

9 PRINTING AND PUBLISHING

SUPPORTING SERVICES FOR GOVERNMENT

REPORT 9: PRINTING
AND PUBLISHING

PUBLISHED BY THE QUEEN'S PRINTER · OTTAWA · CANADA FOR
THE ROYAL COMMISSION ON GOVERNMENT ORGANIZATION

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A small Project Group, directed by Bryan Evans, M.A., A.I.M., Senior Consultant, *P.A. Management Consultants Limited*, Montreal, undertook the detailed investigations into the printing and publishing procedures of the Government of Canada. Mr. Evans was assisted by H. F. Robert Perrin, M.A., F.R.G.S., and John Osman Miller, B.COMM., A.C.I.S., A.A.S.M., A.C.A.A., both from the same firm.

A number of briefs and submissions were duly considered and these are recorded in the final volume of your Commissioners' reports.

Your Commissioners, in acknowledging the assistance received, dissociate those named above from any of the findings and conclusions contained in this report; for these your Commissioners assume full responsibility.

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INTRODUCTION

The printing and publishing services provided by the Department of Public Printing and Stationery were selected for special study because few other supporting services illustrate so clearly the range of problems confronting the government in managing activities of a supporting and commercial nature. Moreover, its operations are of concern to every department of government: all need printing. Many, both in and out of the public service, question the continued desirability of the statutory monopoly granted to the Department to undertake within its own facilities all the printing requirements of Parliament and the departments of government. Furthermore, the printing trade, in briefs submitted to your Commissioners, contends that a true assessment of the Printing Bureau's costs would demonstrate that, where this statutory directive is being followed, the self-provided services are obtained only at greater cost. Therefore the objective of this report is to evaluate the current suitability of practices established by legislation seventy-five years ago: Amendments to the present legislation will be required in order to implement some of the recommendations put forward for consideration in this report; others can be implemented within the context of the present *Public Printing and Stationery Act*.

HISTORY

Parliament established the Department in 1886; prior to that date all printing had been done by contract, at a total annual cost to Parliament and the

departments of government approximating \$400,000. The purpose of the legislation was concisely expressed by the responsible minister when he moved second reading:

The Government requires stationery and printing every day. The Government, in that respect is essentially a consumer, and the rule of action in this case, the Government being the consumer, should be to get the best article at the least possible price. This is the object of the Bill.

The operations of the Printing Bureau are reviewed in this report to ascertain whether this object is currently being achieved.

Parliament recognized that a distinction existed between requirements of a department primarily concerned with a supporting service such as printing and those of other departments responsible for administering government policy and executing prime responsibilities. Accordingly, it sought to ensure by legislation that the Printing Bureau would be managed by officers with the qualifications and experience required for the efficient operation of an industrial activity of this nature; these prerequisites were set out in the statute and still form part of the Act. The statute also directed that wages be related to those paid in the printing trade in Montreal and Toronto.

Section 14 of the *Public Printing and Stationery Act* centralized printing responsibility under one authority and established the monopoly by creating a captive market.

14. A Government establishment shall be organized at Ottawa, and shall be under the management of the Director and Superintendent of Printing in which establishment all printing, electrotyping, lithographing and binding and other work of like nature required for the service of Parliament and the several departments of the Government shall be executed.

This statutory requirement to undertake *all* printing within the Printing Bureau has not been fully honoured, partly because the Bureau has never been equipped to produce every mode of printing. For example, bond certificates, money and stamps have always been acquired from other sources. In turn, the Printing Bureau has not attempted to undertake the production of fine colour work and all types of special forms. However, until World War II, the Bureau sought to produce all printing of a general nature required by Parliament and the departments of government. Wartime demands for printing led to proportionately greater utilization of commercial printing facilities. This practice has persisted, with the result that, in certain years since the war, contract printing has exceeded the production of the Bureau.

Also in the 1940's, wartime needs encouraged certain departments, National Defence in particular, to enlarge and convert internal reproduction facilities into small printing plants, some at Ottawa, others at various places across Canada. Since 1951 most of these have been placed under the jurisdiction of the Queen's Printer and their staffs transferred to the Department of Public

Printing and Stationery. However, map printing has continued to remain outside the responsibility of the Queen's Printer, the preparation and publishing of maps being a statutory responsibility of the Department of Mines and Technical Surveys. The National Research Council and many Crown corporations enjoy an option because they are not designated as departments of government: they may use the facilities of the Printing Bureau or make other arrangements.

Throughout its history, the Printing Bureau has been beset with cost problems. At its origin the House of Commons was told that a suitable building to house the Bureau would not cost more than \$50,000. It cost several times that sum; thus, no effort was made to recover its cost out of printing charges. A new machine, the linotype, which came on the market shortly after the Bureau's inception, created another unforeseen cost. Accordingly, Parliament was asked to appropriate funds for the capital cost of the machines and the practice was established, which still persists, of ignoring depreciation of equipment as a cost factor. In 1956 the Bureau moved into a new building which cost \$16 million. This extravagant outlay for an industrial plant has undermined public confidence in the ability of the Printing Bureau ever to achieve its statutory objective: that of providing the Houses of Parliament and the departments with printing at the least possible cost.

GROWTH

The staff of the Department has multiplied almost sixfold since the first plant came into operation. The expansion by decades since 1891 is illustrated in Table 1.

Table 1—GROWTH OF DEPARTMENT OF PUBLIC PRINTING AND STATIONERY

<i>Year</i>	<i>Number of Employees</i>
1891	341
1901	511
1911	861
1921	730
1931	721
1941	709
1951	991
1961	1,818

Part of the increase in the last decade can be accounted for by the staff acquired from the printing units of other departments which were placed under the Department's jurisdiction. The staffs of these outside printing plants now number 398. However, production personnel at the main plant have also increased since 1951 by almost 250, the personnel of the administrative and

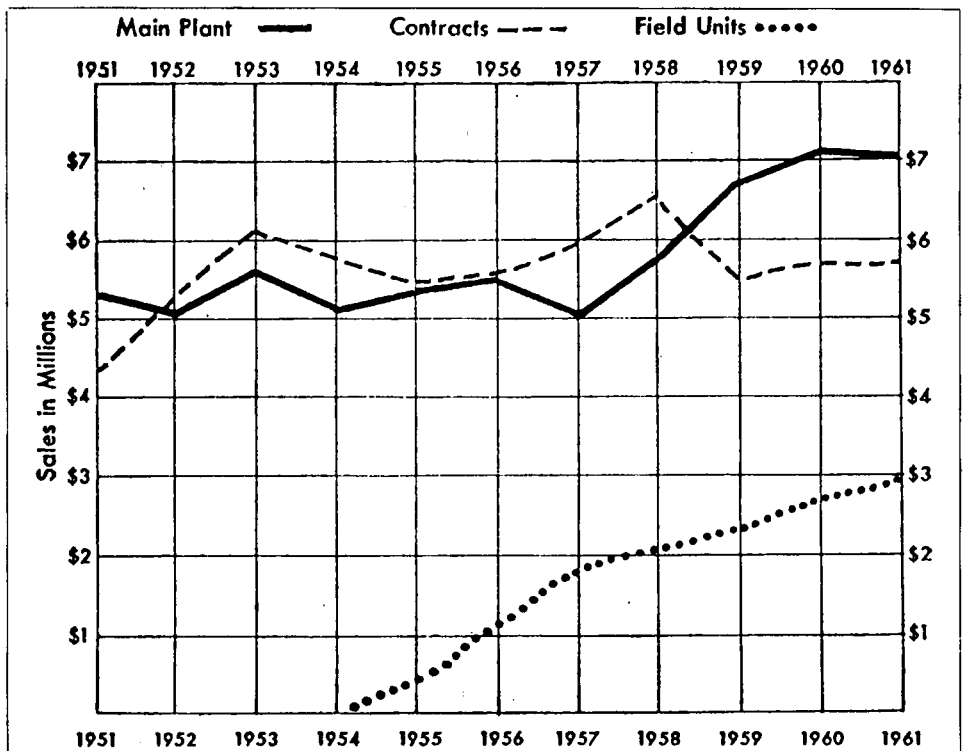
financial services branches by just over 100, sales and distribution employees by approximately fifty, and procurement and stores employees by almost forty. The present distribution of the Department's staff is shown in Table 2.

Table 2—DISTRIBUTION OF DEPARTMENTAL STAFF—1961

Executive	11
Printing Production—Main Plant	987
Printing Production—Field Units	398
Procurement, Purchasing and Stores	178
Publications	91
Administrative and Financial Services	153
	<u>1,818</u>

The growth of government printing requirements in the past decade can be seen by reference to Exhibit 1 taken from the Department's annual report for 1960-61. The growth indicated for the field units does not represent a true increase in volume. Sales values are only included for these units, subsequent to the time that they became part of the Department of Public Printing and Stationery.

Exhibit 1—COMPARATIVE PRINTING SALES



This Exhibit also illustrates the trend over the decade in the apportionment of government printing requirements between the Bureau and the commercial printing trade. However, the sales values presented in the Exhibit must be approached with some caution. Whereas the sales value of contracts represents the full selling price to the government, the sales figures for government printing fail to include costs equal to almost one-half of those billed. The costs omitted are paid out of parliamentary appropriations, either of the Department or of those departments providing services without charge to the Printing Bureau. The printing purchases of departments not passing through the Department, some \$5 million, are also excluded. Nevertheless, even when the Department's sales figures for production within its own facilities are adjusted to include full costs, the resulting figure is small relative to the total annual sales volume of the Canadian printing trade of about \$900 million.

DEPARTMENTAL ORGANIZATION

The duties imposed by legislation on the Department of Public Printing and Stationery are concisely stated in Section 4 of the *Public Printing and Stationery Act* which reads:

4. (1) The Department is charged exclusively with the following duties in relation to services required for the Senate and House of Commons and the several departments of the Government, namely:
 - (a) the execution and audit of all printing, stereotyping, electrotyping, lithography, binding work, or work of the like nature, and the procuring of the material therefor;
 - (b) the purchase and distribution of all paper, books and other articles of stationery of whatsoever kind, except books that are required for the Library of Parliament, and printed books required for the use of the chaplains, libraries or schools in the penitentiaries which may be procured in the manner authorized by law;
 - (c) the sale of all books or publications issued by order of either or both Houses of Parliament or by any department of the Government; and
 - (d) the audit of all accounts for advertising.

The last responsibility, that of auditing all accounts for advertising, is now the responsibility of the Comptroller of the Treasury.

The main services provided by the Department of Public Printing and Stationery are clearly reflected in its organization, as depicted in Exhibit 2. Four branches have primary responsibility for its main functions and two others, the Administrative Services Branch and the Financial Services Branch, service the other branches.

The Printing Production Branch (Main Plant) at Hull, Quebec, produces a wide variety of the printed matter requisitioned by Parliament, and by departments and agencies of government. It also prepares specifications for

all printing work, whether produced in the plant or through commercial printers.

The Outside Printing Production Branch operates eleven printing units at locations convenient to departmental operations in the Ottawa area, and sixteen units located outside Ottawa where they can best serve departmental needs. Generally, the work performed by these units requires offset machines and bindery equipment and is outside the scope of the normal duplicating facilities of departments. New offset machines, now often found in departments, makes this distinction between duplicating and printing increasingly difficult to define.

The Procurement, Purchasing and Stores Branch purchases stationery, paper products and office machinery for the various departments and agencies of the government, procures printing materials and equipment for the Department itself, and places printing contracts for work to be performed by commercial printers. It engages in product research, develops specifications and analyzes the comparative quality of standard items which are catalogued and stocked for use within the government service. Reserve stocks of paper, printing materials and equipment repair parts are centrally maintained. An office machine section tests, repairs and maintains office machines, and is responsible for the allocation of typewriters, adding machines, calculators and similar equipment upon requisition by departments and agencies.

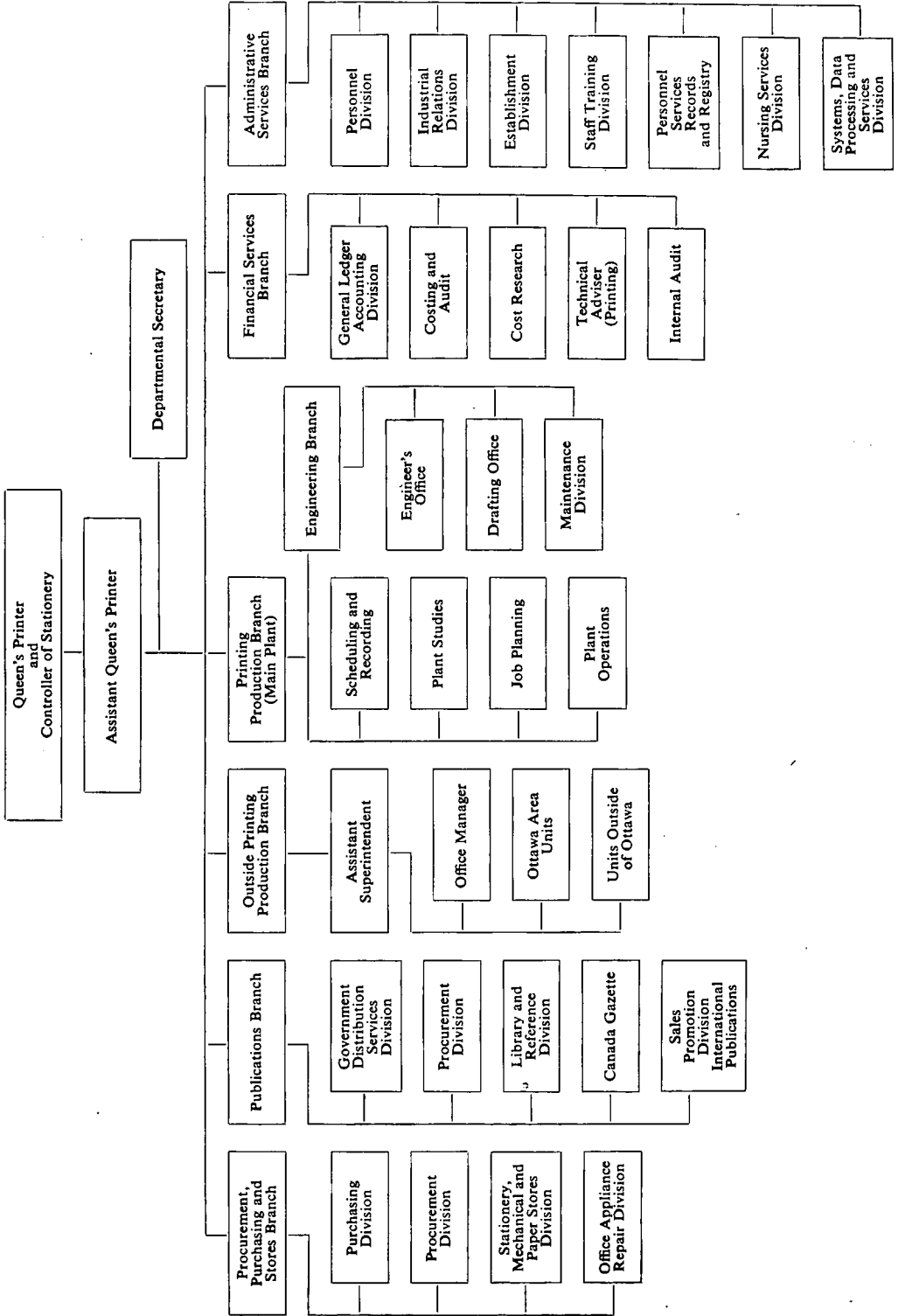
The main role of the Publications Branch is to distribute government publications by: compiling and issuing catalogues and price lists; selling publications through the mail and through government and commercial bookstores; distributing publications to institutions and persons entitled to free issue; and maintaining mailing lists for departments and agencies. The Branch also publishes the *Canada Gazette* and the *Statutes of Canada*, and acts as the exclusive sales agent within Canada for United Nations publications.

Supervising and co-ordinating the work of all these branches is the Queen's Printer and the Assistant Queen's Printer, with the Secretary of State serving as the ministerial head.

THE NATURE OF THE GOVERNMENT'S PRINTING AND PUBLISHING NEEDS

The purpose of this report is to evaluate the efficiency with which the Department provides printing and publishing services. It does not attempt to assess the nature of the printing orders placed by departments and agencies of government which give rise to the large and growing volume. Nevertheless, some understanding of the nature of these printing requirements is necessary

Exhibit 2—ORGANIZATION OF THE DEPARTMENT OF PUBLIC PRINTING AND STATIONERY



in order to determine whether the government's needs are being satisfactorily met.

Most government printing is designed to support, at least indirectly, the implementation of a government programme or the achievement of a public policy. Printing needs range from simple forms and letterheads to major publications. Some are printed at irregular times, others annually, quarterly, monthly or daily. Some are for internal use, others for communicating with the public. Some are to inform, others to persuade, and others to regulate or direct. Internal administrative requirements alone consume vast amounts of printed material, as do the large and growing information programmes of departments and agencies.

Publications include those that originate with Parliament such as the *Debates* of the House of Commons and the Senate, their proceedings, committee reports and statutes. The *Canada Gazette* is published weekly as a medium for publicizing official transactions and regulations of the government. Publications originating within departments and executive agencies include their annual reports, and a wide variety of other material. Subjects range from crop reports to tourist guides, from *The Canadian Bill of Rights* to a book on Eskimo art, from a pamphlet on prospecting for uranium to one on mushroom collecting for beginners, from an atlas of Canada to local tide tables. Few subjects are not covered by the numerous titles published, stocked and distributed by the Department of Public Printing and Stationery.

The printing requirements of Parliament come first in the Department's order of service priority. Next are those printing requirements of departments and agencies which require special treatment either because of urgency or their confidential nature. Other printing is scheduled as a fill-in, or is contracted out to the printing trade.

SERVICES PROVIDED TO CLIENTELE

Fifteen departments originate over three-quarters of the printing demands of the government; therefore, an effort was made to assess consumer reaction to the printing services provided by interviewing more than sixty of their officers. All interviewed are directly engaged in either procurement, information, or editorial activities. Naturally, many different viewpoints were expressed, but the consensus is that:

- The Printing Bureau is giving good service, with noticeable improvements in recent years.
- Printing orders are generally completed and delivered within the time promised, although delays may occur on certain work because of other orders

receiving higher priority. The delay may be further aggravated if the work is eventually put out to tender, for present tendering procedures are time-consuming. (Investigation indicated that many alleged delays originated with the departments by reason of extensive last minute changes in manuscripts, proofs, etc. Other delays were due to inadequate co-ordination of translation work with production.)

- Often the quality of printing is better if orders are completed internally. Present tendering procedures, which permit commercial printers to receive contracts, even though they have an unsatisfactory past performance record, or lack the facilities necessary for the quality or type of printing to be executed, are largely blamed for the lower quality of work contracted out.
- For a continuing publication, the transfer of orders from one commercial printer to another and possibly back to the Bureau, affects liaison between the originating department and printer, and often results in changes in the type or style, detracting from the appearance of the publication.
- Printing Bureau prices are generally lower than when the work is done outside. Moreover, because the departments paying for the printing orders have no say in selecting the printer, fluctuations in the price for like things occur which make accurate budgeting difficult.

The departments canvassed are generally less satisfied with present arrangements for procuring and repairing office machines and equipment. Most were critical of the manner in which their orders for specialized equipment are filled and desired greater flexibility and freedom in procuring minor requirements. These criticisms are analyzed further and recommendations are made to improve present practices in the reports on *Paperwork and Systems Management* and on *Purchasing and Supply*.

NEED FOR REVIEW

The functions for which the Department is now responsible were originally allocated by the Act of 1886, save for those responsibilities assumed later for the procurement, storage, repair and maintenance of office machines and equipment. Since this statute was enacted, substantial changes in the size, responsibilities and organization of the government have occurred: new equipment and technology have altered the nature of the printing industry; alternative processes are available which provide a substitute for traditional methods of printing in meeting many departmental needs—in short, after seventy-five years a review is timely. Furthermore, your Commissioners make recommen-

dations in other reports, the implementation of which will have direct impact on the form, and the financial, personnel and other administrative procedures of the organization selected to provide the printing and publishing services necessary to support the government's primary activities.

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THE GOVERNMENT PRINTING BUREAU

SIZE AND ROLE

Although in 1886 the Department of Public Printing and Stationery was charged with responsibility for conducting *all* printing, electrotyping, lithographing and binding within its own establishment, a portion of the government's printing requirements has always been contracted out. The proportion contracted out has been a source of controversy, for the private industry has contended that its share is inadequate. This controversy was intensified in the last decade when the Department moved into its new, enlarged building and replaced some of its machinery with higher capacity equipment. The Department, as a result, was encouraged to undertake tasks which, during World War II and in the immediate post-war period, had been contracted out.

Despite the specific statutory direction to undertake all printing, the Department wisely restricted its operations, so as to exclude certain printing requiring specialized equipment which might not be employed economically over the full year. Nevertheless, the experience of the Printing Bureau illustrates in a telling manner the government's difficulty in limiting the growth of a supporting activity once it is undertaken.

The Printing Bureau acquired facilities designed to meet quickly and efficiently the special requirements both of Parliament and of the departments of government. Parliamentary debates must be printed and distributed in a matter of hours; bills must be printed and whenever necessary reprinted, as soon as copy is received; and proceedings of committees must be distributed in printed form with minimum delay. Publications, such as the *Canada Gazette* which publishes proclamations and regulations having the effect of law, must appear punctually and sometimes at short notice. Other rush and confidential

work, as well as the documents which must be laid before Parliament, in both languages, within a stated number of days, receive exceptional service. Such service can be obtained only at greater cost, for equipment and men must always be ready to undertake this work with the required despatch. Unfortunately, special requirements such as these are unevenly distributed over the year and reach their peak when Parliament is in session. Furthermore, the periods of peak activity are often unpredictable and usually last for only a few hours of the day. As a result, unless the Department utilizes its facilities for other work, this expensive capacity will be under-employed at additional cost to the taxpayer.

However, like many other activities of the government, described in the report on *The Make or Buy Problem*, printing services have expanded without careful thought being given to the appropriate size. The facilities of the present plant are rarely fully utilized on parliamentary requirements for these represent only fifteen per cent of the total value of production. This and all other work designated by the Department for production internally total less than two-thirds of the chargeable hours; included, at present, are most Dominion Bureau of Statistics publications, the routine orders of the Army and Air Force, *Foreign Trade* published fortnightly by Trade and Commerce, the *Public Accounts*, the monthly *Labour Gazette*, the *Postal Guide* and other publications of a similar nature. Most of these publications could be as readily produced in outside commercial facilities at competitive prices.

Nevertheless, once the facilities have been acquired, short of disposal, the printing operation cannot be conducted at reasonable cost unless the facilities are utilized to a high degree by shift work, use of modern production control techniques, and careful planning of workload. Modernization or replacement of equipment further increases the capacity of the existing facilities. In short, a continuous growth may occur which adds unnecessarily to the size and operating responsibilities of the government.

Unquestionably, parliamentary requirements receive an extremely high level of service from the Department of Public Printing and Stationery. The priority scheduling given to parliamentary printing does, in fact, delay other work and reduces the over-all efficiency of the printing plant. Present facilities of the commercial printing industry, taking into account their geographic location, could not equal this service. Furthermore, contracting out may add to delays and costs. Therefore, rush and small jobs may be appropriate for production within the Department's own facilities; otherwise special contracts would have to be negotiated with the printing trade. Other publications such as the *Canada Gazette* have a special legal significance which may warrant continuance of the present internal production responsibility.

The service given these and many other printing orders might possibly suffer if the printing contracts were transferred to commercial printers. At the same time the Printing Bureau requires at least a minimum flow of orders if its operations are not to add considerably to the present cost of government. Nevertheless, unnecessary growth may continue to occur unless the government printing operation is forced to compete with the trade for marginal printing orders, much of which, as previously noted, derive little special benefit from production in the government's plant. Therefore, the Printing Bureau should be allocated only a portion of government work without tender; the balance should be obtained in competition with commercial printers.

Parliamentary printing, small jobs in the Ottawa area valued at less than \$1,000 and other rush or special printing, all of which are most likely to benefit from production within the Printing Bureau, should continue to be allocated without competitive tendering. Less than two-thirds of the Bureau's present volume consists of work now classified by the Department as requiring production internally. Because the plant does not now operate two full shifts, but utilizes a night shift only to the limited extent necessary, the total hours worked are approximately seventy-five per cent of those possible on a full two-shift basis using the equipment now available. Based on current practices and definitions of work requiring internal production, no more than fifty per cent (two-thirds of the seventy-five per cent) of the plant's present capacity on a two-shift basis, should be allocated without competitive tendering. This should be the maximum for which the Bureau need not compete.

The charges made by the Bureau for this captive work should include the full cost of materials, labour and all applicable overhead, the latter being charged to the work on the basis of an assumed seventy-five per cent utilization of present capacity on the two-shift basis defined above. A surcharge of fifteen per cent should be added to the costs of all rush work (other than of a continuing nature) undertaken internally in order that originating departments will have incentive to eliminate internal inefficiencies and delays which may contribute to the rush.

The Printing Bureau should compete with the commercial printing industry to employ the remaining half of its present capacity. The objective should be, in the long-run, to break even financially, including recovery of the full cost of the Bureau's operations.

We therefore recommend that: 1 All parliamentary papers, including the *Debates* of both Houses, the statutes, documents to be tabled in Parliament or

ordered to be printed by Parliament, other printing such as the *Canada Gazette* and all small orders (say under \$1,000 for Ottawa delivery) continue to be printed within government facilities, without tender, up to a total not to exceed fifty per cent of the capacity of present facilities operating on a two-shift basis throughout the year.

- 2 The full costs of the above work be recovered from the appropriations of Parliament and the several departments, based on an assumed utilization of present facilities at seventy-five per cent of their present capacity on the two-shift basis, with a fifteen per cent surcharge for certain rush work.
- 3 All other work performed in the Printing Bureau be obtained by competitive tender, with the objective to "break even" financially, after taking account of all applicable costs.

EFFICIENCY

If the Printing Bureau is to compete successfully for printing work to keep its facilities operating at reasonable volume, the Bureau must strive for greater operating efficiency. The Bureau's plant in Hull, Quebec, is one of the largest printing plants in Canada. Although its building and some of its equipment are new, much equipment is neither the most modern nor versatile. Within its ability to compete and break even financially, freedom must be given to replace obsolete equipment with new, high-speed and versatile equipment, where this is warranted.

The Bureau's management recognize that they are running an essentially industrial operation of a size that requires effective pre-planning, production control and scheduling, cost studies, methods analyses and labour studies. The freeing of a portion of the Department's captive market will require acceleration of the steps already being taken, though slowly, to institute these management techniques.

The Plant Studies group, first set up in 1958, has studied a number of manufacturing operations and has established standards to control labour utilization. Productivity increases of fifteen per cent are claimed in the sections studied, resulting in estimated savings of \$40,000 per annum. Additional annual savings of \$300,000 are considered possible when the entire printing operation has been studied.

Production control covers the loading, planning, scheduling and expediting of printing through the plant in order to provide the required service to customers at the lowest production costs. Recently, a new system of control, involving the use of automatic data processing equipment, has been introduced in certain sections of the plant. Lack of work standards and trained staff has hampered realization of the full benefits of this new and expensive equipment. This is particularly unfortunate because the Bureau's requirements could probably have been met equally well by an efficient manual system. Nevertheless, improved control has resulted from the new system where it has been introduced.

The Job Planning Section plays a very important role in improving printing efficiency. Job planners receive printing orders from departmental authors and chart the various printing operations necessary to produce the finished product. Their plans form the basis for the scheduling of production and determine the delivery dates and cost estimates given to the departments. These men are the salesmen of the Department. Nevertheless, despite this key role, only recently have results been compared with plans in order to assess the effectiveness with which the planning is being carried out.

The Department's present accounting system, based on historical costs only, is inadequate to achieve the best management control of costs. Introduction of standard costs into the accounting system would highlight deviations of actual costs from scientifically determined standards, and thereby point the way to the management decisions that may be necessary to remedy unsatisfactory situations. Among other things, this would lead to improved control over the non-chargeable time of employees and the spoilage of materials.

The record of the Branch in endeavouring to improve control over direct labour and material costs is nevertheless commendable. Steps taken to control other costs, however, compare less favourably.

Because no depreciation of buildings or equipment is included in the costs which are recovered from customers, the Department has had less incentive to control the use of facilities. Overhead costs are undoubtedly high compared to those of a commercial printer, but to be fair it must be recognized that many of these costs are outside the control of the Production Branch and often even outside the control of the Department. The Bureau's management,

if given the requisite authority to control all costs, will have the necessary incentive to do so through being forced to compete with the commercial industry for a portion of the now captive market.

We therefore recommend that: The programme to improve production efficiency be accelerated and be applied to all aspects of the Printing Bureau's operations.

COSTS

Much of the controversy surrounding the operations of the Printing Bureau centres on the contention that complete and accurate costs of the Bureau's operations are not known or taken into account. Your Commissioners, elsewhere, refer to the inadequacies of the present method of distributing costs within the government, and recommendations are made in the report on *Financial Management* designed to remedy the situation. Nowhere is the need more clearly evident than in the case of supporting services such as printing.

Section 37 of the *Department of Public Printing and Stationery Act* permits the Minister of Finance to advance money out of the Consolidated Revenue Fund to the Queen's Printer in order that he may:

purchase material for the execution of orders given or requisitions made under the provisions of this Act, and to pay the wages of workmen in the execution of such orders or requisitions.

Funds advanced may be used again when the Queen's Printer collects from departmental customers. The object is to realize neither a profit nor a loss.

However, only those material and wage costs that go through this revolving fund or advance account are billed to the Department's customers. Other costs are borne by funds appropriated by Parliament. For example, the Main Estimates for the 1962-63 fiscal year include the following votes for the Department of Public Printing and Stationery for the purposes indicated:

	\$
Departmental Administration	790,500
Purchasing, Stationery and Stores	1,302,400
Distribution of Official Documents	652,100
Printing and Binding Official Publications for sale and distribution to departments and the public	971,500
Printing of Canada Gazette	140,000
Printing and Binding the Annual Statutes	35,000
Plant Equipment and Replacements	297,800
	4,189,300
	4,189,300

A large portion of these votes applies to functions of the Department, other than printing. Nevertheless, the result is two systems of accounting. Costs chargeable to the above appropriations are accounted for on a cash basis; the costs chargeable to the revolving fund are on an accrual basis with due recognition being given to receivables, inventories, etc.

Furthermore, costs are incompletely allocated to customers. For example, no costs are included for the acquisition, replacement or depreciation of capital facilities, either buildings or equipment. Other items such as heating (\$105,000), cleaning (\$83,000), light and power (\$79,000) and water (\$15,000) are borne by votes of the Department of Public Works, and many other expenses, particularly the cost of employee fringe benefits, are paid out of the votes of other departments and agencies.

Considerable publicity has been given to the cost of the present Printing Bureau. Regardless of the cause, the effect is that the 918,620 square feet available in the building cost \$16,038,939 or approximately \$17.50 per square foot. Normally commercial printers of this size seek to limit the cost of a suitable building, including air-conditioning, to about \$10 per square foot. It is not the purpose of this report to conduct an inquest into the cost of this building. Nevertheless, the management of the Department has responsibility for the space utilized. The present printing and other operations, although occupying all this space, could be efficiently conducted in a far smaller area. If charged for space occupied, unneeded space might be released and made available for allocation to other departments. Regardless of the circumstances leading to the cost of the present facilities, the charge should be based on a fair economic rent for appropriate facilities, or the Bureau moved into more suitable and less costly accommodation.

In summary, total current costs, including the cost of the building space actually occupied, are about sixty per cent higher than costs presently being charged to government departments and agencies. Using a realistic economic rent this percentage might be reduced to forty-five per cent. However, economies were identified which could reduce this percentage to thirty-seven per cent. On this basis, your Commissioners believe that the Printing Bureau would be able to obtain competitively sufficient volume to realize the recommended objective of breaking even financially. This is particularly true when it is considered that the Department has an advantage over its competitors of not needing to incur selling or promotion expenses, nor to realize a profit and pay income tax. However, no printer should be permitted to compete for printing orders unless he has the modern equipment and skills, which are essential, and a record of satisfactory performance. Stringent penalty clauses should be incorporated into all contracts and strictly enforced.

Present costing practices can be put on a rational basis only if the full costs of the Bureau's operations are financed through a revolving fund, not just material and labour costs as at present. This method of financing is particularly appropriate to operations of a self-sustaining nature; it also permits the application of those accounting practices, including accrual accounting, which have been found to best meet the requirements of management in commerce and industry.

A revolving fund is established initially by advancing moneys out of the Consolidated Revenue Fund equal to the total working capital requirements of the Printing Bureau at any one time. Expenses are paid out of the fund; sales are billed to the departmental customers; and revenues, when received, are available for further expenditure. At all times the fund is kept intact, being represented by cash, accounts receivable and inventories. The operating profits may be retained if the additional working capital can be usefully applied, or else may be transferred to general budgetary revenues; losses must be reimbursed through parliamentary appropriations unless earnings previously retained are adequate to absorb them and to maintain the fund at its required size.

This system of accounting places full responsibility for operations on the senior management of the Printing Bureau and, given sufficient authority and flexibility, they can be held fully accountable for results. Management and staff should have no employment security beyond that earned by efficient performance. Parliament would receive all necessary information if a budgetary forecast of proposed transactions through the revolving fund were presented when the Estimates are tabled, and operating results were reported subsequently in the Public Accounts.

- We therefore recommend that:*
- 1 All costs of the printing operations of the Department of Public Printing and Stationery be financed through a revolving fund.
 - 2 Costs applicable to the printing operations and now borne by the budgets of other departments and agencies be included.
 - 3 Rental costs for accommodation be based on an economic rent for facilities of an appropriate nature.

FIELD UNITS

Before considering the implications of these recommendations for the present departmental form now governing the printing operations of the Bureau,

consideration is given to the field printing units. These twenty-seven field units, in Ottawa and across the country, provide departments and agencies with printing services beyond the capacity of departmental duplicating equipment. Agencies served are generally satisfied with the service provided, although some would like quicker deliveries.

The centralization of control over these units in the Department of Public Printing and Stationery has produced significant economies. Cost comparison between units has introduced an element of competition; cost controls and improved equipment and processes have resulted in productivity increases that have more than off-set increases in wage and other costs in the past decade. Generally the costs of these field units, after taking into account costs not now allocated, compare favourably with quotations obtained for similar work from the printing trade. Further improvements through use of work measurement techniques and improved supervision can produce additional economies.

Direction and control over the twenty-seven units require improvement. For example, forms to be used across the country, which are more suitable for volume production at the main plant in Hull, are at times being produced in the branches on less efficient equipment. Appointment of regional managers would improve control where it is needed, while conversely, the supervision within each printing unit, which now appears to be excessive, could be reduced.

The favourable results achieved by centralizing control over these units indicate that further benefits might be derived if units still operated by other departments were brought within the common jurisdiction. These facilities could then be utilized on a wider variety of tasks but, if warranted, the units could continue to be located where they would be most convenient to departments now operating them.

We therefore recommend that: All printing units of departments and agencies, not now under the authority of the Department of Public Printing and Stationery, be examined with a view to centralizing direction and control.

FORM OF ORGANIZATION REQUIRED

The original legislation recognized the industrial nature of printing, but subsequently the Department of Public Printing and Stationery has been moulded more and more into the standard departmental form. Some industrial or operat-

ing activities undertaken by the government in the last twenty years have been excepted from the detailed rules and regulations centrally prescribed to govern the financial, personnel and administrative requirements of departments. The Printing Bureau is not amongst these exempted agencies. The failure to delegate adequate authority to departments concerned with policy-making and other primary functions of government is in itself serious and is criticized elsewhere in your Commissioners' reports, but it is even more lamentable when considered in the context of an operating activity such as printing. To a major extent these centrally imposed regulations hinder effective management of an industrial operation; moreover, having a captive market where customers are required to utilize services and to pay whatever is billed dampens management's incentive to be competitively efficient.

Existing financial rules and regulations are patently unsuitable for a printing operation. Changes have already been recommended to facilitate the development of an accurate and complete set of accounting records, to permit expenditures to be adjusted to changing revenues, and to recognize the effect of fluctuating inventories on cash requirements. Similarly, a competitive printing operation cannot bear the load of a duplicate set of accounts. The Comptroller of the Treasury maintains a set of accounting records to ensure that the appropriations are not overspent, while the Department duplicates almost every record in order that its management may have the financial information required to manage effectively.

Although the wages of the printing trades are related to rates set for similar work in Montreal and Toronto, the employees of the Printing Bureau are almost indistinguishable from civil servants generally. Salaries of supervisory and non-trades personnel conform mainly to those of other government departments, not to parallel conditions in the printing industry. Recruiting procedures generally require interviewing an excessive number of applicants, without adequate emphasis on the urgency and the special skills needed in an industrial activity such as printing. The job security enjoyed by government employees creates obvious difficulties in maintaining the status and discipline of supervisory employees. Changes in the total authorized personnel take too much time to effect, and the Printing Bureau is unable, under the present system, to adjust its work force to varying workloads.

Your Commissioners make recommendations in the reports in the "Management of the Public Service" volume to remedy many of the inadequacies of the government's administrative procedures. Even greater freedom is necessary in this industrial operation. Few matters of policy will ever arise which require the Executive's decision, and those that do, such as the selection of the Director and Superintendent of Printing, the assessment of his per-

formance and his removal, whenever necessary, as well as general control over capital, operating and cash budgets, are not of a detailed day-to-day nature.

The organization chart (Exhibit 2) illustrates that most administrative functions common to industry already form part of the Department's internal structure. At the same time the Department of Public Printing and Stationery has many other functions and responsibilities which detract from, if not conflict with, the operation of printing on a normal industrial basis.

We therefore recommend that: The Printing Bureau be operated as a separate industrial activity under the authority of the Director and Superintendent of Printing.

3

THE QUEEN'S PRINTER

HIS FUTURE ROLE

The foregoing chapter, proposing a separate organization for the Printing Bureau under the management of a Director and Superintendent of Printing, has made no reference to the future role of the Queen's Printer. This officer, as head of the Department of Public Printing and Stationery, is now responsible for providing both printing and publishing services. These two functions are often found similarly linked in commerce. Nevertheless, printing is essentially an industrial operation, whereas publishing demands a variety of talents and is confronted with problems quite different from those affecting printing.

Many public servants are occupied doing research, compiling statistics, analyzing problems, the results of which are of public benefit only if communicated to others. Simply to print does not guarantee that it will be read. The true demand for a publication will not be realized unless the style attracts attention, potential readers know of its existence, and copies are made conveniently available. Without the publisher, the author may have limited success in supporting departmental objectives.

Publishing is generally defined as the whole process of selecting and editing the material, of arranging for its printing and binding, and finally of promoting its ultimate sale. However, there is a key difference between the role of a commercial publisher and that of a government publisher which must be recognized. The former, because he normally takes the financial risk of promoting the publication, usually determines whether it will be printed. In government, by contrast, few publications are, or should be, promoted on com-

mercial grounds alone. Publications are printed to further the programmes or objectives of a department or agency, and the originating department, as author, in this case pays most of the cost, thereby leaving it with the ultimate decision as to whether to print or not. The publisher's role in government is to estimate the potential market, to provide technical assistance before and during production and to assist the department in achieving the best possible distribution.

In 1951 an interdepartmental Committee on Publications was established "to examine in consultation with departmental officials each publication, book, periodical, pamphlet and report prepared, published and/or distributed under statutory or executive authority or administrative discretion and report thereon to the Treasury Board with respect to the essentiality, necessary contents, quantity and distribution". This Committee has been largely ineffectual and has not met in the past three years. Obviously this is not the answer to the problem of controlling the printed output of departments.

On the other hand, the number of titles published has been increasing at the rate of ten per cent per annum. Too many publications or a bewildering array of publications, hinder, rather than facilitate, effective communication of useful information. However, any approach to control, to be effective, must start by assessing the value of the departmental programmes giving rise to the publications. Effective budgetary control on a programme basis is outlined in your Commissioners' report on *Public Information Services*.

Departments, however, can benefit from expert assistance in planning, preparing, printing and distributing their publications. A central repository of this expert advice is more likely to lead to the best form of publication and the best means of distribution, both commercial and free. Departmental authors have varied talents, but not necessarily those of a publisher. Furthermore, someone must catalogue, stock, and sell publications to make them readily available to the potential reader. At present, few even within the government know what a storehouse of information the government has available, and often do not know how or where to find it.

Your Commissioners believe that the Queen's Printer would have greater impact on publishing practices throughout the public service if he were released from his operating responsibilities as the government's printer. As publisher, he must transcend departmental interests. As Queen's Printer, he cannot be expected to ignore the requirements of his printing plant in favour of the interests of the departments being advised. A number of new responsibilities are suggested in the report on *Public Information Services*, which further enhance the stature of this office and require that its incumbent be a consultant to all departments, not the manager of a department with large produc-

tion responsibilities. Furthermore, the publishing requirements of Parliament demand exceptional service. Therefore, this officer must be given the status and independence which will enable him to serve the joint needs of Parliament and the departments of government. To reflect the change proposed it would be appropriate to change the present title of this office to that of Queen's Publisher.

We therefore recommend that: A new office, with the title of Queen's Publisher, be created with responsibility for publishing all books and publications issued by order of either both Houses of Parliament, or by any department of the government, and with no responsibility for operating the Printing Bureau.

METHODS OF DISTRIBUTION USED

Most publishing responsibilities of the Department of Public Printing and Stationery are centred in the Publications Branch; these functions would remain with the Queen's Publisher. The Branch interprets its role to be more than that of warehousing and distributing government publications. The Branch shares costs to the extent of fifty per cent of the selling price of those copies which it orders for sale through its own facilities. Funds are voted directly by Parliament to the Department of Public Printing and Stationery for this purpose, and all revenue from sales is deposited in the Consolidated Revenue Fund. The Branch has been active in sales promotion: in 1951 sales were \$304,113 and ten years later \$1,169,135.

The promotion of government publications is accomplished through the following services provided by the Publications Branch:

- Official catalogues and price lists are compiled and issued. Daily lists of new publications are prepared, together with summaries each month and year. Special catalogues of the publications of individual departments, and bulletins on selected publications, are also circulated.
- Sales are made through government-operated bookstores in Ottawa, Toronto and Montreal, through regular book dealers and through mail orders.
- Free distributions are made to designated depository libraries, and to persons and institutions (approximately 1,400) entitled to receive them free of charge under statutory and executive authority. The Branch also maintains mailing lists for individual government departments and agencies and mails publications for them on request.

The principal stocks of government publications are kept by the Publications Branch. Some departments complain that they do not receive from the Branch adequate information, including inventory and sales reports, to permit reorders to be placed before stocks run out. The records of stocks which are maintained need improvement, not only to remedy this situation, but also as a means of controlling and reducing the substantial write-offs of unsold publications. The quality of the record-keeping or the control over stock is unsatisfactory, for numerous adjustments are required to bring the records into agreement with the stock.

SALES OF PUBLICATIONS

Sales of government publications through commercial booksellers are limited. The 4,000 titles issued annually have limited customer demand and, since individual publications have a short life-cycle, few booksellers stock a complete or truly representative selection of publications. Furthermore, the low selling price, the small trade discount of twenty-five per cent allowed, the absence of normal credit terms and allowances on unsold books, eliminate the bookseller's incentive to promote sales of government publications.

The contacts of commercial booksellers with the reading public and their marketing experience cannot be readily duplicated by the government. To encourage distribution of government publications through these commercial channels, higher discounts, say forty per cent, should be allowed on all books, with even higher margins on the low-priced booklets. Credit terms and return provisions should equal those of commercial publishers. Special incentives should be given to selected booksellers who agree to devote a specified amount of counter and shelf space to government publications, by appointing and advertising them as official agents.

Nevertheless, despite any encouragement that can be given to commercial booksellers, there will be need for government-operated bookstores in large cities where the demand for government publications can be profitably cultivated. This is demonstrated by the patronage received by the stores opened in recent years in Ottawa, Toronto and Montreal.

Government bookstores should be expected to operate on a sound financial basis by requiring them to budget and pay all costs out of revenue, as does the private bookstore. Sales in excess of forecasts do not by themselves prove that management is sound. At present, floor space tends to be poorly utilized and the recruiting and training of staff is still open to criticism—the shops have not yet achieved a professional standard. In addition, the present bookstores could offer wider services to the public, including small reference librar-

ies and centralized sources for the published material of all departments, not only those required to use the Department's printing facilities. Dominion Bureau of Statistics publications and Mines and Technical Surveys maps should be sold from the one location.

- We therefore recommend that:*
- 1 Sales of government publications through commercial booksellers be promoted by increasing sales discounts and by introducing credit, return and other privileges equal to those offered by commercial publishers.
 - 2 Commercial booksellers, agreeing to stock a specified quantity of government publications, be designated and promoted as official agents.
 - 3 Bookstores be operated by the government only where demand is adequate to permit operation on a sound financial basis.

FREE DISTRIBUTION

Government publications distributed without charge far exceed those sold. Besides the free distribution to the officially approved list, originating departments are permitted to distribute their publications in answer to enquiries and for promotional purposes. Various methods are used to effect this distribution, but most publications are sent through the mailing services provided by the Publications Branch. The Branch sent out over 57,000 bags of mail in 1960-61, the cost of the service being estimated at \$100,000, not including the value of postage provided by the Post Office without charge.

The benefits of this type of distribution are seldom determinable. Departments are not necessarily right in deciding that free distribution is vital to and effective in promoting a departmental programme. The public are generally willing to pay a moderate price for what they expect will be worth reading, whereas a free publication may be regarded as not worth very much. The centralized distribution service provided by the Publications Branch has obvious advantages, but the failure to charge departments for the services rendered, including the substantial postage bill, hardly encourages departments to approach free distributions with caution. Moreover, uncontrolled and excessive distribution of government publications, without charge, may suc-

ceed more in creating a public image of inefficiency in government administration than in achieving the departmental objectives.

FINANCING OF GOVERNMENT PUBLICATIONS

Many departments originating publications question the validity of the pricing practices now followed. Many inconsistencies were referred to, although generally prices are low. Little differentiation is made between the prices of specialized publications prepared for the benefit of business and industry (where full price would be of little concern if the publications have a legitimate value) and those designed to achieve the widest distribution in order to promote a desired goal, e.g., a book on fish recipes prepared to encourage consumption of Canada's fishing products. Selling prices, at the most, cover only the press and binding costs of the publications; overhead, editorial and composition costs are met out of parliamentary appropriations.

Estimated revenues and direct expenditures on government publications by the Department of Public Printing and Stationery for the 1961-62 fiscal year are as follows:

	<i>Revenues</i>	<i>Direct Expenditures</i>
	\$	\$
Distribution of official documents	—	597,360
Printing and binding official publications for sale and distribution to departments and the public ..	1,200,000	950,000
Printing of <i>Canada Gazette</i>	122,000	139,000
Printing and binding the annual Statutes	22,500	35,000

These expenditures, of course, do not include the substantial costs incurred by the departments originating the publications, nor overhead costs of the printing plant absorbed by other appropriations.

The present arbitrary sharing of the cost of publications sold by the Publications Branch, based on fifty per cent of their selling price, seldom results in the originating department recovering its costs. The lower the price the greater the proportion of the publication's cost which must be paid by the originating department and the less by the vendor. However, since all revenue from sales is deposited in the Consolidated Revenue Fund, the originating departments show greater interest in circulation than in recovering costs through sales.

A preferable method of financing would be to have the full costs of the publications borne by the budgets of the originating departments. Sales proceeds should be credited back to the originating departments, after deduc-

tion of discounts and selling commissions, including a commission of, say, forty per cent to the government-operated bookstore to cover its costs. Sales proceeds in response to mail orders should be apportioned in the same manner. This method of allocating costs and revenues would give both the originating and the selling department incentive to establish a selling price which would achieve maximum recovery of costs without unduly diminishing the volume of sales.

Other services provided by the Queen's Publisher should be billed and recovered from the budgets of the departments benefitting from the services. Thus, the true costs of publications would be known, and more effective utilization of these services would be encouraged.

- We therefore recommend that:*
- 1 The full cost of government publications, including the cost of services provided by the government publisher, be borne by the department or agency originating the publication.
 - 2 Prices be established so as to achieve maximum recovery of costs without unduly diminishing the volume of sales.
 - 3 All revenue be credited to the originating department or agency, except for appropriate sales discounts to the bookseller, either government or commercial, selling the publication.

PROCUREMENT OF PRINT

Publishing, defined previously, includes the responsibility of arranging for the printing and binding of the works to be published. Although the Publications Branch now advises the originating departments on their requirements, it plays little part in deciding where the work will be carried out.

Currently all requisitions from departments or agencies for printing go directly to the Production Branch. The Branch selects those jobs which best fit into its own capacity and scheduling, and prepares specifications and passes all other jobs on to the Procurement, Purchasing and Stores Branch for procurement from the commercial printing trade.

Tenders are called on all jobs over \$1,000 and the lowest price is generally accepted; jobs under \$1,000 may be assigned to a printer without tendering. The smaller jobs, although representing less than sixteen per cent of total

print purchases, totalled over \$780,000 in the year reviewed, and represented over eighty-five per cent of all contracts placed.

The procedure for procuring print has a number of fairly obvious faults. First, leaving the initial decision to make or buy to the Production Branch places the interests of the service organization ahead of the departments and agencies being served. This procedure should lead to the optimum utilization of the Printing Bureau's facilities. In practice, it does not, because the Bureau is assured of a captive market and need not press for maximum efficiency or service in order to retain its customers.

Secondly, the tendering procedure often leads to a product of unsatisfactory quality, where the lowest price governs without due regard for the capacity and competence, or the quality of work performed previously by the printers given the contract. Similarly, the quality of the small jobs suffers when contracts are not put out for tender and are placed with small and less efficient printers. Furthermore, political factors now may influence the selection of printers. Classification of printers based on the quality of printing jobs previously undertaken is inadequate and, therefore, contracts for prestige or specialized work may be let to printers without the necessary capacity and equipment. As a result, contracts go to a wide variety of printers, not necessarily to the efficient firms. Contracts for printing in 1959-60 had a value of \$5,709,931 and these were distributed among 539 printers.

Finally, print procurement is a specialized type of procurement. The buyer must be fully qualified technically to draw up specifications, to assess quotations, to gauge the quality of the work performed and to negotiate with the printing trade as printers rarely produce a standard product, buying can never be reduced to price considerations alone. Furthermore, the workload of printers fluctuates widely, and printers vary greatly in their size, capabilities and need for work. The government's requirements also vary from time to time and are seldom distributed evenly over the year. Therefore, the print buyer requires a sense of timing which can come only from long and varied experience in the industry. Unfortunately, the buyers of the Department were found to have had inadequate purchasing experience, generally having been promoted from divisions of the Department concerned with other responsibilities.

Print procurement should be a responsibility of the Queen's Publisher. As an independent middleman, he should advise on the printing orders which, in addition to parliamentary work, would most benefit by being printed within the Printing Bureau. Such work, up to the maximum suggested previously, should be routed directly to the Printing Bureau without competitive tenders. Included would be those urgent and small jobs which neither warrant the cost nor can brook the delay inevitable in the tendering process. Similarly, small

jobs outside Ottawa might be placed directly with the most convenient field unit of the Printing Bureau.

All other printing orders should be procured through the facilities of the Queen's Publisher. His staff would serve departments by establishing specifications, calling tenders, awarding the contract, and supervising completion of the printing. The Queen's Publisher should be given responsibility to classify, on an objective basis, those printers eligible to be invited to tender. His goal should be to direct the printing to the source most likely to serve the needs of the originating department, having regard for both price and quality.

The Queen's Publisher should enjoy more latitude than is now the case in awarding contracts. For example, he should be permitted to call for tenders on a term-of-years basis where a repetitive publication or repeat orders might otherwise receive less satisfactory and more costly service. Similarly, where the Printing Bureau lacks equipment to quote on a job and unsatisfactory or non-competitive quotes are being received from the trade, he should be empowered to negotiate contracts for a sufficient number of years to warrant the Bureau investing in the additional equipment.

We therefore recommend that: The Queen's Publisher be made responsible for procuring all print required by Parliament or by any department or agency of government, where responsibility is not otherwise specifically allocated.

RELATION WITH PROPOSED DEPARTMENT OF PURCHASING AND SUPPLY

A large part of the procurement now forming part of the Department's responsibilities bears no necessary connection with either printing or publishing. The procurement of office machines, stationery and the servicing of office equipment need not continue to be the responsibility of either the Printing Bureau or the Queen's Publisher. In fact, the Act in 1886 stated that responsibilities for purchasing were only to remain with the Queen's Printer "until a general purchasing agency is established". Your Commissioners recommend in the report on *Purchasing and Supply* the establishment of a common procurement agency, to be called the Department of Purchasing and Supply, for purchasing items of this nature.

Printing and publishing are only two of the many supporting services required by government. For historic reasons that have been noted, these services have been hitherto combined in one agency. It is now proposed that the two activities be separated, with a Superintendent of Printing placed in charge

of the Printing Bureau and responsibilities for publishing handled by a Queen's Publisher. Since both officials are concerned with two aspects of common procurement, they should both report through the proposed Department of Purchasing and Supply. The special and important responsibilities to be vested in the Queen's Publisher make it advisable that he report to the Minister of the proposed department. The Superintendent of Printing, whose responsibilities will be primarily of an operational nature, should more appropriately report to the Deputy Minister of the same department.

- We therefore recommend that:*
- 1 Responsibility for the procurement of office machines, stationery and forms, and the servicing of office equipment, be transferred to the proposed Department of Purchasing and Supply.
 - 2 The Queen's Publisher and the Superintendent of Printing report respectively to the Minister and Deputy Minister of the proposed Department.

10 THE "MAKE OR BUY" PROBLEM

SUPPORTING SERVICES FOR GOVERNMENT

**REPORT 10: THE “MAKE OR BUY”
PROBLEM**

PUBLISHED BY THE QUEEN'S PRINTER • OTTAWA • CANADA FOR
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A number of submissions bearing on this topic were received from individuals and organizations: these have been carefully considered and are noted in our final report.

Your Commissioners in acknowledging the assistance and advice received from the above-named persons, dissociate them from any of the findings and conclusions appearing in this report; for these, your Commissioners assume full responsibility.

1

THE NATURE OF THE PROBLEM

Most activities and types of employment common to commerce and industry find their counterparts in government. The government operates power plants, cold storage warehouses, grain elevators, nurseries, parking lots, asphalt plants, printing plants and sawmills. Public servants repair everything from shoes to ships, from automobile tires to aircraft, from respirators to air conditioners. Government departmental and agency shops across Canada employ blacksmiths, carpenters, draftsmen, electricians, instrument makers, stonemasons, painters, pipefitters, plasterers, plumbers, sheet-metal workers, tinsmiths and welders. Groups of public servants are provided with food through government-operated bakeries, grocerias, cafeterias, canteens and lunch counters. For the benefit of its own employees the government operates cleaning plants, laundries, retail stores, tailor and cobbler shops as well as hotels, motels and hostels to house them. The government not only surveys and maps the terrain of Canada, but alters it by landscaping, building roads and dredging channels. Less usual activities such as baitfreezing, fumigation, signwriting, and aerial photography add to the diverse tasks performed by public servants.

All these activities, and others, result in expenditures by the Government of Canada on goods and services of almost \$3 billion—over eight per cent of the total spent throughout Canada. Many of these goods and services are “bought” in the form ultimately required; others are obtained in a raw or unfinished state and “made” to meet the government’s needs; others are acquired in almost every intermediate stage.

The purpose of this inquiry has been to scrutinize those acquisitions of

goods and services by government which are "made" rather than "bought". No attempt is made in this report to assess the actual need for the goods and services or to question the purposes which they are designed to serve. This inquiry has been directed, rather, to assessing the degree to which effective execution of government policy may be impeded or impaired by unnecessary proliferation of secondary activities.

For the purposes of this report a secondary activity means one which is subsidiary to the direct objective of a policy or a programme and could, in normal circumstances, be carried out by non-government contractors or vendors. Simple illustrations are a repair shop to service government vehicles or a sheet-metal shop to manufacture navigational buoys. Such activities usually entail investment in plant, specialized or technical supervision, and represent an additional administrative burden on departments and agencies which conduct them.

It should be apparent that each venture into a secondary field of activity by government is attended by added responsibilities and increased complexity of management. On these grounds alone such involvement should be avoided to the greatest possible extent. But cumulatively these secondary activities of government can prejudice the position of the private sector through the withholding of a volume of business which could stimulate development and initiative. A not unimportant incidental benefit is that the government itself stands to gain from the tax revenues derived from the profits of those industries which obtain government orders.

The dimensions of the problem are significant. A partial survey identified at least fifty million dollars worth of goods and services each year now being "made" by government within its own facilities, which could be "bought" from private enterprise. A transfer of this work to suppliers outside the government should facilitate, rather than jeopardize, the attainment of the primary goals of departments and agencies, and result in important economies.

The diseconomies of excessive size have long been recognized in commerce and industry. The government is not unique in having to control and limit its growth. Improved forms of organization and new methods of control have accompanied the growth of the large commercial and industrial corporations. The reports in the "Management of the Public Service" volume recommend many changes in present procedures designed to improve management of the public service, despite its size, by new methods and techniques of control. Other reports, concerned with organization, make recommendations designed to shorten the chain of command and reinstate some of the control that once was possible, when government was small and its responsibilities few.

Throughout this and other reports will be found proposals for greater utilization of external resources by the federal public service. These are based on the assumption that the prime concern of government relates to those matters of substance which cannot be delegated to others. Unless the growth of non-essential secondary activities is controlled, there will be an ever-increasing expansion of peripheral distractions, each one leading to others, until the essential activity, the real objective or target, becomes obscured by the size and character of the subsidiary activities. These subsidiary and peripheral activities either sap the time and energy of senior public servants or else they, themselves, are neglected and poorly administered.

ROLE OF PRIVATE ENTERPRISE

Parliament settles public policy by enacting the necessary legislation. The ministers responsible for government programmes look to their departmental officials to carry most of the responsibility for determining the means by which the programmes are to be administered. It follows that decisions to use the facilities of private enterprise or, alternatively, to acquire plant and hire staff if the goods or services are to be provided internally, are made by or on the advice of public servants.

The government can often, although not always, obtain its requirements from private enterprise. In choosing this alternative, the government needs personnel to plan, to establish specifications, to negotiate and contract with suppliers, and to inspect the products supplied. However, the staff required for these purposes are few compared to the numbers involved when the government undertakes the activity itself. Furthermore, when it contracts out, the government is not involved, to the same degree, in fixed commitments in the form of staff, buildings, equipment, etc., which cannot be disposed of or adjusted to changing requirements without great difficulty.

Essential government responsibilities can be extricated from the present maze of diverting and unimportant details of administration only if maximum use is made of non-government facilities. Therefore, decisions to "make" rather than "buy" should only be taken on the basis of conclusive evidence of the unavailability on reasonable terms of the goods or services from outside the government.

INHIBITING INFLUENCES

Personnel Policies

A substantial number of senior officers in the public service prefer to meet departmental needs with self-provided services. This may be attributed, in

part, to motives of self-interest, including consideration of such matters as opportunities for advancement as well as the challenge of new undertakings. There is a not unnatural inclination for the more aggressive public servant to bring under direct control all the elements necessary to support operations and, in this context, contracting out is thought to limit operating freedom and flexibility. Where possibilities of promotion may depend, or be thought to depend, upon the number of public servants being supervised, a direct incentive exists for "empire building".

The Nucleus Argument

Reluctance to resort to external sources is supported by the contention, frequently encountered amongst civil servants, that a nucleus or core of men and facilities must be available to undertake a portion of each activity in all its details. This argument runs as follows:

- The staff of the department or agency must be practised in the undertaking they are called upon to supervise so that they can evaluate the techniques and the quality of workmanship, and keep abreast of new developments.
- The contracting department or agency must have its own measures of performance available to establish norms and costs, against which it can assess the prices and quality of goods produced and services rendered by suppliers.
- The continuity of essential operations must be assured in the event that private enterprise cannot or will not continue to provide the goods or services required.
- Sole reliance on outside suppliers leaves the government unprotected from possible discriminatory pricing tactics.

These propositions have been generally accepted by public servants as not unreasonable justifications for an operating nucleus, but such a nucleus is by no means the only way of safeguarding the government's position as a buyer. Proper recruiting and training programmes can provide the skills necessary to supervise external suppliers. Competitive bidding, contractual safeguards, and the distribution of contracts to more than one supplier should provide better protection against the other potential abuses.

Moreover, as illustrated in ensuing chapters of this report, there is always the danger that, in creating the operating nucleus, equipment, plant and staff in excess of need will be acquired. Government departments and agencies have too often obtained buildings, machinery and equipment without careful

consideration of the appropriate size of the nucleus. It is then not difficult to contend that the capacity of the facilities determines the appropriate size of the nucleus. Further expansion of the activity is easily justified by the claim that efficient management and economy dictate full, or almost full, utilization of the facilities. Facilities in excess of actual need encourage a growth through "make-work" out of keeping with the intentions and objectives for which the activity was brought into being, which is not conducive to efficiency and may effectively close the door to participation by private enterprise. Similar expansions of nuclei often occur in order to reduce unit costs by taking advantage of new equipment and other economies. Thus, without constant control, the government nuclei are likely to grow continuously and inordinately.

Purchasing Procedures

Departmental purchasing policies, established under various regulations, also act as deterrents to the use of outside suppliers.

Where the goods or services required represent insignificant expenditures, orders can be placed without a firm-price quotation or without tendering. However, orders of any size require that tenders be called, and departments must go through a complicated procedure of estimating, preparing specifications, negotiating with prospective suppliers, competitive bidding, receiving the approval of higher authorities and only thereafter placing the order. As a result, excessive and costly delay may occur before the requirement is satisfied. The outside supplier, in turn, faced with these complicated procedures and lacking assurance that there will be continuing business, may show little interest in supplying the requirement.

While present purchasing procedures are undoubtedly a deterrent to a greater use of outside facilities, it is interesting to observe that almost all goods and services described in this report are in some departments being acquired from outside sources and in others supplied by the department or agency itself.

In contrast to this mixed performance, there are in private organizations generally accepted policies for deciding whether to make or buy. Sub-contracting is an important part of Canadian industrial production and in many organizations, not necessarily the largest ones, substantial portions of their requirements are normally contracted out. In the trailer industry, for example, more than forty per cent of the finished product is produced by sub-contractors.

Faulty Cost Information

Your Commissioners' report on *Financial Management* sets forth the characteristics of the accounting system of the Government of Canada that distin-

guish it from industrial and commercial systems. Government accounts are kept on a cash, as opposed to an accrual, basis and no clear or useful distinction is made between current and capital expenditures. Little or no account is taken of extra-departmental costs such as rent, maintenance, heating, cleaning, water, light, power or employees' fringe benefits (superannuation, unemployment and health insurance, and accident compensation); no charges are made for such services as mail and telephone. Moreover, no allowance is made for the depreciation of capital facilities; no interest cost is computed for the use of capital or working funds; no allocation is made of grants in lieu of municipal taxes; and, of course, no account is taken of income taxes.

In brief, comprehensive costs to measure the efficiency of government operating activities are not available, except in isolated cases. Nevertheless, many public servants appear convinced that departments produce goods and services more cheaply than private enterprise. They ignore the fact that true costs exceed the figures provided by their accounts by fifty per cent or more. Despite the absence of true cost figures, the cost savings are often cited to support a decision to "make" rather than "buy".

RESPONSIBILITY FOR SECONDARY INDUSTRY

The recommendations of this report are based primarily on your Commissioners' belief that a way to control the size of government is by contracting out, wherever possible, selected peripheral activities. Moreover, the government has a continuing interest in the economic well-being of commerce and industry in Canada, and many government programmes such as incentive tax relief, development and trade promotion programmes, fiscal and monetary measures are undertaken to this end. Since the government's total purchases probably make it the largest single market for the products of Canadian enterprise, "make or buy" decisions should not be framed without concern for the welfare of present or potential suppliers. The government, in meeting certain of its own needs from its own resources, may deprive the outside suppliers of a significant market, thereby discouraging the creation or growth of secondary industries.

MEANS OF CONTROL

The key to any effective control of the growth of unessential secondary activities is a close scrutiny of all requests for new or additional staff or facilities. This can be applied most effectively in conjunction with the budgetary review. Such a review, with present methods of costing and budgeting, would scarcely be meaningful. However, recommendations by your Commissioners, designed

to improve budgeting and accounting, point the way to an assessment of government activities by programmes, with each programme in turn divided into segments of operating responsibility. This should make it readily possible to distinguish essential activities from those of a secondary nature. Until the recommended changes have been made, care must be taken to ensure that public servants at all supervisory levels understand the limitations and misleading character of present cost figures.

- We therefore recommend that:*
- 1 The Treasury Board and senior departmental management review all requests for additional staff and facilities to be devoted to the conduct of secondary activities to determine whether the government's new or increased need could not, alternatively, be satisfied by the use of private resources and facilities.
 - 2 Accurate and comprehensive cost analyses be prepared to support all requests of such nature.
 - 3 Periodic cost investigations be carried out in respect of all existing programmes of secondary activity, and departments and agencies be required to show cause why these should be continued whenever non-government sources can supply the goods or services at equal or lesser cost.

The more significant savings and improvement will arise from the effective control of the future growth of secondary activities. Important, however, is the need to deal now with existing examples throughout the government of unwise or unnecessary operations of this kind. In the following pages a number of activities are reviewed, serving to illustrate and amplify the general propositions set forth. In cases where it is suggested that goods or services now provided internally be secured from outside sources, problems will arise in disposing of existing governmental facilities. For this reason your Commissioners limit the scope of their proposals to those activities where, it is believed, existing facilities could be sold or put to alternative uses, or where proposals are presently being considered for their replacement or enlargement. Some proposals can be implemented immediately, while others will take time; but the continuing prejudice to both cost and efficiency, where implementation is delayed, should be recognized.

The examples given should be regarded as illustrative rather than all-inclusive. Moreover, these illustrations of the "make or buy" decision have been limited here, and elsewhere in this volume, to the provision of services required by the government to support its own operating needs. The considerations which should be foremost in reaching the "make or buy" decision are equally relevant when government provides services to the public. Consequently, other reports of your Commissioners on "Services for the Public" provide further illustrations of the central theme of this report.

For purposes of this report, approximately forty activities, common to many departments and agencies, were examined. Activities that present similar problems have been combined under broad headings. Because the Department of National Defence is confronted with special problems, not normally the concern of the civil departments of government, its secondary activities are reviewed separately.

2

WORKSHOPS

Seventeen departments and agencies reported 746 separate units which fall into the general category of workshops, employing a total of 3,438 persons. An analysis—by no means exhaustive—reveals the following occupations and enterprises: armourer, blacksmith, carpenter, stonemason, and tinsmith; clock and watch repair, sheet-metal work, electrical, instrument, machine, radio and television shops, and a sawmill. Varied as these activities are, the shops, collectively, present similar problems.

Some small shops scattered across the government employ a few men to perform maintenance and emergency repair tasks in close support of operating and scientific personnel. Larger facilities are, however, comparable to medium-size industrial shops; they use a wide variety of equipment and skills, with broad variations in the quality and precision of performance required. The comments which follow relate primarily to this second category of shops.

Convenience is one of the reasons given for maintaining government workshops, since specifications for shop work vary from oral or written instructions, through rough sketches, to prints from completely engineered designs or inked linen tracings. Control of quality in government shops is possible with only informal communication between the shop and the person originating the requirement. Much more formal specifications and more rigid quality control are essential where the work is contracted out. Nevertheless, the justification for performing work inside the government cannot rest on the arguments that work specifications are incapable of being clearly defined or that quality control can best be achieved informally.

Except for very simple jobs or for work of experimental or developmental nature, specifications should be clearly and completely defined. But all specifications need not be prepared to the elaborate draughting standards now in evidence in some government workshops. These standards are obsolete in most industrial engineering offices, having been replaced by "simplified draughting" techniques which reduce engineering time by thirty to forty per cent. Clearer and more appropriate work specifications would not only improve the work now being performed in government shops but permit more of such work to be contracted out.

A factor contributing to the reluctance to use non-government facilities is the size of existing government shops. Industry commits space and personnel and invests in shop facilities only if a fairly high degree of utilization (fifty to sixty per cent) is anticipated. Because it is difficult in government to programme overtime or to obtain casual help, supervisors tend to staff facilities to peak-load requirements. Thus, there are instances of significant excess capacity in off-peak periods. While overtime is closely controlled, no system of time-reporting exists to identify off-standard or idle time. Under make-work conditions, the working force—consciously or otherwise—tends to stretch out work to maintain continuous activity.

Job cost records, common to industrial shops, are seldom maintained in government shops. Costs, if used at all, rarely include indirect costs, either fixed or variable; administrative and capital costs are often not known. Fair assessment of outside tenders or prices, as well as effective control of government shop costs, will be feasible only if regular and accurate cost reports are available.

NATIONAL RESEARCH COUNCIL

The Mechanical Engineering workshop has a wide range of skills, services and equipment types and capacities. There are probably not more than twenty equivalent shops in Canada. Nevertheless, although there are exceptions due to the experimental nature or low cost of certain work, practice is to contract out if there is no urgency.

Other workshops of the Council could contract out an increased proportion of their activities to industry, if specifications were improved, costing was more accurate and there was greater freedom to contract. The merit of contracting out in this situation is that the shops are peripheral to the main activities and not so organically bound up with the primary activities that work cannot be contracted out. Moreover, this work by nature tends to fluctuate in volume, making it difficult to sustain a steady and economical workload.

The following table shows the workshops of the Council, and the approximate annual value of work performed internally and that acquired from outside sources:

Table 1—NATIONAL RESEARCH COUNCIL SHOPS

Division	Approx. No. Personnel	Approx. Value of Work Done in 1960-61	
		In Division	Elsewhere
		\$	\$
Pure Chemistry	11	129,500	—
Applied Chemistry	8	91,000	—
Pure and Applied Physics	11	115,000	—
Applied Biology	6	53,000	—
National Aeronautical Establishment	18	153,000	—
Building Research	5	35,000	1,000
Mechanical Engineering....	80	200,000	200,000
Electrical Engineering	34	340,000	110,000
Total	173	\$ 1,116,500	\$ 311,000

The proportion of work of each workshop that could be contracted out varies, but based on a brief survey it is estimated in total to represent an additional \$200,000.

DEPARTMENT OF MINES AND TECHNICAL SURVEYS— MINES BRANCH

The mechanical shops attached to this Branch employ thirty-one machinists, eight electricians, seven carpenters, and twenty-four other employees, occupy approximately twelve thousand square feet of space, and utilize capital equipment estimated at \$750,000. Much of the work done consists of small, fairly urgent projects, together with other work as a “fill-in”. There are few specifications, and the information in the cost records is inadequate.

The relationship of the workshops and other divisions within the Mines Branch is unsatisfactory from the viewpoint of optimum utilization of the facilities. The other divisions have the choice of placing work outside or ordering it from the departmental shops. But because no charges are made for work performed for the divisions, the annual Estimates provide no clue as to prospective demand on the shops. In fact, divisional demands are sporadic, increasing noticeably when exhausted budgets preclude outside procurement. For the shops, this situation is a formidable obstacle in planning for a consistent workload.

These deficiencies could be overcome by preparing the Estimates on a programme basis and requiring the research divisions of the Branch to pay for

the services received from the workshops. With better planning and distribution of the workload, the optimum size and capacity of the shops could readily be determined and decisions whether to "make or buy" would be facilitated.

The workshops of the Mines Branch are not used by the other Branches of the Department of Mines and Technical Surveys; nevertheless these other Branches are now contemplating workshops of their own. There should be a consolidation of shop requirements to permit existing shops to meet the increasing needs of other Branches and, at the same time, enable less pressing business, estimated at \$200,000 per annum, to be contracted out.

DEPARTMENT OF TRANSPORT

Marine Services

The ships of the Department of Transport operate from Marine Agencies which also act as supply depots for navigation aids and other items required to service northern localities supplied by water. Ten agencies and several sub-agencies are responsible for maintaining 15,700 aids to navigation (including 3,000 lights, 921 lighted buoys), and seventeen supply and buoy vessels, of which eight are icebreakers. Over 325 public harbours are served. Workshops are maintained in each agency to make minor repairs to the ships and to manufacture and repair aids to navigation.

A large portion of the work in the agencies examined is small in scale, urgent though intermittent and, for these reasons, considered by the public service to be inappropriate for contracting out. In private enterprise, these are usually regarded as sound reasons for contracting out. The Agencies undertake other work as a fill-in activity or for training purposes. Cost data is generally unavailable or inadequate and the work tempo well below industrial standards. Careful control should be exercised over expansion of these facilities. The introduction of proper management techniques and the utilization of these facilities by ships of all civil departments and agencies would promote efficiency, and should also permit the transfer of more work to sources outside the government as the volume of fill-in work is reduced.

The Dominion Lighthouse Depot, attached to the Prescott Marine Agency, employs fifty-four people who repair and manufacture aids to navigation. Possibly ninety per cent of this work, now costing approximately \$250,000 per annum, is not of an emergency nature, no training or security requirements would be jeopardized, and numerous industrial shops are available to compete aggressively for this type of work. The present plant is too large, the equipment obsolete, utilization far from efficient, and the working tempo low.

The Department of Transport should cancel plans to replace these facilities and divest itself of this peripheral activity, with savings not only of money but in administrative distraction.

Air Services

The Department operates in Canada a fleet of thirty-six fixed-wing aircraft and twenty helicopters, and maintains and overhauls these aircraft in its own shops. Such activities are expanding and large new facilities have recently been established at Uplands Airport, Ottawa, for this purpose. The staff of 125 includes ninety licensed engineers. Approximately a hundred of the staff are at the Uplands plant and the remainder at six regional stations of the Department across Canada.

The investment in buildings and inventories is approximately \$3.5 million and the annual operating costs, labour and material only, about \$2 million.

Despite the fact that competent aircraft overhaul facilities are available at a number of points in Canada, the policy of the Department is to fly all aircraft to Ottawa for scheduled overhaul, entailing substantial flight expense and lay-over time for the flight crews. In the case of helicopters, this time represents between 20% and 30% of the total hours flown by such aircraft.

An examination of costing methods reveals serious inadequacies, and calculations made indicate that true costs in the Uplands shops are approximately 35% above prices charged by outside overhaul organizations. This operation is growing: consideration is being given, for example, to adding upholstery and interior cabin refinishing to its activities.

The aircraft overhaul industry in Canada is not large and the loss of this business to government shops is of some significance. In spite of the generous expenditures by government on capital facilities, your Commissioners' view is that the utilization of manpower and facilities is not up to industrial standards, and the cost is substantially greater, apart altogether from the not inconsiderable ferrying costs involved. The Department of Transport should limit its aircraft maintenance and overhaul activities at Uplands Airport to ordinary running repairs. Other uses for current facilities, such as use by the Royal Canadian Air Force should be considered, and periodic overhauls should be contracted out at appropriate locations across Canada convenient to the operating bases of the aircraft.

OTHER DEPARTMENTS AND AGENCIES

Other shops operated by departments and agencies across Canada undoubtedly provide additional opportunities for transfer of work to private industry.

We therefore recommend that: A frequent review be made of all workshop facilities to ensure that:

- 1 New facilities are not established or old ones replaced without thoroughly considering the use of other government shops and outside suppliers.
- 2 Cost accounting, work study and other management techniques are in use to ensure efficient management and accurate measurement of performance.
- 3 Tenders are requested for all work suitable for contracting out.

3

REAL PROPERTY MAINTENANCE

Government activities coming within this category include the operation of asphalt and cement plants, road-building, dredging, landscaping, gardening, the tending of nurseries, painting, pipefitting, plastering, plumbing and general building maintenance. Thirteen departments reported 1,437 units engaged in this type of work, and a total of 6,099 public servants so employed. Because many units are small and quite widely dispersed, much of this work cannot be contracted out. However, there are certain exceptions.

DEPARTMENT OF PUBLIC WORKS

Cleaning and Building Maintenance

The Department of Public Works is responsible for the cleaning, general up-keep and maintenance of some 2,850 buildings with floor space in excess of thirty million square feet. One-third of this total is contained in buildings in the Ottawa area. The cleaning programme is carried out partially by contract (\$1 million) but primarily by departmental staff (\$8 million). There are approximately 2,800 public servants employed (whole or part-time) for this purpose in the Ottawa area alone.

As a result of detailed time and motion studies the Department achieved some economies through the conduct of formal training programmes. The cost of cleaning in the Ottawa area by government employees, however, still remains higher than contract costs. The justifications given for the continued use of departmental employees are that the quality of the cleaning is higher

and that the practice provides a safeguard against excessive contract demands (the nucleus argument). Nevertheless, the number of companies now competing for cleaning contracts is sufficient to provide adequate safeguards as to both quality and price.

The rate of turnover, particularly of male staff, is high, while the female staff consists mostly of older women. Normal attrition is, therefore, sufficiently rapid to permit the extension of contract cleaning without releasing staff. Annual savings in the order of \$1 million are possible.

Dredging

The government is responsible for about ninety per cent of dredging undertaken within Canada. The costs of this public service, designed to improve or maintain navigation channels, and public and fishing harbours, are largely borne by the government. A substantial portion of this work is contracted out. Because the private dredging industry is largely dependent on the government for its market, any increase in the government's plant is likely to have a directly adverse effect on the utilization of existing capacity.

The Department puts forward many reasons for allocating work to its own plant, including the difficulty of estimating quantities for purposes of tendering, the lack of suitable plants in the areas concerned, the inability to schedule precisely, the absence of true competition, and the desire to utilize government plant fully. These influences have contributed to the expansion of the fleet of government dredges which, since 1945, has grown from fourteen to thirty-one. These are operated by the Department of Public Works at locations on the Atlantic Coast, St. Lawrence River, Great Lakes, Lake Winnipeg, Pacific Coast and in the Territories. Dredges have limited mobility and therefore a comparison between the capacity and work performed by both government and industrial dredges on a regional basis is useful (*see* Table 2).

In eastern Canada departmental plant is primarily used on small jobs of limited interest to private contractors. In central Canada little work is contracted out because of the unavailability of suitable commercial plant. However, on the west coast over half the work undertaken is to permit high utilization of departmental equipment. Some of this equipment is new and of a specialized nature with a high capacity and mobility, thus permitting it to cope with emergency situations more expeditiously than the private plant now available. However, the capacity of this new equipment can only be kept fully employed if it is utilized on other work which the private industry can service equally well.

Table 2—ANNUAL SHARING OF DREDGING BETWEEN FACILITIES OF THE GOVERNMENT AND INDUSTRY IN RELATION TO CAPACITY

Approximate Average—1959 and 1960—Cubic Yards Excavated

	<i>Government Plant</i>		<i>Contracted</i>	
	<i>Capacity</i>	<i>Work Done</i>	<i>Capacity</i>	<i>Work Done</i>
<i>East Coast and Great Lakes</i>				
National Harbours Board	—	30,500	—	606,600
St. Lawrence Ship Channel....	—	—	—	3,407,300
Public Works	1,370,000	994,100	17,850,000	5,724,000
<i>Central Canada</i>				
National Harbours Board	—	2,600	—	80,600
Public Works	569,000	415,800	100,000	1,000
<i>West Coast</i>				
National Harbours Board	—	—	—	55,000
Public Works	2,035,000	2,148,100	9,300,000	1,367,500
Total	3,974,000	3,591,100	27,250,000	11,242,000

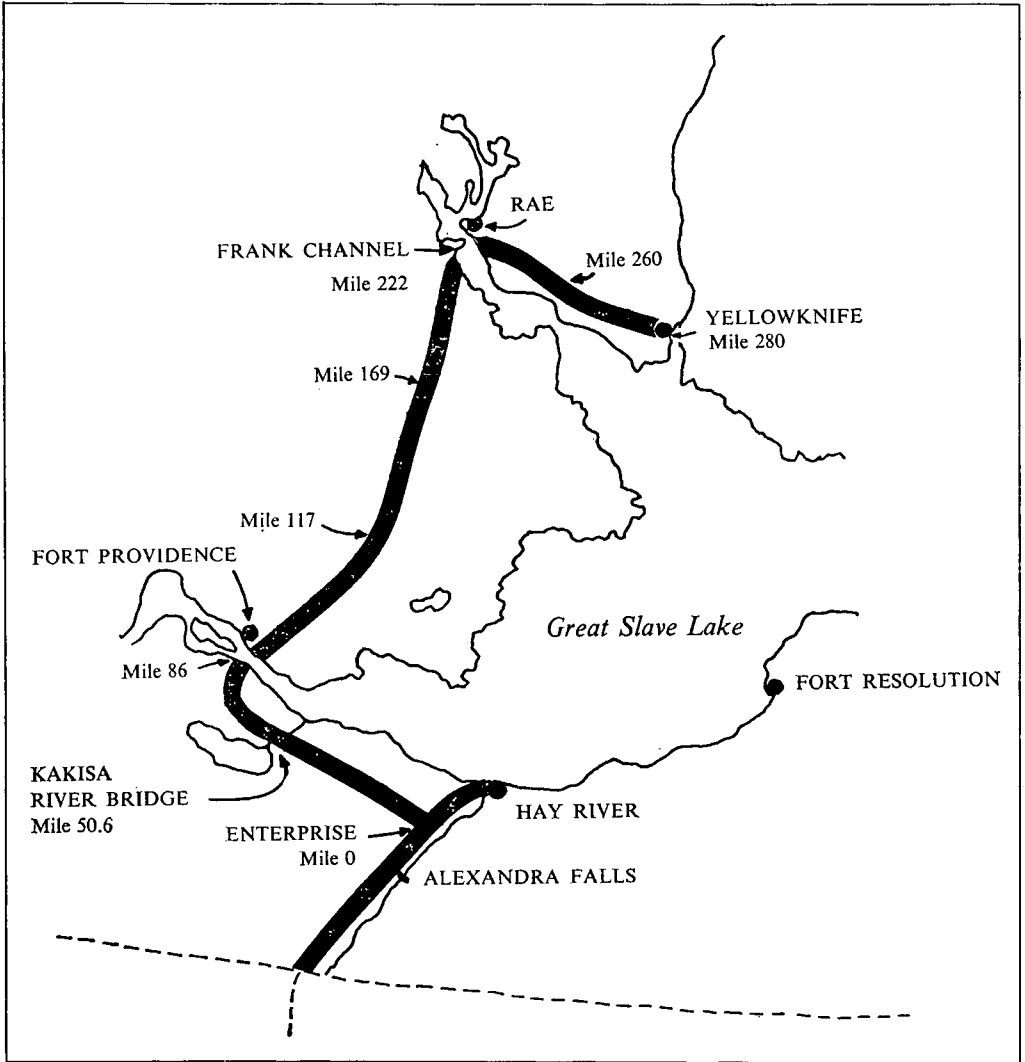
The Department is replacing existing plant, valued at an estimated replacement cost of \$18 million, at the rate of \$1 million per year. Unless this replacement programme gives adequate consideration to the capacity of the private dredging industry, the new, more efficient equipment will further reduce the proportion of dredging being contracted out. Since the government is almost its only source of business, this cannot help but have serious consequences for the private dredging industry.

DEPARTMENT OF NORTHERN AFFAIRS AND NATIONAL RESOURCES

The Department is responsible for maintaining 390 miles of highway running from the Alberta boundary to Yellowknife, with a spur to Hay River (*see* Exhibit 1). Plans envisage additional construction of highways in the Territories at a rate of a hundred miles annually. These roads are generally built by private contractors under the supervision of the Department of Public Works, with the Department of Northern Affairs and National Resources assuming responsibility for maintenance.

In 1960, the Department investigated two alternative methods of carrying out this maintenance. The first was to purchase the equipment, taking on the necessary operators either as continuing or seasonal employees; the second was to continue the previous procedure of renting the equipment with the operators supplied by the contractors. There is no indication that the Department considered contracting out full responsibility for maintenance. The Department's study concluded that an annual saving of \$86,000 would result

Exhibit 1—MAP OF MACKENZIE HIGHWAY SYSTEM



from owning rather than renting and the equipment was accordingly purchased.

This study illustrates graphically the problems faced by senior authorities in reviewing proposals for additional staff and facilities to be devoted to the conduct of secondary activities. The study was prepared in considerable detail and the recommendation was accepted by the Treasury Board primarily because of the savings indicated. Your Commissioners' scrutiny of this report identified underestimates and omissions of costs which exceed the estimated

savings. For example, both the number and unit costs of houses required for supervisory departmental employees were understated in the day-labour estimates. Similarly, the additional costs of superannuation and other employee fringe benefits were overlooked. Estimated operating costs for the equipment to be purchased by the government were selected from the most favourable set of costs included in the performance handbooks of the manufacturers—a questionable selection in view of the climatic conditions of the Northwest Territories and the higher maintenance costs due to their remoteness.

Departmental accounts are not now kept in a form which segregates in a complete and accurate manner the Department's actual cost experience in assuming this operating responsibility. The validity of the Department's computations may therefore never be tested by results. Indeed, despite the misleading nature of this report, it is being used to support other proposals of a similar nature.

Thus, not only is there danger that the original decision, if wrong, will be perpetuated but a chain of events may be set in motion that arrests rather than promotes the development of commerce and industry in the Territories. What is needed is accurate and complete costing of each operating activity of the Department in order that actual results can be carefully checked against proposals from contractors. Unless the savings are conclusive, the work should be let out on contract for a term of years which would be sufficiently attractive to encourage contractors either to enter or remain in the North and serve the needs of the public as well as those of the government.

NATIONAL CAPITAL COMMISSION

The Commission employs its own engineering, architectural and work forces to undertake minor capital works and landscaping in the city of Ottawa, the Green Belt area and the Gatineau Park, including the ground surrounding or adjacent to government buildings, parkways and the Rideau Canal. The operating staff consists of foreman, equipment operators, maintenance staff, and both skilled and unskilled labourers. Peak annual employment is about five hundred; it is substantially less in winter months.

Such work as construction, demolition and modification of buildings, land clearing and curb construction could be profitably transferred to private enterprise. This represents about twenty per cent of expenditures; a like amount represented by landscaping, road construction and maintenance, and the construction of parking lots, could also be transferred, provided the Commission were to issue formal specifications backed up by proper supervision, inspection and regulation.

DEPARTMENT OF VETERANS AFFAIRS

The Department employs at its hospitals, health centres, and other facilities, forty-five gardeners, one greenhouse-man and twelve labourers, making a total of fifty-eight employees, at a cost in excess of \$200,000 per annum, to undertake general gardening and grounds-keeping work, including maintenance and cutting of lawns, greenhouse cultivation and planting of flower beds, hedge trimming and winter protection of shrubs. The staff is spread over fifteen establishments, all located in or close to urban areas.

During the winter season this staff maintains equipment and removes snow and ice from walks and drives. The activity is seasonal and it lends itself to performance by contract.

OTHER DEPARTMENTS AND AGENCIES

The comments referring to particular departments have equal relevance to operations of other departments. Construction and maintenance of real property is not a unique problem. In most urban centres private organizations are available to undertake this type of work, in sufficient numbers to ensure competition. Government departments seldom can hire and lay off employees on short notice to meet fluctuating requirements (although the National Capital Commission has greater freedom in this regard); they cannot effectively provide the degree of supervision that is usually found in small closely-controlled private firms. These are activities which may divert government servants from more essential tasks.

We therefore recommend that: All departments and agencies review their activities involving the maintenance of real property with a view to contracting out this type of work.

4

MISCELLANEOUS SERVICES

The services, briefly noted below, include activities concerned with arts and graphics, cinemas and theatres, clothing and tailoring, dry cleaning, fumigation, gasoline stations, laundries, maps and plans, photography and sign writing. More than 227 service units of this sort, with a total staff of 1,221, were reported by eighteen departments.

DEPARTMENT OF MINES AND TECHNICAL SURVEYS

Maps

The Department prints maps to meet the requirements of many government departments, in addition to its own. Normally, maps are printed by the Department in runs of five thousand copies, in contrast to runs of fifty thousand to one million copies by commercial printers. Thirty per cent of all maps produced are distributed free to other departments of government and, on a restricted basis, to schools and institutions. The remainder are sold at nominal prices. Revenue barely meets the cost of paper, plates and ink.

The facilities are new, with a large capital investment in both equipment and space. Although the Department's accounts do not provide adequate cost figures for making the comparison, higher costs of outside printing were cited as justification for the present policy of printing almost all maps within the Department. Lower quality, longer delivery, lack of appreciation of government standards, and lack of capacity were given as other reasons for not using private facilities.

Investigations indicated that these allegations are not wholly tenable. For example, work of comparable quality is produced commercially; and some of the delay blamed on the contracting out process could be eliminated by improved planning and simplified purchasing procedures within the Department. However, so long as government production continues on the present scale and work contracted out is in sporadic short runs, commercial printers are unlikely to be interested in establishing facilities capable of meeting the government's needs.

The government has an estimated investment in equipment of \$500,000, and in space of 16,000 sq. ft., with more than fifty employees. The result of the federal government's dominance in this field—probably inevitable in the early stages of the country's history—is that it is difficult to encourage the development of a private industry. However, if private sources are not stimulated to produce maps, Canadian school children may continue to use maps of Canada which are imported from or scribed in foreign countries. The Department of Mines and Technical Surveys should establish realistic selling prices for maps and should limit, if not diminish, map production in government facilities in order to encourage the development of outside sources.

Land Surveys

The Department also carries out all legal surveys on government lands, Indian reservations, in National Parks, and in the Northwest Territories. A permanent staff of thirty-eight (at least half professionals), a summer staff of twenty-three students and some sixty labourers are employed. The work extends across Canada and five per cent of it is contracted out to non-government surveyors.

Surveys of federal property can be undertaken only by Dominion Land Surveyors. Admission to membership in this professional association is controlled by officers of the Department, who are also responsible for the instruction and examinations required. By far the greater number of active Dominion Land Surveyors are employed in the Department.

Encouragement of the professional competence and integrity of land surveyors may once have been a proper responsibility of the federal government, but the standards and ability of professional practitioners known as provincial land surveyors are now widely acknowledged. The federal government recognizes provincially accredited members of other professional bodies such as lawyers, accountants and doctors. Canadian government survey work will forever be performed by federal public servants unless provincial land surveyors, widely distributed across the country, are made eligible and given contracts for surveys of federal government properties.

DEPARTMENT OF TRANSPORT

Marine Services

The Board of Steamship Inspection, composed of employees of the Department of Transport, employs approximately one hundred steamship inspectors to undertake periodic inspections of passenger and other vessels, as required by the *Canada Shipping Act* and by the International Convention for the Safety of Life at Sea. The direct cost of this activity is approximately \$1,200,000 per annum.

Similar inspections of vessels are made by agents of the various international insurance underwriters, known as classification societies, when ship-owners request insurance. The Board is permitted to accept certificates of inspection of these societies, only if inspections are made at ports outside Canada. The standards of both inspections are comparable, and certain other countries accept insurance inspections. But, because inspections by the classification societies within Canada cannot legally be accepted by the Department, over one-half of all inspections are duplicated. Consideration should be given to amending the statute to permit acceptance by the Board of Steamship Inspection of survey reports issued by approved classification societies as a means of reducing inspections by the Board's staff to those of a test or residual nature.

DEPARTMENT OF VETERANS AFFAIRS

The Department employs over two hundred people, in a central workshop and at eleven district centres, for the repair, fitting and manufacturing of prosthetic and orthotic appliances and sensory devices. The majority of all artificial limbs, splints, braces and artificial eyes in Canada are manufactured by the Department for its own purposes, whereas wheel chairs, hearing aids, eye glass lenses, trusses, elastic hosiery and stump socks are generally purchased from private sources. Almost all repair work is performed by civil servants. The Department also employs six persons on research to improve appliances, materials and manufacturing methods.

This activity of government illustrates the manner in which the development of private facilities can be retarded when government itself undertakes to provide for a new or special need and fails to withdraw from the field when the need declines.

This programme was undertaken originally to alleviate the suffering and disability of service personnel injured in past wars. Because the requirements of non-veterans have been relatively small, the Department enjoys almost a monopoly in the field. The prosthetic facilities of the Department have been made available from time to time to other government departments and to

some private organizations but, nevertheless, non-veterans are generally denied use of these facilities. Although the Department attempts to recover its costs when rendering services to other departments or private organizations, it seldom achieves this objective, even taking into account the incomplete nature of the cost figures used.

However, a small private industry has grown up in Canada in response to the needs of disabled civilians, numbering about fifty establishments, which range from one-man operations to workshops employing, at the most, six men. Of necessity, this industry imports many of its requirements and it is too small to conduct serious research and development.

The requirements of veterans will remain static and eventually decline, whereas the needs of civilians can be expected to increase as the population increases. This industry is in private hands in both the United States and the United Kingdom, and manufacturing and repair are secondary responsibilities which could well be delegated, so as not to divert public administrators from more important tasks. Unless the Department takes steps now to transfer a portion of its requirements to private facilities, a prosthetic industry equal to national needs is unlikely to develop. As a result the government may easily inherit the responsibility for the entire nation. Without diminishing in any way benefits currently enjoyed by veterans, the Department of Veterans Affairs should undertake to reduce its manufacturing activities in the prosthetic and orthotic fields with a view to encouraging the development of a private industry capable of meeting total future Canadian requirements.

OTHER SERVICES

Tailor shops of the Royal Canadian Mounted Police produce approximately one thousand tunics, jackets, breeches and trousers each year and undertake adjustments and repairs at a cost in salaries and wages amounting to some \$140,000. The Armed Services utilize commercial tailors for these purposes—a course of action that the RCMP might consider adopting.

The Department of Veterans Affairs operates laundries in conjunction with approximately half its hospitals, veterans' homes and other medical facilities, but utilizes the services of private contractors elsewhere. Over one hundred and fifty persons are employed in this activity, with an operating cost of \$430,000 per annum and an investment in equipment of \$800,000.

Similar service activities can be identified in other departments and agencies of government. The absence of competitive pressures and the fact that costs are not closely controlled encourage many of these facilities to provide better service than similar commercial facilities. Too often, however, the level of

service, although attractive, is unwarranted. Such activities not only increase the administrative burden of government but also add to its cost. Before the government embarks on such activities, there should be sound evidence that real savings will result.

We therefore recommend that: Where the absence of viable secondary industries in Canada requires the government to meet its needs from internal sources, positive policies be adopted designed to contract out sufficient volume to permit the establishment of private facilities capable of meeting non-government requirements on an economic basis.

5

FOOD SERVICES AND ACCOMMODATION

FOOD SERVICES

Under this heading are grouped services associated with cafeterias, dining-rooms, canteens, lunch counters, hotels, motels and hostels. At least five hundred and seventeen units falling within this category and providing employment for 1,509 personnel, were reported by fifteen departments.

Analysis of these varied activities clearly demonstrates how the inadequacies in present government costing procedures can produce results that are inconsistent with declared objectives. Stated government policy is that eating facilities may be installed in public buildings only where the population of public servants is large enough to ensure that the operation can be conducted without any loss of public funds.

Nevertheless, the provision of a variety of free facilities and services violates this clearly stated policy. For example, the Department of Public Works supplies, without charge to the operator: space, including periodic painting and decorating; electric power and lamps (gas where applicable); heat, water and steam; and dry garbage removal service. All cafeterias are supplied with: service counters, tea and coffee urns, tray rack section, steam table section, sandwich rack section, refrigerated salad and dessert section; dishwashing section, including dishwasher, dish scraper and dish tables; refrigerators, sinks and basins, kitchen mixers; cooking equipment, electric meat saws and butcher blocks; tables and chairs for patrons and such additional equipment as may be considered necessary to meet special conditions. Moreover, when this equipment wears out, it is replaced at no charge. As a result, the public purse has financed a capital investment of not less than \$10 million and defrays

costs of free services valued at approximately \$2.5 million per annum.

The declared policy of the government is to provide cafeterias only where commercial facilities are inadequate, although canteens, lunch-rooms and snack bars are permitted elsewhere. There are eleven cafeterias, twenty-seven canteens and other lunch-rooms and snack bars in the Ottawa area, with a total of one hundred and sixty facilities outside Ottawa. Most of the cafeterias are managed by an employees' association or by the Canadian National Institute for the Blind. A caterer, responsible for the day-to-day running of the facility, including provision of food, is normally selected by open tenders. Under the terms of these contracts, private caterers pay to the Ottawa Civil Service Recreational Association alone annual fees aggregating approximately \$28,600. In effect, by the free provision of equipment and facilities, the government is giving a measure of financial support or hidden subsidy to the organizations selected as managers.

In summary, although private caterers are employed in most instances to operate these cafeterias, present arrangements do not show the true cost of carrying on the activity. It is common practice for industry and commerce to provide meals to employees at less than cost, but such subsidies are carefully costed for purposes of management control. Present government procedures disclose neither the extent of the subsidy nor its recipient or recipients. Steps should be taken to ascertain on a continuing basis the true costs of providing cafeteria and similar facilities for public servants, and the position of operators as middlemen should be critically reviewed.

Department of National Health and Welfare—Civil Defence College

At the Civil Defence College at Arnprior, Ontario, departmental employees undertake the catering at a cost calculated to be no less than one dollar per meal. The College's catering arrangements could be contracted out and, based on experience elsewhere, it is believed that economies would result.

ACCOMMODATION

Central Mortgage and Housing Corporation—Laurentian Terrace

Central Mortgage and Housing Corporation operates the Laurentian Terrace for the purpose of providing accommodation and dining-room facilities to junior female employees of the Canadian Government and of foreign embassies and legations in Ottawa. The hostel was established as a wartime measure in 1942, when there was a considerable increase in the number of female employees in government departments and a general shortage of suitable accommodation.

The hostel can accommodate approximately three hundred women and is currently occupied to about ninety per cent of capacity. The scale of charges paid by residents is somewhat below present community levels and a measure of subsidy is indicated by the fact that the annual accounts of the hostel for the year 1960 showed an excess of expenditure over revenue of some \$12,000. This does not take account of all items of expense and the effective net cost of providing the service is approximately \$100,000 annually.

Alternative facilities are now available. Furthermore, since the present scale of charges results in an operating loss of some significance, there is little justification for continuing a peripheral activity of this nature.

Atomic Energy of Canada Limited

Atomic Energy of Canada Limited owns and operates residential accommodation in the town of Deep River, with facilities for up to four hundred and seventy persons. A permanent staff of 38 is required to operate these residences, and operating costs, after deducting revenue from rentals, are in excess of \$200,000 per annum. While accommodation is provided primarily for employees of this Crown company, it is also available for school teachers and persons employed by commercial interests in the town.

No differentiation is made between the rates charged to employees and to non-employees. The present scale of charges is sufficient to cover only forty-six per cent of the cost of operation—an effective deterrent to the establishment of alternative facilities by private enterprise in the community.

OTHER DEPARTMENTS AND AGENCIES

Other departments and agencies operate both food and accommodation services on the same bases as those indicated in the previous illustrations. They raise problems of a similar nature relating to costing, rates and contracting out.

We therefore recommend that: All departments and agencies review activities devoted to providing living accommodation or food services with a view to ensuring that:

- 1 Complete and accurate costs are available.
- 2 Charges to beneficiaries are related to the total cost of operations.
- 3 Responsibility for operating these facilities is contracted out wherever possible.

6

TELEVISION AND FILM

CANADIAN BROADCASTING CORPORATION

Staging of Television Programmes

The Canadian Broadcasting Corporation employs the following personnel (mostly at Toronto and Montreal) to provide the supporting services required to stage television programmes.

Carpenters	109
Printers	82
Graphic arts — design	71
— photography	3
Costume — design	44
— wardrobe and tailoring	52
— staging and service	5
	<hr/>
	366
	<hr/>

The Corporation proffers a variety of reasons for its policy of making only limited use of private enterprise to provide these services: the need for maximum utilization of facilities; artistic co-ordination, precise scheduling and technical development; the demands of employee unions; team spirit and the urge to develop a wider, more integrated operation. By the same token, it is alleged that experience with some outside suppliers has been unsatisfactory, that their costs are higher and their skills and capacity inadequate.

Nevertheless, the advent of private television and the growth of other theatrical activities make a review of current policies timely. The Corporation's policy of self-sufficiency may well have retarded the development of

facilities to serve the private entertainment industry as well. However justifiable this policy may have been, its potential defects should be clear: a continuing growth of the subsidiary functions of the Corporation which may ultimately lead to diversion of the main effort, with a deterioration in both quality and efficiency. The establishment of positive, rather than restrictive, policies for collaboration with private enterprise should enable the Corporation to divert at least one-third of its staging activities to private industry. This would bring about a four-fold increase of work contracted out and represent an annual volume of about \$1 million.

Video-Tape and Film Production

The Canadian Broadcasting Corporation uses video-tape and movie film for a variety of film inserts, news documentaries and entertainment programmes at each of its six main stations in Canada. About forty-five per cent of total viewing time is from recorded tape or film.

The cost of films acquired by the Canadian Broadcasting Corporation in 1960-61 may be analyzed as follows:

Films produced wholly by the CBC	\$ 785,350
Films produced jointly by the CBC and the private film industry	374,321
Films produced for the CBC by the private film industry.....	979,902
	\$ 2,139,573

Many of the films produced wholly by the Canadian Broadcasting Corporation could have been produced elsewhere. The creative motivation of the Corporation's personnel engaged in film activities (over five hundred employees), together with the desire to fully utilize facilities required only part-time for news and film inserts, accounts to a material degree for the extent of C.B.C. film production.

In addition, a major portion of the Corporation's programmes is pre-recorded on video-tape. The Corporation places practically no business with industry for video-tape productions—indeed, it actually produces some tape for advertisers. Nevertheless, this area offers substantial long-range possibilities for outside participation, provided certain serious problems are overcome—namely, high capital cost, severe technical problems of recording and transmission, and the ability of private industry to adhere to the Canadian Broadcasting Corporation's programme specifications.

Your Commissioners can see no good reason why industry's participation in both film and video-tape activities cannot be progressively developed. Even a

small percentage increase would, in view of the total cost of CBC-originated programmes of \$42.5 million, represent a significant increase in the present volume of the private Canadian film industry, which is now valued in total at approximately \$10 million.

The Corporation has, however, announced plans to (i) erect a large integrated establishment in Toronto to house all activities, such as radio broadcasting, telecasting, staging and film production; (ii) provide new construction in Ottawa, essentially a head office building and (iii) a projected installation in Montreal along the lines of the pattern developed for Toronto. These plans for expansion should be carefully reviewed to ensure that capital facilities are not being created to undertake work appropriate to private enterprise and thereby rule out increased outside participation.

NATIONAL FILM BOARD

The National Film Board's history, since moving into a new enlarged establishment in 1956-57, clearly demonstrates the consequences of framing capital programmes without adequate consideration of the possible contribution from private enterprise—the Board's film-making activities have since expanded by fifty per cent. During this same period, the amount of work contracted to the Canadian film industry by the Board has decreased, and is now only about one-half the 1955 level.

Although the Board represents all government departments and agencies in their dealings with industry, the business placed by the Board with industry has not been of material assistance to the latter's development, either commercially or technically. There is room for a substantial increase in such business before the Board achieves one of the purposes outlined in the *National Film Act*, which is "to promote the production and distribution of films designed to interpret Canada to Canadians and to other nations".

In the 1960-61 fiscal year, the gross cost of films produced by the National Film Board amounted to \$3,524,551 and the amount contracted out was \$148,723. By comparison, the gross revenue of private film producers, as reported to the Dominion Bureau of Statistics, was \$9,972,151 in the same period. It can be seen from comparing these statistics with those of the Canadian Broadcasting Corporation that the latter (even with its present restrictive policy) is far more effective in promoting the prosperity of the private film industry than the National Film Board.

The National Film Board has established high standards, and it is difficult to criticize the Board's declared purpose of utilizing its plant, equipment and personnel to the fullest extent in order to achieve an economic operating level. However, in view of the adverse effect that the Board's expansion has had on

the participation of private film-makers, consideration should be given to greater utilization of the National Film Board's facilities by the Canadian Broadcasting Corporation as another alternative to the construction of new facilities by the Corporation. This would permit the Board to contract out additional work, now being done internally.

Film-making is an internationally competitive industry. Canadian producers can compete in foreign markets and thereby obtain economic distribution of their films, only if they are supported at home. This is a clear illustration of a special responsibility which ought to influence the government's purchasing policies.

- We therefore recommend that:*
- 1 Supporting services, such as staging, be reviewed to ensure that maximum use is made of outside facilities.
 - 2 The Canadian Broadcasting Corporation's plans for expansion of capital facilities be reviewed to ensure that proposals for film-making and video-tape activities will not reduce or inhibit greater participation by the private film industry and the National Film Board.
 - 3 The National Film Board stabilize its film-making at a level sufficient to provide economic utilization of present facilities.

7

SPECIAL CORPORATE ACTIVITIES

In addition to the various supporting services and secondary activities of the departments and agencies dealt with in the preceding chapters, there are two large industrial-type corporations which were originally acquired by the government as a result of "make or buy" decisions. Both Polymer Corporation Limited and Eldorado Mining and Refining Limited (and its subsidiaries) were acquired in support of the government's activities in World War II. Today they have no such supporting role and their future is essentially a matter of public policy.

POLYMER CORPORATION LIMITED

This company was almost totally excluded from the investigation. Your Commissioners, from limited contacts with it, gained the impression of a well-managed industrial concern engaged in significant expansion and growth, including establishment of plants abroad. Its research activities provide a good example of a well-conducted industrial research programme.

At first glance, public ownership of Polymer seems unwarranted on any of the tests applied in this and other reports on supporting services. The Corporation cannot be regarded as an instrument of public policy. Its ownership by the Crown is in no sense essential, on security or other grounds, to any of the programmes of the federal government. Your Commissioners recognize, however, that the transfer of this undertaking to private ownership presents certain practical problems which, so far, have proved very obstinate.

By the very reason of its good management and commercial success in world markets, it has become established as a valuable and unique Canadian asset, possessing highly specialized scientific, production and marketing skills and experience, and providing careers and a livelihood for more than 2,500 men and women. Under these circumstances, general public approval can only be expected if its sale is made on terms which ensure that control of the undertaking will remain in Canadian hands, and that its integrity will be preserved by its new owners.

ELDORADO MINING AND REFINING LIMITED

A detailed study of this operation was conducted because, in spite of its essentially commercial character, it carried on certain special activities in furtherance of government policy.

Eldorado was originally a private mining company and was expropriated by the government in 1944 when uranium became a material of strategic importance. All shares of the company are now owned by the government, representing an investment of \$8,247,000 at cost.

The primary operating functions of the company are the mining and refining of uranium ore. The original mine was located at Port Radium, Northwest Territories, and is now closed down. The company's Beaverlodge mine, a much more substantial investment, is located near Uranium City, Saskatchewan, a municipality largely centred around Eldorado's operations; it mined approximately one-eighth of the uranium produced in Canada in 1960. The company's refinery at Port Hope, Ontario, processes uranium concentrates from Eldorado's own mines and those of other producers. The company also carries on a programme of research in uranium ore dressing and refining designed to serve the uranium industry as a whole.

A wholly-owned subsidiary, Northern Transportation Company Limited, was originally formed to serve the company's Port Radium mine on Great Bear Lake. It is now a general carrier of waterborne traffic in the Mackenzie River basin—only one-sixth of its gross revenue being derived from Eldorado freight. Another wholly-owned subsidiary, Eldorado Aviation Limited, provides air transportation for the company, but is not a common carrier.

The relative dimensions of the capital facilities employed in these several activities are demonstrated by the summary of the principal fixed assets as at December 31, 1961, shown in Table 3.

In addition to these operating activities Eldorado, as the agent of the Canadian government, is responsible for selling and promoting the sale of uranium products, including the negotiation of contracts and their allocation within the Canadian industry.

Table 3—ELDORADO MINING AND REFINING LIMITED—SUMMARY OF PRINCIPAL FIXED ASSETS—
DECEMBER 31, 1961

<i>Fixed Assets</i>	<i>Original Cost</i>	<i>Cost less Accumulated Depreciation</i>
	(\$ thousands)	(\$ thousands)
Beaverlodge mine	36,350	7,438
Port Radium mine	5,969	nil
Northern Transportation Co. Ltd.	12,378	1,875
Port Hope Refinery	6,800	2,072
Research Laboratories	718	425
Eldorado Aviation Ltd.	911	169

Your Commissioners have found Eldorado to be well managed, with competent personnel and exceptionally high morale. Present uncertainties as to its future, however, constitute a serious threat to its continued efficiency.

Because of current world over-supply, the Canadian uranium industry faces an uncertain future when present contracts expire. At least a decade may pass before the consumption of this metal can be expected to expand sufficiently to absorb present productive capacity. Through mergers and purchases, existing uranium contracts of privately owned mines have been consolidated into fewer hands, in the hope that the remaining companies can maintain activity through this period of difficulty.

Eldorado, as an integral member of the surviving industry, faces a highly competitive future. So long as foreign contracts are allocated at a uniform price to the several remaining companies, the future is reasonably predictable, but with the onset of real price competition the situation is bound to become much more strained. In the meantime, under existing contracts with foreign governments, all Canadian producers are in receipt of a substantial flow of cash. Eldorado itself, without considering the effect of the British contract now being re-negotiated, will accumulate by September, 1964, cash balances of over \$47 million, after paying all expenses. But as a government-owned company, it has not been permitted to use its available funds to diversify its activities or carry on active exploration. Such a proscription promises at best a lingering death. In these circumstances, there is need for a decision as to Eldorado's future, in the absence of which its value as an investment cannot but decline. By severing Northern Transportation, the Port Hope refinery and the research laboratories, Eldorado would remain for all practical purposes just another uranium mine with its necessary transportation facilities. As such, and with its prospective cash flow, it should be highly saleable, and under private ownership might well achieve a permanent success in the mining field.

We therefore recommend that: A decision be made as to the future role of Eldorado Mining and Refining Limited.

8

COMPETITIVE OPERATIONS OF THE DEPARTMENT OF NATIONAL DEFENCE

INTRODUCTION

The pressures tending to multiply the number of activities carried on by the Department of National Defence must be recognized. The Armed Services must ensure that a fighting force is in being, capable of meeting an emergency with maximum mobility and flexibility.

The breathing space to convert non-military facilities to wartime needs is obviously even more limited now than in the past. Because manufacturers cannot afford indefinitely to reserve plants for production in an emergency and because obsolescence proceeds at a rapid pace as changes occur in weaponry, there is a natural inclination for the Armed Services to seek a high degree of self-sufficiency. As a result, they have established many operating facilities of their own.

Having acquired facilities for training purposes or as emergency nuclei, commanding officers properly seek to obtain their fullest utilization, in order to ensure that their operation is co-ordinated on an economic basis. Having trained its personnel to the high degree of technical competence required by modern warfare, the military services quite naturally attempt to provide them with suitable career opportunities in order to retain them. The resultant expansive effect is reinforced by other less justifiable influences.

It is always difficult in a military activity to achieve a balance between need and cost. It is the more difficult when accurate and complete cost information is not available. The same errors and misconceptions on this score were found in the Armed Services as in the civilian departments. Many secondary activities were found to have been undertaken, not for purposes of

preparedness or training, but to achieve economy—a commendable objective, but often lost through inadequacy of the cost data used.

Another factor predisposing the military against contracting out their requirements is the severely limited authority of commanding officers to contract without reference to headquarters. Approval may in many cases require reference to another government department, the Department of Defence Production, or to a control agency, the Treasury Board. The cumbersome administrative requirements, costs, delays and general frustration cannot be expected to stimulate interest in broadening the participation of industry.

The effect of these influences is that the numbers of personnel in the Department of National Defence, both uniformed and civilian, employed in supporting services or secondary activities are quite substantial. The greater the involvement of uniformed personnel in these activities, the less strength is available for other tasks which only the military can perform. The extent of involvement in workshops, maintenance and construction, and services can be seen by reference to Table 4 which shows the numbers employed in these activities as reported at the end of May 1961, in relation to the total strength reported in support of the 1961-62 Estimates.

Table 4—ANALYSIS OF MILITARY EMPLOYMENT IN SELECTED SECONDARY ACTIVITIES

	Defence Research Board		Navy		Army		Air Force		TOTAL	
	Mil.	Civ.	Mil.	Civ.	Mil.	Civ.	Mil.	Civ.	Mil.	Civ.
Workshops	—	268	287	2,726	779	948	8,904	526	9,970	4,468
Maintenance and Construction	—	27	10	341	203	1,549	261	2,184	474	4,101
Supporting Services	—	31	89	117	205	269	631	135	925	552
Total	—	326	386	3,184	1,187	2,766	9,796	2,845	11,369	9,121
Total (All Services)										20,490
Total Personnel in the Armed Forces excluding Departmental Administration and Inspection Services	—	3,021	20,754	11,729	47,799	18,667	51,923	14,135	120,476	47,552
Total (All Services)										168,028

WORKSHOPS

Over fourteen thousand men, including more than four thousand civilian tradesmen, are engaged in workshops modifying, maintaining and repairing military equipment. This work covers a broad range, including ships, tanks, guns, firearms, helicopters and airplanes, automotive and engineering equipment, radar, fire-control instruments, life rafts and parachutes. These workshops are also concerned with certain non-military equipment, such as textiles, footwear, refrigerators and electric motors.

Skills applied to this work are numerous and varied and include armourers, aircraft mechanics, blacksmiths, brake and tire servicemen, carpenters, electricians, electronic technicians, engine mechanics, fitters, instrument men, machinists, sheet-metal workers, plant and boiler workers, pipe-fitters and plumbers, painters, sailmakers, shipwrights, vehicle repairmen and welders.

The military services recognize that many of these activities are competitive with private industry, but point to their training value and lower costs to justify existing operations.

Royal Canadian Navy

The Royal Canadian Navy operates dockyards at Halifax and Sydney, Nova Scotia, and at Esquimalt, British Columbia, which make running repairs to ships and carry out ship refits. The latter is a fill-in activity and is shared with the shipbuilding industry. Armament depots are maintained at Esquimalt, British Columbia, Sydney and Dartmouth, Nova Scotia, and Longueuil, Quebec.

These naval facilities account for about six per cent of total Canadian marine construction and repair activities. They are almost fully integrated marine, armament, mechanical and electrical repair stations. Although these operations are almost completely competitive with private facilities, the Navy considers that service control is warranted because of the unpredictable nature of a large portion of the work, certain security aspects, the need to do a large portion of the work aboard the ships, and small runs which make contracting out difficult.

Unlike the other military services, the Royal Canadian Navy does not use these dockyards for training trades personnel and depends largely on civilian staff. Separate facilities are operated for training purposes. However, the dockyards may provide training for officers in supervisory, management and command skills.

Nevertheless, many of the secondary activities within the dockyards could be transferred to private operations, with a significant strengthening of local

industry. Such activities, estimated at \$1 million per annum, are now performed, under supervision of the Navy, largely by civilian tradesmen, possessing the skills as shown in the following table.

Table 5—PERSONNEL EMPLOYED IN SHIP REPAIRS BY THE ROYAL CANADIAN NAVY

	<i>Naval</i>	<i>Civilian</i>	<i>Total</i>
Armourers (inc. air)	34	300	334
Carpenters	10	24	34
Electricians	20	280	300
Engine Repairs	28	48	76
Fitters	—	115	115
Machine Shops	10	124	134
Metal-Working	26	51	77
Pipefitting	—	100	100
Plumbing	15	—	15
Refrigeration	—	20	20
Plate and boiler shops	—	125	125
Paint shops	14	75	89
Sailmaking	—	133	133
Shipwright	—	132	132
Total Establishment	157	1,527	1,684
Casual Labour—approx.	—	1,025	1,025
	157	2,552	2,709

The Navy contracts out a very substantial portion of its major aircraft maintenance work, providing a good illustration of the proper utilization of private industry. On the other hand, at the same naval air station a large number of trades personnel are employed repairing electronic equipment. At smaller locations, vehicles are repaired by contract but at Halifax, Longueuil and Esquimalt over one hundred civilian tradesmen repair and maintain approximately six hundred highway-type vehicles, in addition to other more specialized equipment.

Canadian Army

The Royal Canadian Electrical and Mechanical Engineers operate large base workshops at London and Hagersville, Ontario, and at Montreal, Quebec. The labour force employed is approximately as follows:

	<i>Military</i>	<i>Civilian</i>	<i>Total</i>
London	20	121	141
Hagersville	13	141	154
Montreal	179	270	449
	<hr/>	<hr/>	<hr/>
	212	532	744
	<hr/> <hr/>	<hr/> <hr/>	<hr/> <hr/>

In addition to this labour force, about forty military personnel and three hundred and fifty civilians are engaged in associated management, engineering, clerical and servicing duties.

A substantial amount of the work at both London and Montreal represents the rebuilding of automotive and tank engines and mechanical and electrical components. These activities were undertaken on grounds of economy, but analysis of the figures used by the Army indicated that costs were understated by almost thirty per cent, primarily because cost elements borne by the budgets of other organizations were excluded. This erroneous costing approach not only prevents greater industrial participation, but has also created an unsound basis for decisions to repair or to scrap. Even without fixed costs, marginal costs alone exceed the figures presently in use.

The Montreal workshop has acquired expensive facilities to rebuild tank engines—work that was formerly contracted out. This was justified by using the same erroneous and incomplete costs. The national interest would be better served if this type of activity were contracted out, thereby ensuring that an industrial base is available for expansion in time of emergency. Military facilities, operating at less than full capacity, with a large portion of their time and effort devoted to training, will not prove any more capable of meeting an emergency.

One other factor was noted in this review. Common industrial practice is to exchange worn or damaged components for new or factory-rebuilt ones, a practice denied to service workshops by the government's policy of utilizing Crown Assets Disposal Corporation for all disposals. As a result, the workshops either themselves rebuild components or dispose of them as scrap. Rebuilding a unit with the equipment normally available in such shops is more expensive and results in a unit inferior to one rebuilt by the manufacturer.

We therefore recommend that: The Armed Services review their activities in the repair and maintenance of military material, using accurate and comprehensive cost information.

CONSTRUCTION AND MAINTENANCE OF REAL PROPERTY

There are more than four thousand civilians employed in maintenance and construction work by the Department of National Defence, in addition to nearly five hundred uniformed personnel. This activity embraces maintenance of military installations, barracks, married quarters, roads and runways, and employs such tradesmen as carpenters, electricians, gardeners, masons, painters, pipe-fitters and plumbers, plasterers and road workers.

One of the most noteworthy illustrations of a construction and maintenance project under detailed control of the military is the Alaska Highway (some 1,300 miles in length). The original assignment of this duty to the Army was appropriate because of the lack of existing facilities in the area and the suitability of the environment for training.

Annual expenditures on this highway now approximate \$13 million, ten per cent of which represents capital investment. Civilian participation in this work to date has been limited, although the development of the area and increased activity in natural resource exploitation is engendering the growth of available private facilities. Unless the Army progressively transfers this responsibility to outside contractors, such general development may be retarded. Furthermore, in time of war, this highway would have to be maintained by the military at the expense of other more vital assignments or else transferred to civilian management.

We therefore recommend that: The Army transfer responsibility for major improvements and maintenance of the Northwest Highway to private industry in a gradual manner which will encourage development in the area.

SUPPORTING SERVICES

The Armed Forces have about five hundred civilians and an even greater number of military personnel engaged in providing services such as art and graphics, bakeries, cobbler shops, clothing and tailoring, laundering and dry-cleaning, and mapping and photography.

Laundry and dry cleaning facilities are operated at a number of remote locations. In addition, however, the Navy has a laundry in the Halifax area. No justification from a training, cost or nucleus viewpoint could be found.

At National Defence Headquarters twenty photographers are engaged in producing black and white photographs for public relations purposes; nearly all of this work could be performed, equally well, by commercial photographers. At Rockcliffe, Ontario, the R.C.A.F. Photographic Establishment employs about one hundred and forty persons in a large, fully integrated photographic facility. This operation is engaged in printing aerial photographs for military, civilian, government and general commercial purposes, only some of which involves security considerations. In addition, all colour printing for the Department of National Defence is executed in this Establishment. Activities have expanded beyond essential requirements and now duplicate facilities of the National Film Board; moreover, it has only recently embarked on a programme of motion picture production.

Training manuals on the use, maintenance and operation of new equipment or facilities are normally provided by the supplier of the equipment, but in some instances large projects of this nature have been undertaken by the Armed Forces, particularly the R.C.A.F. This is hardly a primary responsibility of the Services and, without clear definition of the project or adequate cost information, it is generally uneconomical.

The Army Survey Establishment carries on a large domestic mapping programme in collaboration with the mapping activities of the Department of Mines and Technical Surveys. Supporting services are often contracted out. Some experienced staff is necessary as a nucleus in the event of an emergency, but aside from personnel engaged in field work there are over one hundred and fifty personnel (about forty per cent civilian) engaged in production, compilation and printing.

We therefore recommend that: The Department of National Defence review its supporting services, such as laundry and dry cleaning, photographic, art and graphics, and mapping operations in order to contract a greater proportion to private industry.

TRANSPORTATION

The Royal Canadian Army Service Corps employs a mixture of civilian and military drivers to man its vehicles. Many of the vehicles and many of the tasks performed are similar to those of the private transportation industry.

Nevertheless, only limited use is made of outside contractors. The Army contends that, without assurance of immediate mobilization of private industry, it cannot otherwise guarantee that its administrative requirements will be met in the event of an emergency.

The Air Transport Command of the Royal Canadian Air Force operates scheduled and non-scheduled flights, both domestic and overseas, to deliver military personnel, materiel, dependants and effects, and also other items for civilian departments. These operations are criticized by the Canadian air and surface transport industries. The Service states that it cannot be expected to sustain effective operations in a national emergency in the absence of a prepared plan for the mobilization of industries participating in peacetime operations. It therefore feels called upon to proceed independently of the private air industry. Your Commissioners examine this problem in their report on *Transportation*, which appears earlier in this volume, and conclude that, although military considerations are of primary importance in determining the size and peacetime role of the Air Transport Command, the impact on the civilian economy has received inadequate attention.

We therefore recommend that: The emergency transport plans and current practices of the Department of National Defence be reviewed to ensure maximum integration with civilian transportation facilities.

CONCLUSION

The above examples of activities being undertaken within the Services are again only illustrative of the types of activities that might be better left to the non-military. Effective control over secondary activities must begin with a complete and detailed analysis of present expenditures and manpower allocation. This must be done by programmes and, within the programmes, by areas of operating responsibility. Because of the total nature of modern warfare, at least some rationalization—however equivocal—can be put forward for military involvement in activities of every type normally found in the economy at large. The adverse effect of self-interest can only be minimized, if an objective appraisal, designed to establish priorities, is made of all activities.

11 LEGAL SERVICES

SUPPORTING SERVICES FOR GOVERNMENT

REPORT 11: LEGAL SERVICES

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Several briefs and submissions bearing on the subject of legal services were considered and are duly recorded in the final volume of your Commissioners' reports.

Your Commissioners, in acknowledging the assistance and advice received, dissociate all those named above from any of the findings and conclusions contained herein; for these, your Commissioners assume full responsibility.

1

LEGAL SERVICES REQUIRED BY THE GOVERNMENT

INTRODUCTION

The citizen often thinks of "government" and "the law" as interchangeable terms, rarely pausing to consider the traditional distinction between Parliament, the Crown, and the vast and complex administrative operations of "government". So it is important to make clear that this report is not concerned with the passing of laws—a function of Parliament; nor with their interpretation—a responsibility of the courts. It does not discuss police forces as such, the appointment of judges or their decisions. Attention is directed, rather, to lawyers in the public service: their recruitment, what they do, the conditions under which they work and the standard of work they accomplish.

As part of the survey of legal services, a study has been made of administrative boards and commissions that perform functions analogous to those performed by the courts. The problems raised by these so-called "deciding tribunals" are not strictly relevant to the main issues considered hereunder; they have reference, rather, to the relations between the public and the public service—a subject which is discussed in Volume 5 of your Commissioners' reports.

Among more than three hundred qualified lawyers employed in the government service few ever appear in the traditional role of advocate in a court of law. Most are engaged in drafting statutes and regulations, preparing contracts and advising departments. Some are specialists in military law, others in company law, revenue statutes and war veterans' legislation, and a few in international law.

The most striking aspect of the legal services and procedures of government today is their variety and complexity. This is largely a modern phenomenon arising from the growth in size and responsibility of federal operations. Thus, while at Confederation the Department of Justice had almost exclusive responsibility for government legal work, today about seven-eighths of government lawyers are employed outside the Department, and so wide is the dispersal that nearly forty per cent of the total are in agencies outside the jurisdiction of the Civil Service Commission. Even this takes no account of the important volume of legal work undertaken by lawyers in practice acting as "legal agents".

The main legal requirements of the government, described in some detail below, are as follows:

- Representation in criminal proceedings.
- Claims by or against the government.
- Representation in civil litigation.
- Representation in various proceedings.
- Legal advice and opinions.
- Drafting.
- Land transactions.
- International law.
- Military law.

REPRESENTATION OF THE GOVERNMENT IN CRIMINAL PROCEEDINGS

Division of Responsibility Between Federal and Provincial Governments

By Section 91(27) of the *British North America Act*, criminal law, including procedure in criminal matters, is within the exclusive legislative authority of the Parliament of Canada. The *Department of Justice Act*, R.S.C. 1952, c. 71, provides that the Minister of Justice shall "have the superintendence of all matters connected with the administration of justice in Canada not within the jurisdiction of the governments of the provinces". In turn, section 92 of the *B.N.A. Act* places the administration of justice—including the constitution, maintenance and organization of provincial courts having civil and criminal jurisdiction—in the hands of the provinces.

Constitutionally, responsibility in prosecutions has been treated as a concurrent field and divisions of responsibility for prosecutions have developed on the basis of custom and agreement, province by province, and by different types of cases. For example, in the common law provinces the provincial authorities usually enforce counterfeit money offences, but in Quebec the federal government generally prosecutes. Offences under federal statutes, apart from the *Criminal Code*, are the responsibility of the federal government, but there are some variations in practice. The responsibility is on the federal government for the enforcement of all criminal law matters and offences against local ordinances in the Northwest Territories and the Yukon Territory.

The Criminal Law Section of the Department of Justice reviews all capital cases and all proposals for amending the *Criminal Code*, gives advisory opinions on criminal matters, maintains liaison with and supervises proceedings initiated by the Royal Canadian Mounted Police, and directs prosecutions in those areas where the federal government has assumed responsibility. The enforcement of all criminal law in the Yukon and Northwest Territories is also the responsibility of the Section.

Investigation of Offences

The R.C.M.P. performs the police work required in the administration of all statutes of the Parliament of Canada, other than the *Criminal Code*. The Force is responsible for the enforcement of all federal statutes of a penal nature and assists government departments charged with the administration of particular Acts.

While the R.C.M.P. is the primary agency engaged in investigative work in the federal field, other departments and agencies also do similar work. For example, the Post Office and the Department of National Revenue (Taxation Division) have investigation sections, and the Departments of Agriculture, Fisheries, and Trade and Commerce, and the Unemployment Insurance Commission have local enforcement officers scattered throughout the country. No major duplication of effort as between the R.C.M.P. and these departmental investigators was observed.

The Institution of the Prosecution

In the year 1959-60, the R.C.M.P. alone laid 31,082 charges for infractions of the federal statutes, and in 1960-61 there were 26,750 charges. During the same two years, legal agents were appointed in 11,913 cases. Their

selection, once the department or agency decides to prosecute, is made by the Department of Justice.

The decision to prosecute is made, in most cases, by the department or agency concerned, but the methods employed within departments and agencies vary considerably. Thus, in connection with offences involving the *Aeronautics Act*, *Canada Shipping Act*, *Government Property Traffic Act*, *Indian Act*, *Explosives Act*, and *Parole Act*, the R.C.M.P. may initiate prosecutions in flagrant cases, but for other types of prosecutions, such as those relating to Customs narcotics, the R.C.M.P. must first obtain a departmental authorization.

Within departments or agencies, the decision whether or not to prosecute depends on the nature of the offence: for example, the Chief Electoral Officer makes his own decision and may secure the opinion of outside counsel. For offences involving narcotics, numbering on the average about 600 a year, control is in the Narcotic Control Division of the Department of National Health and Welfare, and the decision to prosecute involves close collaboration between that Division, the Department of Justice and the R.C.M.P. In so far as the Department of National Revenue (Taxation Division) is concerned, minor offences are handled at the local office level in conjunction with the R.C.M.P. In more important cases, the Department's Legal Branch at headquarters is consulted.

In some cases where they are involved, the R.C.M.P. may go direct to a standing agent (an outside lawyer retained on a continuing basis) who will make the decision as to whether a prosecution should be instituted. This will occur where speed is important, or where the prosecution must be conducted by an agent, as in the Province of Quebec.

The large volume of prosecutions, their wide geographic distribution and the necessity for quick action in some types of cases, obviously imposes a tremendous burden on the nine officials in the Department of Justice who are formally responsible for directing prosecutions. In practice, in so far as the initiation of prosecutions is concerned, the Department has had to rely on the judgment of lay investigators, standing agents and the officers of federal departments and agencies, reserving to itself the right to screen important and difficult cases, such as those involving income tax evasion.

The Conduct of the Prosecution

Lawyers in the Department of Justice rarely prosecute. They may appear in important cases, for example concerning immigration and income tax evasion, and occasionally take cases in the Territories; but for most prosecutions

legal agents and lay investigators are employed. Of the 31,082 charges laid by the R.C.M.P. in 1959-60, the police prosecuted 24,397 or 78.5%. In 1960-61, the figure was 22,069 or 82.5%. During these two years, agents were retained and paid to conduct 11,366 charges laid by the R.C.M.P.

Legal agents may be of two types, standing or *ad hoc*. Standing agents who are available on a continuing basis have been appointed for prosecutions concerning, for example, the *Unemployment Insurance Act*, the *Opium and Narcotic Drug Act*, failure to file returns under the *Income Tax Act*, the *Food and Drugs Act* ("goof ball" cases only), the *Canada Shipping Act* (in Quebec).

Lay investigators normally lay an information and conduct the prosecution when it is believed the accused will plead guilty; otherwise, a legal agent is generally appointed. The R.C.M.P. sometimes act in contested cases; however, if the case is likely to be a difficult one, appointment of counsel is usually sought.

Lay prosecutors are not recognized in Quebec courts and all prosecutions are conducted by legal agents, except in those few instances where government lawyers appear. As a consequence, all 3,510 charges laid by the R.C.M.P. in Quebec in 1960-61 required legal agents, while in the rest of Canada only 1,171 cases were prosecuted by lawyers out of 23,240 charges laid.

It is clear that, for most practical purposes, the conduct of prosecutions, like the decision to initiate prosecutions, is vested in departments and agencies. The Department of Justice does, however, exercise more control over appeals from verdicts in criminal prosecutions. Normally, departments and agencies make recommendations with respect to appeals, but the Criminal Law Section in Justice makes the ultimate decision whether it should be abandoned or not; should the appeal be proceeded with, Justice lawyers may conduct the appeal or at least control its conduct.

The Yukon and Northwest Territories

In the administration of justice in the Yukon and Northwest Territories the Department of Justice confronts problems which are not to be found in other parts of Canada. One example is the question of allowances for defenders of indigent persons; another concerns payment of witness fees and conduct money. These are of significance because witnesses may be put to considerable personal trouble and expense by reason of distances, poor or non-existent public transport facilities, and so on.

The centre of justice in the Yukon is Whitehorse, and Yellowknife on

Great Slave Lake is the seat of the assizes for the Northwest Territories. Problems have arisen in Yellowknife because the judge has on occasion held court at places more convenient to some than to others: for example, in areas where Eskimos live. But it was observed that the Department of Justice sometimes takes exception because of the extra cost of transporting prosecutor, court officials and others. Your Commissioners recommend measures in a later section of this report which should alleviate some of the problems associated with the administration of justice in the Territories.

Conclusion

The Criminal Law Section of the Department of Justice is charged with direction of criminal prosecutions, but because of the volume of business, the relatively small staff, the very wide area over which prosecutions may take place and the urgency of many cases, the duty is delegated to departmental officials, investigators and legal agents. In thousands of cases the Department is in fact little more than a "post office". In the case of appeals, which are fewer, the Section exercises more control.

The use of lay investigators to conduct prosecutions meets with opposition by the legal profession. But to appoint Crown prosecutors in all cases would be costly. Estimates based on average costs of prosecutions across Canada reveal that the prosecutions now conducted by the R.C.M.P. would, if performed by legal agents, have cost an additional \$1.5 million annually. Despite objections to the use of lay investigators, radical changes in the system are not recommended. Cost militates against change, and there is no evidence that the present practice is ineffective.

Supervision of prosecutions can best be improved by strengthening the system of standing agents and by decentralization to branch legal offices. These conclusions are equally applicable to the legal work entailed in civil litigation, tax and land cases. Your Commissioners make specific recommendations with these objectives in mind in a later chapter of this report.

CLAIMS BY OR AGAINST THE GOVERNMENT

The many activities of government departments and agencies give rise to claims by and against the Crown and, to ensure a degree of uniformity, "claims regulations" have been promulgated. Government departments generally are subject to the Claims Regulations approved on July 15, 1960, while the Department of National Defence has a special order dated November 21, 1952.

The regulations also apply to most government corporations, boards, commissions and agencies (the Canadian National Railways is one excluded). As soon as it is apparent that a claim may be made, departments gather information, statements, plans and photographs, etc., and report to the Deputy Attorney General of Canada. If the claim is against the Crown, he decides if it is to be contested. Contested claims are handled by the Department of Justice. Where a settlement appears wise, and the department concerned accepts liability, Justice may negotiate and recommend payment up to \$5,000, without Treasury Board approval. For amounts over \$5,000 both settlement and payment must be approved by the Treasury Board. Alternatively, the claim may be referred back to the department with advice to pay or negotiate: the department can settle any claim up to \$1,000, but must obtain Treasury Board approval for any claims above this sum. In practice, legal officers in a department are empowered to settle the numerous minor claims not exceeding \$100. When the claim is made by the government, a similar routine is followed, except where the matter is referred back to the department and the amount demanded by the department is not paid—in which case the matter is returned to Justice for action.

In general, the National Defence Claims Order requires procedures similar to those in the Claims Regulations. Where they differ, the reason is generally because of the use of weapons, operation of aircraft or execution of military manoeuvres, and the large number of claims handled—more than all civilian government departments together.

The most important difference is to be found in the larger discretionary powers conferred on officers of the Judge Advocate General's office to settle claims in the field: in each of the five military districts, an Assistant Judge Advocate General is empowered to settle any claim up to \$1,000 of which general damages do not exceed \$200; the Judge Advocate General can, himself, settle claims up to \$3,000 of which general damages do not exceed \$1,000. All claims in excess of these amounts must be referred to Justice, both for an opinion and for settlement.

Slightly more than half of the departments and agencies queried report no need for legal services in connection with claims. About one-quarter use their own legal staff.

Table 1 shows the proportionately large number of small claims currently coming to the Department of Justice for review and settlement. Table 2 presents a similar picture of voluminous small claims handled by a selected group of departments and agencies.

The system imposed by the Claims Regulations ensures control and uniformity. However, in practice it is cumbersome and time-wasting, particularly

**Table 1—CLAIMS BY AND AGAINST THE CROWN ARISING OUT OF MOTOR VEHICLE ACCIDENTS—
PROCESSED BY DEPARTMENT OF JUSTICE, FISCAL YEAR 1959-60**

	Total of All Claims	Total of Claims Involving M.V. Damage Only	Total of Claims Involving M.V. Damage Only Under \$200	Total Payments Involving M.V. Damage Only Under \$200
AGAINST THE CROWN				
(a) Number.....	333	257	177	117
(b) Amount.....	\$859,780.09	\$47,563.38	\$13,500.68	\$7,786.11
BY THE CROWN				
(a) Number.....	312	213	117	72
(b) Amount.....	\$332,429.77	\$46,815.04	\$10,918.78	\$6,324.76

**Table 2—CLAIMS AGAINST THE CROWN REPRESENTED BY CERTAIN DEPARTMENTS, BOARDS AND
AGENCIES FOR THE FISCAL YEAR 1960-61**

Department Board or Agency	Total Number of all Claims	Motor Vehicle Claims		
		Number	Under \$200	Over \$200
Agriculture.....	10	9	6	3
Citizenship and Immigration.....	4	2	2	0
Commissioner of Penitentiaries.....	14	6	4	2
Forestry.....	2	2	1	1
Mines and Technical Surveys.....	7	7	6	1
National Film Board.....	10	9	8	1
National Health and Welfare.....	10	10	7	3
National Research Council.....	12	11	10	1
Northern Affairs and National Resources..	14	9	6	3
Post Office.....	23	14	13	1
R.C.M.P.....	95	95	67	28
Department of Veterans Affairs.....	8	7	5	2
TOTAL.....	209	181	135	46

Table 3 — DEPARTMENT OF NATIONAL DEFENCE — CLAIMS STATISTICS

Fiscal Year	Claims under ¹ \$1,000 Against the Crown		Claims over ¹ \$1,000 Against the Crown		Total Cost of Claims Against the Crown (\$000)	Revenues from Claims By the Crown (\$000)	Claims By and Against the Crown Investigated by UAB	
	Number	Cost (\$000)	Number	Cost (\$000)			Number	Cost (\$000)
	1958-59.....	1,048	132	95	889	1,021	185	1,392
1959-60.....	1,082	139	502	206	345 ³	147	1,471	76
1960-61.....	1,322 ⁴	141	402	211	352 ³	305	1,424 ⁵	69 ⁶

CLAIMS AGAINST THE CROWN UNDER \$200 SETTLED BY UAB

Fiscal Year	Number	Cost of Claims (\$000)	UAB Fees (\$000)	Total Cost of Claims (\$000)
1960-61.....	497	35	16	51

Notes: ¹The total figures of claims under and over \$1,000 are not indicative of the number of claims processed but only those settled. The actual number of files closed in fiscal year 1960-61 by JAG officers was 2,080.
²Of 21 claims against the Crown between \$1,000 and \$3,000 settled in fiscal year 1959-60, 12 were settled by JAG and 9 after being sent to Justice.
³Of 18 claims between \$1,000 and \$3,000 in fiscal year 1960-61, 11 were settled by JAG and 7 after being sent to Justice.
⁴In the fiscal year 1959-60, 32 other claims of various sizes were settled by the Exchequer Court and the Department of Justice. In the fiscal year 1960-61, 23 other claims of various sizes were settled by the Exchequer Court and the Department of Justice.
⁵The figure 1,322 includes claims against the Crown settled by UAB.
⁶The figure 1,424 includes 497 claims under \$200 in subsidiary table. The amount of \$69,000 includes fees of \$16,000 in subsidiary table.

in the case of trivial claims. A vehicle accident involving less than \$200 can involve several lawyers and extended correspondence. It may be thought to be in the public interest always to deny liability, but the cost of settling small claims is disproportionate.

Prior to 1959, claims made against the Crown involving the Armed Forces were the subject of a board of inquiry; in 1959 the Underwriters Adjustment Bureau Limited (UAB) was engaged to report on each incident referred to it in Canada. Where a claim involving a DND motor or tracked-vehicle does not exceed \$200 and there is no personal injury, the Bureau may settle the claim. The UAB is reimbursed after a field representative of the Judge Advocate General's office approves the settlement. UAB also investigates and reports on other cases involving substantial injury and property damage claims, and, in some cases, has conducted the settlement negotiations. In 1960, UAB handled approximately 1,300 claims, including claims in excess of \$200. The handling charge runs between three and five per cent of the value of the claim. Table 3 gives some indication of the settlements handled by UAB.

Your Commissioners believe that present practices for handling claims are far from efficient and that immediate steps should be taken to simplify procedures. The settlement of small claims might be handled most expeditiously by employing, as the Armed Forces do, a private adjusting service. Alternatively, departmental solicitors should be given much greater discretion than they now have under the \$100 limit to settle claims. Your Commissioners suggest that this limit be raised to claims not exceeding \$1,000, of which general damages do not exceed \$200. In the long run, as the number of these claims tends to rise—particularly for cases involving motor vehicles—the government may find it useful to employ its own staff of adjusters, as certain large business concerns do.

Your Commissioners consider that much unnecessary duplication of work can be eliminated, that routine clerical work connected with claims settlement can be removed from the hands of lawyers and that substantial savings are possible.

REPRESENTATION OF THE GOVERNMENT IN CIVIL LITIGATION

The Department of Justice, through the Attorney General of Canada, is charged by the *Department of Justice Act*, R.S.C. 1952, c. 71, with: "the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject within the authority or jurisdiction of Canada". Hence, the Department of Justice has the conduct of

litigation, while consulting with the department concerned and keeping it informed. The Department is involved in frequent references to the courts on constitutional questions but it is also involved in a wide variety of civil litigation matters.

Fifty-five departments and agencies of the hundred examined call on the Department of Justice in civil litigation matters; the Department often employs law firms or agents to act.

Where matters are not referred to Justice, various practices are followed. For example: the Board of Transport Commissioners handles all legal matters through its own staff who may appear before the Supreme Court of Canada to represent the Board; Central Mortgage and Housing Corporation has a substantial volume of legal work which is dealt with through agents nominated by the Department of Justice; the St. Lawrence Seaway Authority has a legal staff and exercises a degree of independence in litigation which permitted, for example, the direct settlement of substantial claims by contractors arising out of the construction of the Seaway; the Canadian Broadcasting Corporation retains standing agents in several centres.

The Attorney General of Canada handles a wide variety of lawsuits both for and against the Crown. Damage actions form a substantial part of the work and settlements are generally negotiated before trial. About twenty-five per cent of all taxation cases are now dealt with by Justice lawyers, assisted by members of the legal branch of the Department of National Revenue.

Although departments and agencies report that "outside agents" are customarily retained to handle civil litigation matters, the policy of the Department is to have its lawyers plead as many cases as possible in the Exchequer Court and Supreme Court of Canada involving the Crown in the right of Canada. In a representative Supreme Court list there were six such cases, three of which were handled by Justice lawyers alone and the others by Justice lawyers in association with outside counsel. At present, about twenty-five per cent of civil litigation work goes to outside agents. In recent years the number of "man-days" spent in court by Justice officers has been:

1957 — 99

1958 — 125

1959 — 185

1960 — 145

There were in August-September 1961 roughly 1,200 cases outstanding in the regular courts (apart from the Quebec courts and those cases coming from Quebec), in the Exchequer Court and in the Supreme Court of

Canada. Of the Quebec cases, 269 were in the hands of Justice Department lawyers.

The following tabulation, which refers only to claims made by the Crown, is a record of files closed (cases ended) and the number of agents retained. It reveals an increasing proportion of cases taken by Department of Justice lawyers:

<i>Year</i>	<i>Number of files closed</i>	<i>Number of cases where agents used</i>
1957	215	23
1958	236	17
1959	281	12
1960	325	16

Litigation, in contrast to the initiation and conduct of criminal prosecutions, is centralized and controlled. There is uniformity of procedure and the approach to problems is consistent. Although there were some complaints, departments (with the possible exception of the Department of National Revenue) appear satisfied with the system.

One complaint is that the department concerned does not deal directly with the solicitor and so is inadequately informed of progress and unable to make recommendations. A study of complaints points to a few cases where there has been excessive delay. In one instance—an action to dispossess an owner of property—the matter dragged on for six years before completion. One Crown corporation has reservations about Justice's ability to give cases the preparation and attention they deserve; another Crown corporation uses its staff to do much of the legal preparation, because Justice lawyers have not the essential technical knowledge of its activities.

The complaints cited are in the main justified but are by no means symptomatic of any basic weakness in the system of handling civil litigation. On the whole, these difficulties arise because the Department of Justice is understaffed. Your Commissioners conclude that the centralized control and provision of legal services in connection with litigation is working well and that should the subsequent recommendations for integration of legal services in the Department of Justice and the creation of branch offices be adopted, complaints concerning delay and inadequate collaboration would virtually disappear.

Department of National Revenue—Taxation

Civil litigation for the Taxation Division is handled in such a fashion that there is duplication of effort between Justice and National Revenue lawyers.

The latter take all cases before the Tax Appeal Board, but on appeal to the Exchequer Court or Supreme Court or for cases originating in the Exchequer Court, lawyers from Justice take over.

Taxation Division lawyers are organized into four sections: (1) objections and appeals; (2) prosecutions and investigations; (3) collections and securities; (4) legislation, regulations, Orders in Council and opinions. These lawyers familiarize themselves with each case by discussing it with the assessor, and they represent the Department before the Tax Appeal Board. The work performed, particularly in the objections and appeals section, requires them to travel to all parts of Canada where sittings of the Board and of the Exchequer Court are held; for this reason, an attempt is made to assign the work to individual lawyers on a regional basis.

The Tax Appeal Board, as originally constituted, was designed to provide a relatively informal forum where the taxpayer might appear to discuss his problems. The taxpayer may argue his own case or he may be represented by his auditor or his lawyer. Over the years, however, the Board has tended to become a more formal tribunal, publishing its rules and procedures, as well as the reasons for its judgments.

The Tax Appeal Board, seeking to preserve its independence from the Department of National Revenue and also to retain the original informality of proceedings, often calls sittings at short notice without proper regard for the convenience of Revenue lawyers. Partly for this reason, little use is made of interlocutory motions which permit one side or the other to clarify portions of a pleading or to determine the relevant matters at issue. It would be preferable were resort made more frequently to such interlocutory motions and to a much more careful and extended drafting of Replies and Notices of Appeal coming from Revenue lawyers. Department of Justice lawyers do not appear before the Tax Appeal Board, partly because of the lack of sufficient staff. When a Justice lawyer enters a case in a higher court, he is briefed by the National Revenue lawyer and, if Justice appoints an agent, further briefing has to be given and additional copies of all documents prepared. National Revenue would prefer that, once an agent is appointed, he be instructed by the Taxation Division as is normally the case in connection with litigation concerning the enforcement of securities.

In recent years there has been a substantial increase in the amount of tax work handled by Justice. In 1952 there were only 36 income tax appeals pending in the Exchequer Court; in 1961 there were 157. In 1952 there were 16 income tax appeals before the Supreme Court; in 1961 there were 26. In

1959 Justice lawyers personally argued only two per cent of the cases, two years later they argued twenty-five per cent.

It is clear that relations between the Departments of Justice and National Revenue on tax litigation are far from satisfactory and your Commissioners make specific proposals, later in this report, which should eliminate duplication and improve relations between the two departments.

REPRESENTATION OF THE GOVERNMENT IN VARIOUS PROCEEDINGS

Thirty-three departments and agencies indicated that they had special legal requirements, such as counsel for royal commissions, representation at international conferences and treaty negotiations, and labour matters. Twenty-one of this number meet these requirements by using their own legal staffs, and four rely on practicing solicitors whom they themselves retain. Only the Department of National Revenue and the Restrictive Trade Practices Commission use the services of Justice in this connection. The Canadian Broadcasting Corporation is represented before the Board of Broadcast Governors by an administrative vice-president.

Questions of both international and domestic law are involved at international conferences where lawyers from many departments perform important services. The most typical are the Departments of National Health and Welfare, Labour, Transport, Northern Affairs and National Resources, as well as the Department of External Affairs. Some of the agencies most frequently involved are the Air Transport Board, the Canadian Maritime Commission and the Atomic Energy Control Board.

Within Canada, a number of statutory bodies, such as the Board of Broadcast Governors, the National Energy Board and the Board of Transport Commissioners, hold special inquiries at which their legal counsel assist. The Department of Citizenship and Immigration is represented at special inquiries under the *Immigration Act*. Legal Officers attached to the Director of Investigation and Research examine witnesses before the Restrictive Trade Practices Commission. The Customs Division of the National Revenue Department is represented before the Tariff Board by Justice lawyers. The Department of Transport employs legal agents to conduct investigations into air crashes and navigation casualties involving individuals. Apart from the special problems associated with the international law matters (to be examined later), arrangements for meeting the above miscellaneous legal needs of the government appear to be satisfactory.

LEGAL ADVICE AND OPINIONS

The *Department of Justice Act*, R.S.C. 1952, c. 71, provides that "the Attorney General of Canada shall . . . advise the heads of the several departments of the government upon all matters of law connected with such departments". At one time or another, almost all government departments and agencies need legal advice and opinions which they obtain from their own legal advisers or, if the point is of substantial importance, by reference to the Deputy Attorney General.

Opinions are prepared either by the Advisory Section of the Department of Justice (except for matters likely to result in litigation—which are dealt with by the Civil Litigation Section) or, in the case of questions involving the Quebec Civil Code, by the Civil Law Section. The work is normally performed in chronological sequence. During the twelve months ending May 31, 1961, the average was 107 opinions monthly. Excluded from this monthly average are several types of less formal opinions, such as those given in the course of litigation, the handling of criminal prosecutions or the preparation of legislation; also those given in connection with correspondence, and special cases, such as returns to Parliament. Approximately one-half of the total relate to motor vehicle accidents, and are rendered by the Civil Litigation Section or Civil Law Section of Justice.

A good standard is maintained. Nevertheless, departments complain that the Department of Justice is slow in giving opinions (the average monthly backlog, at the time our inquiries were made, amounted to 162 references, of which about one-quarter were held up pending the provision of additional information from the departments concerned). Though technically correct, many opinions are considered impracticable—a complaint which is less often heard where Justice officers are seconded to departments—because the Department of Justice confines its opinion to legal aspects of the case. It does not advise other departments on questions of policy. This attitude is correct in principle, but a good lawyer generally indicates to a client what he thinks is the prudent and reasonable thing to do. Extension of the practice of secondment, through the integrated legal service proposed later in this report, should facilitate the rendering of legal advice and opinions.

DRAFTING

Statutes

The Department of Justice has the responsibility for drafting statutes, although production of a statute is a joint enterprise of the sponsoring depart-

ment and the Legislation Section of the Department of Justice. The staff of this Section is specially trained for this type of work; a newly recruited lawyer requires about two years to become a good draftsman.

There are three stages in the drafting of a statute: (1) preparation, (2) instruction, and (3) drafting. The preparatory stage is primarily the responsibility of the sponsoring minister, who outlines the broad policy and instructs the draftsman. The draftsman, by detailed questioning of the officials involved, satisfies himself that he knows what is wanted, and prepares and circulates a preliminary draft. The interchange between draftsman and sponsor continues until a satisfactory version of the bill is prepared.

All bills must be available to the House of Commons in French and English versions. Since bills are almost invariably drafted in English and then translated into French, care must be taken to ensure the juridical accuracy of the French version as well as ensuring that the Bureau for Translation is given sufficient time to render a good translation. It is essential that a French-speaking lawyer trained in the law of Quebec should be associated at an earlier stage than is now customary to ensure that the French version is juridically accurate and to point out any special implications that the bill may have for persons in Quebec under the Civil Code. In this context, it is also important to note that where a department has extensive dealings with residents of Quebec, it should have legal staff available to deal with citizens in the French language. Departments and agencies which do not have legal officers trained in the Civil Law should take care to refer the particularly complex problems arising under the Civil Code to the Civil Law Section of the Department of Justice. The proposed integrated legal service should make possible the seconding of bilingual legal personnel to appropriate departments and encourage the reference of Civil Code problems to the relevant Section in Justice.

It is customary, at rather prolonged intervals, to prepare and publish consolidations of the Statutes of Canada. This is a relatively expensive matter; the consolidation of 1952—the only one since 1927—cost roughly \$500,000. Despite the cost, the importance of this service to the public suggests the need for more frequent consolidations, possibly every fifteen years. Consolidations could be more economically and rapidly prepared if the staff of the Department of Justice (temporarily enlarged, if need be) were employed rather than a special revising commission.

Regulations

Statutory orders and regulations are a constant and necessary feature of modern government. They form a large proportion of the law in force, hence

the way they are made and the arrangements for publication are important.

Regulations usually elaborate the general policy expressed in statutes and are instrumental in the implementation of policies of a department or agency; they therefore require the services of solicitors familiar with the intricacies and objects of departmental programmes and policies. They also require the same attention to accurate translation and careful checking by Civil Law lawyers as has been recommended in the framing of statutes. Departments oppose any centralization of legal services which will deprive them of direct and experienced legal advice in this area.

The chief responsibility for regulation-making is on the departments and agencies, although a degree of control is vested in the Department of Justice and the Privy Council Office.

When draft regulations have been approved in a department, they are sent forthwith to the Privy Council Office for review by the legal officer (seconded by the Department of Justice) before promulgation and reporting to Parliament in the *Canada Gazette*. Their volume is so great as to make this, at times, a somewhat perfunctory check. In 1960, for example, there were 578 regulations published in 1,618 pages of the *Canada Gazette*. Review and occasional redrafting are major undertakings, and the volume has sometimes exceeded the facilities available for review. Regulations reflect the delegation of discretionary power to ministers and their officials and, as part of the law of the land, warrant the most careful attention being paid to their form, and to consistency with statutory powers and the *Canadian Bill of Rights*. Care should be taken to ensure that the Privy Council Office and the Department of Justice exercise their undoubted powers of review in all respects.

Revised and consolidated sets of the statutory orders and rules in force were published in 1949 and again in 1955. Since consolidations of the regulations become quickly dated, your Commissioners commend the decision of the Privy Council Office requiring each department to present revised and consolidated sets of its regulations at least once every five years. These are to be published in Part II of the *Canada Gazette*, as they occur. Coupled with a quarterly cumulative index, this arrangement would avoid the periodic crisis of wholesale revision throughout the government every five or ten years. Ideally, a proper solution depends upon a continuing process of revision and consolidation year by year, with appropriate publication, possibly in loose-leaf form. This would avoid an existing serious defect that, when amendments or additions to regulations are made, the amended regulation is not repeated in full. A rough estimate of the cost of such publication is that, with larger revenues derived from increased sales, an annual net cost of \$40,000 would be entailed—exclusive of the initial capital outlay.

Contracts

Most departments and agencies require legal assistance in drafting contracts. The work is done by the departmental solicitor, or an officer seconded from Justice. Standard contract forms are used extensively. Land transactions involve such complicated procedures that they are examined hereunder.

LAND TRANSACTIONS

Acquisitions

The government is continually acquiring land. In the period 1958-1960, eighty-four new files were opened each month, and in the summer of 1961 there were 1,400 active files. Your Commissioners make additional observations and recommendations on this subject in their report on *Real Property*. Here, only the formal legal procedures are described.

When a department or agency buys, it negotiates with the landowner, generally after securing expert opinion on the value of the property. Under the Regulations Relating to the Acquisition of Land by Government Departments, a minister may purchase when the price does not exceed \$15,000. Purchases above this amount must be approved by Treasury Board and, in the case of all purchases, "no payment may be made in respect of a purchase of land before delivery of a good title satisfactory to and to be obtained through the Deputy Minister of Justice". When a purchase has been authorized, the matter must be submitted to the Department of Justice where most of the work is done by lawyers or notaries in private practice. They are appointed legal agents by the Minister of Justice and conduct searches, prepare deeds and other documents and submit a certificate of the state of the title to the Department of Justice, where the work is checked and approved.

The routine followed in expropriating land is similar to that for making purchases and is also governed by the Land Acquisition Regulations. Expropriation takes place when the owner and the department cannot agree on a price or when there is a flaw in the title. If a department and a landowner cannot agree on the amount of compensation, the amount is eventually determined by the Exchequer Court.

Sales

Land is usually sold by the government by Letters Patent under the Great Seal, rather than by deeds. Since the Great Seal is in the custody of the Department of the Secretary of State, the formal document has to be prepared

in that Department. However, because the Attorney General must settle and approve all instruments issued under the Great Seal of Canada, the Department of Justice is also involved. Since many sales are made through Crown Assets Disposal Corporation, there may be three departments or agencies involved in addition to the original department or agency. Moreover, the Governor General in Council must give authority to dispose of the land. Selling land by Letters Patent is an involved proceeding which merits attention.

While the Department of Public Works manages most government lands, other departments are also active. For example, the Department of Transport manages lands for canals, marine services and airports; the National Capital Commission and the Department of National Defence control substantial parcels of land; and a number of Crown agencies hold land in their own names. In addition, the Department of Northern Affairs and National Resources has the National Parks and the vast areas in the north.

If land is determined to be surplus, departments generally must have it disposed of by Crown Assets Disposal Corporation. If land may be disposed of otherwise, the department concerned can arrange for the sale. Authority to sell must first be obtained from the Governor in Council, except in those instances (for example, sales of land in the Northwest Territories or certain Indian lands) where prior general approval has been given by the Governor in Council acting through a Cabinet Committee. The Order in Council approving the sale is sent to the department concerned, which then writes to the Department of Justice requesting the preparation of draft Letters Patent. The complexity of this process varies with the circumstances and the type of land involved: for example, some lands are under the *Indian Act*, others under the *Public Lands Act* or the *Territorial Lands Act*. Simple forms can be used for certain transactions, others require detailed attention by a lawyer. The draft Letters Patent do not contain a description of the land. This is the responsibility of the department involved, except in those instances where a legal agent or a Notary is retained as, for example, where land is exchanged for another piece of land.

The procedure for final issuance of the necessary Letters Patent follows a circuitous route:

- To Justice for drafting.
- To originating department for preparation of the description of the land.
- To Secretary of State for preparation of actual Letters Patent.
- To Justice for review and signature of Deputy Attorney General.

- To Secretary of State to be signed by Deputy Registrar General.
- To originating department for Deputy Minister's signature.
- To Secretary of State for forwarding to His Excellency the Governor General for signature.
- Returned to Secretary of State for embossing and affixing the Great Seal, photographing and recording.
- To originating department.

By use of this elaborate procedure, 527 Letters Patent for disposal of Crown lands were issued in 1960.

Special Procedures

The Land Acquisition Regulations do not apply to some Crown agencies. Consequently their acquisitions of land are not supervised by the Department of Justice. Among the most important of such agencies are Atomic Energy of Canada Limited, Central Mortgage and Housing Corporation, the Farm Credit Corporation, and the Directors of the *Soldiers' Settlement Act* and the *Veterans' Land Act*. Lawyers in private practice do this work. They are selected from a list approved by the Minister of Justice, except in the case of the Farm Credit Corporation where the list is approved by the Minister of Agriculture.

Some Crown agencies, such as the National Capital Commission and the Directors of the *Soldiers' Settlement Act* and of the *Veterans' Land Act* (as corporations sole) avoid many of the cumbersome procedures because they convey land by deed rather than by Letters Patent.

The vast majority of leases entered into by the government are prepared by department or agency solicitors, the departments most involved in leasing land being Public Works and National Defence.

The present methods of coping with the legal problems associated with the government's transactions in land are unduly cumbersome and diffused. The establishment of a Lands Section in the Department of Justice, concerned principally with the acquisition and disposition of land, would permit a more expeditious, centralized handling of such matters, with a possible elimination of the present use of Letters Patent. Part of the work now performed by legal agents could be assumed by this Section; and, particularly if coupled with a system of branch offices, experts in the varied land laws of the provinces could

be developed. A notary to handle land transactions in Quebec could also be made a part of this Section. In any event, attention should be directed to simplifying the Letters Patent system of conveying land. In the interval, secondment of a Department of Justice lawyer to the Secretary of State Department would contribute to this desirable improvement.

INTERNATIONAL LAW

International law work in the government has assumed major proportions and many departments, apart from External Affairs and Justice, are now called upon to negotiate and administer treaties, as well as pass on the legal problems which may arise. These may intermix international, constitutional and private law. Both the Departments of External Affairs and Justice claim final authority in determining international law problems, their conflicting claims to jurisdiction arising out of specific sections of the *Department of External Affairs Act* and the *Department of Justice Act*. Confusion is compounded by the presence of lawyers and other officers scattered throughout other departments and agencies who do extensive international legal work. It is by no means an invariable practice to have trained international lawyers present at conferences where treaties affecting Canada are being negotiated. Nor is there any consistent practice of referring problems arising out of treaties to one authoritative centre.

There is obviously a no-man's land with respect to the adequate provision of international law services which merits attention. A good deal of time of senior civil servants in many departments is taken up with the work attendant on numerous international negotiations. The involvement of departments in this field may be illustrated in summary form as follows:

- The Air Transport Board has the administration of many bi-lateral treaties relating to air traffic.
- The Canadian Maritime Commission is concerned with international maritime law, as is also the Department of Transport.
- The Department of Fisheries has direct interest in at least eight treaties respecting fisheries.
- The Department of Labour participates in the preparation of many labour conventions drafted by the International Labour Office and recommended to signatory countries for adoption.

- The Department of National Defence has international law problems as a result of the Canadian Forces posted abroad.
- The Department of National Health and Welfare has a continuing interest in international movements of narcotics, in water pollution and in quarantine practices.
- The Department of National Revenue is involved in bi-lateral agreements with respect to taxation, and in customs tariff treaties and agreements.
- The Department of Northern Affairs and National Resources is concerned with the application of several treaties with the United States. The Migratory Birds Convention is an example.
- The R.C.M.P. has an interest in international extradition agreements.
- The Department of Secretary of State has international conventions relating to patents and copyrights.
- The Departments of Trade and Commerce and Finance participate in negotiating treaties and agreements with respect to trade, and in the resulting application.

This is not an exhaustive listing but it suffices to point out the range of administrative problems which may arise after treaties or other international agreements are negotiated.

The Department of External Affairs has the only comprehensive library on international law. It has also a Legal Division to which are attached nine legal officers. However, only two serve continuously; the other seven are classified as Foreign Service Officers and are rotated frequently to other posts either at home or abroad. Generally, but not invariably, they have legal training, but service in the Division is regarded only as an incidental training aspect in developing careers as foreign service officers, many of whom are relatively junior when posted to the Division. The Department of Justice, on the other hand, does not recruit specialists in international law. In general, considering the growing burden of international legal work associated with a great variety of commitments by many departments, the current arrangements for dealing with such services are unsatisfactory: they have produced strained relations between Justice and External Affairs; they lack a central focus from which permanent, trained experts can provide the necessary counsel and guidance; and they jeopardize Canada's position when treaties are being negotiated. Your Commissioners have certain specific proposals on this subject in the final chapter of this report.

DEPARTMENT OF NATIONAL DEFENCE—OFFICE OF
THE JUDGE ADVOCATE GENERAL

The legal services required by the Department of National Defence are in some instances similar to those provided for other departments, but in the administration of Service justice the Department's needs are unique. Within the Department of National Defence, a special office of the Judge Advocate General (JAG) serves both civilian and military legal needs. The staff of some seventy lawyers is the largest single group of legal employees in the government—indeed, possibly the largest number of lawyers working within a single organization in Canada.

As senior departmental legal adviser, the JAG performs the same functions as legal advisers in other departments, giving legal advice to the Minister, preparing proposals for legislation, drafting regulations, agreements and documents relating to land acquisition. Land matters are particularly important in the Department because of the many large service establishments in Canada and overseas. There are also legal matters regarding procurement of material, including the checking of specifications and contract demands. Patent, copyright and trade-mark work is also done. Of particular importance is the work done by JAG on claims by and against the Crown arising out of negligence and other torts, out of contracts and leases, and for overpayment of pay and allowances. JAG also advises concerning disciplinary matters and is required to give opinions on, for example, the interpretation of statutes, regulations and orders relating to pay and allowances, boards of inquiry and applications for redress of grievances. He also gives legal aid to members of the Forces and their dependants abroad.

Another major responsibility of JAG is the review of all courts martial. This work is carried on through a courts martial judicial section which advises on petitions for new trials; arranges for hearings before the Court Martial Appeal Court and if necessary the Supreme Court of Canada; and is responsible for the provision, training, and supervision of all Judge Advocates for Courts Martial. Working quite independently of the section dealing with the judicial aspects of courts martial is a section responsible for the conduct of the prosecution of such cases. This section appoints defending officers and supervises those who are prosecuting the case.

In addition, the Judge Advocate General has "Tri-Service administrative functions". Thus, he is Chairman of the Service Pension Board, which determines the actual cause of release of all Service personnel in accordance with the *Canadian Forces Superannuation Act* and the *Defence Services*

Pension Continuation Act. As Director of Estates he is responsible for collecting, administering and distributing the Service estates of officers and men who die during service in the Canadian Forces. Through one of his deputies, JAG serves as Chairman of the Tri-Service Committee on Voting, being responsible for arrangements for taking the Service vote.

2

THE LAWYER IN GOVERNMENT SERVICE

There are approximately 330 persons employed as lawyers in the federal government, of whom sixty per cent come under the jurisdiction of the Civil Service Commission. Although the Department of Justice has an obvious central responsibility for the provision of legal services throughout the government, it actually employs only forty-two lawyers out of the total. Three other departments employ a substantial number of lawyers: National Revenue, Taxation Division (29); Veterans Affairs (54); National Defence (73). The remainder are scattered singly or in small units through several dozen departments and agencies (as indicated in Table 4).

Other officials, with legal training but not formally engaged as lawyers, spend part of their time doing legal work. In addition, a substantial share of the government's legal work is performed on an *ad hoc* basis by legal agents drawn from private practice. The performance of legal agents is examined separately in the next chapter.

LAWYERS IN THE DEPARTMENT OF JUSTICE

The Minister of Justice, by virtue of the *Department of Justice Act*, R.S.C. 1952, is the official legal adviser of the Government of Canada and, as Attorney General, serves as the focal point for the provision of the various legal services discussed in the previous chapter. Assisting him in the discharge of his strictly legal functions is the Legal Branch of the Department under

Table 4 — POSITIONS IN THE PUBLIC SERVICE REQUIRING LAWYERS

(Agencies grouped under associated department)

	<i>Provided by Dept. of Justice</i>	<i>Under the C.S. Act</i>	<i>Exempt from C.S. Act</i>
<i>Privy Council</i>			
Council Office.....	1		
National Research Council.....			1
Atomic Energy Control Board.....			1
Atomic Energy of Canada Limited.....			
<i>Agriculture</i>			
Department.....	1		
Farm Credit Corporation.....			7
Canadian Wheat Board.....			2
Prairie Farm Rehabilitation — Admin.....			1
<i>Citizenship and Immigration</i>			
Department.....	1	1	
Indian Affairs.....		6	
<i>Defence Production</i>			
Department.....		4	
Canadian Commercial Corporation.....			1
Crown Assets Disposal Corporation.....			1
Defence Construction (1951) Limited.....			2
<i>External Affairs</i>			
Department.....		9	
International Joint Commission.....		1	
<i>Finance</i>			
Department.....	1		
Comptroller of the Treasury.....		1	
Industrial Development Bank.....			23
<i>Fisheries</i>			
Department.....		2	
<i>Justice</i>			
Department*.....		42	
Combines Investigations.....		8	
National Parole Board.....		1	
Royal Canadian Mounted Police.....			3
<i>Labour</i>			
Department.....		2	
Unemployment Insurance Commission.....		10	
Office of the Umpire UIC.....		2	

	<i>Provided by Dept. of Justice</i>	<i>Under the C.S. Act</i>	<i>Exempt from C.S. Act</i>
<i>Mines and Technical Surveys</i>			
Department.....	1		
<i>National Defence</i>			
Department.....		6	
The Armed Forces (JAG).....			67
<i>National Health and Welfare</i>			
Department.....		3	
<i>National Revenue</i>			
Customs and Excise.....		5	
Taxation.....		29	
Board of Broadcast Governors.....		1	
Canadian Broadcasting Corporation.....			3
<i>Northern Affairs and National Resources</i>			
Department.....	1	4	
<i>Post Office</i>			
Department.....		1	
<i>Public Works</i>			
Department.....	2	1	
Central Mortgage and Housing Corporation.....			6
<i>Secretary of State</i>			
Department.....		5	
Custodian of Enemy Property.....			1
<i>Trade and Commerce</i>			
Department.....	1		
National Energy Board.....		1	
<i>Transport</i>			
Department.....	1	4	
Air Transport Board.....		3	
Board of Transport Commissioners.....		2	
Canadian Maritime Commission.....		1	
National Harbours Board.....			5
St. Lawrence Seaway Authority.....			4
<i>Veterans Affairs</i>			
Department.....		22	
Veterans Bureau.....		31	
Canadian Pension Commission.....		1	
		209	128

* Includes officers provided to other departments on full or part time basis.

direct supervision of the Deputy Minister, who is also Deputy Attorney General of Canada.

The Solicitor General, who is a member of the Cabinet, is required to "assist the Minister of Justice in the counsel work of the Department". A major responsibility is that of advising the Cabinet on the exercise of the prerogative of mercy and serving as Acting Minister of Justice in the absence of the Minister.

The forty-two lawyers in the Branch are distributed in seven sections, six of which bear the titles of the major areas into which legal services, as previously described, are subdivided: Civil Litigation, Legislation, Criminal Law, Civil Law, Advisory Services and Taxation (the most recent addition).

The seventh section, known as the Departmental Services Section, is of particular importance to this review. It is through this Section that a number of departments meet all or some of their requirements for legal services by obtaining legal officers on a seconded basis. The nine departments thus serviced are: Agriculture, Citizenship and Immigration, Finance, Northern Affairs and National Resources, Privy Council Office, Public Works, Trade and Commerce, Mines and Technical Surveys, and Transport.

Whenever possible, the Department of Justice provides a lawyer with at least three years' experience on its own staff, although shortage of suitable persons sometimes compels the seconding of a less experienced officer. The usual tour of duty extends at least to four years. The system is readily adaptable to the varying legal requirements of departments. For example, lawyers seconded to Trade and Commerce, Mines and Technical Surveys and the Privy Council Office serve on a part-time basis only. In the Departments of Northern Affairs and National Resources, Citizenship and Immigration, and Public Works, the seconded lawyers serve as heads of the respective legal divisions, with departmental solicitors under them. Another variation is found in Transport, where the seconded Justice lawyer is under a departmental head of the legal division.

The Departments participating in this plan of secondment express satisfaction with the arrangement and your Commissioners revert to it in the closing chapter of this report as a system that warrants extension to many other departments now outside the scheme.

Each of the seven sections in the Legal Branch of Justice, is headed by a Director (one, by an Assistant Deputy Minister) and staffed with from two to nine lawyers. Officers are usually assigned to a particular section, but may also assist with particular tasks in other sections or be transferred from one section to another. Perhaps the most striking feature of the Legal Branch is the large number of subdivisions and the correspondingly large number of

directing staff: in addition to six divisional directors there are three Assistant Deputy Ministers and two Associate Deputy Ministers, all carrying responsibility for one or more aspects of the Branch's legal work. The exigencies of the workload do not necessitate this: the real cause of this minute subdivision of labour is, rather, to overcome modest pay scales by conferring managerial titles on lawyers—a problem to which we revert in a later section of this chapter.

LAWYERS IN OTHER DEPARTMENTS AND AGENCIES

Introduction

Almost sixty per cent of the 295 legal positions in other departments and agencies are located in Ottawa, most of them, with the three major exceptions previously noted, working alone or in small units.

The duties of lawyers vary in each department and agency, but in general they prepare regulations and contracts, interpret statutes and other legal instruments, advise on the disposition of claims, prepare agreements for sale and leases of property to and from the government, and give opinions on problems that arise in the course of administration.

Many lawyers render legal advice that contributes to the formulation of departmental policies, and a substantial number appear before administrative tribunals. They are not always principally concerned, like the Department of Justice lawyers, with determining whether matters referred to them are legal or illegal; rather their function is quite often to devise procedures to implement administrative policies.

Because the Department of Justice supervises all litigation, departmental lawyers, with a few exceptions, are limited to acting as channels of information. Similarly, since criminal prosecutions are a responsibility of the Department of Justice, the departmental or agency solicitor is restricted to procuring the evidence and assisting the agents appointed to conduct the prosecutions. A few departments, notably National Health and Welfare and National Revenue, instruct non-government lawyers in particular cases. As already indicated, the Department of Justice has responsibility for drafting statutes. Since the Minister of Justice is the legal adviser of the Government of Canada, many opinions involving complex or important questions of law are referred directly to the Department of Justice.

The largest group of government lawyers outside the Department of Justice are classified by the Civil Service Commission as Departmental Solicitors. Others fall into several different classifications. Many government lawyers are of course beyond the jurisdiction of the Commission.

Departmental Solicitors

The one hundred and fifty-two positions classified by the Civil Service Commission as "Solicitor" are not organized within a single service, nor are they arranged in strictly comparable ranks in the various departments. Some are termed Legal Advisers, some General Counsel, and so on. As has been mentioned, few departments employ more than two or three. Where the number is larger, individuals are usually scattered through several branches and in most cases at various centres outside Ottawa. Thus the Department of National Revenue has twenty-nine Solicitor positions in Taxation and five in Customs and Excise. Of the twenty-two in the Department of Veterans Affairs, only six are located in Ottawa. The Department of National Revenue (Taxation) has the only substantial group of departmental solicitors centred in Ottawa.

In view of the fragmentation described, opportunities for promotion are inevitably few unless the solicitor turns from the practice of law and rises through the administrative ranks of the Department. There are few promotions through transfer between the departments.

Other Civil Service Legal Personnel

Apart from departmental solicitors, a number of other lawyers are under the jurisdiction of the Civil Service Commission but carry different titles. Several senior lawyers, for example, have been promoted to the administrative rank of "Senior Officer" in order to provide them with higher salaries than is possible in the "Solicitor" classification. Examples are found in the Departments of National Health and Welfare, Veterans Affairs, Department of National Revenue (Taxation) and the Board of Transport Commissioners. While such officers share in the formulation of general policy, they are primarily concerned with legal matters.

The Legal Division of the Department of External Affairs is staffed by seven Foreign Service Officers and two Departmental Solicitors. The F.S.O.'s are career officers who spend, at most, a few years in the Legal Division. Occasionally the staff may include officers without legal training. The Division deals almost exclusively with international law, most problems of domestic law being referred to the Department of Justice.

Investigations to determine whether an offence has been committed under the *Combines Investigation Act* require knowledge of both the law and aspects of economics, although the Combines Branch is in fact a law enforcement agency. Its staff of Combines Investigation Officers therefore includes both

lawyers and economists. An investigation, once completed, may lead to a case before the Restrictive Trade Practices Commission. If the Commission expresses the view that an offence has been committed and a prosecution is decided upon, Combines Investigation Officers assist and supervise legal agents appointed from outside the government service in prosecuting the case. This may include appearing in court with the agents. On appeal, they may themselves appear as counsel. Some of the officers with legal training have left the Combines Branch to join the Legal Branch of the Department of Justice, a practice which merits consideration being given to integrating the two groups within the Department.

Three members of the Royal Canadian Mounted Police have legal training and are engaged in legal work. They serve much as do departmental solicitors in other departments. However, they are not recruited as solicitors under the *Civil Service Act*. The practice has been to send selected members of the Force, with some years of ordinary police service, to law school. They remain members of the Force, with the usual pay and allowances, and expenses at law school are paid by the government. On graduation they are assigned to legal work at headquarters in Ottawa, and after three to five years are promoted to non-legal positions. Such law graduates are not members of a provincial bar nor do they serve Articles to gain experience in a law office. The situation, in some respects, is comparable with that described below in the Judge Advocate General's office of National Defence.

Legal Services for the Department of National Defence are performed by the Judge Advocate General and his staff. With the exception of six civilian positions for solicitors, the approximately seventy lawyers in the Department of National Defence are commissioned officers. Thirty-three lawyers (including the departmental solicitors) are located in Ottawa; the remainder are elsewhere in Canada or attached to Canadian forces abroad, performing both departmental solicitor work and dealing with matters affecting Service justice. Twenty-two of these are staff legal positions that are not strictly professional. Constant rotation between the staff and legal positions is practised. The JAG in Ottawa is responsible to the Minister through the Deputy Minister and the Associate Minister.

Lawyers in Agencies exempt from the Civil Service Act

Several agencies not under the jurisdiction of the Civil Service Commission have legal departments. These include the Canadian Broadcasting Corporation, Canadian Commercial Corporation, Canadian Wheat Board, Central Mortgage and Housing Corporation, Custodian of Enemy Property, National

Research Council, Atomic Energy Control Board, Atomic Energy of Canada Limited, Defence Construction (1951) Limited, Crown Assets Disposal Corporation, Farm Credit Corporation, Prairie Farm Rehabilitation Administration, Industrial Development Bank, the National Harbours Board and the St. Lawrence Seaway Authority. Lawyers in these agencies perform work similar to that of departmental solicitors, but there are variations. Thus Central Mortgage and Housing Corporation appoints and supervises its own legal agents to deal with land transactions. Lawyers in several of the agencies perform senior administrative functions along with their legal duties.

In the foregoing listing, the Industrial Development Bank has the largest legal staff. Of its twenty-three lawyers, one is stationed in Ottawa, the others in cities across the country. Their principal duties are in connection with loans and legal matters incidental thereto.

Although such agencies are not subject to civil service regulation, some use as their model the civil service classifications for lawyers. Others, including Atomic Energy Control Board, Canadian Broadcasting Corporation, Canadian Commercial Corporation, Canadian Wheat Board, Custodian of Enemy Property and Industrial Development Bank, have their own salary scales based on assessment of the individual and the value of his work.

RECRUITMENT

The Civil Service Commission is responsible for filling 209 of the 337 positions identified for purposes of this report as legal officers throughout the public service. Over half the remainder are recruited for the Judge Advocate General's Office of the Department of National Defence through the Services' recruitment schemes. The other 60-odd positions are filled in various ways by agencies outside the jurisdiction of the Civil Service Commission.

The Department of Justice assists the Civil Service Commission in recruiting legal staff for its own purposes and for the other departments coming under the Commission. A senior lawyer of the Department normally sits on the selection boards and makes recruiting visits to law schools. There are no written examinations for Solicitors or Advisory Counsel, but marks and class standing at law school are used by the Examining Board in making a final assessment.

The position of Advisory Counsel, which is a class peculiar to the Department of Justice, is filled by a continuing competition beginning on September 1st of each year. This competition is advertised in newspapers, through law societies and at law schools. Advisory Counsel required for the Civil Law Section are recruited, after public advertisement, by written and oral

examinations. The one-year probationary period for all new entrants to the Department is rigidly enforced.

Recruitment for the more generalized class of Solicitor 1 is aimed primarily at the recent graduates from law schools, but the competition is open to all qualified lawyers. Occasionally, vacancies for solicitors above the grade 1 level are filled by open competition, but the normal procedure is to fill these by promotion from within. Since the legal requirements of various departments are not uniform, the standards set for the Solicitor positions tend to vary and are normally set below those demanded by Justice for its Advisory Counsel class.

Agencies outside the jurisdiction of the Civil Service Commission recruit by a variety of informal procedures. The Industrial Development Bank, for example, advertises in the newspapers and keeps law societies and practising solicitors informed of vacancies. As an indication of its more practical orientation, it is interesting to observe that over half of its 23-member legal staff was drawn from private practice and six came from legal departments of trust companies and corporations. The Central Mortgage and Housing Corporation attracts candidates by a unique system of offering part-time employment to senior law students. This form of apprenticeship may continue until completion of the final bar examinations at which time the candidate may take up permanent employment.

The views of the deans of Canadian law schools, which were canvassed during the course of this inquiry, support the extension of the apprenticeship principle. They recommend that the government should accept new graduates from law schools on a trial basis in the Department of Justice and in other suitable departments. Alternatively, temporary or probationary employment after bar admission could be extended. Law school deans also suggest the need for a good brochure, comparable to that already available from Justice, describing legal careers and prospects in the federal public service. Your Commissioners endorse this suggestion as a necessary adjunct to a recruitment programme designed to attract the more highly qualified graduates in law.

Reference to the need for giving wider publicity to the legal career opportunities in the public service for young lawyers raises the question of whether it is preferable to recruit lawyers with some years experience in private practice. The Department of Justice has built up a competent legal staff, by recruiting more or less directly after bar admission, and by limiting the age of entering candidates to twenty-seven years. Practice in other departments, for example, the Departments of Defence Production and Veterans Affairs,

has been to favour the lawyer with outside experience.

The case for recruiting lawyers with extensive outside experience is that they can be immediately useful to those departments where a general knowledge of commercial legal affairs and practical business matters is required of its solicitors.

On the other hand, the development of an effective legal career service depends on recruiting able younger persons at a junior level and opening up attractive, permanent career prospects by promotion to more senior levels. Younger persons with demonstrated intellectual capacity are adaptable and can be rotated much more readily within the legal service of the government—a valuable asset if the system of secondment from Justice is to be expanded. Moreover, the opportunities for training the younger officer in legal work peculiar to government employment, e.g., drafting legislation or regulations, are enhanced by recruiting younger candidates. A practical consideration lending weight to this form of recruitment is that the salary for the entering grade of Solicitor begins at about \$5,000—an amount scarcely sufficient to attract practising lawyers with some experience. The salary scales at the senior level are also not sufficiently competitive with average earnings of able, experienced lawyers outside to be genuinely attractive to any save a few persons.

In the depression years, conditions favoured the government in recruiting more senior people directly from outside practice. Today, the graduations from law schools barely keep pace with the expansion in population and industry. Consequently, the prospect of attracting senior lawyers to government service tends to be limited to special cases where salaries and other incentives go beyond what is normally available in the civil service proper.

The legal work of departments varies substantially and so, too, do the intellectual attributes and practical experience of the lawyers involved. A single, uniform system of entry, in these circumstances, is not practicable. There will be a continuing need to attract the practising lawyer with outstanding special abilities into government legal offices, but the government would appear to be at a competitive disadvantage in reaching such persons. The necessities of a career legal service, with secondment and rotation, together with the prevailing salary scales, suggest that attention should increasingly be directed to attracting the younger, able law school graduate. Even here, however, there is room for distinguishing between the relatively sophisticated needs of a department like Justice and the more modest qualifications demanded by some departments. A case can be made for several entering grades, to permit a superior candidate to be fitted into the appropriate niche.

CONDITIONS OF SERVICE

Classification and Pay

DEPARTMENT OF JUSTICE: Lawyers in the Department of Justice, classified as Advisory Counsel, are ranked in three salary grades extending from \$4,740 to \$8,340. An additional class of Senior Advisory Counsel provides a top salary of \$13,750. Those with administrative duties are classified as directors, Associate and Assistant Deputy Minister. (Average income of Canadian lawyers for 1959, as released by National Revenue, was \$14,123.) These figures help to explain the proliferation of supervisory positions—thirteen out of slightly more than forty lawyers—for this has been the Department's solution to the problem of holding its more experienced and valuable members against the counter-attractions of salaries outside the government.

The Department of Justice, unlike other departments, has a well-developed legal career service which is successful in bringing junior staff along rather rapidly up to the \$10,000 level. The effective starting salary is actually some \$400 above the minimum of the scale, and for the first five years rapid promotions and salary increments put the Department in a good competitive relationship with private practice. It is between the fifth and tenth year of service that remuneration ceases to be competitive. The result is that over the past five years, the Department has lost five senior counsel. The youthfulness of the legal staff of Justice is noteworthy: its average age is thirty-five and about 90 per cent have been called to the bar since 1951, as contrasted with only 30 per cent of the departmental solicitor classes. The Department of Justice therefore lacks lawyers of long experience—a situation which may account for some departmental allegations of the "academic" quality of the Justice decisions.

The system of overpromotion adopted by the Department creates an unrealistic hierarchy of managerial positions as an escape from the restrictions on top professional salaries; it imposes administrative burdens on senior counsel who should be free to devote full time to their legal advisory functions; and it is a cause of dissatisfaction for other legal staffs. Clearly, the answer is not to be found in forcing administrative or managerial assignments on lawyers.

Improvement of the senior salary scales should enable the Department to overcome a perennial shortage of staff which prevents it from undertaking the drafting of a higher proportion of regulations, participating more fully in tax litigation, and from supplying more lawyers to other departments and agencies.

OTHER GOVERNMENT LAWYERS: Outside the Department of Justice, the largest group of government lawyers fall into seven grades, extending from Solic-

itor 1 starting at \$4,740 to Solicitor 7 with a maximum of \$13,500. Beyond this point, solicitors must move into the Senior Officer category—as five have now done—to obtain higher salaries (\$14,000 to \$18,000). There are too many ranks, reflecting the attempt by subtle refinement of class descriptions to match the varying quality and talents of those employed. Should the proposal for an integrated legal service be adopted, classifications for legal staff should be reviewed with the object of achieving greater uniformity and simplicity, permitting the development of a genuine legal career service and improving both recruiting and promotional prospects, and commensurate salaries.

The pay and classification of lawyers, other than the departmental solicitors, vary considerably. In External Affairs, lawyers are members of a diplomatic career plan and are classified as Foreign Service Officers, ranging in ten classes from \$4,380 to \$18,000. The class of Combines Officers, grades 1 to 6, and Senior Combines Officers, found only in the Combines Investigation Branch, applies equally to lawyers, economists and accountants, and salary rates range from \$4,380 to \$15,000. These grades and salary scales are roughly comparable with departmental solicitors, except that they go higher. For the lawyers employed in agencies falling outside the jurisdiction of the Civil Service Commission, salaries tend to be higher and more competitive with private practice.

In the Judge Advocate General's office of the Department of National Defence, salary and grade are based on military ranks. In the result, the remuneration of JAG lawyers, except for departmental solicitors, is substantially less than for their civilian counterparts, even when subsistence allowance is added to basic pay. Unlike doctors and dentists in the Armed Services, no additional pay is granted in recognition of their professional status. Furthermore, promotion follows a slower course than for lawyers in civilian departments and when, in recent years, significant upward adjustments in the latter's pay were made, no corresponding increase occurred in the Services. These circumstances account for the fact that resignations and retirements have outnumbered new recruits; indeed, in the ten months prior to September 1960 (used as a test), not a single application for enrolment as a legal officer was received by the Armed Services. The early age of mandatory retirement compounds the difficulty: age forty-five to forty-seven for a captain or equivalent and fifty-three to fifty-five for a colonel or equivalent rank—as against the general civil service retirement age of sixty-five.

Either more should be employed as civilians or a professional allowance over and above the basic rates of Service officers should be provided to legal staff, as is now done for doctors and dentists in the Armed Forces. As a

corollary, attention should be directed to the possibility of adjusting pension rights and age of retirement of Service lawyers to make them more nearly comparable with lawyers in the rest of the public service.

Training and Professional Status

There are few formal training courses for lawyers in the public service. The Training and Development Division of the Department of Defence Production offers certain solicitors courses to give an insight into the legal problems encountered in preparing contracts, and in giving opinions.

External Affairs gives Foreign Service Officers, with legal backgrounds, some training by rotating them—sometimes with remarkable celerity—through the Legal Division. This exposure is occasionally supplemented by short courses on international law at the Hague Academy and by attendance at meetings of the International Law Association; in both cases the Department pays all or part of the attendant expenses.

In the Judge Advocate General's office, juniors are re-posted every two or three years, and assignments of lawyers in Ottawa change every one or two years. Rotation of juniors is also practised by the Taxation Division of National Revenue, and the Department of Veterans Affairs treats juniors as trainees in its main regional offices.

In the Department of Justice there is no systematic rotation among the various sections, and training consists essentially in direct and careful supervision of new lawyers by an experienced member of the staff.

It is important for a group with professional credentials to preserve its association with other members of the profession outside the government. All government lawyers, with a few exceptions, have been admitted to practice law in one or more provinces of Canada and are members of their respective bars. As a group, however, they tend to be relatively isolated from the rest of the profession, principally because of their concentration in Ottawa. Thus, less than forty per cent of the government lawyers are members of the bar of the province in which they work. Possibly a third are members of the Canadian Bar Association, though nearly two-thirds of their colleagues in private practice are members. The annual fees of about half the government lawyers are paid by their respective departments—a practice which, if deemed appropriate for some, should be more uniformly applied.

3

THE LEGAL AGENT

INTRODUCTION

At one time legal agents, drawn from private practice on an *ad hoc* basis, performed most of the legal work of the federal government, including the drafting of legislation. They are still used extensively for civil litigation, criminal prosecutions and land transactions. Today, legal agents do about 75 per cent of taxation litigation and 25 per cent of other civil litigation. Complete figures are not available, but it is known that in the regular courts alone during a selected period in 1961 approximately 350 were engaged in the conduct of civil litigation and another 125 in taxation cases. During the calendar years 1959 and 1960, legal agents were retained for 11,913 prosecutions. Land transactions, other than conveyances by the government, are handled almost exclusively by legal agents and, as has been noted, these average about 80 new transactions every month.

Some Crown corporations use legal agents because they have no legal staff of their own. Legal agents may also be employed to represent government departments and agencies for legal work required outside Canada, before boards of inquiry, or in connection with industrial relations matters. However, since these are exceptional cases, this review is confined to their role in civil litigation, prosecutions and land transactions—areas where agents are usually retained.

SELECTION OF LEGAL AGENTS

With very few exceptions, the Minister of Justice appoints or controls the appointment of legal agents, deriving his authority from his power to make

contracts for "the performance of legal services". Even where agencies appoint their own legal agents they frequently consult the Minister before taking any action.

When the services of an agent are required, selection is made from a list approved by the Minister of Justice and the legal branch is advised of the selection.

Ordinarily, agents are appointed on an *ad hoc* basis, but for some criminal prosecutions and land transactions standing legal agents have been appointed. This is usual for opium and narcotic prosecutions, and offences involving the *Unemployment Insurance Act*. In the Yukon and Northwest Territories the equivalent of provincial Crown prosecutors conduct many criminal prosecutions.

Within Canada, ten agencies of government appoint their own legal agents, several acting independently. A number of departments employ agents outside Canada. The Department of External Affairs requires missions to obtain approval from headquarters before they spend more than \$25, but the actual choice of legal agent rests with the mission. Other departments represented abroad may consult the local Canadian mission but make their own appointment for some types of cases; in others, Justice is asked to make the appointment. The variations in practice are accounted for in part by geographical considerations, but it is clear that, despite the existence of some standing instructions on the matter, there is need for a more clear-cut definition of areas of responsibility.

INSTRUCTION AND SUPERVISION OF LEGAL AGENTS

Legal agents employed on an *ad hoc* basis are subject to varying degrees of control. All receive, at a minimum, copies of the printed "Instructions to Agents" from the legal branch of the Department of Justice, which along with the accompanying letter constitute the basis of the contract for the agent's services. Strict supervision and control is maintained by the Department over agents appointed in most civil litigation matters. In taxation litigation, the Department of National Revenue has in the past dealt directly with the agent but with the setting up of the new taxation section in Justice, the practice is changing. It is clear that present arrangements produce much unnecessary duplication of effort, as both National Revenue and Justice become involved in the control and supervision of agents.

In the vast majority of criminal cases, detailed instructions are given by the R.C.M.P., or the particular department or agency affected, and the Department of Justice does not participate. Justice exercises control over all agents

employed for land acquisitions by the Crown or sales of Crown land, except where the transaction involves bodies such as Central Mortgage and Housing Corporation, the Farm Credit Corporation, or the Director of the *Veterans' Land Act*, all of whom deal directly with the legal agents. In many instances the legal staffs of departments and agencies work very closely with the Department of Justice in instructing and supervising legal agents, and in a few cases take full responsibility.

FEES, ACCOUNTS AND PAYMENT OF LEGAL AGENTS

The Deputy Minister of Justice determines the fees and "taxes", i.e., checks and approves, the accounts of legal agents appointed by the Justice Department and also those of some selected by Crown corporations.

The "General Instructions to Agents" contains the tariff of fees and charges applicable throughout Canada for summary conviction cases, acquisitions of land and collections, and applies to agents across Canada in all other matters. The tariff does not refer specifically to civil litigation; in fact rates allowed in such cases often differ from those set out in the "Instructions".

Within the Department of Justice, the directors of the civil litigation, criminal, tax and civil law sections are responsible for taxing accounts presented by legal agents in their respective fields. They exercise a good deal of discretion within the range of fees provided, and no standards or principles are laid down for determining how such discretion should be exercised in any given case. The experience of the agent is taken into account, as well as his geographical location and the nature and difficulty of the legal service he has performed. There is no appeal from the amount allowed.

The administration of justice in the Northwest and Yukon Territories has created problems for the Department of Justice in compensating defence counsel who are appointed to defend indigent persons. As a result of difficulties in securing defence counsel together with the refusal of the judges to try certain types of cases without them, the Department has increased the amounts formerly allowed.

A department or agency with power to appoint a legal agent usually arranges the agent's fees and approves his account. An exception is that accounts for work done for the Director of the *Veterans' Land Act* are taxed by Justice. No uniform pattern of tariffs is used by these agencies. Outside Canada, the department or agency for whom legal work is performed determines the fee and approves the account. External Affairs, in determining what is a fair fee for agents abroad, relies on the recommendations of the mission concerned.

In almost every instance the department or agency for whom the service is performed pays the account, except that the Department of Justice pays the fees of legal agents in criminal prosecutions in the Yukon and Northwest Territories, and several departments and agencies pay certain legal fees incurred by boards or subsidiaries under their jurisdiction or control. In the case of Central Mortgage and Housing Corporation, Farm Credit Corporation and the Industrial Development Bank, the borrower pays the legal fees of agents retained by these corporations.

COST OF LEGAL AGENTS

The federal government is currently spending well over \$1 million a year for legal agents. The following table is based on reports from 52 departments and agencies over a 5-year period:

Table 5—COST OF LEGAL AGENTS EMPLOYED BY THE FEDERAL GOVERNMENT

1956-57	\$1,104,888
1957-58	898,630
1958-59	1,103,644
1959-60	1,273,210
1960-61	1,444,237

It will be observed that there has been a steady increase over the past four fiscal years, a situation which may have a direct relation to the under-staffing of the Department of Justice already mentioned.

CONCLUSIONS

There are, no doubt, areas where the performance of *ad hoc* legal agents has not given the results which could be expected, but this does not mean that legal agents in general are not competent. Even if it were deemed desirable to do away with legal agents, such a change could not become effective immediately: it would be many years before full-time government lawyers could fill the gap. Nevertheless, some changes are desirable.

The Department of Justice insists on close control over all civil litigation, and departmental complaints in this field were relatively few. The Department of Justice is progressively taking over specialized work from legal agents, leaving them with the more routine cases such as automobile claims. The continual change in agents creates problems of fresh instructions and it is obvious that the method of selection is now dated. On the other hand, the competence of standing agents is built up through experience, and the

amount of time necessarily spent in instructing and supervising them is correspondingly reduced. Your Commissioners support the view that *ad hoc* agents should be replaced wherever possible by standing agents.

While the tariff for legal agents allows some elasticity, there is complaint that the tariff is on the low side thus affecting the number of those interested in government work. The tariff should be revised to match normal levels of fees for the different types of legal services performed.

Obviously, the use of agents involves additional paperwork. The agents, the department concerned and Justice, must prepare multiple copies of everything, including each letter. As a result, the files reveal extensive duplication.

Selection of legal agents often entails expensive, time-consuming procedures. When a local sub-division of the R.C.M.P., for example, requires a legal agent for a prosecution it must communicate with headquarters in Ottawa, which in turn writes to the Department of Justice. Justice notifies the R.C.M.P. in Ottawa and they, in turn, notify the local sub-division through the area division. Should the agent refuse the case, the process must be repeated. Meanwhile, the police must seek remands which waste time and are unfair to the accused. There are comparable difficulties in obtaining agents in emergencies, such as when a ship is involved and speedy action is necessary. Long distance telephone calls followed by confirmatory letters through regular channels may be needed—and the end result may be only a small fine. Several departments consider that, since most of the preparation falls on them because of their specialized knowledge, their staff could handle much of the work now done by agents.

It is probable that, in major centres where there is a large and steady demand for legal services, government lawyers operating from branch offices could perform the work more economically than by using the present system of legal agents. Where legal agents continue to be used, the existence of branch offices would permit much closer supervision to be maintained.

In the Territories, distance and sparsity of population raise many problems for the administration of Justice. For example: there are three lawyers in Yellowknife, one of whom acts as Crown Prosecutor. Defence counsel must be selected from the remaining two or from those few lawyers in the provinces who are also members of the territorial bars. There is a comparable situation in Whitehorse. Allowances made by Justice in urban areas of the provinces take no account of long distances, transportation delays, hardship and even dangers which exist in the Territories. A lawyer volunteering to serve as defence counsel may need to make a hazardous flight to a remote region. Although the case may last half a day (for which he would be paid \$50 plus a small allowance for travelling time), it might require him to be away for

five or six days. Under the circumstances, interested counsel and *ad hoc* agents in the Territories are few.

The essential difficulty with respect to the provision of legal services abroad is that the responsibilities of the Department of External Affairs and the Department of Justice and other departments and agencies concerned are nowhere clearly defined. There is confusion over the selection and direction of agents, and over payment of their accounts, which needs to be cleared up. This confusion illustrates the generally unsatisfactory arrangements for providing international legal services which receive fuller consideration in the following chapter.

4

AN INTEGRATED LEGAL SERVICE

INTRODUCTION

The foregoing chapters describe and assess the provision of legal services and problems associated with staffing them throughout the government. At various points references occur to the benefits to be derived from integrating these legal services, coupled with a proposal to set up branch offices. The case for integration and the reasons for making several important exceptions to complete integration now need to be reviewed.

Career prospects, for many lawyers presently employed, are less than satisfactory. In a number of departments small groups of solicitors suffer from professional isolation, and interdepartmental transfers are rare. As a result, professional lawyers may spend unreasonably long periods on legal work which does not fully engage their capabilities. Seniority rather than competence may govern the opportunity for professional development which the more demanding legal assignments represent. The legal workload has its peaks and valleys, so that at times a full-time lawyer cannot be kept busy and at other times there may be need for several.

These circumstances combine to discourage many of the graduates of law schools from entering the public service and contribute to the departure of lawyers from government employment to private practice. When coupled with inadequate salaries for senior legal positions, they inhibit the government's ability to recruit and retain experienced lawyers.

Among the more important tasks of the lawyer in public service, the initial framing of bills and regulations and advising on their application in individual cases demand a special degree of independence for the lawyer, setting him

somewhat apart from the "line" activities of his department. Lawyers often find themselves drawn into the policy-making machinery of their departments, thereby becoming so closely identified with departmental management that their capacity to provide impartial advice becomes impaired. At the other end of the scale, some lawyers perform duties of such routine nature that they could be performed adequately and more economically by clerical employees. When this happens, professional skill tends to deteriorate. Isolated from members of his own profession, the sole lawyer in a department is usually further handicapped by lack of access to that indispensable tool of a lawyer—a good legal library.

The integration of isolated departmental lawyers into a common legal service, revolving around the Department of Justice, appears to your Commissioners to offer the most practicable remedy—if not the sovereign solution—for many of the present afflictions.

In addition to the legal staffs of certain commercially-oriented and independent agencies, your Commissioners would exclude from the proposed integrated service, in whole or in part, the following legal branches of five departments:

- The Judge Advocate General's office in the Department of National Defence.
- The Legal Division of the Department of External Affairs.
- The Legal Branch of the Taxation Division of the Department of National Revenue.
- The Pensions Advocates in the Department of Veterans Affairs.
- The legal officers in the Royal Canadian Mounted Police.

These exclusions are founded on one or more of three factors which make the status of lawyers in these five legal groups rather different from that of other departmental lawyers for whom an integrated service is proposed. First, the body of laws and procedures and the associated legal questions are quite different from the laws and procedures with which a departmental lawyer or a Department of Justice lawyer normally contends: this provides the basic reason for excluding from an integrated service both the international law questions of concern to External Affairs and the military law problems of the Judge Advocate General.

Second, the nature of the work may be such as to require a close identification of the legal staff with officials who are administering the law: to sever

this organic connection would, as has been said, cause the whole function to "bleed". This is the relevant consideration in recommending a partial dissociation from the proposed integrated system of the legal branch of the Taxation Division of National Revenue and the lawyers in the R.C.M.P.

Finally, the function now performed by lawyers may be one which does not necessarily call for professional legal competence but may, in fact, require skills of a different order. This is the reason for excluding the lawyers who are pension advocates in the Department of Veterans Affairs, for their work is primarily of a welfare nature.

THE EXCLUDED LEGAL SERVICES

Office of the Judge Advocate General

The previous description of the staffing and operations of the Judge Advocate General's office demonstrates that the group is large enough to provide a satisfactory, self-contained career for lawyers and that there is a sufficient variety of challenging legal work to draw recruits to the office—provided salary scales are attractive.

In some measure, the work performed by JAG differs little from solicitors work in regular civilian departments. Its unique qualities derive from the application of Service justice, in particular, the conduct of courts martial and the review of decisions rendered by such courts. In effect, JAG acts as both prosecutor and judge for courts martial, a situation which, in the United Kingdom, has given rise to the appointment of a civilian JAG and staff for the purely judicial aspects of the work. In Canada, the office of the JAG is organized so as to provide a sharp separation of judicial and prosecuting roles, each handled by an independent section. There have been no complaints by accused or defending counsel that this juxtaposition of two apparently incompatible functions has worked inequitably. In the Canadian Armed Forces commanding officers dispose of a broader range of minor disciplinary matters than in the United Kingdom. As a result, the volume of courts martial and related legal activity are relatively smaller and it is doubtful whether the situation warrants the appointment of a separate staff for the judicial function.

The principal reason for excepting from the proposed integrated service the office of the Judge Advocate General is the Service status of most of its lawyers. The requirements of the Armed Forces necessitate travel and postings to military camps and establishments in Canada and abroad. Clearly, civilian lawyers, who are not subject to military discipline, cannot satisfactorily fill such a role. Moreover, a principal attribute of the integrated service,

namely its rotational character, would be impaired through the practical impossibility of rotating lawyers in uniform through posts in civilian departments.

One other element of the work performed by the Judge Advocate General's office also favours its continued existence as a separate legal group. Nearly one-third of the staff of the JAG are holding staff positions, whose duties consist largely of interpreting JAG opinions and rulings to staff officers. These positions provide an effective liaison between the central legal branch and the military staff, thereby reducing the number of references to JAG. Service lawyers are essentially an arm of military administration: staff experience is essential for a JAG officer and for the most part it would not be practicable to bring in civilian lawyers to such positions.

However, within the Department of National Defence there are some legal positions which are recruited under the *Civil Service Act* and are not part of the Judge Advocate General's office. These lawyers should be part of the proposed integrated career legal service attached to the Department of Justice.

Department of External Affairs

Earlier in this report, the extensive involvement of a number of departments (other than External Affairs itself) in matters of international law was described. It was further noted that the legal services provided in this special branch of law are far from satisfactory and that collaboration is almost totally lacking.

One way of curing this defect would be to incorporate all lawyers concerned with international law into the proposed integrated legal service, under the Department of Justice. However, international law is distinctly different from the subjects of domestic and constitutional law with which solicitors in Justice and in the other civilian departments must deal. International law is intimately bound up with high policy questions and relationships with other nations. In treaty negotiations particularly, there is need for trained international lawyers to be associated with the negotiators to preserve a balance between policy considerations and legal implications—someone who is familiar with Canada's commitments under other treaties. For these reasons, responsibility for this branch of law should be placed on External Affairs, the department occupying the strategic position in all international negotiations and treaty matters.

This will not counteract the existing unsatisfactory relations which exist between the Departments of External Affairs and Justice; nor will it remedy the current defects which result from the efforts of other departments to meet their own needs for services of this highly specialized type. Substantial re-

forms in the present organization and functioning of External Affairs Legal Division are needed to provide a workable solution.

What is required is a reorganization to meet the twin objectives of providing a focal point for legal services in the field of international law and at the same time promote proper liaison with the domestic legal services. Your Commissioners therefore propose the following arrangement:

- (a) The Legal Division of External Affairs should be headed, as now, by a permanent legal adviser who would have no responsibility (as he now has) for administration or policy decisions outside the operation of the Division. The title of "General Counsel" might more appropriately describe the character of this position than the present title of "Legal Adviser".
- (b) Under the "General Counsel" should be a senior advisory counsel seconded by the Department of Justice and a member of the integrated service. In addition to administrative duties within the Branch, this officer should, in particular, act as a clearing house on matters of domestic law and on references to the Department of Justice. He should have primary responsibility for initial drafting of changes in legislation or regulations. This officer would also provide what is now sadly lacking—a focal point to which references from other departments on questions involving international law would be sent, as well as a central source for experts on treaty matters. The presence of a lawyer seconded from the integrated legal service should promote a better understanding between the Departments of Justice and External Affairs, as well as a co-ordinating point for the currently dispersed efforts of various departments in this specialized area.
- (c) The staffing of the Legal Division by the rotation of Foreign Service Officers—some for extremely short periods—should be modified to build up a core of specialists in international law, permanently resident in Ottawa, and making a career in this special field of law.
- (d) Any other requirements of the Division should be met by assigning Foreign Service Officers qualified to practice law. The posting period should be from four to five years. If more international law training is needed for foreign service officers generally than can be provided under the foregoing conditions, educational leave or special training courses should be employed to meet such need.

We therefore recommend that: A strengthened Legal Division of the Department of External Affairs assume responsibility for co-ordinating the inter-

national legal work of departments and agencies and provide the expert assistance required on such matters as treaty negotiation.

Department of National Revenue (Taxation)

The assumption underlying the proposal for an integrated legal service is that a solicitor-client (department) relationship should be established which will permit the departmental solicitors to give independent advice rather than becoming involved in making policy or in duties of an administrative nature. In a majority of cases, questions of law are incidental to the main programmes of departments. An exception is the subject of taxation where the assessment of income tax and succession duties is the main task of the Taxation Division of National Revenue and where the application of the law affects the rights of individuals. In this sense, the whole assessment procedure may be said to be a legal matter.

Assessment calls for a working partnership between the skilled accountant and the lawyer in which it is impracticable to segregate the two professions. Consequently, in the Taxation Division, the income tax lawyer occupies a position in relation to the operating officials in the Department which differs from the normal, somewhat independent solicitor role in other departments. In recognition of this difference it would be appropriate to designate the tax lawyer as an "Assessment Solicitor". As experts on tax matters, with a daily involvement in administration, they should be classified and paid in such a fashion as to distinguish them from the lawyers in the integrated service.

The "Assessment Solicitor" group needs a head to preserve its status, preferably an assistant deputy minister—an upgrading from its present place in the departmental hierarchy. This group should then be directly involved in the day-to-day administration of assessment, as well as playing a prominent part in policy-making.

The Department will, nevertheless, still require the services of lawyers who are not part of the assessment team to perform the tasks assigned in other departments to departmental solicitors: for example, drafting legislation and regulations. This function should be staffed by lawyers seconded from Justice as part of the integrated service. They would serve the Deputy Minister (Taxation) in precisely the same the same manner as other departmental solicitors serve their respective departments. In particular, these lawyers should be available to render opinions for the benefit of the assessment staff, but should remain aloof from policy-making commitments of the Department.

In the conduct of litigation, there is a need for effecting accommodations between the Taxation Division and the Department of Justice. Co-operation can best be achieved by having the group of seconded lawyers in the Taxation Division conduct tax cases before the Tax Appeal Board, the Exchequer Court and beyond, either directly or by arrangement with outside counsel, referring important legal questions to Justice wherever necessary.

Your Commissioners recognize that, in recommending what is, in effect, two legal services within a single department, there are obvious possibilities of confusion and duplication of effort. However, a clear recognition of the distinction between the functions of the two should provide a logical basis for determining where each fits in specific cases: the role of the "assessment solicitor" is primarily to help formulate and carry out government policy and procedures in tax matters; the legal adviser, on the other hand, should acknowledge no responsibility for administrative decisions but should act in a strictly advisory capacity to the Department and act as advocate in the courts.

Finally, in the periodic revisions of the taxing statutes, there must be effective consultation among the Departments of Finance, Revenue and Justice. The "legal adviser" branch in Taxation should have the responsibility for seeing that such consultation is effective and that the bills submitted to the House of Commons are free from serious flaws. In this process, the specialized knowledge acquired by "assessment solicitors" from their experience in administering the legislation will form a necessary supplement to the work of the legal advisers.

Department of Veterans Affairs

Within the Department of Veterans Affairs, approximately one-half of the fifty-odd lawyers are employed on the regular legal solicitor work for the benefit of the Crown; the remainder, in the Veterans Bureau (known as Pensions Advocates), are primarily concerned with defending the interests of veterans.

Your Commissioners recommend that the departmental solicitor group be incorporated with the proposed integrated legal service under Justice. The Pensions Advocates should not, however, form part of the integrated service. A large portion of the functions of Pensions Advocates is essentially welfare work which could be performed equally well by laymen.

Where this special type of assistance is rendered to veterans by non-lawyers, it would be desirable to permit the latter access to departmental solicitors. In such cases, the duty of the departmental solicitor should be

limited to an interpretation of the law, and any identification of the solicitor with the merits of a particular claim should be avoided.

Royal Canadian Mounted Police

As indicated above, the Force meets its legal requirements—primarily for crime report analysis—by paying for the legal education of selected members of the staff. Since these officers, after their legal training, are not kept permanently on legal work and since there is a continuing need to refer many matters to the Justice Department, it is proposed that a representative of the integrated legal services be seconded to the Force to head up the legal work. The existing pattern of legal training and rotation would not be disturbed, but more effective liaison with the Department of Justice would be maintained.

CONCLUSION AND RECOMMENDATIONS

The implications of your Commissioners' recommendation of an integrated legal service—subject to the five exclusions specifically spelled out in previous sections of this chapter—should by now be quite clear. Approximately one hundred lawyers in departments and agencies will be brought under the aegis of the Department of Justice. The proposal complements the recommendations of your Commissioners (developed at length in Volume 1) for giving departmental managers a freer hand than they have hitherto enjoyed in managing their own operations. The value of a lawyer depends on the preservation of his independence from the operating necessities of his department. Secondment from Justice should help to preserve this independence, while opening up opportunities for professional advancement in a legal career service for those solicitors who have, to the present, been locked in isolated departmental compartments.

An integrated legal service will introduce greater flexibility to meet the intermittent legal needs of some departments (without necessarily employing a lawyer full-time). Extra staff will be available for emergencies. Other special requirements, such as the need for bilingual lawyers or those skilled in the Civil Code of the Province of Quebec, can be more readily met. When replacements have to be made, a new man seconded from Justice will have all the resources and experience of the parent department to fall back on.

Integration of legal services should lead to an improvement in the important matter of rendering legal opinions, where current practices cause duplication, delay and a tendency for opinions to be given at arms length from the operat-

ing departments. Rotation of Justice lawyers into departments and back to the Department of Justice should bring a fresh touch of reality to the oft-times academic tone of Justice opinions and, at the same time, maintain in the departments the appropriate aura of neutrality required in rendering impartial legal advice. Formal references to Justice should be reduced and, at the same time, the Department should be more accessible than it now is to the seconded lawyers who are serving the operating departments.

Able young graduates in law should be eager to seek a career in an integrated service which offers enlarged prospects of varied and interesting legal work, coupled with a simpler classification and an up-grading of salaries at the senior professional level.

The Department of Justice will need to be strengthened in order to assume the task of seconding legal staff, on a rotational basis, to the various departments. In addition to the career-planning and development function, implicit in this scheme, the Department will have, in conjunction with the Civil Service Commission, the responsibility for conducting a vigorous recruitment programme. Moreover, an important responsibility of the Deputy Minister of Justice, under an integrated system, will be to take cognizance of organizational or procedural defects in the legal services within departments which were occasioning delays or giving rise to complaints that the services provided to the public were less than satisfactory. The Department of Justice would, under such circumstances, advise and assist in the task of smoothing out these defects and seeing that service to the public is improved.

The proposed integration of legal services, in effect, simply confirms and extends the current practice of seconding Justice lawyers to certain departments. Broadening out this practice to include other departments can be accomplished only by a readjustment which will permit the gradual absorption of existing departmental legal staff. It is vital, in your Commissioners' view, to establish the principle of integration at once, so that the Department of Justice can assume charge of the long-term programme of consolidation and improvement. An immediate review of existing classifications and pay scales is required so that a new classification for the integrated service can be quickly established and legal staffs "slotted" into their appropriate grades, on the basis of the salary earned at the time of transfer.

The integrated legal services should include the legal staffs of all departments and agencies save those which, for reasons of public policy or because they are engaged in activities of a commercial nature, have been given a degree of independence from the civil service proper. For reasons already stated, the legal staffs of five departments or agencies should also be excluded, in part, from the integrated service.

We therefore recommend that: Subject to the exclusions specified in this report, the Department of Justice assume responsibility for an integrated legal service embracing all legal staffs of departments and agencies.

Two other recommendations of your Commissioners bear a close relationship to the major proposal for an integrated service. Previous reference has been made to the merits of setting up branch legal offices in centres where there is a large enough volume of legal work to sustain such an operation. Implementation of this suggestion is independent of the proposed plan for an integrated legal service. However, it is clear that integration would facilitate the servicing of the legal needs of many regional offices of other departments by the branch offices. In particular, it would improve control and instruction of standing or *ad hoc* legal agents handling land transactions and civil litigation in centres where branch offices were established.

We therefore recommend that: Consideration be given to establishing branch legal offices of the Department of Justice in centres across Canada where the volume of work justifies such action.

The volume of legal work in the Yukon and Northwest Territories and the problems of administration stemming from the remoteness of these areas from Ottawa, are such as to warrant the posting, in each Territory, of a Department of Justice legal officer. His functions would include: civil litigation; preparation of Ordinances; acting as Crown prosecutor; and, more generally, providing the nucleus for an Attorney General's Department. Such a step would be part of a broader re-arrangement of administrative operations in the North which are considered at length in Volume 5 of your Commissioners' reports.

We therefore recommend that: A Department of Justice legal officer be posted, on a rotational basis, in each of the Territories.

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