeking to ascertain whether the province found itself, at the end of the period of federal control in as good financial position as if it had had provincial administration of the resources from the time of Manitoba's entry as a province into Confederation. We find on page 21 of the Manitoba report, this statement:—

"Bearing in mind the object sought to be attained by this Order in Council, which, as we understand it, is to place Manitoba, in so far as is now possible, in the position of a fully autonomous and fully endowed member of Confederation, we think it admissible to proceed by inquiring in the first place into the treatment which the province has received from the time of its creation down to the present. We can then decide whether, in view of the situation thus revealed, Manitoba is in as good financial position as she would probably have been in had her right to the administration and control of her natural resources been conceded from the beginning."

The latter portion of the foregoing extract—which we construe only in the light of a thorough study of the entire text of the report—we take as indicating a method of approach closely corresponding to that which we adopt for Alberta. The recommendations of the Manitoba Commission led to that province's receiving, (1) transfer of the unalienated resources, (2) the continuance in perpetuity of the subsidy in lieu of lands on the scale originally provided in 1905 for Alberta and Saskatchewan and later applied to Manitoba; and (3) payment of a sum which, when added to what Manitoba had already received and was thereafter entitled to receive, placed the province in as good a financial position as it would have been in had it been endowed with control of its resources from its inception as a province in 1870.

The sum, so awarded, was made up of the shortages between the subsidy payments which the province had received from July 15, 1870, to July 1, 1908 (see paragraph 22 (b)) and the subsidy payments which it should have received during those thirty-eight years. The sum comprises nothing else. The aggregate of these shortages was found to be \$4,693,125, of which nearly \$3,800,000 was referable to the period before 1905. The sum paid on July 1, 1930, was reduced to about \$4,584,000 by the net result of a series of debit and credit items arising out of the sale by the province of swamp lands. These items had no direct connection with inadequacy of subsidy.

It seems advisable at this point to refer briefly to the acreage of Manitoba's alienations. The Manitoba Commissioners mention only a few groups, that is, nearly 8,000,000 acres given away to homesteaders and nearly 3,000,000 acres given away as subsidies for the construction of non-provincial railways (page 36). They also mention, without giving the acreage, the swamp lands sold by the province, and university lands retained by the province. These, amounting to about 1,000,000 acres, were not charged to the Dominion in the report. No computation is attempted of the acreages of pre-emptions or other sales, nor of soldier bounties or other such grants. In the presentation of Saskatchewan's and Alberta's claims, on the other hand, acreage of surface alienations was strongly emphasized and because comparisons were then made with the alienations of Manitoba as mentioned in the report, we think it only fair to point out, in the light of these circumstances, that the total of Manitoba's alienations, corresponding in classification to the 20,300,000 acres for which Alberta claims compensation, amounted to at least several million acres more than the 11,000,000 acres mentioned in the Manitoba report.

Moreover, we must bear in mind that Manitoba was deprived of its natural resources as a source of revenue for a period not only of twenty-five years, as was the case with Saskatchewan and Alberta, but for a period of nearly sixty years. The length of this deprivation of this source of revenue was apparently the chief factor in the computation of the amount awarded by the Commission for deficiency or inadequacy of subsidy. It accounts for nearly the whole of the actual award. This time factor is only one of the several considerations which distinguish Manitoba's resources problem from that of Alberta, but it will serve to illustrate the point we wish to stress, namely, that quantitative comparisons of resources alienated by the Dominion in the western provinces are impracticable and valueless if confined to acreage of surface alienations alone. Many other elements must be brought into the picture if we are to get anything like a fair and comprehensive view of the whole problem. We are convinced that, when the sum total of what Manitoba and Alberta (including in the latter case, the payment we are now recommending) have received from the Dominion in compensation for their respective resources is compared on a basis that considers the case of each province "as from its entry into Confederation," it will be found that both provinces have been fairly dealt with, and the one not more or less so than the other.

94. *Saskatchewan.*—We have already mentioned that concurrently with the present enquiry, a separate commission has been conducting an investigation, similar in scope and character, relative to Saskatchewan. The personnel of the two commissions have been the same, except for one member of each, and the work of the two bodies has been carried on almost as a joint undertaking. We have thus had every opportunity of ensuring, as regards Saskatchewan and Alberta, consistency in conclusions as well as in method of approach. The measure we recommend for the purpose of placing Alberta on a basis of equality with the other provinces of Canada is in accord with the conclusions recommended in the majority report with respect to Saskatchewan.

95. *Prince Edward Island.*—Upon its entry into Confederation, this province possessed no public lands, and the Dominion agreed as part of the terms of union to give the province, on that account, a special subsidy of \$45,000 per annum. That was part of a bargain made under exceptional conditions; and the circumstances can hardly be regarded as affording in any way a parallel to the present case. While the special subsidy to Prince Edward Island is admittedly a payment from the Dominion to a province in respect of natural resources, we feel confident that this Commission was not expected to preserve equality between what Alberta should obtain in return for very large resources alienated by the Dominion and what Prince Edward Island has received by virtue of having no public domain whatever.

96. *The subsidy system.*—Time and again, during the course of this enquiry, material was submitted or suggested for consideration which, we thought, involved issues not clearly within our terms of reference. We have endeavoured to keep within the limits of our particular task but we realize that, directly or indirectly, the resources question as we have had to deal with it with regard specifically to Alberta and with some regard necessarily to other provinces, touches closely the whole problem of the subsidizing of provinces by the Dominion. We make the suggestion that a re-examination of this subsidy system in its entirety might be undertaken with advantage both to the provinces and to the Dominion. The readjustments made in recent years have been chiefly on the basis of *ad hoc* investigations affording little opportunity or authority to consider the full effect of such adjustments in relation to the subsidy system as a whole.

97. *Acknowledgments.*—We close with a word of appreciation to all who have assisted in the conduct of this enquiry. Counsel for the province and for the Dominion left nothing undone toward presenting and clarifying the voluminous material required to afford a clear view of every aspect of the case. An enormous burden of preparatory work fell upon departmental officers both at Edmonton and Ottawa. In particular, the Department of the Interior was called upon for assistance at every turn, entailing not merely weeks but months of heavy demands upon the staff, over and above their normal duties. All branches of that department, concerned now or in earlier years with the administration of western lands, forests, minerals and waters, or with kindred responsibilities, gave us courteous, prompt and invaluable co-operation. Officers of the Department of Finance likewise extended all possible assistance in equally efficient and courteous manner.

Special reference must be made to Mr. Oliver Master, the secretary of our Commission. Mr. Master is chief of the Economics Division of the Department of Trade and Commerce. He was secretary of the Manitoba Resources Commission and of the Saskatchewan Resources Commission. Deeply versed in the natural resources problems with all their ramifications, experienced, able and industrious, he has rendered our Commission advice and assistance that we deeply appreciate and gratefully acknowledge.

March 12, 1935.

A. K. DYSART,
Chairman.

T. M. TWEEDIE.

GEORGE C. McDONALD.

NOTE BY MR. COMMISSIONER McDONALD

I have subscribed to the recommendation in favour of an additional payment in the belief that a settlement is urgently desirable and that the merits of the case not only permit but demand latitude of view. Having regard only to the terms of reference, I have found it difficult to put aside the opinion that without further payment the Province of Alberta has already been well compensated in respect of natural resources.

I question whether—as was so often urged—force of circumstances would have induced the province, had it not been in receipt of an annual subsidy, to look wholly and solely to its natural resources to obtain a revenue equivalent to the subsidy. It is not unlikely that by a combination of—

1. Less expansive expenditure;
2. Increases in other forms of taxation;
3. Further borrowings, which would have been simplified by the possession of the natural resources;

the province would have substantially obtained the equivalent of the subsidy and that, in consequence, the revenues sought from the natural resources would hardly have approached the immense figures which were from time to time suggested.

While I concede that the province, had it been in possession of its resources from 1905 to 1930, might have taken advantage of high land values to realize substantial sums, I find it difficult to convince myself that any considerable proportion of these receipts would have been set aside to produce a permanent income in any way equivalent to the annual subsidy from the Dominion, which is now \$562,500 and which will rise ultimately to \$1,125,000.

GEORGE C. McDONALD.

March 12, 1935.

