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Technical Report No. 13

Regulation and Other Forms of Government Intervention Regarding Real Property

S. W. Hamilton
University of British Columbia

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TECHNICAL REPORT NO. 13

REGULATION AND OTHER FORMS OF GOVERNMENT INTERVENTION REGARDING REAL PROPERTY

by

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The findings of this Technical Report are the personal responsibility of the author, and, as such, have not been endorsed by members of the Economic Council of Canada.

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FOREWORD

This study is one of a series commissioned by the Economic Council's Regulation Reference which deals with various aspects of land use and building codes regulation. These studies do not cover the whole field of land use regulation but they do focus on important areas of concern.

The following is a list (alphabetically by author) of land use studies to be published in this series:

* Dale-Johnson, David, Greater Vancouver Regional District Land Use Regulation Study: An Evaluation of the Land Use Approval Process in Coquitlam, Surrey and Vancouver, 1979.

* Eger, A.F., Land Development Risk and Regulation in Montreal, 1966-1979.

* Hamilton, S.W., Regulation and Other Forms of Government Intervention Regarding Real Property.

* McFadyen, Stuart and Denis Johnson, Land Use Regulation in Edmonton.

* Proudfoot, Stuart, Private Wants and Public Needs: The Regulation of Land Use in the Metropolitan Toronto Area.

* Seelig, Julie H., Michael Goldberg and Peter Horwood, Land Use Control Legistation in the United States -- A Survey & Synthesis.

* Silver, Irving R. assisted by Rao K. Chagaralamude, The Economic Evaluation of Residential Building Codes: An Exploratory Study.

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* already published

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RÉSUMÉ

L'étude de S. W. Hamilton vise quatre buts. Premièrement, elle doit présenter un répertoire de toutes les principales lois et de tous les plus importants règlements fédéraux et provinciaux ayant directement trait à l'aménagement du sol ou pouvant influer directement sur les diverses utilisations qu'on en fait. Deuxièmement, elle tente d'analyser les problèmes pouvant découler du partage des responsabilités entre les gouvernements fédéral, provinciaux et locaux. Les causes de ces problèmes tiennent en partie à la nature des pouvoirs concédés ou imposés par les provinces aux gouvernements locaux. C'est cette répartition des responsabilités qui détermine le cadre de référence servant à la formulation, à l'application, et finalement, à l'administration des règlements locaux sur l'utilisation du sol. Troisièmement, l'étude analyse les tendances constatées dans les règlements sur les terrains et les bâtiments. Enfin, elle examine les sources de conflits et de chevauchements d'attributions entre les divers niveaux de gouvernement, et analyse leurs effets possibles sur les coûts que suppose la réalisation des objectifs nettement définis de chaque palier de gouvernement.

À noter que l'étude a pour objectif d'explorer le cadre de référence de cette réglementation foncière, c'est-à-dire la structure juridique qui comprend les pouvoirs de réglementer l'utilisation, le changement d'utilisation ainsi que la

propriété du sol. À cette fin, l'auteur examine les divers degrés de délégation d'autorité aux gouvernements locaux, qui caractérisent chacune des provinces. De plus, il analyse les cas où le gouvernement fédéral ou une province réglemente directement l'utilisation du sol ou la construction de bâtiments. Toutefois, il n'étudie ni la façon dont les gouvernements locaux décident d'appliquer les règlements dans ce domaine ni les effets éventuels de l'exercice des pouvoirs nécessaires obtenus par obligation. Ces questions forment le thème des études de cas à paraître.

Pour atteindre ces objectifs, la première chose à faire est évidemment d'effectuer un inventaire des lois existantes qui en constituent le cadre juridique. Pour établir les critères qui permettront de choisir telles ou telles lois plutôt que d'autres, il est d'abord nécessaire de définir certains termes (comme le mot "règlement", l'expression "terrain et bâtiments") et de comprendre en gros le fonctionnement du marché immobilier. Il faut aussi noter le moment où intervient la réglementation foncière, de quelle façon elle est actuellement appliquée et par qui ? Enfin, pour bien comprendre comment la réglementation est actuellement appliquée et par qui, il est nécessaire d'en étudier les aspects constitutionnels de façon à mieux saisir les rôles respectifs de chaque palier de gouvernement.

Il importe de bien retenir que la présente étude n'est pas une analyse de l'impact économique de la réglementation foncière, mais qu'elle est plutôt une tentative en vue d'explorer le cadre dans lequel s'applique la réglementation. L'auteur ne passe pas en revue les règlements municipaux -- première source de réglementation directe visant les terrains et bâtiments -- à cause de leur multiplicité et de leur grande variété.

SUMMARY

This study has four purposes. First, it is designed to provide a catalogue of all major federal and provincial statutes and regulations which relate either directly to land or which may directly influence either the type or form of land use. Second, this study attempts to analyze the potential problems arising from the division of responsibilities between federal, provincial and local governments. The sources of these potential problems are found in part, in the nature of the permissive and mandatory powers granted by the provinces to local governments. This division of responsibility determines the framework in which local land regulations are formulated, implemented and ultimately administered. Third, this study analyzes the trends which have occurred in the regulations relating to land and building. Finally, it examines those areas of conflict and overlapping jurisdiction between the various levels of government and analyzes their potential impact on the costs of achieving the identified objectives of each level of government.

One point to note is that this study is intended to explore the framework for the regulation of land and buildings. That is, the legal structure that embodies the powers to regulate the use, change in use, and ownership of land resources. To this end, the study examines the various degrees of delegation of authority to local governments that are employed in each of the provinces. In addition, those situations where either the federal or a provincial government directly regulate land and/or buildings will be analyzed. However, the manner in which local governments elect to exercise regulation and the impact of exercising of regulatory powers that have been delegated to local governments are beyond the scope of this study and will form the focus of the case studies in the series.

In attempting to fulfill these purposes, the obvious starting point is to assemble an inventory of statutes which establish the legal framework. In order to establish some criteria for including or exluding statutes, it is first necessary to provide some definitions (i.e. What is meant by "regulation"? What is meant by "land and buildings"?) and to understand something of how the market for land and buildings operates. It is also necessary to identify when regulation of land and building occurs, how it is presently implemented, and who currently regulates. Finally, in order to fully understand how regulation is presently implemented and by whom, it is necessary to consider the constitutional issues in order that the respective roles of each type of government can be understood.

It is emphasized that this study is not a study of the economic impact of regulation of land and buildings; rather it attempts to explore the framework within which the regulation occurs. Local by-laws, which are the important source of direct regulation of land and buildings, are not surveyed due to the multiplicity and variety of these local by-laws.

INTRODUCTION

1.0 ECONOMIC COUNCIL OF CANADA TERMS OF REFERENCE

This paper is one in a series prepared for the Regulation Reference of the Economic Council of Canada.[1] In adopting the research agenda for the Regulation Reference, the Economic Council of Canada specified that two general types of research be undertaken - framework studies and area specific studies.[2] This is one of the latter.

At the time land use and building codes were selected as a research project for Regulation Reference, the general preamble for the study noted:

> Serious concern continues to be expressed in Canada over the relationship of the cost of housing and the development of commercial and industrial property to the numerous regulations (of the different levels of government facing builders and developers during planning and construction. The purpose of this study is to attempt to estimate the impact of government) regulation in the land use/zoning area, and its contribution to the cost of housing and property development in Canada. It will complement the work in the Report of the Federal/Provincial Task Force on the Supply and Price of Serviced Residential Land (April 1978).
>
> The study will recognize the very important social and economic objectives of regulation in this sector. In addition to estimating the impact of land-use regulation on housing costs and other types of property development, the study will also attempt to develop recommendations for improving and rationalizing these regulatory processes consistently with the public policy objectives of regulating housing and urban development. (Economic Council of Canada, 1978, p. 32).

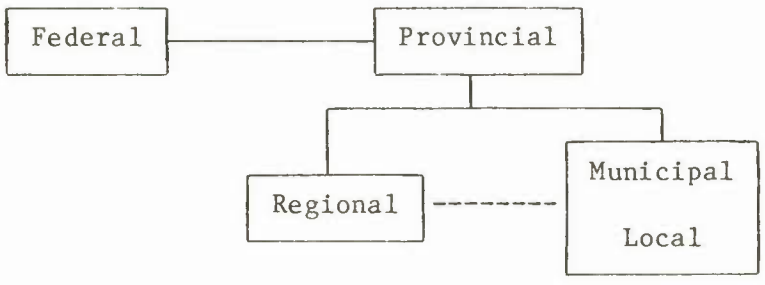
The research agenda noted:

> The purpose of these exploratory studies, based on a sample of jurisdictions, would be to estimate the economic impact of selected parts of building codes of selected construction materials. In addition, the study would attempt to determine the economic consequences of the lack of standardization of building codes among jurisdictions (Economic Council of Canada, 1978, p. 32).

Taken together, these two component parts, involving the regulation of land and the regulation of buildings, form the basis for this study.[3] In undertaking this study, the systems of regulation in each of the provinces (and of the Federal Government) were considered in order to document the nature of the regulatory systems currently in existence, the major changes which have occurred in these regulatory systems, and their economic impact.

In order to understand the general authority for the regulation of land and buildings, it is important to recognize the respective roles of each type of government.[4] Under the British North America Act, powers are distributed to either the federal or the provincial governments (although in certain areas the federal and provincial governments may have concurrent jurisdiction). Under this arrangement, the provinces have jurisdiction over local governments, both regional and municipal.

CHART 1.1 STRUCTURE OF GOVERNMENT IN CANADA



These arrangements further provide that the provinces will generally have control over all local matters, including land and building (see section 3.2 on the constitutional issue).

The provision for provincial control over land and buildings, which in turn is generally delegated, in whole or in part, to regional and/or

municipal governments, recognizes the local nature of land markets. One of the distinguishing characteristics of land is that it is immobile and, as a result, the services (shelter) supplies cannot be spatially separated from the land. An oversupply of space (housing, office space, warehouse) in one location cannot compensate for shortages in another area, a fact which gives rise to the local nature of land markets.

Since four types of government (federal, provincial, regional and local) may exercise authority that either directly or indirectly influences land markets, it follows that there are potentially a multitude of regulatory systems in operation in Canada.[5]

Differences in the systems of regulatory controls, either cross-sectional or inter-temporal, occur for a variety of reasons. In some cases they are logical extensions arising from geographical differences (size of province, climatic conditions, soil conditions, etc.). Alternatively, they may reflect variations in the division of responsibility between provincial and local governments, or reflect the stage of development of the particular community, or reflect a local attitude regarding the type of community desired (concept of growth, community design, etc.). At any point in time, the systems of regulatory control in operation in a specific local market will represent a compromise position, reflecting the balancing of objectives of individuals and groups within the community and their various governments constrained by the legal and economic tools available to the regulators. The design and composition of the regulations is made even more complex because the durability of investments in land - the good and bad decisions of the past - physically constrain current and future decisions.

Even in those cases where two or more local markets have identical regulations, it will not necessarily follow that the impact of these on market

behavior will be identical. Variations in local market conditions, on the supply and the demand side, may cause identical regulations to produce quite different market results. For example, a regulation requiring developers to install concrete storm sewers in all new subdivisions can have a significantly different cost impact depending on local conditions. In an area of high demand for new housing, this regulation may result in increased costs, providing the regulated standard exceeds that which the market demands. Conversely, in an area with no demand for new housing, the regulation will have no effect. Even in two areas of high demand for new housing, this regulation may have a different impact. For example, in one area where digging the trench in order to install a concrete storm sewer system is relatively straightforward and mechanically simple, the installation will be less expensive than would be the case in an area where digging the trenches presents physical difficulties (e.g., in rock beds).

1.1 ECONOMIC REGULATION OF LAND: RESEARCH DESIGN

In order to survey the breadth and scope of land and building regulations in Canada and, at the same time, provide manageable research projects, four separate but closely related research components were chosen by the Economic Council of Canada.[6] These included:

(1) A Study of the Framework of Federal and Provincial Regulation Concerning Land;

(2) Four Case Studies of the Costs and Benefits of Government Regulation Concerning Land Use, Development and Redevelopment[7];

(3) An Exploratory Study of Building Codes;[8] and

(4) Analysis of the Land Use Controls in the United States[9]

These four components are then integrated into one final summary report.

This paper is the report on the first of these four research components.

1.2 OBJECTIVES OF THIS STUDY

This study has four purposes. First, it provides a catalogue of all federal and provincial statutes and regulations which relate either directly to land or which may directly influence the type or form of land use. Second, it analyzes the implications arising from the division of responsibilities between federal, provincial and local governments, including the nature of the permissive and mandatory powers granted by the provinces to local governments. This division of responsibility determines the framework in which local land regulations are formulated, implemented and administered. Third, this study analyzes the changes which have occurred in the regulations relating to land and building. Finally, it examines those areas of conflict and overlapping jurisdiction between the various levels of government and analyzes their potential impact on the costs of achieving the identified objectives of each level of government.

One point to note is that this study is intended to explore the framework for the regulation of land and buildings. That is, the legal structure that embodies the powers to regulate the use, and change in use, of land resources. To this end, the study examines the various degrees of delegation of authority to local governments that are employed in each of the provinces. In addition, those situations where either the federal or a provincial government directly regulate land and/or buildings will be analyzed. However, the manner in which local governments elect to exercise regulation and the impact of

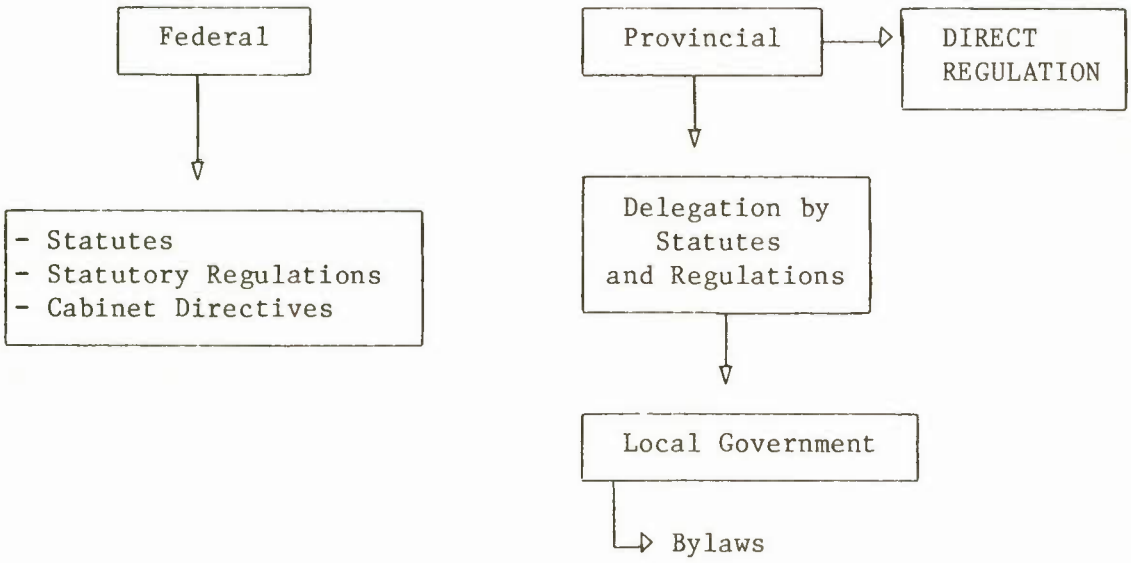
exercising of regulatory powers that have been delegated to local governments are beyond the scope of this study and will form the focus of the case studies in the series.

In attempting to fulfill these purposes, the obvious starting point is to assemble an inventory of statutes which establish the legal framework. In order to establish some criteria for including or exluding statutes, it is first necessary to provide some definitions (i.e. What is meant by "regulation"? What is meant by "land and buildings"?) and to understand something of how the market for land and buildings operates. It is also necessary to identify when regulation of land and building occurs, how it is presently implemented, and who currently regulates. Finally, in order to fully understand how regulation is presently implemented and by whom, it is necessary to consider the constitutional issues in order that the respective roles of each type of government can be understood.

It is emphasized that this study is not a study of the economic impact of regulation of land and buildings; rather it attempts to explore the framework within which the regulation occurs. The legislation which is reviewed in this framework study makes provisions for by-law enactments at the local level, and these by-laws are an important source of the major direct regulation of land and buildings. Due to the multiplicity and variety of local by-laws, it is not possible to study particular by-laws in detail in this report.

In this context, attention is focused on "regulation" which may be found in a variety of sources and execised by various types of government.

CHART 1.2 SOURCES OF REGULATION

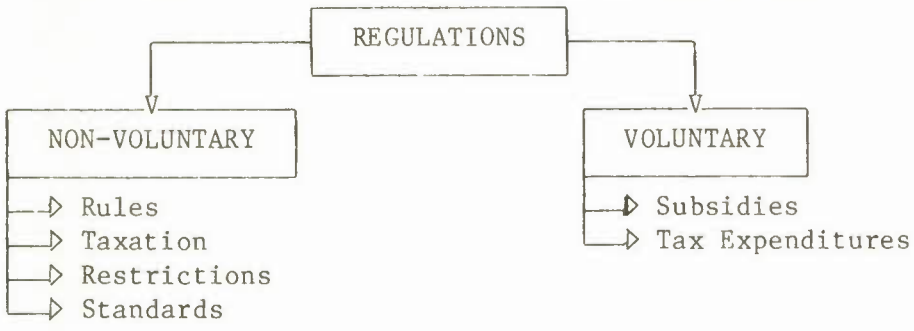


1.3 WHAT IS "REGULATION?"

A review of the literature relating to government regulation indicates that while there is an abundance of written material concerning the administration of regulation and its impact on market behavior, there are few carefully reasoned definitions of the term "regulation" in the context of such studies.[10]

In the broadest sense, regulation can be defined as any activity from outside the market which influences market behavior (Mitnick, 1980). In the present context, government is the important source of outside influence and the focus is to influence economic behavior of the market participants. Therefore, regulation may be defined as the imposition of rules by a government, backed by the use of penalties or subsidies, that are intended specifically to modify economic behavior of individuals or firms in the private market.[11]

CHART 1.3 FORMS OF GOVERNMENT REGULATIONS



Using this definition, regulations which depend upon penalties can be viewed as "non-voluntary" in that private market participants have no freedom to ignore the regulations, whereas regulations backed by subsidies can be viewed as "voluntary" in that they only become effective if and when the private market participant elects to participate. In either case, the regulations still fall outside the private market operation. While one or more individual market participants may choose not to accept subsidies (i.e., not volunteer), if any one participant elects to accept a subsidy, the total market behavior may well be altered.[12]

If regulation is viewed in this context, as comprising both voluntary and non-voluntary elements, then a broader scope of government intervention can and will be identified for analysis in this study. However, before the scope of government intervention is considered, the various elements of this definition should be considered.

Five important points should be noted with respect to this definition of regulation. First, this definition provides for the imposition of rules by any area of government - an important consideration in the study of land use and building code regulation where the local governments play such a major role.

Second, the definition requires the rules are intended to modify economic behavior.[13] In this context, the economic behavior that may be modified could include supply, demand, price, and quality, and in each area some examples can be found of government regulation with respect to land: (a) supply (incentives to builders, restrictions on the number of new subdivisions); (b) demand (subsidized mortgages, income tax provisions regarding "principal residence"); (c) price (rent controls); (d) quality (the health standards, quality of maintenance).[14] In some cases, the regulation may influence two or more aspects of behavior. For example, rent control, designed primarily to influence price (rents), will also influence supply, demand and, in the long run, quality.

Third, it is also noted that economic regulation must be intentional. In the case of land or buildings, this may include the secondary impacts rather than primary impacts of regulation as stated in the pronouncements. In many cases, government regulation is designed to alter behavior in one area, but may have major and known secondary impacts on local land markets; impacts which are intentional. It is important that these secondary impacts be captured in any definition of economic regulation that is intended to apply to land markets. As will be seen later, this is of particular importance to the role of the federal government in the regulation of land markets.

A fourth point to note is that economic regulation consists of activities aimed at the private market. It will not always be possible to limit the analysis to statutes aimed directly at the private sector since it will be necessary to analyze the delegation of authority from one area of government to another, a delegation which will ultimately affect, either directly or indirectly, the private market. For example, the municipal Acts

in the various provinces are not intended to have a direct effect on the private sectors. These acts simply outline the functions and powers of the local governments. However, the limitations contained in the municipal Acts will have a very direct bearing on the nature of economic regulation imposed by municipal governments on the private sector. Therefore, it seems essential to maintain this linkage between the statutes that have a major part to play in establishing the framework for regulation.

The final element in the definition is that economic regulation must be backed by the use of penalties or subsidies. The study is concerned with the de facto legal powers, whether it be in the form of statute, subordinate legislation, by-law, administrative directive, etc., providing they have the force of law to either impose penalties (non-voluntary regulations) or award subsidies (voluntary regulations).[15]

1.4 ALTERNATIVE FORMS OF PUBLIC INTERVENTION

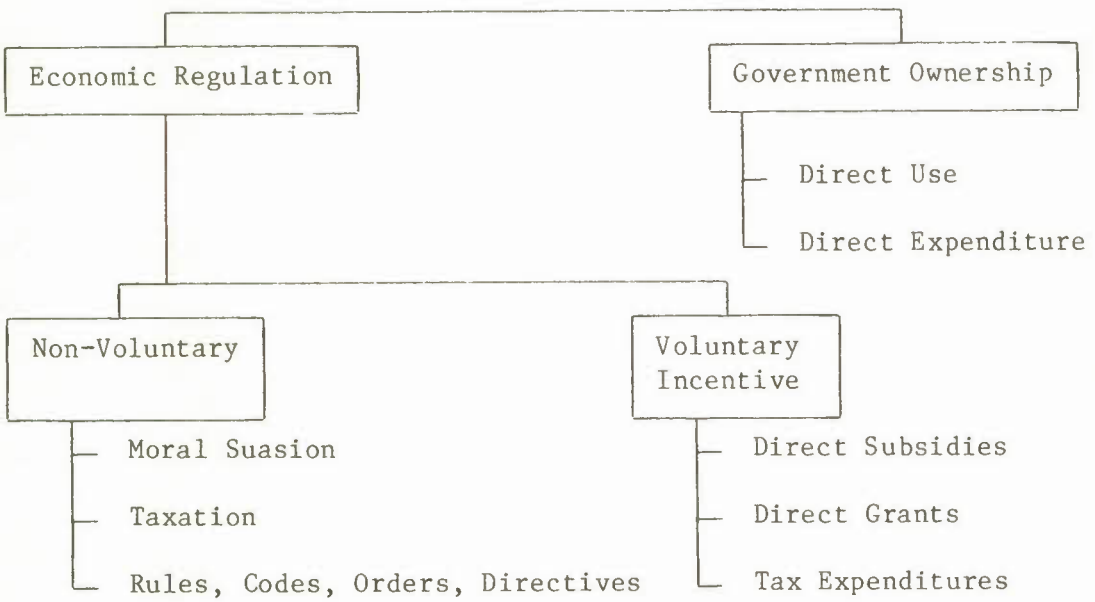
Before proceeding with a discussion of land and buildings, one further point must be covered. Governments use a variety of forms of intervention at any one time (Mitnick, 1980). In some cases the range of instruments is restricted, either by the division of powers as between the federal and provincial governments, or by delegation from the provinces to local governments. But from within the range of instruments available, each area of government may have the option to substitute one instrument for another. Therefore, it is important to understand the range of instruments available to each area of government, the limits on this range (see later section on role of each area of government) and the extent to which governments substitute one instrument for another (see section on current framework).

Priest et al. (1980, p. 20) outlines five categories of government policy instruments, other than those included under their definition of economic regulation.[16] These include: (a) moral suasion (speeches, reports, threats, i.e. immoral suasion); (b) direct expenditure (including grants, subsidies, transfers); (c) taxation (direct or indirect); (d) tax expenditures (reliefs and exemptions); and (e) direct government ownership. To a large extent, the first four categories fall within the definition of economic regulation provided earlier in this paper while the last instrument (government ownership) forms a substitute for economic regulation (Mitnick, 1980 pp. 364-395). For example, it can be shown that some forms of tax incentives (remissions of some taxes) represent non-voluntary economic regulation in that the primary intent is to alter economic behavior in the private sector, applying penalties if necessary. Direct expenditures in the form of grants and subsidies to the private sector and tax expenditures represent forms of "voluntary" economic regulation (Mitnick refers to these as "regulations by incentive" (1980 p. 356)).

If one ignores intergovernmental transfers and government ownership of land, applications in each of the first four categories fall within this broad definition of economic regulation and should be considered as subsets of the more comprehensive definition (see Chart 1.4).

These alternative instruments of government have been and will continue to be used, to various degrees, by each area of government. In order to illustrate the range of use of such instruments as they apply to land, consider the following examples:

CHART 1.4 INSTRUMENTS OF GOVERNMENT INTERVENTION



(a) Moral suasion[17]

- Threat of delays in the approval process
- Threat of "down-zoning" or "re-zoning"
- Threat of expropriation[18]

(b) Direct expenditures[19]

- Grants and susidies to local government to promote the interests of the senior governments; e.g., conditional cash grants subject to approval of new low-cost housing
- Grants-in-lieu of taxes
- Low-interest loans and grants for municipal services
- Grants to house builders
- Grants to house purchasers
- Grants to home owners

(c) Taxation

- Real property taxation
- Land speculation tax[20]
- Land transfer tax[21]
- Tax on foreign ownership of land

(d) Tax Expenditures[22]

- Income tax relief for "principal residences"
- Real property tax relief for owner-occupiers and senior citizens
- Real property tax relief to attract industry (e.g. industrial parks)
- Income tax relief for "tax shelter" property (capital cost allowances)
- Real property tax relief for farmlands

(e) Government Ownership[23]

As only 9.8 percent of all land in Canada is privately owned, government ownership of land can (and often does) play an important role in land markets. Moreover, since the private ownership varies from province to province, the effect of the management of these lands will vary. For example, in Prince Edward Island, 91.4 percent of the land is privately owned (highest) while in Newfoundland only 4.4 percent is privately owned (lowest except Yukon (0.03%) and the Northwest Territories (0.002%)).[24] However, it does not always follow that government-owned lands will be situated in the right location to be used as an effective instrument to achieve the desired market goals. As a consequence, the role of government ownership of land is frequently combined with the use of the power of expropriation to acquire land situated in appropriate locations to promote the achievement of immediate goals.[25]

While this list of examples are not intended to be exhaustive, it does illustrate the importance of the variety of government instruments which influence land - its use, ownership, and development. Frequently, these instruments are substituted one for another, either because of their technical (efficiency) characteristics or because of their political attractiveness. In some cases, the limits on the authority of an area of government may necessitate the use of particular instruments. In any case, the complete range of instruments should be recognized. While it was the original intention of this study to focus on a subset of the non-voluntary regulations (rules, codes and orders), as the study progressed, it became clear that the broader definition of economic regulation had to be considered because of the frequency with which other instruments were substituted by one or more areas of government.

LAND MARKETS

2.0 WHAT IS LAND OWNERSHIP?

It is necessary to offer a definition of "land" and "building" in order to establish the scope and coverage of the regulations that will be reviewed in this paper. At the risk of some legal generalization[1], the owner of a parcel of land is said to own rights with respect to the surface area as described in the legal description of that parcel of land, the air space above the surface insofar as the use of this space is necessary for the proper enjoyment of the surface and the space below the surface.[2] In addition, at common law, the owner of a parcel of land has a right to have his land supported laterally by the land of the surrounding neighbors.[3]

In the strict sense of the word, land excludes those elements of improvement which are man-made. However, improvements, including the infrastructures and buildings, once set in place are married to the land; together these land and improvements are described as real property or realty.[4] It will follow from this definition that in the first instance, the bricks, mortar and lumber which are used to erect buildings, are personal property. However, once they are set in place on a parcel of land, to form a building, they generally come to be known as fixtures, and these fixtures form part of the real property. Hence in the strictest sense of the word, the domain of this paper should be set out in terms of real property rather than land and buildings, since the regulations that are to be investigated do, by necessity, include regulations that will affect developed property as well as undeveloped or raw land. Because of the common use of the term "land regulation" or "land use regulation", the phraseology is continued in this report. It should be noted by the readers, however, that unless otherwise specified, the term

"land" is taken to mean real property, inclusive of all fixtures which remain with the land: land refers to land and all things permanently attached to it.

Throughout this paper, and elsewhere in the literature, reference is made to the concept of "ownership" and "private ownership" of real property. While it is convenient to refer to "the house that I own", (i.e. the physical property), it is frequently misleading to do so. It is not the private ownership of the physical product - land or real property - which is important in our society, but rather the ownership of an abstract entity known as "estates in land" or rights with respect to the use and enjoyment of real property. Under the English common law, there has never been such a thing as the absolute ownership of the physical product - land or real property. What has evolved over time is the notion that we can have private ownership of estates in land.[5] These estates in property include reasonably well-defined legal rights and obligations that may fall within the private sector.

In the Canadian context, it has generally been maintained that the highest "estate in land" or bundle of rights that can be privately owned were represented by a fee simple estate or freehold estate in land. The fundamental limits on the fee simple interest in land with respect to private ownership are the right of the government to expropriate and the right to seize for tax sale purposes.[6] All other constraints and limitations refer to the use and enjoyment of real property. These include the common law provisions, governing trespass[7], negligence[8], and nuisance[9]. Moreover, it is now generally accepted that these private rights of ownership are subject to the general police powers of the government (the right to promote health, safety, peace and good order).

More recently, however, a number of statutes have been introduced which

further curtail the rights of private property ownership. It is these statutes which include forms of non-voluntary economic regulation of the private rights of ownership in real property. For example, under common law, the owner of a fee simple interest in land has the right to use the air space above the parcel of land, a right which originally extended to the heavens above. But more recently, this right has been curtailed by the courts to some "reasonable height". However, if the parcel of land should, perchance, be situated in the flight path adjacent to an airport, then under the Aeronautics Act, R.S.C. 1970, C.A-3, the federal government has the authority to regulate the height of buildings on these particular parcels of land, and this may be done without compensation being paid to the owners.

Consider the possible range of non-voluntary regulations governing the use and enjoyment of lands. Using a single detached house as an example, the regulations may govern:

1) the height of a building;
2) the amount of land (lot) covered by a building;
3) the side-yard set-backs;
4) the minimum house size;
5) minimum lot size;
6) use of the building;
7) number of unrelated adults residing within the building;
8) color of the exterior;
9) location and size of auxiliary building, i.e. garage;
10) height of fences;
11) quality (safety) of construction, electrical, gas, plumbing.
12) the rent chargeable under a lease.
13) the right to sell to foreigners.

These are but a few examples of the regulations which serve to alter or limit the bundle of rights that have been traditionally associated with the ownership, use and enjoyment of private ownership of real property.

In addition to the range of restrictions which apply to ownership, consider the possible "forms of owning a house" which will serve to illustrate the importance of understanding the legal nature of ownership. Individuals may "own a fee simple interest in land", or they may own a "condominium unit in fee simple along with their position as tenants in common in the common areas," or they may own a "prepaid long-term leasehold estate".[10] In each of the three above-mentioned examples, the physical product may be absolutely identical. However, the rights of ownership and the obligations of ownership will vary considerably. The condominium corporation has authority under the various statutes to pass by-laws which may influence the rights of the individual condominium unit owner. Moreover, the condominium unit owner must, as part of the package, become a tenant in common in the common areas, and this carries some rights as well as obligations. At the other extreme, the owner of the prepaid leasehold interest may acquire a bundle of rights similar to the fee simple owner, but these are limited in duration.[11]

From the preceding comments, it is apparent that the private 'owner' of a parcel of land in fee simple is functionally more akin to a long term tenant than an owner in the general sense of the word. The 'landlord' (the Crown) may evict the tenant (the owner) even if the owner has done no wrong (through expropriation), or if the tenant has not paid the 'rent' (taxes) the property may be recovered. Further, the 'owner' can only put the land to approved uses and must develop it in accordance with the Crown's preferences (as expressed in land use and planning controls). About the only major difference between

an owner and a long term tenant is that the 'owner' has not been traditionally restricted in the right to sell the bundle of rights and obligations represented by the fee simple interest to other parties whereas tenants' rights to sub-let or assign leases have been traditionally restricted by the landlord.

The concept of the private ownership of rights and interest in land is further complicated by the changing forms of economic regulation that affect land and buildings. At the time a private individual acquires an interest in land, this ownership is accompanied by some expectations about the rights and obligations that are inherent in the ownership. To the extent that these rights and obligations are changed in some positive way, the private owner is not likely to be concerned. However, to the extent that the rights and obligations are adversely changed at some future date, the private owner will likely raise the question of compensation. While this particular issue will be addressed later in the paper, it is important at this stage to recognize that any attempt to evaluate the impact of economic regulation must, by necessity, begin with the present distribution of rights and obligations with respect to real property. This does not imply that the present distribution of private rights with respect to real property is in any sense ideal. It simply recognizes that individuals acquiring rights and interests in land do so predicated on some expectations of the future. These expectations of the future are determined in large part by the current distribution of rights and the regulations in force at the time title is acquired.

2.1 WHEN REGULATION OCCURS IN REAL PROPERTY MARKETS

At some level of abstraction it is possible to identify three broad stages for regulation of real property to occur: (1) Production stage; (2) Distribution and Merchandising stage; and (3) Consumption stage. In most markets, and for most products, a brief explanation of the nature of the regulations is generally sufficient to describe the particular market which is being regulated. For example, a description of regulations relating to the aeronatic industry would immediately suggest whether it was the airline (travel "service") industry or the airplane construction (capital asset) industry that is under discussion. Since, the participants involved in producing the service (travel) are seldom the same as these in the production capital assets (airplane), hence it is unlikely that any confusion is apt to arise.

In the case of regulation in land markets, a greater degree of confusion is possible since there are three closely related goods: the bare site or lot (capital asset); the developed property (capital asset); and service (shelter accomodation) which frequently involve the same market participants at two or more points. As a consequence, it is often possible that one regulation is designed to regulate a variety of participants involved in the production, merchandising and consumption of either lots, developed property or shelter.

Traditionally the economic regulation of land and buildings, with the exception of some forms of taxation, has generally focused upon situations where private land holders attempt to make changes, either to the legal or

CHART 2.1 CONDITION OF REAL PROPERTY: STOCK OR SERVICE

	CAPITAL ASSET		CONSUMER GOOD
STAGE FOR REGULATION	BARE LOT	DEVELOPED LOT	SERVICE-SHELTER)
Production	Subdivision controls & zoning	Zoning Building Codes	Ownership Use (Zoning)
Distribution	Subdivision & Ownership Controls	Ownership	Ownership
Consumption	Ownership Zoning	Zoning Occupation	Use (Zoning)

physical conditions with respect to their parcels of real property. Moreover, the regulations, once applied, tend to be both passive and restrictive, being applied only at that point in time when the property owner desires to initiate certain changes on the condition of the property or its ownership.

Five major occasions for changes have been subject to government intervention. These include: (a) development; (b) subdivision; (c) building (construction); (d) change in occupation; and (e) change in ownership.

a) Development (Change in the Use of Land)

The term "development" is used in this context to describe either the process of applying manmade improvements to a vacant site or to a rezoning of a site to permit a change in use of the land. As a matter of practice, the term "development" is generally considered to imply improvements beyond the subdivision process but this separation of development from subdivision processes is becoming more and more arbitrary as subdivision regulation extends to include a greater commitment of capital for services.

Development regulations generally become effective at a point in time where some physical change (construction change in land use) to the land occurs, either in the form of initial development or redevelopment.[12] Regulation of development generally takes the form of a "zoning by-law". These zoning by-laws prescribe the permitted uses for each parcel of land. Residential, commercial, industrial are the three basic categories, but these are generally expanded to more and more detailed categories. In addition, density for each parcel of land (in the form of minimum building sizes and/or limits on the number of families per unit); bulk of the building on each site (in the form of side yard requirements, setbacks from the front and rear roads, height limitations and site coverage); off-street parking requirements; and on occasion, landscaping and design standards are prescribed in these by-laws.

While changes in zoning requirements may occur at any time, their impacts in the market only have effect when the private landowner elects to undertake development. Hence the controls are passive and negative in nature.

b) The Subdivision of Land (Change in Legal Description)

Subdivision of land is defined as being the process of dividing a legal parcel of land into two or more separate legal parcels of land or, more precisely, dividing one fee simple interest into two or more fee simple estates.[13] The general concerns raised by the regulating agencies at this stage are to ensure "adequate services", "adequate lot sizes", and to avoid "premature development". This subdivision activity is generally the first phase in the conversion from rural to urban use and always involves some level of capital improvements in the form of roads, streets, water and sewer lines and storm water controls.[14]

Originally subdivision controls were designed to ensure correct surveys and to facilitate title registration. This was accomplished by refusing to permit the sale of subdivided lots which had not been approved. The system evolved to include the regulation of lot sizes and site design, road patterns and sidewalks; services in the form of sewer systems, storm sewers, water; and the dedication of lands for public purposes (e.g. 5-10 percent of land dedicated for public purposes in most provinces).

Initially the capital and operating costs for the major services were borne directly by the municipality. Gradually the costs involved in the subdivision process have shifted from the municipality to the developer. Initially the shift was limited to "on-site" costs for services (e.g. services contained within the property being subdivided). Eventually the shift included both on-site and off-site costs and now includes contributions for an ever increasing range of expenditures, both capital costs and operating costs.

c) Building Construction

The common practice is to treat the regulation of building construction (in the form of building codes, electrical codes, and plumbing codes, all of which relate to structural requirements) as a distinct area of government regulation separate from development controls. One suspects that the reason for keeping building construction codes separate is that these regulations tend to be technical in detail and less obvious to the untrained eye. As a consequence, these building codes or changes in the codes are not apt to evoke the kind of public reaction that generally accompanies major new developments.

The regulation of construction - whether new construction or renovation of existing units - represents one of the oldest areas of government regulation respecting real property.[15] It should be noted, however, that building

code regulations do not apply to existing buildings (unless the statutes expressly declare them to do so which is not the case in Canada). As a consequence this form of regulation is only effective at that point in time when the private land owner elects to undertake some form of new construction or renovation. Once the landowner seeks permission to renovate or build, the current codes become enforceable.[16]

d) Change in Occupation

Regulation of real property can occur in the absence of physical construction or development on the site. The first such general category relates to the change in occupation of existing buildings. All changes in occupation must be consistent with existing current zoning regulations relating to land use.[17] Hence the zoning by-laws generally become instrumental both in cases involving construction (change in use of land) and occupation (change in occupation of existing structures).

e) Transfer of Interests in Land (Change of Ownership)

The final form of change which gives rise to regulation relates to a change in ownership rights. This may involve either a transfer of an entire interest in land or the creation of a new interest in land which is then transferred. Some of the oldest forms of regulation with respect to land pertain to such transfers of ownership rights.[18] These were originally linked to the requirement for a central registry to maintain an inventory of all interests in lands; but more recently the regulations in this area have altered the rights of ownership by regulating the sale to foreigners and non-residents, the leasing of interests (e.g., condominium by-laws limiting rights to lease) and through taxation directed to particular classes of owners (foreigners, non-residents).[19]

There remains two general forms of regulation in use in Canada today which are not necessarily linked to changes in either the physical characteristics or the legal characteristics. The first such set of regulations relate to maintenance and occupation standards.[20] A number of provinces provide authority for local governments to prescribe standards of fitness and safety for buildings for human occupation. These regulations are frequently limited to residential buildings, and generally only apply where someone other than the owner is in occupation.

Enforcement of these occupancy and maintenance regulations is not contingent upon changes but, because of the problems of identification, enforcement generally requires that the occupant lodge a complaint. The recurring costs of inspection are such that these regulations generally are poorly enforced unless either a complaint is filed or the local government has some other reason to inspect properties owned by a particular landlord.[21]

The second area of regulation in the absence of change is that of rent control or rent regulation.[22] In the past decade every province in Canada had some form of rent control, either as part of the general wage and price controls or as a separate instrument of housing policy.[23] The control of rents is not generally contingent upon any change in occupation or new construction and, as such, is in a separate class. The enforcement of rent control provisions is somewhat similar to those for occupation and maintenance standards - they are dependent upon some complaint being filed if they are to be enforced. In fact, enforcement of rent controls and occupation standards are generally closely linked as the empirical evidence from rent controlled communities suggest many controlled landlords reduce maintenance standards in order to prescribe their rates of return in the controlled markets. As a

consequence, the strict enforcement of rent controls generally occasions a greater need for occupation and maintenance standards.

The non-voluntary regulations, except for rent controls and occupancy regulations under the public health requirements, are not applied until such time as a private property owner decides on development, subdivision, or construction upon the land, or a change in the use and occupation of the land, or a change in the legal ownership. Similarly, the benefits arising from voluntary regulations such as subsidies are generally not available until some change occurs, either in the form of new development, construction, change in use or ownership.

Generally, there is visible evidence of activity (except in the case of public health enforcement and rent control), in the real property market before regulations are enforced and the enforcement of regulations is made easier by this fact. It is only the case of public health regulations and rent controls where there is no change in the physical or legal conditions, that presents some difficulty with respect to enforcement. In these latter cases, enforcement generally relies upon complaints by private citizens such as complaints to the city authorities about "excessive rent increases" or "unsafe buildings". However, one can conclude that the need to enforce public health regulations and rent controls on current users merely proves that the other regulations (subdivision, zoning and building regulations) concerning changes in use, ownership and occupation have failed to fully achieve their objectives. The greater the need to enforce occupation and rent regulations, the greater the failure of the other forms of regulations.

The fact that the majority of the regulations with respect to real property are applicable only at the time when physical or legal changes occur,

either with the property or its occupation, coupled with the fact that real property is an extremely durable asset, implies that the majority of existing properties at any given moment of time will not necessarily conform to the current regulations. For example, in the residential sector, new housing starts amount to approximately three percent of the inventory of housing units in any given year.[24] Hence, new regulations passed today will influence only the small fraction of the total housing inventory one year hence. Thus, the total impact of changes in the regulations will only become visible over long periods of time, a fact that often leads to conclusions about the lack of effectiveness of regulations to achieve policy goals.

The durability of real property and the application of regulations at the time changes occur has one other important consequence. The cumulative history of regulations from the past regulations requiring a grid pattern of subdivision with uniform lot size and patterns of intrastructure today inhibit new forms of subdivision design. Even in those provinces which provide for easy replotting (reverse of subdivision), the physical patterns of roads and services generally limit all new developments to conform to existing transportation and service networks. To the extent that society's ideal community design changes, these cumulative decisions from the past make it more difficult to achieve the goals of today.

REAL PROPERTY REGULATION TODAY

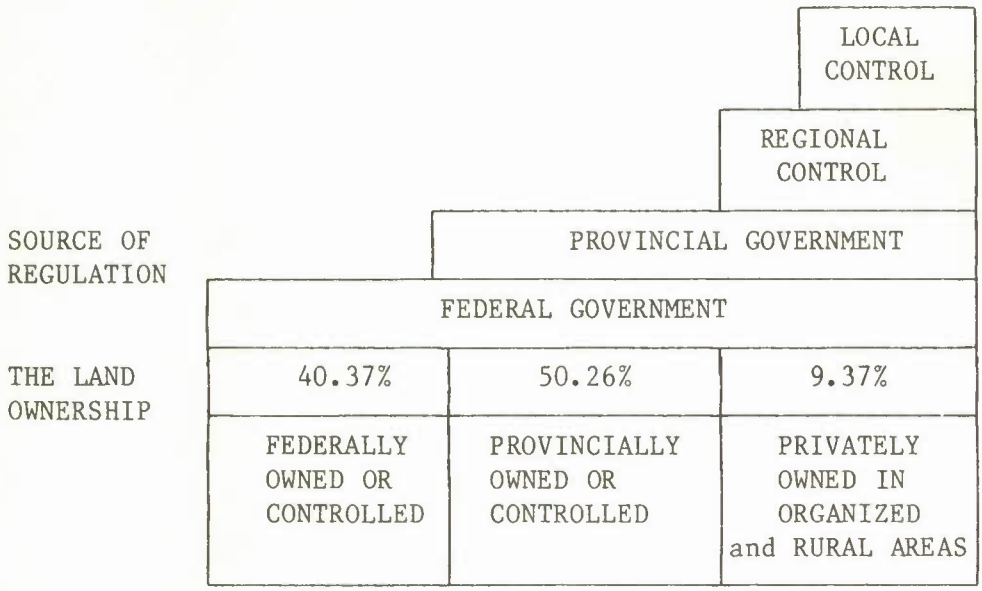
3.0 INTRODUCTION

The purpose of this section of the study is to describe the present situation with respect to real property regulations - the source and nature of current regulations. It was noted earlier that the markets for real property are local in nature, due in large part to the immobility of real property and, as a consequence, one expects the major sources of regulation to be also local in nature. This is generally found to be the case, subject to some constitutional considerations and excepting those situations where the local area of government is inconsistent with local real property markets (i.e., in urban areas where the provincial government has intervened).

Chart 3.1 illustrates the sources of regulation as they apply to privately owned lands in Canada. It should be noted that all sources of regulations potentially apply to privately owned lands in organized territory, while all sources, except local government, regulations apply to privately owned lands in unorganized (rural) territory[1]. As a consequence, privately owned lands are potentially subject to regulations from four areas of government and, within each area of government, these regulations may arise from many separate agencies and departments[2]. On the other hand, over 90 percent of the lands in Canada (publicly owned) are subject to regulations from only one or two areas of government, either the federal or provincial governments.[3]

While the local nature of real property markets suggests the major source of regulations should be local in nature, the authority to regulate

CHART 3.1 SOURCES OF REGULATION IN CANADA



land in Canada is constrained by the existing constitutional arrangements. Generally these constitutional arrangements have the effect of limiting the range of regulatory instruments available to a specific area of government (i.e. they may restrict the use of non-voluntary regulation but they do not limit the use of voluntary regulations). As a consequence, in order to fully understand the selection of regulatory tools, it is first necessary to understand the constitutional constraints.

3.1 CONSTITUTIONAL AUTHORITY TO REGULATE REAL PROPERTY

The British North America Act 1867, a statute of the Parliament of the United Kingdom, is the main document allocating the legislative powers in Canada between the federal parliament and the provincial legislatures. The preamble to this Act states that the founding provinces desired a constitution "similar in principle to that of the United Kingdom". While this preamble has

no legal status in Canada - unlike the United States where the preamble is an integral part of a statute - its intent is captured elsewhere in the Act which provides that all legislative power resides with some Canadian legislative body, either provincial or federal.[4]

The British North America Act, under section 92, grants the provincial legislatures control over almost all lands within the province. The Act states:

> 92. In each Province the Legislature may exclusively make laws in relation to Matters coming within the Classes of Subjects next herewithin enumerated; that is to say ...
> (8) Municipal Institutions in the Province ...
> (10) Local Works and Undertakings, other than such as are of the following classes ...
> (13) Property and Civil Rights in the Province ...
> (16) Generally all matters of a merely local or private nature in the Province.

Section 92 of the Act (particularly 92(13) on "Property Rights") appears to provide the provincial legislatures with exclusive control of most real property matters, an observation frequently supported in practice and in law.[5] However, the exclusive nature of this control generally applies to laws which are in the form of non-voluntary regulations respecting real property. As will be seen later in this section of the study, the federal government is also granted important areas of exclusive control, but not specifically for real property markets.[6] The interpretation and exercising of their areas of exclusive control are sources of potential conflict between the various areas of government.[7]

Potential conflicts between the two senior areas of government occur either in those cases where the exercising of their exclusive jurisdiction create conflicting reactions in the market or where the Act has not provided a

clear separation of responsibilities and the two levels of government each seek to exercise control.[8] Since the federal government has no expressed authority to exercise non-voluntary regulation of privately owned lands, its influence over real property may arise either incidental to the exercise of other powers or through the use of voluntary regulations aimed specifically at the real property market[9]. These activities often give rise to conflicts with provincial regulations.

The B.N.A. Act also granted the provincial legislatures exclusive authority over "municipal institutions in the Province".[10] The provinces originally delegated powers and authority to their municipalities through special statutes (and prior to that by royal charters), but the common practice today is to use a general act, commonly called the Municipal Act.[11] While the B.N.A. Act specifically mentions only municipalities, all provinces in Canada presently provide for some form of regional or multi-municipal governments, a form of local governments which extend beyond the legal boundaries of an individual single municipality.[12] Presently it is sufficient to note that two forms of local government - municipal and regional - may exist and in both cases these are creations of the provincial legislation.

How the local governments obtain their power is generally less important than the nature and extent of the powers they obtain. The sharing of power between the provinces and their local governments is a matter of considerable controversy: on the one hand, local governments seek greater autonomy and fiscal independence, while on the other hand, the provinces seek to maintain a degree of control to ensure the "broader good is served". In commenting on the debate concerning the allocation between provincial and municipal governments, the Alberta Land Use Form (1976, p.50) noted:

> The role of the municipal governments in relation to the provincial governments has been the subject of much debate and many studies have been made in this area. ... from our studies we derived two principles that we feel should be kept in mind when provincial - muncipal relations are being considered:
> (1) Policy and administrative decisions should be made as far as possible at the municipal level, rather than at the provincial level. At the provincial level should be made those broad decisions that affect more than one municipality and are of significance to the province as a whole.
> (2) The provincial government needs to clearly define the role of the municipalies and give them sufficient legal authority to carry out their responsibilities and sufficient fiscal authority to raise the necessary funds to meet their needs.

(In the next section of this paper we shall examine the nature and extent of local powers for the regulation of real property.)

At this point it is sufficient to note that local governments are creatures of the province and, as such, their powers are limited to those delegated to them by their "parents" by way of statutes. In exercising their delegated authority, local governments pass by-laws which can be challenged by other areas of government or by private citizens either on the basis that the local government had no authority to enact such by-laws or on procedural grounds.[13]

3.2 CONSTITUTIONAL LIMITATIONS

It is important at this point to comment on the constitutional limitations which exist in Canada, particularly on how they differ from the United States from whence Canada borrowed many real property regulatory ideas. Under the provisions of the B.N.A. Act, all legislative power resides within some Canadian legislative body (except the B.N.A. Act itself). Therefore it follows that in Canada either the federal parliament or provincial legislatures has an absolute right to make laws and, if these laws are challenged on constitutional grounds, it can only be argued that the law should have been

enacted by the other area of government. There is no basis for arguing that a particular type of legislation is outside the authority of both the federal and provincial legislatures (although it could be argued that legislation which affects the distribution of powers in the B.N.A. Act requires the unanimous consent of the federal and provincial legislatures).

In contrast to the Canadian situation, laws passed in the United States, either by the federal government or state legislatures, can be challenged on the constitutional grounds that neither area of government has the authority to pass such laws.[14] With respect to land law, the basis for the constitutional challenges are generally found in the Fifth and Fourteenth Amendments which provide, in part, that "...nor shall any state deprive any person of life, liberty or property without due process of law...."[15] The courts in the United States traditionally play a much larger role as adjudicator of such constitutional issues than is typical in Canada.

These constitutional provisions in the United States serve to explain how the non-voluntary regulation of real property is structured in order to get around the Fifth and Fourteenth Amendments of the Constitution.[16] The non-voluntary regulation of privately owned land in the United States is only possible if the regulations are held to be a valid exercise of the "police power".[17]

The differences in the Constitutional arrangements between Canada and the United States have resulted in quite different forms of regulation of real property. In Canada, the legislature is supreme and one of the two areas of government has the capacity to pass any statute (or by delegation this power can be exercised at the local level in the form of by-laws). As a consequence, most non-voluntary real property regulations are simply local by-laws

qualified by some descriptive adjective (i.e., zoning by-law, development by-law, building code by-law). The challenge to these regulations - if any challenge exists - is that the wrong area of government enacted the regulation.

It should be noted, however, that local by-laws can (and often are) challenged on the basis that the local government does not have the authority to pass such by-laws. The courts have taken the position that a local government can only exercise such authority as is specifically and expressly granted through some statute.[18]

In contrast, real property regulations in the United States can be challenged on the grounds that no area of government has the constitutional right to enact particular legislation. As a consequence, governments in Canada can and do exercise a greater array of regulatory techniques than is the case in the United States, although it does not follow that regulations of real property are necessarily more ominous in Canada.[19]

3.3 SOURCES OF LOCAL AUTHORITY OVER REALTY: PROVINCIAL - LOCAL SHARING

In order to identify the local and provincial real property regulations, the first task at hand is to undertake a compilation and analysis of the provincial statutes which, in one way or another, provide for the regulation of realty. Without an up-to-date and comprehensive inventory it would be impossible to identify and analyze the interplay between the provincial and local governments and the public. In the first phase of the investigation, the broadest possible inventory of provincial statutes was used (Appendix I).

Each statute in force in 1978, for each province, was reviewed. (By way of illustration, this necessitated the searching of 92 statutes in British Columbia and 107 statutes in Ontario). Where there was reference, either in the form of direct non-voluntary economic regulation of real property or in the form of the delegation of authority to some other body to regulate real property, the statute was included in the count. This provided the broadest possible inventory. This inventory provides one indication of the vast web of regulation throughout the various provinces. By including all statutes that provide, either directly or indirectly, for the regulation of some element of real property, some indication of the potential for conflict between the various enforcement authorities is also identified.

The use of this broad definition of regulatory statute serves yet another purpose in the context of this paper. The range of statutes in which one can find some reference to the regulation of realty provides some indication of the potential complexity of the task facing an individual who is about to undertake such activities as subdivision, development, construction, or change in use and ownership of privately held lands. While the full range of these statutes will not necessarily come to bear on any individual parcel of land, their very existence represents a potential for regulatory intervention.[20]

The results of this broad search are summarized in Table 3.1. The number of statutes which contain one or more sections pertaining to the regulation of real property (the broad definition) are classified by province and processes (development, subdivision, building codes, changes in land use and change in land ownership).

Several general points should be kept in mind in analyzing the data in Table 3.1. In the first instance, a number of statutes overlap between the various categories. For example, a condominium Act may appear under the heading of "subdivision", under the heading of "land development", and under the heading "change of use of land". Therefore it is not possible to simply sum the statutes under these five categories to obtain a global picture for any individual province. It should also be noted that it is not practical to eliminate this duplication and provide a total count since each province has adopted a different process in expressing their regulatory activities.

Caution should be exercised in making comparisons between the provinces since the practices adopted by the various provinces make such interprovincial comparisons hazardous, to say the least. In some provinces, the practice has been to adopt a general statute and handle the specifics in the form of subordinate legislation, while in other provinces they have adopted individual statutes to take care of select areas of regulatory activity.

In an effort to provide some further insight into the range of provincial statutes that will serve to establish the scope of regulation affecting realty, either directly or indirectly, a narrower definition of regulatory statutes was adopted. It excludes from the catalogue any statute which has applicability only to a single land use, a single site or a single product. For example, in the Province of Alberta, the Amusements Act R.S.A. 1970, c.18, was included in the broad definition but has been excluded in this narrower definition. The justification for including the Amusements Act in the broad definition was the clause in the Act that provides for the regulation of the physical standards of theatres. However, since this Act applies to only one land use, it has been excluded from the narrower definition adopted.

The numbers in Table 3.1 contained in the parentheses indicate the number of statutes which fall within this narrower definition. One further problem associated with identifying regulatory provisions arises because of the variety of statutes which have the same general theme. While it may seem more appropriate to consider the various local services Acts and the municipal Acts as substitutes (the former to apply in unorganized territory and the latter to apply in organized territory), they are both included in the inventory for two reasons. First, the various provisions which influence real property are not identical under the two statutes, and these differences are of some consequence in the market place. Second, one form of statute (the local service Act) is under direct provincial controls while the other (the municipal Act) provides for indirect (delegated) controls. Since the purpose in this study is to consider the full range of regulations which, from the point of view of the private ownership sector, may alter economic behavior, the broadest inventory is assembled. In this context, a particular section found in some obscure statute is assigned the same weight as a full statute if the effect is to alter economic behavior of private owners with respect to realty.

The selection of Acts used in the inventory assembled for this paper, is found by posing the question: "If a private land owner wishing to develop, subdivide, build, occupy land or transfer ownership were to rely on this list, would the individual be in a position to comprehend the full range of requirements with respect to the action about to be undertaken?" This alone would appear to justify the adoption of the somewhat more general definition for inclusion in the inventory. The implications of such a decision are illustrated in Appendix III which contains a comprehensive summary of provincial subdivision legislation.

TABLE 3.1

PROVINCIAL STATUTES REGULATING LAND, 1979

Province	Subdivision	Development	Building Codes	Use of Realty	Change in Ownership
Alberta	4(3)*	20(10)	25(13)	22(9)	3(3)
British Columbia	7(7)	9(5)	13(6)	28(9)	3(3)
Manitoba	5(5)	19(10)	5(5)	21(8)	4(4)
New Brunswick	3(3)	16(10)	3(3)	10(7)	3(3)
Newfoundland	2(2)	24(12)	30(11)	26(11)	3(3)
Nova Scotia	2(2)	25(1)	25(10)	23(9)	3(3)
Ontario	4(4)	35(11)	18(7)	34(9)	5(3)
PEI	2(1)	11(6)	13(8)	20(8)	2(2)
Quebec	10(7)	20(8)	19(12)	29(13)	2(2)
Saskatchewan	7(7)	29(9)	27(10)	31(11)	4(4)
TOTALS	46(43)	189(82)	252(97)	254(86)	31(30)

SOURCE: Appendix I

The first count represents a broad definition of statutes which include provisions for the economic regulation of realty. For example, in Alberta, the Amusements Act is included because of the reference to physical standards in theaters, etc. This Act is excluded from the count in parentheses, which includes only statutes which have a general applicability beyond a single use, single site or single product (the narrower definition) of an economic regulation.

Statutory Instruments (Regulations)

In addition to the provincial statutes discussed in the previous section, economic regulation may also take the form of subordinate legislation such as orders-in-council and by-laws. An attempt was made to establish a current inventory of such provincial statutory instruments providing they were created under the statutes that were included in Table 3.1, however no attempt was made to provide an inventory of local by-laws enacted under these statutes.

Some considerable difficulties were encountered in identifying the subordinate legislation for the various provinces. In some cases the provinces maintained a convenient annual or cumulative index, while in other provinces it was necessary to attempt to search the gazettes in order to obtain some reasonable count of the number of new regulations under each of the various statutes.

While the results do not represent all subordinate legislation in the sense of completeness or uniformity, they nevertheless provide some indication of the extent to which the subordinate legislation is used (Table 3.2). Only three provinces presented considerable difficulties in terms of data collection. These included Nova Scotia, Prince Edward Island (for 1978 and for the early years) and Newfoundland.

A number of other minor difficulties were encountered in collecting these data and presenting them in some kind of systematic form. In some provinces a cross-index was available such that one could compare the new regulation with previous regulations under the same section of the various statutes. As a consequence, in the provinces of Ontario and Quebec, it was possible to separate those regulations which were new in any given year from

TABLE 3.2

STATUTORY INSTRUMENTS UNDER THE BROAD DEFINITION OF LAND REGULATION FRAMEWORK STATUTES(a)

	New Regulations in 1978	New Regulations in 1977	New Regulations in 1965
Alberta	127	103	31
British Columbia	108	78	8
Manitoba	29	57	6
New Brunswick	39	36	15
Newfoundland(b)	135	n/a	n/a
Nova Scotia	n/a	n/a	n/a
Ontario	97(235)(c)	84(276)	22(52)
PEI	n/a	10	n/a
Quebec	178(26)(c)	69(9)	2
Saskatchewan	120	139	114

(a) SOURCE: Appendix I for statutes and Appendix II for full explanations as to sources and limitations.
(b) Includes regulations filed as of July 20, 1979. Any regulations not filed as of this date were not effective.
(c) Numbers in brackets refer to amendments to existing regulations.

those which represented an amendment to an existing regulation. Unfortunately, the same information was not readily available in all provinces.

While one must be cautioned against attaching too great a significance to the particular numbers, the trend seems obvious. The statutory instruments are becoming a more commonly used vehicle, and anyone attempting to subdivide, to develop or use real property would, by necessity, be forced to become familiar with the content of some or all of these statutory instruments. While it is obvious that the use of regulations has increased since 1965, and the increase is significant, some care should be assigned to these numbers since the quality and accuracy of the various

provincial records differ so greatly. Moreover, not all provinces required the registration of regulations, hence the compilation in some provinces depended entirely upon finding references in the weekly gazettes. Hence, in addition to the broad range of statutes that must be searched by private citizens (or their lawyers) wishing to participate in the land market, one encounters - backing up these statutes - an ever-growing array of subordinate statutory instruments.

3.4 LOCAL GOVERNMENT REGULATION: DELEGATED AUTHORITY TO REGULATE REAL PROPERTY

3.4.1 PLANNING

The compilation of statutes and subordinate legislation illustrates the range of sources for potential regulations of real property. This compilation does not, however, indicate which area of government is apt to exercise the regulations. While it is clear that the role of local government is subordinate to the provincial role, each province has historically provided its local governments with broad powers to regulate real property situated within municipal boundaries.

The delegated authority to regulate local real property markets is generally set out in two major provincial statutes and a multitude of lesser ones. The two main statutes are the various municipal Acts and planning Acts. In all provinces, except British Columbia and Quebec, the main provisions specifically authorizing local regulation of real property are found in some statute using the term "planning Act". In British Columbia the similar authority is found in its municipal acts, although a new planning Act is presently being debated.[21]

The general allocation of authority that has evolved in Canada is to provide local government with some power or authority to "plan" - to regulate the use and development of land (see, for example, Tindal and Tindal, 1979). The objective of these provisions is perhaps best described in the Manitoba Planning Act S.M. 175, c.29, which states that the purpose of planning is "to secure suitable provision for vehicular and pedestrian traffic, proper sanitary conditions, public safety, general well-being, amenity and convenience in connection with the laying out of subdivisions, streets, roads and the use and development of land and of any neighboring lands for building or other purposes" (s. 13). In Saskatchewan, the objective of local government planning is to "provide direction of the future physical development and improvement of the municipality" (The Planning and Development Act, R.S.S. 1978, c.P-3, s.21). In Ontario the objectives of planning are more generally stated as to "secure the health, safety, convenience or welfare of the inhabitants" (The Planning Act, R.S.O. 1970, c. 349, s.1(h)).

The general process which appears to have been adopted throughout Canada (and the United States) is basically to grant local government the authority to plan. As a first step, the appropriate local authority would plan - a process which might eventually culminate in the preparation of a community plan. This community plan is variously known as the master plan (Quebec); the official plan (Ontario, Prince Edward Island); the municipal plan (New Brunswick and Newfoundland); the municipal development plan (Nova Scotia and Saskatchewan); the development plan (Manitoba); the official community plan (British Columbia); and the general municipal plan (Alberta).[22]

The community plan is then to be implemented using regulations to govern development, subdivision, building construction, land use and ownership

of real property. Authority to implement the community plan generally comes from the delegated authority to pass zoning by-laws, subdivision by-laws, building code by-laws and occupation codes.

The provinces in Canada exhibit considerable diversity in the particulars of the planning authority granted to local governments, both in terms of the process by which local governments are to undertake planning and the methods made available to implement the plans once they are adopted.

Since the delegation of authority to regulate realty at the local level is designed to start with the development of a community plan, some general observations concerning these plans need be made. In the first instance, it should be noted that preparation and adoption of a local plan is generally not mandatory unless such preparation is specifically required by Ministerial order or required under a regional plan (Table 3.3). Only Alberta has a general requirement for the mandatory preparation of a master plan but then only in municipalities with a population in excess of 10,000.[23] Five provinces have a provision for mandatory planning under Ministerial orders while two provinces have provision for mandatory local plans if required by the regional plan.

The common current practice is to not adopt an official community plan but rather to adopt a general planning policy statement or set of policies to serve as an unofficial guide to future growth and development.[24] There are a number of reasons why a local government may elect not to officially adopt a community plan.[25] In the first place the legal effect of community plans are limiting and restrictive. Once adopted, a master plan is binding on both the private landowners and the public sector.[26] Local governments cannot permit any activities which are inconsistent with the official plan nor can local

governments initiate any development which is inconsistent with the plan, unless the plan is first amended.

Not only is the community plan, once adopted, binding on the local government, the courts have taken a rather strict interpretation and will not permit variations from the plan without a formal amendment to the plan (strict construction).

A further difficulty is the inconvenience of amending a community plan once adopted. In general the process of amending is as complex and time consuming as the process whereby the plan is initially adopted.

Municipalities generally may adopt zoning by-laws, subdivision by-laws and building by-laws (the regulatory tools) without first adopting a community plan; as a consequence, a local government can utilize the regulatory instruments without being bound by the rigidity of an official plan.[27]

Given that the preparation and adoption of an official plan is not a mandatory step in the regulation process, it remains to determine who decides if a community plan is to be prepared and adopted. In every province, except Newfoundland, the process of formulating the plan and the process of adoption are separate. In nine provinces, some provision (which varies considerably) exists for the appointment of a planning board (joint planning board, planning advisory board, planning board, town planning commission, etc.) which is a lay board whose function is to prepare plans and advise the municipal councils on planning matters. These planning boards are thought to be a desirable means of removing planning from the day to day political considerations.[28]

As a general practice, the various planning commissions tend to play a minor (and declining) role in local government (See Roger, 1975 and Adamson, 1973). The planning boards and commissions are generally appointed by local

TABLE 3.3

REQUIREMENTS FOR THE PREPARATION OF LOCAL PLANS

Province	Mandatory Preparation of Local Plan	Mandatory by Ministerial Order?	Mandatory if Required Under Regional Plan?
Newfoundland	No	No	No
Nova Scotia			
New Brunswick	No	Yes	Yes
P.E.I.			
Quebec	No Unless an "urban community"	No	No
Ontario	No	Yes if planning board appointed by Treasurer	No regional plan includes local plans
Manitoba	No	Yes	No
Saskatchewan	No	Yes	No
Alberta	Yes if town 1,000 if mun. 10,000 (1977)	No	No
British Columbia	No	No	No

SOURCE: Field research

councils, have no independent funds other than those granted by the municipal councils and serve in an almost exclusively advisory capacity. Municipal councils are not bound by the plans prepared by the planning boards, nor is it necessary that such plans be adopted.[29] As a rule the planning board will normally only initiate the preparation of a plan upon the request of a local council; but in some cases the Minister may require the planning commission to act. Only in Ontario and Prince Edward Island do planning boards have the right (and duty) to initiate the preparation of a plan without reference to municipal council.[30] (In Alberta the regional planning commissioners have a duty to adopt regional plans. Similar provisions exist at the regional level in Ontario and Quebec).[31]

Adoption of Master Plans

The final responsibility (at the local level) and authority for the adoption of a plan is, in every province, left to the municipal council. (In unorganized territory this is either a regional or provincial matter). The municipal council may adopt, amend or reject a plan proposed by a planning commission or its own professional staff. Only in Ontario and Prince Edward Island is it necessary that a plan be first recommended by a planning board before the local council may adopt it. In all other provinces the municipal council may adopt a plan without it being recommended by the planning board.

Prior to adoption, provision is made for public hearings to obtain the participation of local residents. While public hearings prior to adoption are not always mandatory, as a matter of practice they occur at either the plan preparation stage or through public council meetings.[32] The procedure in Ontario, Manitoba and British Columbia do not require a hearing at the council

council level prior to the adoption of a plan. However, in Ontario and Manitoba, citizens have a right to comment at the provincial level prior to provincial approval of the plan.

The procedures for public hearings are of some significance for two reasons. First, the public hearings are the first major opportunity for public participation in the planning process. While other opportunities may arise at the zoning and development stages, these are generally for quite specific areas rather than the community overall. Second, developers have complained that public participation is increasing and, as a consequence, approval times are expanding.[33] Given the rather permissive nature of provincial authority to hold public hearings, it is quite clear that any delays occasioned by such hearings are almost entirely a result of local decisions (except Manitoba and Ontario which have compulsory public hearings at the provincial level).

While it remains with the municipal government to adopt local plans, before the plan comes into force, it must generally also have the approval of the provincial planning authority designated in the statutes. Provincial approval of local plans is not mandatory in British Columbia, Alberta, Quebec and New Brunswick. However, in Alberta, provincial approval is required for regional plans[34] and in British Columbia, if the Minister believes a plan is contrary to public interest, he can direct that it be amended.[35] In the remaining provinces, provincial approval of local plans is mandatory prior to the plan coming into force. Approval is either by the Minister of Municipal Affairs or the provincial Land Use Commission (Prince Edward Island). In Manitoba the approving officer is the provincial cabinet (and not only is provincial approval required for the plan, it is also required prior to the

preparation of the local plan). As a general rule, the provincial approval provides an opportunity for the provincial authorities (generally a number of separate ministries) to ensure that the plan conforms with other provincial policies and follows good planning principles. This review is intended to raise the decision above the level of local politics and local self-interest. The various statutes in the six provinces which provide for mandatory provincial approval appear to provide provincial authorities with fairly broad grounds for rejecting a local plan.[36]

Planning Area

Given that planning is a critical function at the local level, it is important to identify the territorial scope of such planning activities. In most cases the scope of the plan is proposed, in the first instance, by the local council and then must be approved by the provincial governments. Generally the planning area comprises an entire municipality but increasingly there are planning areas which are larger than a single municipality (regional or joint planning areas).

In Saskatchewan, British Columbia and Nova Scotia, the Minister (or regional planning authority) may designate all or part of a municipality as the planning area; in Ontario and Newfoundland the Minister defines the area and it may include land outside the municipality which forms part of the "local realty market"; the Minister defines the planning area in Prince Edward Island; in New Brunswick and in Quebec the municipality is the planning area; in Manitoba the planning area may include land in neighborhood municipalities; and in Alberta the planning area may include land in more than one municipality if agreed to by each municipality or required by the Minister.[37] These

provisions for identifying a planning area recognize that local municipal boundries are seldom suitable planning areas since they infrequently correspond to local realty market boundaries. To solve this problem, provinces have either authorized local governments to voluntarily form joint planning areas (and most provinces permit this activity but it mostly occurs in metropolitan areas) or have implemented regional planning. The joint planning areas need not necessarily correspond to a particular market area since there is no logical reason to believe two or more municipalities will represent a logical real property market area. Moreover, since joint planning areas are generally a permissive and voluntary activity, their use depends entirely upon the willingness of two or more local governments to give up some local autonomy.

This second level of local planning is permitted in all provinces, either in the form of joint planning areas (voluntary) or regional government (involuntary at the local level). British Columbia has provided leadership in the use of provincially determined regional planning areas (including regional planning boards) and provides for both regional plans and local plans.[38] Two-plan systems are also permitted by statute in Ontario, New Brunswick and Prince Edward Island. Newfoundland provides for three-level planning (local, joint and regional) and it is possible for all three to exist simultaneously and the boundaries not to conform to those of a single municipality.

The important point to note is that the use of some form of extra territorial planning is on the increase and, at least in British Columbia, the regional planning authority has planning jurisdiction over the entire region.[39] These regional planning powers have come at the expense of local autonomy since the regional plans are, in all cases, paramount in the event of conflict with local plans.

Summary: Planning Authority

This brief review of the various provincial planning schemes indicates clearly that planning, as it applies to real property, is a local matter, but subject to some overall monitoring at the provincial level. In all cases but one, the development of a community plan is permissive at the local level. Since in all provinces the instruments to implement the plan may be used in the absence of an official community plan, there is little incentive for a local government to constrain itself by adopting an official plan. This explains in part why local governments have been slow in adopting official community plans. In 1949, Spence-Sales (P.110) observed that only 58 municipalities in Canada had actually adopted plans and a further 21 municipalities had them under consideration.

Another factor contributing to the slow process of adopting community plans has been the lack of skilled planners. As late as 1943, only one municipality in Ontario (Toronto) had a full time town planner on staff. Edmonton and Calgary did not have full time town planners until 1949 and 1951.[40]

Not only have the municipalities been slow in adopting official plans, but once adopted the plans are generally brief, vague and often fall short of the legislative intent of providing an operational guide for future development. Milner (1975, p. 1125) observes that plans in force in Ontario were "primitive and crude in form and content". The plans in force did little other than establish areas in a municipality for three or four simple zoning categories. Since the provincial statutes are reasonably vague as to the content of the plans, local governments have opted to keep plans vague and subject to local interpretation. The consequence of the slow adoption rate for official plans at the local level and the lack of detail in the plans

adopted has served to increase the level of uncertainty within the local real estate areas.

However, since the community plans have no practical effect unless they become implemented in some form of by-laws, some clearer ideas of the intent of local government can be obtained by examining the various by-laws, in particular the zoning, subdivision and building by-laws. While it is convenient to maintain separate classifications for zoning, subdivision and development (mainly building and zoning) by-laws, in practice the separation of these by-laws will seldom be so clear.[41] Some municipalities, especially those facing substantial new subdivision applications will rely heavily upon subdivision by-laws as the principal means of regulating real property. Other communities (older, central communities) may have little subdivision activity but extensive development and redevelopment. In these cases some form of development controls form the major part of the regulatory system. Hence reliance upon one system or another of by-laws may well be dictated by local circumstances, particularly the degree to which the community has already been developed. Therefore it will not be surprising that in any one local community, at any given point in time, either the subdivision or the development by-laws will be more fully developed and utilized as the main regulatory device.

3.4.2 SUBDIVISION REGULATIONS

Subdivision is defined as the process of dividing a legal parcel of land into two or more separate legal parcels of land.[42] Milner (1965, p. 49) states:

> When a piece of land described in a deed or other evidence of title is divided into two or more pieces of land separately described on one or more deeds, the large piece is said to have been subdivided... For many years now this process has been seized upon by governments as the appropriate point to impose a system of control...

Prior to the introduction of condominium legislation, subdivision regulation (by-laws) were almost exclusively limited to the division of one fee simple interest into two or more fee simple interests. With the introduction of condominium legislation, subdivision regulations have generally been extended to include the conversion of one fee simple interest in land to two or more condominium units.[43]

In addition to the division of one legal interest, the subdivision process also involves the commitment of some capital improvements to the land. In every province, at the present time, some investment of capital by the land owner is required in the form of roads, services or dedications of land for public purposes as a condition of subdivision approval.

Control over subdivision varies from province to province but the provincial systems can generally be categorized as being exclusively municipally controlled, mainly municipal control subject to provincial supervision or largely under direct provincial control. Most provinces regard the subdivision process as a purely local matter and opt for local control with general provincial supervision.

Table 3.4 summarizes the current nature of the subdivision control practices in the various provinces. (A detailed description of the various provincial subdivision practices is contained in Appendix III).

In British Columbia, Quebec and Newfoundland, the subdivision control is the responsibility of the local council. In Newfoundland the Minister

TABLE 3.4

SUMMARY - SUBDIVISION AUTHORITIES

	INITIAL APPROVAL	
System 1	Largely Local Control	British Columbia Newfoundland Quebec
System 2	Lieutenant Governor in Council sets up the system (broad powers) Board or Minister adds regulations Local does specifics and carries out	Alberta Saskatchewan New Brunswick Nova Scotia
System 3	Same as System 2 but with appeal from decision to Board or Minister	Manitoba (except Winnipeg which is local control) Prince Edward Island
System 4	Large provincial role	Ontario

must approve the subdivision bylaws designed by the Council; in Quebec and British Columbia no Ministerial approval is required prior to the passing of local subdivision bylaws.[44] At the other extreme, Ontario requires that all plans of subdivision must be first approved by the Minister, although the Minister may confer with officials at the local level. In Ontario, both the applicant and the Minister have the right to refer an application concerning subdivision bylaws to the Ontario Municipal Board for a decision.[45]

The remaining provinces fall somewhere between these two extremes. In Nova Scotia, the Minister establishes two sets of model regulations; one part

is mandatory for all subdivisions in the Province and one part is permissive at the local discretion. In New Brunswick, certain guidelines for subdivision regulation are set out in the Act and the remaining details are left for local implementation.[46] In Saskatchewan the Minister may make subdivision regulations for areas which have not assumed subdivision controls and can force a local government to adopt by-laws controlling subdivision. Generally, however, local governments are free to adopt their own bylaws.[47] In Alberta, the provincial government has established provincial subdivision by-laws, but approval of subdivisions is local in Calgary and Edmonton.[48]

Elsewhere, in Alberta approval is either regional or provincial. In Manitoba subdivision control is provincial except in Winnipeg.[49] However the Manitoba provincial board will not approve any by-laws which is not first passed by local council.

At the risk of some loss in precision, the patterns appear to provide for local input in all cases, but provides, some varying degrees of provincial review and control. In most cases the larger urban areas (presumably where the professional staff are available) have greater local autonomy than is the case for smaller communities.

To some extent the differences between the various provincial systems are more procedural than substantive. In Ontario, the local authorities have substantial input into a process which is uniform throughout the province. In the event that subdivision approval is granted by the province to applications which are not consistent with local plans, the local municipality may appeal to the Ontario Municipal Board. Conversely, in British Columbia, the local municipality makes the subdivision regulations and the decisions to approve of each application, but if the province does not agree, the Minister has the

authority to forbid the depositing of a plan where "it is against the public interest". Hence, in both extreme cases, the Minister has retained a significant role, but the system provides for substantial local inputs.

Given the procedure to be followed in each province, the next important question relates to the requirements imposed on subdivision approval. In most provinces, the approving officer has the authority to impose obligations to provide roads, sidewalks, parks, services (water, sewer, storm sewers) to serve the specific subdivision. In addition the requirements may include financial contributions for schools, parks and other public amenities and facilities required as a result of the increase in population occasioned by the subdivision. In order to understand the current requirements found in most subdivision provisions, it is necessary to consider five basic questions arising at the time each subdivision occurs.

1) What minimum set of on-site services are to be required in subdivisions?
2) What quality or standard of on site services is to be required?
3) Who will pay the capital costs of all on site services?
4) Who will pay the ongoing maintenance and future repair costs of the services?
5) Who will pay for off-site costs associated with subdivisions?

The answers to the first question appear fairly uniform across the provinces, with the exception of Quebec. There seems to be no expressed authority in Quebec local municipalities to require a private landowner (subdivider) to provide services even within the lands being subdivided. In all other provinces, the provincial Acts provide expressed authority for local or provincial authorities to require subdividers to supply water service,

sanitary services, streets and roads and utilities. In most cases these requirements are named in the enabling statutes while in the case of Ontario, the requirements call for "availability of services".

In all cases, except Quebec, the requirements for these so called "hard-costs" (costs of providing services) apply to provision both within the subdivided areas (on-site) and outside the subdivision (off-site). The major service lines (water and sewer mains) or off-site services are generally provided by the local or regional governments, at least initially, but subdivisions are frequently required to contribute to these capital costs. This separation of on-site and off-site costs is of some consequence. In all provinces but Quebec, subdivision approval may be withheld unless adequate services are available up to the site to be subdivided. If the off-site services are not adjacent to the subject property, the local authority may refuse to grant a subdivision permit, even though the subdivider is prepared to install on-site services. Alternatively the local authorities could approve the subdivision providing the developer was prepared to install (or pay for) connections to the nearest off-site main service line.[50]

Since local governments are facing increasingly stringent budgets, the common practice has been to require the developer to make a contribution towards the hard costs incurred by the municipality in providing off-site services. In most cases these off-site levies (or "impost fees" or "hook-up" charges) have been extended to include financial contributions for schools, parks, and other locally provided services and facilities. Municipal councils and land developers in Ontario have been dancing at arm's length for many years. Clearly they are partners in the larger enterprise of building and rebuilding the urban spaces of the province. They are not, however, truly in

love. The developers need municipal institutions. No other level of government could be so effectively relied upon to provide "hard services" like trunk services, water mains and thoroughfares while still offering "staff services" such as police protection, health care and schools... By the same token municipalities look to developers for the creation and renewal of the urban fabric and its amenities.

The recurring problem is, of course, "who will pay for the dance?" (Blackwell, 1980, p. 133). These latter charges form what is called the "soft costs". In some cases the soft cost levies are specifically designed to maintain the quality of services in the immediate area of the new subdivision while in other areas the levies form part of general revenue for the local municipality.

While the courts require strict adherence to the law (and will not permit local authorities to charge a fee without expressed authority), most provinces have either provided expressed authority permitting local government to levy subdivision fees, or have worded the statutes in such a way as to permit an interpretation which includes such levies. For example, in Cornerbrook (Newfoundland) no subdivision permit will be issued if, in the council's opinion, the subdivision is "premature". Similar wording is found in New Brunswick, Ontario ("premature" or "necessarily in the public interest"); British Columbia ("injuriously affect the established amenities"), while Saskatchewan requires consideration for the "economic provision of services".[51] In British Columbia a subdivision can be rejected if it is "not in the public interest".[52] The net effect of such vague clauses is to improve the capacity of local government to negotiate a satisfactory subdivision agreement with the private property owner.

In addition to the hard and soft costs associated with on-site and off-site services, each province, except Manitoba, requires that a subdivider dedicate land to the local authorities, without compensation, for public purposes. This dedication is in addition to lands used for highways and roads. Provision is generally made to accept cash in lieu of the dedication of lands. Four provinces specify 5 percent of the subdivided land should be dedicated (Nova Scotia, Quebec, Ontario and British Columbia); Alberta requires at least 10 percent; Saskatchewan requires either 5 or 10 percent depending upon population density; New Brunswick requires 8 percent; and Newfoundland is silent as to the percentage, but does require the dedication of land (Milner, 1963, especially pp. 83-88).

The net effect of these provisions regarding the type of services and the dedication of lands is to permit local authorities to demand or negotiate almost any type of on-site services they wish. Since the normal practice is to require the developer to enter a subdivision agreement prior to proceeding with a subdivision (and either pay the municipality to install the required services or post a performance bond), the specific requirements can be included in the agreement.

Once the range of services to be provided has been determined and agreement is reached, the second important question relates to the standard or either to the standard or quality of services to be provided or the manner in which these standards are to be set out in the subdivision by-laws. However, inasmuch as the local governments assume responsibility for maintaining and replacing services once they are installed, there is a natural inclination for local governments to overspecify the requirements in their subdivision by-laws and subdivision agreements. ("Cadillac standards" and "gold plating"). In

some cases the subdivider may have an ongoing responsibility repair for a certain "warranty period", but this is generally quite short and the local authority eventually assumes responsibility.

Only one province - British Columbia - specifically requires economic justification for subdivision levies (see next section on development) or requires any cost-benefit analysis for service standards.[53] The remainder of the provinces have no such requirement to evaluate the standards prescribed in the subdivision bylaws. The general subdivision standards appear to vary significantly across the country. Just by way of illustration, consider the road requirements and drainage requirements for a cross-section of Canadian communities. The data in Table 3.5 indicate significant differences in the road widths required in new subdivisions, even within the same province. Given the cost of construction of building an extra one foot in width in a road, variations of this nature require some careful cost benefit analysis.

Similarly, the different regulations relating to drainage standards vary considerably (Table 3.6). For example, two adjacent municipalities in British Columbia have opposite policies on the use of double connections (e.g., two houses connected to one drain pipe to the main line). Richmond permits the connecting of two houses to one line while Surrey requires separate lines.

TABLE 3.5

ROAD ALLOWANCE WIDTHS AND PAVEMENT WIDTHS
VARIOUS MUNICIPALITIES

MUNICIPALITY	ROAD ALLOWANCE WIDTH			MINIMUM PAVEMENT WIDTH (F/F CURB)		
	MINOR LOCAL	LOCAL	MINOR COLLECTOR	MINOR LOCAL	LOCAL	COLLECTOR
Coquitlam	40	50	66	28	28	28
Delta	50	60	66	30	30	30
Edmonton	50	50	80	30	30	38
Regina	50	60	72	28	36	42
Winnipeg	60	60	66	24	24	24-33
London	62	66	70	24	28	32
Hamilton	66	66	66	28	28	28
Etobicoke	61	66	76	28	28	32
Hull	50	60	66	30	38	38
Shawinigan	50	50	66	28	28	36
St. John (NB)	50	60	66	26	30	30
Dartmouth	50	50	60	30	30	36
St.John's(NFLD)	50	50	44	38	38	44

SOURCE: Paul Theil Associates Ltd, Design Guidelines for Residential Streets (HUDAC Technical Research Report, Toronto) 1977.

TABLE 3.6

FOUNDATION DRAINAGE STANDARDS
VARIOUS CANADIAN MUNICIPALITIES

MUNICIPALITY	DOUBLE CONNECTIONS PERMITTED	DOUBLE CONNECTIONS NOT PERMITTED	FOUNDATION DRAIN TO
Delta, B.C.		x	storm
New Westminster, B.C.	x		storm
Richmond, B.C.	x		storm
Surrey, B.C.		x	storm
Burnaby, B.C.		x	storm
Coquitlam, B.C.		x	storm
Prince George, B.C.		x	storm
Calgary, Alta.		x	storm
Edmonton, Alta.	x		sanitary
Regina, Sask.	x		sanitary
Saskatoon, Sask.		x	storm
Winnipeg, Man.		x	sanitary
London, Ontario		x	sanitary
Stoney Creek, Ontario		x	storm
Hamilton, Ontario		x	storm
Oakville, Ontario	x		storm
Mississauga, Ontario	x		storm
Brampton, Ontario	x		storm
Etobicoke, Ontario		x	storm
North York, Ontario		x	sanitary
Scarborough, Ontario	x		storm
Markham, Ontario	x		storm
Nepean, Ontario		x	storm
Glouchester, Ontario	x		storm
Hull, Quebec	x		storm
Laval, Quebec	x		sanitary
Dollard des Ormeaux, Quebec		x	storm
St. Bruno de Montarville, Quebec	x		sanitary
Shawinigan, Quebec		x	sanitary
Anjou, Quebec		x	storm
Boucherville, Quebec		x	sanitary
Sherbrooke, Quebec	x		storm
Chicoutimi, Quebec		x	sanitary
St. John, N.B.		x	storm
Dartmouth, N.S.		x	storm
St. John's, Nfld.		x	storm

Source: Paul Theil Associates Ltd., Update On Sanitary Drainage and Sewer Disposal Methods (HUDAC Technical Report, Toronto, 1977)

These data serve to illustrate the variation in standards amongst municipalities in the various provinces and amongst provinces. They do not, however, indicate the degree to which the standards may exceed some reasonable level as determined by cost-benefit analysis. Given the importance of subdivision costs, it is surprising that more provinces have not required that some careful analysis, be undertaken in the form of cost-benefit analysis, to justify current subdivision standards, particularly when the entire subdivision on approval process encourages municipalities to overspecify standards in order to minimize future upkeep.

The next major issue with respect to service standards is to ask who pays the capital costs and on-going operating costs. In these regards the practices are fairly uniform (although the statutes vary). Except for Quebec, all provinces require that the developer pay for all on-site costs associated with the subdivision and, in addition, make contributions towards all off-site costs created by the subdivision. The municipality takes responsibility, as part of the annual general budget, for all future maintenance and replacement of the services. While these general practices are fairly uniform in the broad terms, some considerable variations in the costs occur for three reasons. First, local governments, depending upon their state of development and attitude towards growth, require different services be installed. Second, the quality or standard of each services varies considerably. Finally, local governments have used a variety of formulas, to determine what off-site levies will be charged to the private subdividers and what basis for calculating levies will be used.

Two points are, however, quite clear. Local governments have required more and more services to be installed prior to the approval of any new subdivisions and the standard or quality of such services has increased as

municipalities attempt to capitalize some future maintenance expenses and shift them to the initial developer. (See Goldberg, 1979) These changes - shifts in both capital and maintenance costs from the municipality to the private developer - have generally occured with little or no apparent real regard for the actual costs and benefits associated with such new subdivisions.

One final point should be made concerning subdivision. Most subdivision approvals provide that the sites or lots created must be of a certain minimum size. While this is generally a zoning matter, it becomes operational at the point of subdivision. The provincial requirements concerning lot sizes will be discussed in the next section but it should be noted at this stage that minimum lot sizes will have a pronounced effect on the "per unit" costs of subdivision and one should not overlook this relationship between the subdivision by-laws and zoning by-laws and the interplay on the per unit costs of subdivision.

3.4.3 DEVELOPMENT (Change in Use)

The term "development" is used in this case as a catchall phrase to distinguish between the regulation of subdivision, the regulation of construction (structural) and all other regulations relating to changes in the use of realty. The term is generally synonymous in North America with "zoning", in the United Kingdom the term is "development control".[54]

Zoning is a form of economic regulation whereby an area is divided into zones or areas and each area may either prohibit certain uses or specify permitted uses at the exclusion of others. Zoning is defined in the dictionary as follows:

> ...to divide (a city or town) into areas or districts subject to special restrictions as to buildings, as with respect to their purpose or use (business, industrial, residential, etc.), their maximum height, and the amount of the lot that may be covered.

Broadly stated, zoning enables a local municipality to regulate the use of land and the erection and use of buildings and structures. This was not always the case with zoning. Milner notes that "instead of being exercised by the Council for the whole municipality, (zoning) was left to the residents of local neighborhoods, or even streets, to decide whether they wanted zoning protection" (p. 86).

Zoning is one of the means by which the community plans may be made operational. The statutes in each province provide that local communities may use zoning as a regulatory tool, providing the zoning by-laws are properly adopted.

In contrast to the system of zoning, three provinces (Alberta, Saskatchewan and Newfoundland) rely, to some extent, upon the development control system borrowed from the United Kingdom.[55] Under a development control system, land use is regulated on a permit system for each individual proposed use of land. Development regulation is, therefore, based on administrative and not legislative control. This method of regulation is distinguished from zoning by-laws which, if complied with, permit the property owner to develop without further permission being required (outright uses).

The arrangement in most provinces provides that the adoption of a community plan and a zoning by-law are independent. It is only Alberta (which requires that a zoning by-law be based on a plan) and Newfoundland which

require a plan to precede the zoning by-laws.[56] Conversely, if a plan is adopted, Nova Scotia and Manitoba require zoning by-laws be adopted (in Nova Scotia this is achieved by repealing all zoning by-laws prior to the adoption of the plan and in Manitoba the by-law is part of the plan).[57] In all but two provinces (Quebec and Saskatchewan) the statutes clearly provide that any zoning by-laws adopted must conform with any official plans.[58]

The various provincial planning Acts and municipal acts grant local authorities power to pass zoning by-laws with specific mention of the term "zoning" but without limiting the range of zones permitted or the conditions attached to each zone.[59]

While the enabling legislation is generally very brief and simple, the actual zoning by-laws adopted at the local level have tended to be very complex and thorough. The typical zoning by-laws provide for a extensive list of zones.[60] For each zone, the by-laws usually prescribe standards for lot size, side yards, frontage, height, bulk, site coverage, density and use. (Regulations governing size and shape of structures and their relationship to the site are frequently called development standards but they are generally part of the zoning by-laws).

Because zoning is a restriction on the use of privately owned lands and is confiscatory in nature, the courts have tended to protect the property owner in this position.[61] In Canada no compensation is payable when zoning restricts the use of land, hence zoning becomes a form of quasi-expropriation without compensation.[62] While the courts have generally upheld a broad range of zoning by-laws, strict interpretation is required to protect a property owner from unreasonable abuses of zoning powers.[63]

To illustrate the problems which have occurred with zoning by-laws, consider three extreme examples. One municipality rezoned a parcel of land from residential to parkland (a zoning class which did not permit any development). The by-law was held to be legal and the rezoning upheld even though the land became practically worthless.[64] In another case, the City of Toronto established a by-law requiring that all buildings in an area be set back 150 feet from the street but, at the time, the lots affected were only 110 feet deep. As it was impossible to conform, the by-law was declared illegal and oppressive.[65] Conversely, a Quebec Court of Appeal ruled a by-law invalid which permitted only residential use of lands suitable (in the market place) for only commercial use.[66] The court held that the by-law was equivalent to expropriation without compensation and without expressly stating no compensation was to be paid.

In order to protect private property owners from these extreme abuses, some provinces have established protection against the improper use of zoning. Alberta retricts quasi-expropriation by limiting public use zoning (park, school, etc.) to lands intended for such use, owned by the municipality or to be acquired within six months of such zoning.[67] In British Columbia, compensation is permitted when land is zoned exclusively for public use.[68] In Newfoundland, an owner whose property is zoned for public use may require the local municipality to purchase the lands rendered "incapable of reasonably beneficial use in its existing state".[69]

Two points appear clear from the cases challenging zoning by-laws. First, the zoning by-laws in the various provinces are recognized as being in the nature of economic regulations and do not allow local governments to prohibit the development of land. Regulation is deemed to imply some

continued activity. As a consequence, efforts to "freeze" development, for whatever reason, are not likely to be upheld without other expressed authority to prohibit land use. Second, efforts to delay development pending comprehensive zoning or rezoning or pending the services being extended to an area are likely invalid or ultra vives. In some cases, however, the provinces have granted expressed authority to refuse a building permit if no adequate services are available (Ontario, New Brunswick).[70]

In an effort to circumvent these strict requirements, a number of municipalities have taken to using some low density zoning by-laws as a holding device and such an appoach appears to be both legal and approved by the various provincial governments. This low density holding zoning approach has two advantages. It is a legal method of preventing all but low density development until such time as the community wishes to promote higher density use. It also provides that a landowner seeking higher density must apply for a rezoning, and the rezoning is an occasion to negotiate some concessions for levies or services. Given this variety of provincial zoning provisions, the obvious question is to determine when zoning occurs. The normal cycle of land would be as follows:

CYCLE OF LAND USE ZONING

STEP 1. PLANNING

STEP 2. ADOPT PLAN

STEP 3. ADOPT ZONING BY-LAWS

STEP 4. ADOPT SUBDIVISION BY-LAWS
AND SUBDIVIDE

STEP 5. PHYSICAL DEVELOPMENT
ADOPT BUILDING CODES

STEP 6. USE OF REALTY

STEP 7. CHANGE IN USE

Normally one expects that land is first zoned for its future use, then subdivided according to the subdivision by-laws and the zoning by-laws (lot size). Development and construction, subject to the zoning by-laws and building codes would next occur, followed by the use and eventual change in use of the realty. In many cases, however, the original zoning on undeveloped urban land is for a low density and it is expected that a rezoning would occur, either at the time a subdivision agreement is sought or at the time development is about to occur.[71] As a consequence, it is not uncommon for a subdivision or development application to be held up pending a zoning change (which may in turn await comprehensive planning or extension of services).[72]

Providing an applicant proposes to use a site in conformity with the present zoning by-laws, the local council must grant the necessary permits to proceed (building permit in most cases). This implies that development that conforms with current zoning by-laws is a "right" which cannot be denied. Several provinces provide variations to this theme. In Alberta, a local council may elect to use a conventional zoning by-law and/or adopt a development control scheme where each application is considered on its own merits.[73] In Saskatchewan and Newfoundland systems of development control are used but these are only for a limited time period.[74] In Saskatchewan the time period is set by the Minister while in Newfoundland the time period for development control is two years.

These development control systems are thought to be more flexible than conventional zoning by-laws but suffer in that the rights of the property owner are subject to a greater degree of uncertainty.

The province of British Columbia has provided some leadership in experimenting with two alternative forms of development control. (See Dale-Johnson, 1980) Initially, in the City of Vancouver, it was possible to

enact by-laws to require a development permit (in addition to a building permit) (Dale-Johnson, 1980, p.43). This provision was extended in 1968 to all municipalities in British Columbia.[75] Under this system, a municipality could zone an area as a "comprehensive development area" and require an owner to obtain the development permit. As a condition of granting the development permit, the local council could waive the provisions of the zoning by-laws and stipulate any other terms they could negotiate. This system was later replaced by the land use contracts. These land use contracts basically provide a mechanism to ensure a developer will negotiate with the community for terms and conditions of subdivison and/or development. Dale-Johnson (1980, p. 46) described these land use contracts as follows:

> The particular points of the legislation include: 702(a)(2) The council may ... amend the zoning by-law to designate areas of land within a zone as development areas ... 702(A)(3). Upon the application by an owner of land within the development area ... the council may ... enter into a land use contract containing such terms and conditions for the use and development of land as may be mutually agreed upon ....
>
> As well, the legislation bound council, to have "due regard" to the following five considerations.
>
> a) The development of areas to promote greater efficiency and quality;
> b) The impact of the development on present and future public costs;
> c) The betterment of the environment;
> d) The fulfillment of community goals; and
> e) The provision of necessary public space.

The key aspect of this legislation, which had not previously been available to communities in the Province other than Vancouver, was the ability to contract with property owners requesting land use changes. This ability to contract acquired for the zoning by-law a new role beyond that of minimizing the problems of conflicting uses. A regulatory mechanism had been introduced through which the municipality could force the developer to bear any costs that the development might impose on the community. In other words, each development had to stand on its own. This aspect heralded the introduction

of fiscal zoning to British Columbia.[76] Prior to this time, virtually all zoning regulations had been oriented toward dealing primarily with problems of externalities or providing a crude device to delay subdivision and development, thereby forcing negotiation. Generally, however, the costs of accommodating growth and new development by providing new services were costs which had been borne by the community-at-large through the property tax mechanism. While the land use contract provided an additional means by which municipalities could raise revenue, it did not carefully restrict the extent to which the legislation could be used as a fiscal tool. As should be clear from the prior paragraph, a municipality could negotiate a land use contract containing virtually any terms which met the broad objectives of the community.

The new provision gave the municipality considerable flexibility with respect to land use regulation and as well added an additional means of raising revenue. A number of points should be noted concerning this new regulatory device. Landowners always had the option of developing the parcel according to the existing zoning and were never forced to seek a land use contract. In theory then, land use changes did not require the negotiation of a land use contract provided that the existing zoning was being adhered to. However, it was possible for the community to downzone areas so that development in compliance with existing zoning was economically unfeasible thereby forcing use of land use contracts (e.g., since subdivision could not occur in residential areas with a five-acre minimum lot size without rezoning, a developer would be forced to negotiate a land use contract, presuming an application for rezoning would not be permitted). As a result, in many communities, regulation of the process of subdivision (usually a process

considered distinct from the question of zoning) became indistinguishable from the process of determining acceptable land uses. Many municipalities did not often use land use contracts while others forced the use of the land use contract to the exclusion of all other instruments.

Those municipalities that incorporated the new legislation in their by-laws in the rapid growth period of the 1970s did so because the standard zoning procedures inhibited innovative development. Planning flexibility with respect to unique projects and project-specific problems was enhanced with the land use contracts. In addition, pressures for growth were straining municipal budgets beyond the point where the burden could effectively (because of time lags) or equitably be borne by existing property tax revenues.[77]

In 1980 the land use contract system in British Columbia was replaced with a development permit system.[78] Under this new system, a local government is permitted to designate any area as a development permit area and require owners to obtain a development permit prior to development (either subdivision or construction). However, the development permit cannot be used to alter the zoning in the area - it is not designed as an alternative to zoning, but rather a complementary process. The development permit is a rider to the existing zoning by-laws. The permit cannot alter use or density but only regulate the engineering design and public service aspects of the project. The goal seems to be to separate the subdivision and development approval from the land use and density issues.

Nova Scotia has also superimposed a development permit system on the traditional zoning by-laws but the granting of the permit seems mandatory providing the development conforms to zoning by-laws.[79] New Brunswick has a development permit system to administer the regional plans but not at the

local level.[80] Other provinces can (and do) achieve much the same results by initially using a low density zoning which will eventually be the subject of a rezoning request and, at the time of rezoning, conditions for development may be negotiated.

The enabling legislation permitting local authorities to regulate development, through zoning or development permits, are broad indeed. Local councils have adopted by-laws ranging from one or two page documents to lengthy and complex by-laws. The provincial statutes are mainly silent as to the content of the by-laws but there is one exception. Alberta requires that zoning by-laws set forth the permit uses in each zone. Authority to zone usually includes authority to prescribe standards for the development of the lot and this is taken to authorize size, bulk, height, and situation requirements. Authority to use set-backs is generally found in provisions to regulate the location of a building. At least five provinces (Alberta, British Columbia, New Brunswick, Prince Edward Island and Nova Scotia) expressly authorize local authorities to regulate architectural design, character and appearance of buildings.[81]

Because of the controversial nature of zoning and the fact that zoning infringes upon private property rights, opportunities for public input are afforded in every province. Property owners and citizens are given notice of the zoning and also an opportunity to speak to the issue. Public notice of a proposed zoning by-law is mandatory in every province but public hearings are only mandatory at the local level in New Brunswick, Nova Scotia, Saskatchewan, Alberta and British Columbia. In Prince Edward Island, Ontario and Manitoba local hearings are not mandatory but are commonly held. In Quebec a public hearing is mandatory but only to determine whether a referendum should be held on the zoning issue.[82]

While all provinces have granted extensive power to local government to regulate land use and development, six provinces require that all zoning by-laws be first approved by the province. Only Quebec, Manitoba, Alberta and British Columbia do not require provincial approval, however, in Manitoba approval is linked to the approval of plans.[83] While the practice varies from province to province, only Ontario appears to hold hearings before approving the zoning by-laws.

Local government controls on development (change in land use) are quite considerable in every province in Canada. Local governments have the power, at least de facto power, to control use, density and timing of developments, to charge - either directly or indirectly - fees and development levies to offset public costs associated with new development. The practice at the local level is clearly towards more discretionary regulation of land uses (either through development controls or low density zoning and rezoning) and this trend is at least consistent with the movement to shift greater costs onto the developer.

3.4.4 Building Codes

Local municipalities in every province have been granted extensive authority to regulate building construction, at least the structural components.[84] This local authority generally begins with the right to require a building permit be obtained prior to any structural addition to a building. This is then supplemented by the authority to set standards for new construction (by-laws). The exercising of these non-voluntary regulatory power respecting construction begin with the approval of plans and ends with the final inspection of the finisned construction.

The authority to require building permits is, in most cases, used as a device to ensure compliance with the conditions set out in the by-laws, the existing legal restraints. In other cases the building permit is also used to administer existing zoning by-laws by ensuring that all proposed development will conform. In this latter case, expressed authority must exist to use the building permit system in such a manner.[85] In six provinces the power to use the building permit to enforce zoning by-laws has been extended to allow withholding a permit pending an amendment to an existing zoning, but in all cases this delaying period is strictly limited.[86] The six provinces include Nova Scotia (delay for a maximum of 120 days); New Brunswick (delay for a maximum of six months); Quebec (maximum three months); Manitoba (maximum of 60 days); Saskatchewan (maximum of three month delay); and British Columbia (30 days plus additional 60 if development will conflict with proposed zoning amendment and amendment is forthcoming).

Given that the purpose of the permit system is to ensure that the construction conforms to existing by-laws, it is important to determine just what is being regulated. In most cases, the provinces have granted wide ranging authority to municipalities to regulate building construction. In general, these powers are for the purposes of promoting health, safety, the prevention of fires and the prevention of the spreading of fires. (See Silver 1980) Hence, construction is generally to be regulated for safety, not aesthetics. However, three provinces have expressly granted authority to regulate design (Prince Edward Island, Nova Scotia and Quebec) while Alberta, Saskatchewan and British Columbia can regulate design, at least to some degree, under their development control schemes.[87]

In addition to the broad powers granted to municipalities, provincial governments frequently prescribe specific standards to be adopted for certain aspects of building construction. It appears that, unless otherwise stated, municipalities are free to add to the provincially prescribed standards but, in the case of conflict, the provincially-set standards prevail.[88]

The general provisions authorizing municipalities to pass by-laws governing construction do not apply generally to existing buildings, unless the enabling statutes grant specific authority for such regulation.[89] The courts have taken the position that such application to existing building would be a form of retroactive regulation and generally construe legislation as not granting authority to regulate existing construction unless the provision is clearly set out in the statute.[90]

On the other hand, the courts do enforce by-laws prescribing standards of maintenance and occupancy for existing buildings (see Section 3.5.6). Hence, in those provinces authorizing local by-laws to control the standard of maintenace of existing buildings, some degree of retroactive construction control is permitted.

The term "construction" has been given a fairly wide interpretation by the courts. In the absence of specific expressed authority, the courts have ruled that construction includes reconstruction, addition and alteration.[91]

The general provisions granting municipal authority to regulate building construction varies from province to province, but the general theme is the same across Canada: local councils have been granted extensive powers to regulate construction. In Newfoundland the councils may set by-laws to "secure the orderly and sanitary development" (or in lieu of such regulations

they may adopt a National Code); Prince Edward Island provides authority to regulate the "erection, construction, alteration and repair of buildings including foundations, materials, chimneys, sewage, plumbing, roofs and all materials necessary to guard against fire and promote safety and health"; in Nova Scotia the authority includes "all other matters necessary to guard against fire and to provide for the public safety"; New Brunswick authorizes the adoption of a National Code; Quebec provides for extensive and detailed powers to regulate and prohibit "any work not of the prescribed strength, depth, architecture, dimensions, symmetry, alignment and destination".

In Ontario, local councils have expressed authority to regulate the size and strength of walls, foundations, roofs, etc. of all buildings, but not non-structural aspects which do not affect the public safety. Ontario also provides for by-laws to achieve fire safety and generally "to regulate the construction, alteration and repair". Manitoba provides for regulations to control building and building materials, plumbing, electrical, repairs and alterations. The Saskatchewan provisions specifically mention construction, erection, classification, alteration and repairs; Alberta provides an all embracing "building regulation" provision and power to regulate "the construction of buildings"; in British Columbia, all powers are granted to local councils for "the health, safety, and protection of persons and property, to regulate the construction, alteration, and repair".

Under the general statutes authorizing the regulation of construction, reference is made to a number of national and provincial codes. Builders have long complained of the variety of building standards encountered and the difficulty of getting economies of scale in construction because of the lack of uniformity.[92] As a consequence, both the federal government (in a voluntary manner) and the provincial legislatures have moved towards greater uniformity in construction codes.

Under the general heading of "regulation of construction", there exists not one, but several possible codes relating to the construction repair and alteration of buildings. The most commonly cited of these is the National Building Code - a model code which has become the popular basis for provincial codes and recently adopted by an increasing number of local councils. In addition, most provinces have separate provisions for plumbing, fire, electrical and gas.

Dealing first with the building codes, Silver (1980 pp. 2-4) states that:

> The first National Building Code (NBC), prepared under the joint auspices of the Department of Finance (then administering the National Housing Act) and the national Research Council, was issued in 1941. While adoption was slow during the war years, the NBC's requirements were reflected in varying degrees in the bylaws of over 200 municipalities. By 1974, over 70 percent of the population resided in areas where the National Building Code had been voluntarily adopted as the local building by-law or formed the primary basis for it. During the decade of the seventies, a major trend in responsibility for the formulation of building bylaws has been away from the municipalities to the provincial level. British Columbia, Alberta, Manitoba, Ontario and Quebec all have mandatory codes. Municipalities in these provinces are obliged to enforce a uniform code, without exception or addition. In Quebec, small residential structures are exempted, but municipalities must adopt provisions for such structures at least as stringent as the provincial code. In B.C., Vancouver, as a Charter City, is exempt, but has in fact adopted the NBC. In Saskatchewan, municipalities have the right to amend the provincial code. A mandatory code has been adopted by Nova Scotia's government, but not yet proclaimed. In New Brunswick, municipalities are required to adhere to the NBC. In Prince Edward Island, the two major urban areas use the NBC as their bylaws. In Newfoundland, the provincial government encourages all municipalities to adopt the NBC as the basis of their bylaws. In all cases where provincial codes exist, they are based upon, and follow closely the NBC.

Hence, in the majority of provinces, one single uniform code is mandatory but some exceptions are permitted at the local level.[93]

Only two provinces (British Columbia and New Brunswick) appear to have compulsory provincial plumbing codes. In the case of British Columbia, the plumbing code is a provincial code, whereas in New Brunswick they have adopted the Canadian Plumbing Code. In Prince Edward Island, the Environmental Inspection Act provides for the establishment of a Plumbing Services Code. In the remaining cases, the plumbing codes are found under the general provisions, at the local level, for the regulation of construction. In addition to these general provisions for building, electrical and plumbing, each province provides numerous examples where specific types of development are subject to some form of construction regulation. For example, in Nova Scotia, 12 statutes provide specific regulatory powers relating to construction, excluding the general powers found under the planning and municipal Acts. The numbers are equally large in other provinces.

Every province except Ontario presently specifically mentions the National Building Code as a code which is either compulsory or may be adopted, in whole or in part (Table 3.7).

In addition to the building codes, each province has some provisions for separate codes to cover the electrical, plumbing, gas and oil and fire codes (Table 3.7). The Canadian Electrical Code has been adopted in whole (or Part 1 only) as a compulsory provincial code in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island. In the case of British Columbia, Alberta and Saskatchewan, some amendments have been made at the provincial level. In the case of Newfoundland, there exists a compulsory Newfoundland and Labrador Electrical Code (1967).

TABLE 3.7 CODES ADOPTED COMPULSORILY BY PROVINCE

	National Building Code	Canadian Electric Code	C.S.A. Standard Gas, Oil	Canadian Plumbing Code	National Fire Code
British Columbia					
- N.B.C. Parts II - VI, VIII, IX	X				
- C.E.C. Part I		X			
- B.C. Plumbing Code				X	
- Can. Standard Gas			X		
- National-Fire Code					X
Alberta					
- N.B.C.	X				
- Canadian Construction Safety Code					
- Canadian Heating, Ventilation and Air Conditioning Code					
- C.E.C.		X			
- Various C.S.A. Gas standards			X		
- C.S.A. Lightning Rod Standards		X			
Saskatchewan					
- C.E.C.		X			
- N.B.C.	X				
Manitoba					
- N.B.C.	X				
- C.E.C. Part I		X			
- C.S.A. standards with respect to gas and oil			X		
- Manitoba Fire Code					
Ontario					
- Ontario Building Code	X				
Quebec					
- Quebec Building Code	X				
New Brunswick					
- N.B.C. Parts II - IX	X				
- C.E.C. Part I		X			
- Canadian Plumbing Code, 1977				X	
- National Fire Code Parts I - VII					X

CODES ADOPTED COMPULSORILY

	National Building Code	Canadian Electric Code	C.S.A. Standard Gas, Oil	Canadian Plumbing Code	National Fire Code
Nova Scotia					
- N.B.C.	X				
- C.E.C. Part I		X			
Prince Edward Island					
- NBC (Two Major Areas Only)					
- C.E.C. Part I		X			
- Plumbing Services Code				X	
Newfoundland					
- NBC (Encouraged Only)	X				
- National Flammable Liquids Code					
- Various C.S.A. standards with respect to gas and oil			X		
- Newfoundland Electrical Code					

Source: Field Research

TABLE 3.8 CODES TO BE VOLUNTARILY ADOPTED BY THE LOCAL AUTHORITIES

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Councils are empowered to adopt (subject to the compulsory provisions previously noted):										
- The National Building Code	X	X	X	X	X	X	X	X	X	X
- The Canadian Electrical Code	X									
- Canadian Standards Association standards with respect to gas and oil	X									
- The National Fire Code	X	X								
- standards with respect to wiring, plumbing, etc.		X								

Source: Field Research

3.4 5 Change in Occupation

The next major area of activity which is subject to regulation is that involving a change in occupation (use) of an existing parcel of land or building. This change in use may be accompanied by a change in the physical aspects of the real property (in which case the building regulations, zoning regulations and/or subdivision regulations may become effective) or it may be simply a change in the occupation of a property without accompanying physical change to the realty (in which case the zoning by-laws will be the effective means of regulation).

As a general rule, changes in occupation are subject to the provisions of the zoning by-laws but in the absence of some physical structural changes, it is often difficult to enforce the by-laws. Detection is difficult, particulary given the size of most local inspection staffs.[94] Perhaps the most commonly cited change in occupation is the use of "illegal basement suites". Unless someone files a complaint, these illegal activities (contrary to zoning by-laws) are apt to continue undetected.

To the extent that changes in occupation are detected, the generally adopted means of regulation is through the provisions in the zoning by-laws controlling density or number of occupants per dwelling unit. Generally, these zoning by-law provisions are phrased in terms of the number of families rather than the number of occupants, hence the regulations are generally rather weak since family size varies considerably.[95]

3.4.6 Change in Ownership

Local councils generally have no authority to regulate ownership. As a general rule this is an area of regulation shared by the federal and provincial governments.[96] Two important exceptions to this general practice exist, both in the residential fields. As part of the general legislation permitting rent control and rent regulation systems, those provinces still maintaining a rent regulation system generally provide tenants with some provisions for security of tenure.[97] As part of the security of tenure provisions, the provincial statutes generally provide that a local council can refuse permission to convert a residential rental unit to an ownership unit (generally a condominium unit).[98] The argument is advanced that such conversion will reduce the supply of residential rental units, thereby making rental conditions even worse than ever.[99] Such a conversion generally involves only a change in ownership (if it involved either physical construction or change in use, then other local regulations could be applicable) and, in the absence of authority to control change in ownership, the conversion into the owner-occupied market would likely proceed.

The second area where local councils have some restricted control over changes in ownership occur, again in residential rental, when the owners attempt to convert their rental units to long term prepaid leases (usually 99 years) which are then "sold".[100] Once again this provision appears to fall within the general scope of affording security of tenure in a rent controlled or rent regulation environment.

3.4.7 Other Regulatory Powers: Local Government

Local councils throughout Canada have, to varying degrees, two other forms of power which are not associated with a change in use, ownership, construction, subdivision or zoning. The first such area is that of maintenance and occupancy standards for existing buildings. These regulatory powers provide that local councils may regulate for the abatement of nuisances and order the demolition or repair of dilapidated buildings, pass by-laws for the protection of inhabitants (Nova Scotia, Ontario, Manitoba and British Columbia), establish conservation districts, declare heritage buildings and prohibit renovation.[102] (Chart 3.2)

The regulations concerning occupancy standards for inhabitants of existing buildings prescribe basic or minimum fitness standards for a building to be occupied by humans - but in the four mentioned provinces, the regulations only apply to residential buildings and, in the cases of Manitoba and British Columbia, the rules only apply if the occupants are not also the owners.[103]

In addition to these general provisions regulating the condition of residential buildings, the landlord has a duty to repair and maintain residential rental buildings, (in a good state of repair, fit for habitation and in compliance with health and safety standards) under the various residential tenancies Acts in all provinces except Saskatchewan, and Quebec.[104]

In the case of rent control or rent regulation programmes, it is common for the province to provide the local councils with some authority to prescribe whether rent regulations will be applicable and, if so, to

CHART 3.2 HEALTH, DILAPIDATED OR UNSIGHTLY BUILDINGS: PROVINCIAL AUTHORITIES

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Who is empowered to order that a dilapidated building be demolished or it's dangerous condition remedied?										
- The Minister		X								X
- The Department of Health					X		X	X		
- Council		X	X	X		X				X
- Magistrate										X
- The Inspector										X
Who may order the repair of premises that are found to be unhealthy to it's occupants?										
- The Minister			X							
- The Board		X								
- The Inspector					X					
- The City Medical Officer										X
The Medical Health Officer may inspect for health and sanitation purposes and order the premises vacated, demolished or quarantined				X						
Council may take emergency action regarding unsafe, unoccupied buildings	X			X						
Minister may declare restricted areas and regulate the construction of sewage facilities therein										X
The Magistrate is empowered to fine the owner of a dilapidated building										X

describe the scope of the market to be controlled. At the present time, British Columbia, Ontario, Quebec, Nova Scotia and Prince Edward Island maintain a system of rent control or rent regulation and, of these, Quebec and Nova Scotia permit the local councils to have a voice in determining the scope of rent regulation.[105]

3.4.8 Voluntary Local Regulations

As a general rule, local councils have not been given much scope or authority to use voluntary regulations. In part, the voluntary regulations have not been necessary because of the wide range of non-voluntary powers available. At the same time, municipalities have been amongst the most financially restricted areas of government and the funds to operate a large scale voluntary system of regulations or incentives have not been available.

Within this limited area, however, two voluntary programmes have been used in the past and continue to be used today. The first is the provision of tax relief, from the real property tax, to encourage particular forms of development. While most tax relief granted is either compulsory at the provincial level, or restricted to a long established list of charities, Manitoba and Newfoundland permit the local council to provide tax relief as a means of attracting industry to the community.

A second, and more widespread form of voluntary regulations relates to the use of locally owned public lands as a means of promoting particular goals. Some communities (Saskatoon, Red Deer, Hamilton and Edmonton are the leading examples) have actively pursued a programme of land banking to promote the orderly development of their communities.[107] These land banking programmes, albeit accounting for a minor share of total new development, have provided some leadership and incentive for other private

developments. These land banking programmes are generally dependent upon some financial assistance, in the form of loans, from either one or both senior governments.

3.4.9 Trends in Local Government Regulation of Real Property

It is somewhat difficult to speak of trends in local government regulation of realty without first analyzing the scope of provincial control since the province and the local controls are but two parts of the total regulatory system. However before analyzing the role of the province, it is possible to comment on a number of specifically local trends.

First, the local councils are using their authority to cause a significant shift in the method of financing new growth and development.[108] Using tools that have been available for several decades, local councils have shifted virtually all new capital costs (and some operating costs in the form of higher quality services) onto the builder subdivider.[109] The one exception to this trend is in the province of Quebec.

A second change of some consequence relates to the increasingly prescriptive form of regulations, especially the building and construction codes. The use of provincially prescribed codes have given the appearance at least of greater uniformity.[110]

A third important trend at the local level has been a shift towards a greater emphasis on quality of life; the aesthetics of the community. This is manifested in the application of occupancy and maintenance standards and the prescription of architectural and design considerations as matters to be regulated.

3.5 Regional Government and Regulation of Realty

It was previously mentioned that every province in Canada has made provisions for some form of extra-municipal government, either in the form of "joint planning areas" created voluntarily by two or more municipalities or in the form of provincially determined "regional area" districts.[111]

All provinces have recognized the need for planning (regulations) which transcend municipal boundries. Gerther et al. (1975) suggest two reasons for this legislative response to permit regional government.

1. the accelerated spread of urban development creating settlement patterns that defy traditional local governmental boundaries, structures and functions; and
2. the increasing and persisting differences in rates of economic and population growth and development between core metropolitan regions and the other parts of the province (p.72).

Gerther et al. go on to observe that the regional level of government was not highly developed in 1975, and little has changed in the meantime. The observation is made that regional or joint planning areas have not received the necessary support and authority to become a major power.

The first major problem to be addressed in regional government or regional planning is that of determining the boundaries of the region. Ideally the regions should be consistent with the "market" - either economic or social. In fact, only two provinces have established a requirement that the region or joint planning area be a homogeneous market area. In Saskatchewan, homogeneous planning districts based upon "topographical features, the extent of existing and probable urban development, the existence of important agricultural, forestry, conservational or other rural problems, the existence or desirability

of uniform social and economic interests and values and the existence of planning problems common to the municipalities concerned"are the standard (Saskatchewan Planning and Development Act, R.S.S. 1978, c.P-13, s.85(a)). Manitoba has similar requirements for homogeneous planning areas comprising a "logical rational area for planning purposes" (Manitoba Planning Act, S. M. 1975, c.29, s.13(2)). The other provinces simply require all or part of two or more municipalities be included in a planning area. Independent of the factors to be considered in establishing regions or joint areas, the fact remains that in most provinces independent regional government does not exist at the present time. In the majority of provinces the regional level of government is a voluntary activity and is created only at the pleasure of the municipalities affected. (Newfoundland, Prince Edward Island, Quebec, Manitoba, and Saskatchewan). Even in Ontario, the usual practice has been to await municipal agreement.[112]

Even in those cases where the province prescribes a regional planning area, the government of the regional planning area is generally left to representatives of the member municipalities.[113] Hence each municipality representative strives to ensure that the regional plans are not inconsistent with their own local by-laws and goals. For example, in British Columbia (which is considered to have the most advanced regional legislation in Canada Gerther et al. (1975)) regional directors are representatives selected from the member municipalities and major divisions require a two-thirds majority so it is unlikely that many controversial decisions will be made. In 1965, British Columbia provided for the establishment of a province-wide system of regional districts, however, the duties of the regions were not deferred in the original amendments. The regional districts obtained their powers by supplementary letters patent. Two functions are generally performed - regional land use planning and hospital planning - and, unlike other provinces, provision is made for the administrative and technical staff.

Alberta also has regional government and regional planning but, like British Columbia, representation is by the member municipalities. Outside of Calgary and Edmonton, the regional areas do have the power to prepare and adopt land use plans.

Ontario has an active provincial structure (Ministry of Treasury Economics and Intergovernmental Affairs (TEIGA) to promote regional government. Provincial plans were to be prepared for the regionals by the province however the results have been less dramatic than originally anticipated (Gerther et al. 1975 p. 80-82).

While it is clear that some form of regional government is becoming more common, at the present time regional governments in Canada are in a relatively weak position. The combination of the voluntary establishment of joint planning districts, combined with municipal control of most regional decisions, promotes weak regional control. As a consequence, most regional planning and regulation tends to be quite general, almost policy oriented in nature. While all provinces provide that local planning must be consistent with existing regional plans, the general nature of the regional plans makescompliance a rather simple undertaking.

These comments should not, however, be taken to suggest that regional planning has had no effect in the market for real property. Frequently the preparation of the various joint area or regional plans is cited as a major contributor to the delay in land development. For example, in Ontario where regional government became a matter of serious consideration in 1966 with the Design for Development Programme" (Government of Ontario, 1966), the initial preparation of the Toronto regional plan was cited as a major delaying factor. The 1973 Advisory Task Force on Housing Policy concluded:

> In the Central Ontario Region (Toronto. Centered Region), where the Provincial regional planning process has reached the stage of formulating development proposals, the result has been, for all practical purposes, to freeze housing development in critical areas, most notably in the Metropolitan Toronto housing market area. The process has imposed very extended delays on the approval of both municipal and private development plans and discouraged municipalities and developers from proceeding with development plans while regional planning questions remain unsettled. (1973 p.39).

Similar conclusions were reached by Derkowski (1972) and the Ontario Economic Council (1973). More recently, Proudfoot arrived at the same conclusion concerning delays in approving applications in Peel, Ontario (1980).[114]

Frankena and Scheffinan (1980) observe that the Ontario Provincial Government appears to have changed its attitude towards regional government, and has moved away from their emphasis on regional government. They observe "although the province's regional planning program has been characterized by elaborate administrative reorganizations, there has been little in the way of concrete regional policy, particularly outside the TCR (Toronto Centered Region)" (p.146). A similar situation prevails in almost every province - a weak regional level of government lacking strong support from either the municipal or provincial governments.[115]

3.6 Provincial Regulations and Real Property

3.6.1 Introduction

The various roles of the provincial governments, in their capacity as watchdog of the local governments, was discussed in the previous two sections of this paper. To varying degrees, the provincial legislatures have sought to share authority with local governments, maintaining various rights of review and approval. Examples included the rights reserved by the provinces to approve community plans, approve by-laws, establish minimum (and in some cases maximum) codes and standards for construction and control subdivision.[116] In adddition to these powers to monitor and constrain local government activities, the provinces exercise a number of direct regulations affecting land markets and the trend is presently towards greater, rather than less, direct provincial involvements.[117]

In his comments concerning trends in land control, Robinson observed that:

> One of the more notable manifestations of this resurgence of interest and activity (in land) is the quiet 'revolution' in land planning, control and management, ... First and foremost, it involves the restoration to provincial governments of some of the land control power that under the British North America Act belongs to them, and that they long ago delegated to local government (Robinson, 1977, p.166)

This observation was based upon the new forms of land use regulation contained in the various provincial statutes and studies. Frankena and Scheffman (1980, p.34) reached this same conclusion.

In order to permit some comparison of the respective roles of the local and provincial governments, the provincial regulatory powers will be examined under the same general classification used for the local governments.

3.6.2 Provincial Planning

In addition to the powers of review reserved by the provinces, evidence of more direct provincial planning has begun to appear.[118] This greater provincial role has been evidenced in the greater voice and control exercised over local plans. For example, in Alberta the regional planning commissioners are now required to adopt a regional plan; in Manitoba and Saskatchewan the Minister can direct a municipality to prepare a plan and if they fail to do so, the province may directly prepare a plan; and in Nova Scotia the Minister may direct the preparation of a local plan.[119]

In addition to these specific powers to force or undertake local and regional planning, six provinces have, in recent years, undertaken major reviews of their planning processes: New Brunswick, Quebec, Ontario, Alberta and British Columbia (although British Columbia is still at the draft stage).[120] In every case the result has been greater direct provincial role in the planning process. In Saskatchewan, the amendments provide for direct provincial planning if the local council fails to carry out their planning responsibilities.[121] In Ontario the revised Act provides that local plans must reflect provincial policies,[122] and in British Columbia the proposed amendments provide for provincial powers to "approve official (community) plans", to "establish by regulation all subdivision servicing standards"and control the "form of land use by-laws". (The Planning Act, 1980 p.25). The proposed amendments in British Columbia would also make the preparation of official plans a mandatory activity.

In addition to these shifts in the distribution of planning authority, a number of provinces have established or set the administrative machinery in place to establish in the future direct provincially controlled planning areas which supercede local authorities.[123] The creation of the Niagara

fruit belt area in the province of Ontario, in 1977, indicated exactly what lands were to be excluded from urban development (the reservation of some of the best agricultural lands in the province).[124] While this area of Ontario was the subject of a number of studies beginning in early 1960, the ultimate unilateral action of the provincial government heralded a new phase in provincial intervention.[125]

In Newfoundland, the provincial government has established "land development areas", a planning area exclusively agricultural in nature. (Land Development Act, R.S. Nfld.1970, c.197.) Similarly in Alberta, the province has now the power to designate "special planning areas" - areas of particular provincial concern - and ensure that all local by-laws within these areas conform to provincially determined guidelines.[126] Two other provinces, Manitoba (Northern coast zone) and British Columbia (ecological reserves) have created similar direct provincial planning.[127] In addition to the land specific planning, seven provinces, (Newfoundland, Prince Edward Island, Nova Scotia, Quebec, Ontario, Manitoba, Alberta) have introduced some degree of economic planning (long term economic strategies, goals and/or plans)which either directly or indirectly affect land uses.[128] While these long term economic plans are not in the form of comprehensive province-wide plans, they do influence the direction of government activities.

3.6.3 Subdivision Control

Provincial governments have a direct role in regulating subdivision in three ways. First the province can dictate which subdivision standards are to prevail and the trend is towards greater involvement.[129] The proposed changes in British Columbia - to follow Ontario and establish a provincially determined subdivision standard - is symbolic of the movement in other provinces.[130] The second major role for the provincial government is that of

financing the extension of major services into new development areas. The direction and timing of the extensions for these services can have a material impact on the direction and pace of subdivision. In this regard, the provincial authorities have shown a general reluctance to provide local governments with the necessary funds to extend major service lines relying instead on some form of provincial aid, either of grants or loans.

The final area where the government regulates subdivision is in their powers to set maximum (or minimum) standards for levies charged to private developers. In one province, British Columbia, the provincial government has set out, in some detail, the items that may be included in the calculation of a subdivision (and development) levy and the province has reserved the right to approve the amount of the levy and the analysis used to determine the amount.[131]

3.6.4 Provincial Development Controls

In the area of development controls, provincial governments have introduced a number of provincially designated zoning classifications. These provincial zoning "by-laws", which supercede all local zoning by-laws, are generally in the area of agricultural land preservation or ecological controls.[132] In British Columbia, the 1973 Agricultural Land Commission Act, R.S.B.C. 1979, c.9 had the effect of a new super zoning by-law, preserving agricultural lands throughout the province by prohibiting development on such lands until such time as the provincial cabinet removed the lands from the reserve.[133] Similar results are achieved in Newfoundland using planning areas (land development areas) rather than zoning.[134] The provincial governments in both Saksatchewan and Quebec have moved to preserve the "family farming unit" using ownership controls rather than zoning.[135]

3.6.5. Provincial Building Regulations

The provinces have made major changes towards greater uniformity of building (and other) codes in recent years. The compulsory codes in use in most provinces, in some cases with no amendments permitted, have for all practical purposes, restored provincial supremacy in this area (Sibur, 1980).

3.6.6 Regulation of Occupation

As a general rule, the provincial governments have left the regulation of occupation of existing buildings to the local authorities.[136] The one exception is in the area of residential tenancies where most provinces have now amended the various residential tenancy statutes to require that the premises be "fit for habitation". Enforcement of these standards has, in at least five provinces, been shifted from the local authorities, to a provincially established rent control commission.[137]

In addition to the requirement that residential premises be fit for human habitation, five provinces still maintain a form of residential rent control or rent regulation which represents a form of non-voluntary regulation of occupancy in that the rent regulation applies to the unit, not the occupier.

Since the topic of rent controls and regulation has been extensively covered elsewhere, there is no need to repeat the information at this point.[138] It is sufficient to note that rent regulations have, since 1973, formed a major area of provincial regulation in every province in Canada. It is only since 1978 that some "deregulation" has occurred in Alberta, Saskatchewan, Manitoba and Nova Scotia.[139]

3.6.7. Regulation of Ownership

One area receiving significant provincial attention in recent years is the area of foreign land ownership.[140] The ownership of real property by aliens was a topic of general interest to many Canadians during the decade beginning in 1970 (Horwood, 1976). Much concern was expressed about possible foreign domination and the possible added pressure on property prices arising because of foreign demand for this scarce resource. Until 1970, this area was not a subject of urgent attention but the substantial price increases in land resulted in closer examinations of the federal and provincial controls over alien ownership.

The question of alien ownership of land immediately evokes a constitutional question as to the respective rights of the provincial and the federal governments. The present federal legislation provides that an alien may hold real property in the same manner as a Canadian citizen, similar to legislation in effect in Quebec, British Columbia, Manitoba and New Brunswick.[141] The remaining six provinces have some form of legislation which limits, in some manner, the rights of aliens or non-residents in land ownership.

The Alberta legislature has a statute limiting the grants of crown land. Saskatchewan introduced legislation in 1972 prohibiting the sale of a farm land to anyone not a resident in the province. This bill was eventually dropped and replaced with a farm land purchase programme designed to maintain ownership of farm land within the province.[142] Similar legislation is now in effect in Quebec. In British Columbia, all alien purchases of land must be separately recorded, but no use has been made of these data. Nova Scotia passed a bill in 1969 to compel non-residents to disclose their holdings of land in a special register. However, no use has been made of the

information. Newfoundland has an Act to ban grants of crown land to persons not resident in the province.

Three provinces, Prince Edward Island, Quebec and Ontario have the most stringent legislation at present. Prince Edward Island introduced legislation in 1964 to limit the amount of land an alien was allowed to hold without special permission. In 1972 the law was changed to impose a limit on land holdings (10 acres and five chains on shore frontage) on all persons not resident in the province. A Royal Commission has recommended this be supplemented by imposing a discriminatory tax on non-resident landholdings.[143] The Prince Edward Island law was tested in the courts, on two points of law. First, whether a province may limit or prohibit alien land ownership and second, whether a province may limit or prohibit land ownership by a non-resident of the province? The courts ruled in favour of the Prince Edward Island regulations since they related to non-residents of the province, not to alien ownership. Hence it fell within the jurisdiction of the provincial legislature.[144]

The Provinces of Ontario and Quebec introduced legislation to control alien ownership, but through the use of taxation rather than absolute limits or prohibition.[145] A 1973 Select Committee in Ontario recommended a restriction be placed on alien land ownership and, in addition, a discriminatory tax on real property be instituted. Because of the then existing uncertainty arising in Prince Edward Island regarding the rights of the province to control alien land ownership, Ontario elected to introduce, in 1974, a discriminatory transfer tax whereby all transfers of real property to non-resident owners would be subject to a transfer tax of 20 percent, as compared with one percent on transfers to residents.

This Ontario Tax system was introduced through an amendment to the existing Land Transfer Tax Act (1921), to provide for differential tax rates based on the residency of purchasers. The affect of these amendments was to radically alter the nature and impact of this land transfer tax.

The Ontario Act defines non-residents in a manner consistant with the term "alien owner", a step designed to lessen the likelihood of a constitutional confrontation. The Province of Ontario introduced the tax on all transfers to "non-resident" aliens. The Minister of Revenue noted:

> ... our concern was also heightened by the knowledge that escalating real estate prices represent a form of irreversible inflation because of the debt overhead it imposes on both owned and rented accommodation. A recent credit report cited in the Globe and Mail made this point and went further to suggest that the realty market today - because it is so highly financed bears resemblance to the financing of equities before 1929. ... in the case of the Ontario real estate market place we could see that the activities of speculators, together with heavy purchasing by non-residents was generating considerable upward pressure on prices. Significantly, this pressure was in addition to, and apart from, bona fide supply-demand characteristics of the market...
>
> For its part, the Land Transfer Tax has two objectives in mind. Firstly, to preserve for Canadians a justifiably preferred position in acquiring Ontario real estate; and secondly, to act as a discouragement to speculation by non-residents. The Act, therefore, reinforces the Land Speculation Tax in its objectives.
>
> I would point out, however, that the Land Transfer Tax is not intended to unduly inhibit non-resident investment in Ontario. In cases where the transfer tax impedes needed economic development or the preservation of existing jobs, the tax is open to review and, if justified, can be waived.

In this explanation, three important points are noted. First, the two objectives are to preserve a preferred position for Canadians in acquiring lands and to discourage additional speculation by non-residents. Second, the Act is designed in such a manner as not to jeopardize non-resident investment outside the land markets. Third, the Act is open to review in specific cases

and will be open to change if or when the federal government established satisfactory guidelines for foreign investments in Canada.

The use of discriminatory taxation against aliens, as one set of participants in real property markets, is a convenient alternative to direct provincial limitations on ownership. Obviously, through the use of a discriminatory property tax, a province could exert considerable control over the purchase and the ownership of land by aliens. It would be possible to modify existing real property taxation schemes to shift the burden of the local tax onto lands held by aliens, or alternatively a discriminatory transfer tax could be introduced, thereby decreasing or eliminating future transfers of land to aliens.

Since property taxation clearly falls within the rights of a province, the taxation approach to the question of controlling alien ownership may provide the realistic alternative to direct limitations. The form of a discriminatory tax to control alien ownership of land will depend upon the nature of the perceived problem. If the problem is defined in terms of excess current control by aliens, then the discriminate tax would, by necessity, have to apply against current owners to encourage them to sell holdings. If, on the other hand, the problem is defined in terms of future alien holdings, then a tax on purchases by aliens would be sufficient to reduce or eliminate further purchases. Generally, the latter case appears to be most common.

As with any taxing scheme, the impact in the market will depend to a considerable degree on the subject matter of taxation (the tax base), the measure of liability (basis of assessment) and the exemptions and reliefs.

It would be a dangerous oversimplification to assume that a tax on capital values arising in real property is a sufficiently clear statement of the tax base or that a capital gain is a clear basis of assessment. Therefore it becomes imperative that the potential interpretations of these terms be clearly understood.

3.6.8 Other Provincial Non-Voluntary Regulation

One other major item of regulation which has occurred at the provincial level is the land speculation tax introduced in Ontario in 1974. While this tax has subsequently been repealed, its brief history is an important step in the development of provincial controls of real property and illustrates the extremes to which provinces are prepared to regulate markets and market activities.

In justifying the introduction of the land speculation tax in the Province of Ontario, the Minister of Revenue outlined the government's position.

> In the case of the Land Speculation Tax, our problem was twofold: Firstly how to focus the taxing effect on speculation without prejudice to normal transfers of property ownership; and secondly, how to ensure that the tax would be broad enough to capture speculation in whatever form it might be camouflaged. I would emphasize that the whole basis of the legislation is to be fair and reasonable and to focus the taxing effect on transactions where increases in sales prices are realized without any real contribution of added value. I would, in fact, say that this element of added value between transactions is the keystone of the legislation since it is this factor which distinguishes conventional transfers of property ownership from speculative activity (Meen, 1974).

The Minister noted that he was proposing a new tax to discourage speculative activity. This tax had two objectives:

(1) to reduce the escalation of land and housing prices

(2) to recover for the public a major share of windfall gains from land speculation.

The Ontario position was to focus the taxing effect on transactions where increases in value are realized without any real contribution of added value or improvement. This immediately identifies some of the major issues in enacting a tax of this nature. The first obvious problem is to define speculation, which, as was pointed out in the previous section, is not an easy task. Once speculation or speculative activities are defined, the second problem is to define the tax base, which in the Ontario case will be all transactions involving speculative activities. In an effort to define speculative activities warranting a special tax, the Minister made reference to an "added value" test, however, it will become clear that this is not a useful approach. The Ontario speculation tax provisions contained numerous illustrations where "no value added" existed and yet the transfer was exempt from the tax. This illustrates one of the major problems in coping with speculation is that one cannot impute motives to the observed market activities. As a result, any attempt to tax speculation must be based on observed behaviour, not motives. Hence, by the test of "value added", the

owner-occupier of a house is as much of a speculator as the owner (vendor) of raw land. The difficulties of applying this "value added" test will become obvious as the Act is enforced.

In explaining the reason for the form of tax, the Minister cited speculation both by Canadians and non-residents as factors which artifically increase the cost of land and housing. In imposing this tax, the Minister emphasized that he did not want the tax to discourage the production of new houses nor the "legitimate use" of real property - in a productive sense.

These two objectives of this tax are of some antiquity in the economic literature on this subject. The desire of planners and politicians to reduce land and housing prices has given rise to numerous schemes to reduce the activities and profits of "middle-men" in the productive cycle.

The second proposition was that profits arising from land transactions should accrue, in total or in part, to the public. This proposition rests on the notion that much of the increase in land values arises because public expenditures and/or public decisions affect land uses.

While there is some justification for the recoupment of a portion of property profits for the public, it is possible to extend this argument to include profits arising in many areas which benefit from public expenditures and public decisions. There is no unique reason to single out property profits for a special tax although historically this has been done. Moreover, the manner in which most land tax schemes were established permitted a number of land use categories to escape a tax designed to recoup gains for the public. Hence, not only was property singled out for special tax treatment, only certain types of property were taxed.

3.6.9 Provincial Voluntary Programmes

The various provinces have introduced a number of voluntary programmes in the area of real property, particularly in the area of housing, housing ownership and housing production. The Province of Ontario has provided considerable leadership in this area, experimenting with a variety of programmes. Some of these various provincial programmes are generally an off-shoot of a corresponding federal programme. They will be dealt with under the heading of federal initiatives.

3.6.10 Trends in the Division of Responsibility

It was noted earlier that the use of statutory instruments and the growth in new statutes concerning land has increased during the past two decades. In addition to this growth in the number of statutes and regulations, there has been a shift in the division of responsibility between the various areas of government. The provinces have jealously guarded their responsibility and authority within this broad area of land management. It is clear that the provinces have attempted to restore some of their direct control over real property. Legislation has been enacted in recent years, in a number of provinces, authorizing new forms of land regulation exercised at the provincial level. In most cases these new regulations are limited to geographic areas (environmentally sensitive areas), to particular classes of land (those categories most in need of protection e.g. agriculture) or to boundary disputes. This restoration of power has in most instances come to rest with existing provincial departments, but in other cases new departments or agencies have been created.

Consider, for example, the experience in Saskatchewan during the decade of the 1970s.

1974 Establishment of the Saskatchewan Wetland Committee (Provincial) to review development proposals related to wetlands.

1973 Reorganized Planning and Development Act granting the provincial government the power to designate certain areas as "special planning areas" (area with "more than local interest and affects the interest of the public") and directing Council to plan for these areas (compulsory).

1973 New Saskatchewan Housing Corportion Act providing new authority for the province.

1973 New Senior Citizens House Repair Assistance Act.

1974 New Farm Ownership Act providing provincial control over the ownership of farmland.

1974 New Housing Building Assistance Act with a strong provincial element.

1976 First major provincial workshop on land policies.

1977 Establishment of the provincial Land Use Policy Committee to report to Cabinet.

This list only serves to illustrate the variety, extent and degree of change which have occurred. Similar activities have occurred in other provinces. (See Eger (1980), Proudfoot (1980); McFadyen (1980) and Dale-Johnson (1980).

This renewed provincial interest in the management of land is not only manifested in the new statutes that have been introduced, but it is also evident in a number of major studies that have been undertaken at the provincial level. At least six provinces have taken the leadership to provide major amendments or rewriting to the various regulations relating to the planning and regulation of land (British Columbia, Alberta, Saskatchewan, Ontario, Quebec, and New Brunswick). In each case there is a common thread of increased provincial involvement in the land planning process.

Ironically the Province of Alberta promised a shift to local autonomy while at the same time strengthening provincial control. The major 1977 revisions to their Planning Act, 1977, S.A. 1977,c.89 granted greater local control while at the same time making it mandatory for regions and municipal governments to prepare "plans". The net effect has been to reduce local autonomy since the province retains the right to reject these plans; but once they are adopted, they become binding on the local authorities.

Other examples can be cited. In British Columbia, recent amendments to the Municipal Act, R.S.B.C. 1979,c.290 have provided a stronger provincial control over municipal action with respect to development costs, subdivision costs, planning and development charges assessed on private developers. In a similar vein, the Agricultural Land Commission Act, R.S.B.C. 1979,c.9 in British Columbia represented a major new land management initiative exercised at the provincial level. In Manitoba, legislation introduced during the past decade provides for the province to carry out planning responsibilities where a municipality chooses not to exercise this role. In Alberta, a similar tendency toward providing greater provincial control is found in the amendments to the existing statutes, particularly the new Planning Act.(S.A. 1977, c.89).

In the Province of Ontario, the proposed amendments to the Planning Act, R.S.O. 1970,c.349 provide for a stronger provincial influence in the form of positive initiatives and control over municipal activities.

As a general statement, these new provincial initiatives can be broadly grouped into classes which emphasize preserving agricultural land, protecting the environment, redistributing income (the various tax schemes on earned and unearned increments in land), and controlling "foreign" ownership of provincial lands.

While a more exhaustive list of the various statutes and amendments to existing statutes which have tended to shift authority back to the hands of the provincial government can be analyzed, the above-mentioned examples are sufficient to demonstrate the point. The increase in the number of new statutes, new statutory instruments and new agencies has corresponded with a shift in power from the local level to the provincial level. (Robinson (1975) and Gerthen et al. (1975)).

3.6.11 Overlapping Jurisdiction: Local and Provincial

The trend toward restoration of greater controls in the hands of the provincial government has simultaneously tended to reduce the opportunities for legal conflicts between the provincial and local levels of government. In reviewing the statutes, it is clear that the major new statutes regulating land have provided for rather clear statements as to the ultimate jurisdiction in any particular instance. Some significant problems and areas of potential conflict still exist in the host of provisions contained in a variety of minor statutes which have as their ultimate purpose something other than land use regulation.

While the legal jurisdiction have been clarified to a large degree by recent amendments to existing statutes and to new statutes, the opportunities for conflict in objectives have become more evident during the past decade. Local governments, in attempting to manage and preserve the quality of life within their own jurisdiction, often come in conflict with provincial and sometimes federal governments in their attempts to achieve their objectives. While it is clear that the repatriation of authority to the provincial level is intended to provide the provincial government with a stronger hand in achieving their objectives, this does not lessen the likelihood of conflict. As a generalization, it appears safe to conclude that the potential for

conflict in the legal sense has been lessened, but the likelihood of conflict in objectives and means to achieve these objectives has been greatly enhanced as the provincial governments seek to play a more central role in land use planning.

In an attempt to reduce the potential conflicts, most provinces have moved from a traditional line agency approach to land management to an integrated multi-interest approach (Gerther (1975) and Robinson (1973). While this may assure that all represented groups have an opportunity to be heard, it does not lessen the potential for conflict - only places it behind boardroom doors. To the extent that provinces seek to play a more active role and local governments seek to preserve a quality of life, working within their limited local resources, conflicts will continue to prevail.

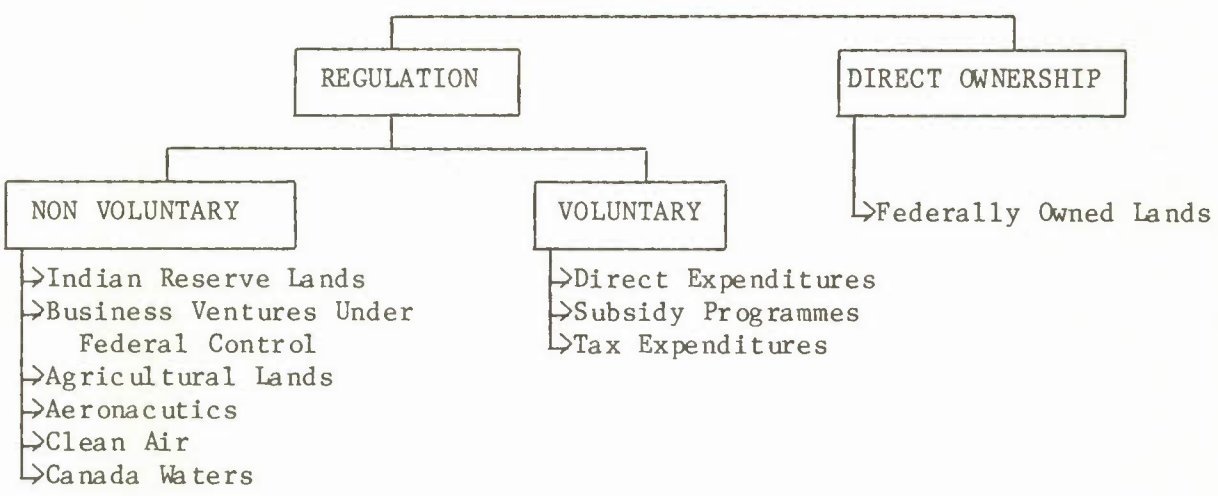
3.7 THE FEDERAL ROLE IN REGULATING REAL PROPERTY

3.7.1 Introduction

The definition of economic regulation stated earlier in this paper, combined with the allocation of exclusive jurisdictions granted to the federal government and provincial legislatures under the B.N.A. Act implies that the federal role in the non-voluntary regulation of real property will be extremely limited. There are, however, several important areas where the federal government has the constitutional authority to exercise non-voluntary regulations (directives) of real property, either controlling land owned by the federal government or lands used in activities which normally fall under federal jurisdiction. In addition, the federal government has the constitutional authority to exercise voluntary regulations, and it is these voluntary activities which form the important part of the regulatory framework at the federal level. Finally, the federal government, as a principal landowner in Canada (40.4 percent of all lands), can exercise considerable indirect influence on real property markets via their management of federally owned lands.

Chart 3.3

NATURE OF FEDERAL INTERVENTION IN REAL PROPERTY MARKETS



In the absence of constitutional limitations, the federal government may well choose to use a variety of non-voluntary regulations to influence decisions respecting real property (Chart 3.4). It appears that, in an effort to get around their constitutional limitations, the federal government has been forced to use alternative means to influence the development, subdivision, use and ownership of real property, and these federal actions must be considered as part of the regulation process since they play a major role in the regulation of real property, either directly or indirectly.

Table 3.9 represents the list of federal statutes containing provisions which relate to the regulations affecting real property. It should be noted that Priest and Wohl (1980, pp. 119-120) concluded that no federal statutes fell within their definition of land use regulation.[146]

TABLE 3.9

FEDERAL STATUTES DIRECTLY INFLUENCING REAL PROPERTY

1978 Act	Original Act	Current Act	Present Act
A. Non-Voluntary Regulations			
1 Indian Act, R.S.C. 1970,c.I-5	1868	1970	1970
2 Aeronautics Act, R.S.C. 1970,c.A-3	1919	1927	1919
3 Canada Water Act, R.S.C. 1970,c.C-5 (1st supp.)	1953	1970	1970
4 Clean Air Act, R.S.C. 1970,c.C-244	1971	1971	1971
B. Voluntary Regulations			
5 National Housing Act, R.S.C. 1970,c.N-10	1935	1938.....1954	
6 Canada Mortgage and Housing Corporation Act, R.S.C. 1970,c.C-16	1945	1979	1954
7 Municipal Improvements Act, Assistance Act, R.S.C. 1970,c.M-16	1938.....1970		1970

8	Income Tax Act, S.C. 1972,c.63	1917	1952	1972
9	Regional Development Incentives Act, R.S.C. 1970,c.R-3	1968	1970	1970
10	Regional Economic Expansion Act,	1968	1970	1970
	R.S.C. 1970,c.R-4	1968	1970	1970
C. Direct Ownership				
11	Railway Act, R.S.C. 1970,c.N-8	1868	1919	1919
12	National Harbours Board Act, R.S.C. 1970,c.N-8	1936	1936	1936
13	Harbours Commission Act, R.S.C. 1970,c.H-1	1964	1964	1964

In the list contained in Table 3.9, four statutes provide for a form of non-voluntary federal regulation over real property not owned by the federal government: Indian Act; Aeronautics Act; Canada Water Act; and Clean Air Act. The remaining statutes provide for some form of voluntary regulations.[147]

3.7.2 Federal Non-voluntary Regulation

INDIAN LANDS

Under section 91 of the B.N.A. Act, the federal government has exclusive power regarding land reserved for Indians (s.91(24)). Provincial and local real property regulations are not enforceable on "land reserved for Indians" within the meaning of section 91(24) of the B.N.A. Act.[148] Moreover, the courts appear to have concluded that Indian reserve lands which are conditionally surrendered for the purpose of leasing to private individuals, other than Indians, continue to be "lands reserved for Indians and are, therefore, subject to federal controls but not local or provincial controls."[149]

While provincial and local land use regulations do not apply to the Indian reserves, from a practical point of view the Indian Band Council will often develop in conformity with provincial and local regulations in order that the municipality will share the local services (sewers and water) with the reserve lands. Unfortunately, there are enough exceptions to this practice to create problems in the urban areas and conflicts between the federal (acting for or on behalf of the Band) and local governments are likely to increase as pressure mounts to develop the vast holdings of Indian reserve land, much of which is located in high profile urban areas.[150]

THE AERONAUTICS ACT

While the primary purpose of the Aeronautics Act, R.S.C. 1970,c.A-3 is to regulate air transportation, section 6(1)(j) is of greater consequence at the local level since it directly affects substantial privately owned lands adjacent to airports.

> ... the Minister may ... make regulations with respect to the height, use and location of buildings, structures and objects, including objects of natural growth, situated on lands adjacent to or in the vicinity of airports, and including for such purposes regulations restricting, regulating or prohibiting the design of anything or suffering of anything to be done on any such lands....

This particular provision, along with the more general issues of situating airports, has been the subject of considerable controversy in Vancouver, Toronto and Montreal.[151]

CANADA WATER ACT

The Canada Water Act R.S.C. 1970,c.5(1st Supp.) provides that the federal authority with a similar type of authority over privately owned lands. Section 24(1)(a) of the Act states that the authority may:

> enter any area, place, premise, vessel or vehicle, other than a private dwelling ... in which he reasonably believes (i) there is being or has been carried out any manufacturing or other process that may result in or has resulted in waste, or (ii) there is any waste that may be or has been added to any water that has been designated as a water quality management....

This inspection authority, combined with the authority to control waste disposal, is mainly in the nature of environmental protection, but it does provide an element of non-voluntary regulation over the use of land since the privately owned property must either include a satisfactory disposal system or change the land use. (See Landis (1970) for a general discussion of federal and provincial controls of water pollution).

CLEAN AIR

The final area of non-voluntary regulation is found in the Clean Air Act, R.S.C. 1970,c.C-244, which provides controls for the emission of air contaminants (s.15) and grants the (federal) inspector power to specify emission standards with respect to construction, alteration or expansion (s.15(2)). The key aspect of real property regulation in this context is the federal authority to regulate construction, an area normally under provincial or local controls.

In each of these areas, the main purposes of the statutes are not exclusively related to real property but they each contain a significant and direct regulatory element over lands which are not publicly owned.

3.7.3 FEDERAL VOLUNTARY REGULATIONS

Six statutes fall into the category of voluntary regulations, that is forms of government intervention where the private citizen is, directly or indirectly, regulated only when they choose to participate.

The first two statutes classified under the title of voluntary regulation are the most significant. The Canada Mortgage and Housing Act, R.S.C. 1970,c.C-16 and the National Housing Act R.S.C. 1970,c.N-10, have, since 1954, represented the major thrust of the federal government into urban land markets.[152] The major federal land and housing programmes are provided in the National Housing Act. The preamble to this Act states that the purpose is

> to promote the construction of new housing, the repair and modernization of existing housing, and the improvement of housing and living conditions.

The National Housing Act provides for direct expenditures, in the form of subsidies, in two broad areas including insured loans and subsidy programmes. Canada Mortgage and Housing Corporation (CMHC) is authorized to insure mortgage loans against borrower default and act as a lender of last resort when the private lenders will not service a market. In 1954, when this Act was amended to provide an insurance programme, CMHC was the only agent offering this insurance programme and, in turn, it was the only insurance programme recognized by the institutional lenders. Beginning in 1963, private mortgage insurance companies competed with CMHC in offering this service.[153] While it is beyond the scope of this study to evaluate the role of this NHA insurance programme, it is sufficient to note that it played a major part in shaping mortgage lending practices in Canada and accounted for a substantial proportion of all residential mortgage loans.[154]

The NHA insurance and direct loans were initially limited to loans to finance new construction (until 1969) - a fact that reflected the preamble of the Act. It is important to recognize that the focus of this Act was the construction, repair and renovation of housing. The emphasis during the early years, (1959-1969) was on employment, not housing. The early history of the administration of this Act lends support to this observation.[155] Between 1954 and 1969 the federal government either expanded funds or curtailed funds to

CMHC, depending upon the rate of unemployment and the state of the economy. The use of housing as a stimulus to cure unemployment rested with the assumptions that the housing industry employed low-skilled workers, those most likely to be unemployed and the industry was labour intense. As a result, this industry would provide a high employment multiplier effect.

This early history of the National Housing Act corresponded with a period of high demand for housing, a strong trend towards urban living, a shift to the suburbs and a period of major servicing problems for local governments.[156] The emphasis under this Act was clearly towards owner-occupation, resulting in a serious distortion of the tenure choice facing most Canadians.

It is also important to note that the insurance provisions contained under this Act were not unconditionally available for new construction. Under the provisions of this Act, the Governor in Council could (and did) make regulations concerning the size and terms of the mortgage loan, and the minimum size and quality of the new houses and services.[157] Milner (1963A p. 88) notes that:

> Notwithstanding that the regulation of subdivision, land use and building is a matter of provincial concern under the British North America Act, the Federal Government has had an important influence on the quality of subdivisions since 1945 when, generally speaking, Canadian provinces began to take subdivision control more seriously. Federal control has not been exercised directly, of course, but indirectly through its lending policies under the National Housing Act, 1954 and its predecessors administered by the Central Mortgage and Housing Corporation, a Crown corporation commonly referred to as C.M.H.C., established in 1945 to be the Government's housing agency.

Like all lenders, C.M.H.C. was able to set its own non-interest rate conditions on its loans and, given the importance of NHA financing, these conditions would strongly influence market behavior. The standards applied to both housing standards (construction codes, size) and subdivision standards. In 1956, C.M.H.C. prepared some subdivision guidelines which established a

minimum lot size (4,000 square feet), a setback requirement (40 feet plus a minimum of 1,000 square foot rear yard) and a 66 foot "normal" frontage and, at least five percent of the land to open space for single detached units.

Hence by offering an attractive mortgage lending and insurance programme, the federal government was able to play a major role in the regulation of the size and quality of a substantial portion of new housing construction.[158] In addition, the federal government was also able to influence servicing standards by refusing to insure loans of houses which did not meet a specified level of services.[159]

Under the provision of the National Housing Act, the federal government has experimented with a number of subsidy programmes aimed at stimulating the construction of housing in general, and specific forms of housing. These programmes include subsidies for cooperative housing, low-cost (and smaller) housing, subsidies for residential rental units, public housing, and student housing.[160] In addition to these housing subsidy programmes, the National Housing Act further provides for loans to municipalities for land assembly and public land banking, for urban renewal and for municipal sewer treatment projects.[161] In addition to these roles, the Act provides that the federal government, through CMHC, would play a major role in research and provide financial support for research at the local and private levels.[162] Under this general provision, CMHC has been the major force behind the establishment of the Community Planning Association of Canada - an organization created to promote "good planning".[163]

While participation in the federal government programmes is voluntary, (the provinces, municipalities and private citizens had to initiate the agreement), the attractiveness of the programmes was such that they played (and continue to play) a major role in shaping the land markets. Often, the conditions attached to the loans, particularly in the areas of size of units

would conflict with municipal plans. Public housing is one such example where everyone seems to agree that low-income families are entitled to "adequate" housing, providing it is not in their neighborhood. Similarly, municipalities have voiced their concern about the impact the subsidized housing programmes was having on their tax base and servicing costs.[164]

The next statute, the Municipal Improvements Assistance Act, R.S.C. 1970,c.M-16 provides that the federal government may:

> enter into an agreement with any municipality to make a loan or loans ... to pay the whole or any part of the costs of constructing or making extensions or improvements to or renewals of a municipal waterworks system, a municipal gas plant, a municipal electrical light system, or other municipal project if the project ... will be a self-liquidating project (section 3.1).

Loans under this Act are conditional upon the municipality obtaining provincial government approval.

Since the lack of infrastructure in a local real property market can be a major limitation on new growth, federal subsidies in this area play an important role in ensuring sufficient services are in place to provide adequate lands for expansion and new development.[165] However, the volume of loans made under this programme are relatively minor. In 1971, only $215,300 was given and this had declined to $19,796 in 1976.[166]

Tax Expenditures

The Income Tax Act, S.C. 1972,c.63 has played, and continues to play an important role in regulating real property markets (Office of Management and Budget, 1979). While it is beyond the scope of this paper to analysis the impact of tax expenditures on the allocation of real property, the literature provides sufficient evidence to suggest four areas where tax expenditures under the Income Tax Act have affected economic decisions with respect to land. First, the provisions to exempt a "principal residence" from taxation,

either taxation on imputed income or capital gains, have encouraged owner-occupation of housing.[167] This, in turn, has promoted the construction of single-detached housing at the expense of multi-unit construction.[168] It has also been argued that this provision promotes the ownership of proportionately more housing (larger houses and lots) than would be the case otherwise.[169] Second, the provisions governing the deductability of land holding costs are thought to encourage concentration of raw land holdings in the hands of real estate companies.[170] Third, the capital cost allowance provisions have encouraged wood frame construction (which has the highest capitol cost allowance rate) at the expense of concrete or brick construction.[171] Finally, the provisions for "tax shelters" have artificially stimulated the construction of multi-unit residential projects at the expense of other types of construction.[172]

Regional Development

The next two statutes, the Regional Development Incentives Act R.S.C. 1970,c.R-3, and the Regional Economics Expansion Act, R.S.C. 1970,c.R-4, represent two programmes of joint federal-provincial involvement.

Regional Development Incentives Act states that this is:

> An Act to promote incentives for the development of productive employment opportunities in Regions of Canada determined to require special measures to facilitate economic expansion.

These two Acts, operated jointly under the Department of Regional Economic Expansion (DREE), each require consultation and agreement with the individual provinces before any positive action is undertaken. While the thrust appears to be the promotion of "productive employment", the impacts on land at the local levels can be significant.

The importance of the DREE activities was summarized by J.M. Robinson (1977, p. 167):

> Provincial governments are gaining more power in designing federally funded programs. In 1974, in the case of the federal program for economc expansion in the Department of Regional Economic Expansion (DREE), there had been a decentralization of almost all developmental planning power to the provinces. While admittedly, the federal department continues to fund development planning and could veto development plans prepared by the provinces, responsibility for programs has clearly shifted.

As an indication of the significance of these two statutes, it can be noted that $67.4 million was paid out in 1978/79. The estimated amount of the incentives created was $109.8 million. This involved a total of 855 accepted offers from all provinces and the Northwest Territories.[173]

These four areas (and six statutes) represent major interventions into the operation of the market for real property. Generally, these provisions compliment, rather than conflict with provincial and local activities. On the other hand, changes in these Income Tax Act provisions frequently prompt provincial and local governments to request support for some form of housing. For example, when the Income Tax Act was amended to eliminate tax shelters (January 1, 1972 through November 14, 1974), many municipal governments joined the development industry in requesting a re-introduction of this inducement to develop rental units.[174]

Direct Ownership

The final area of federal activity - which forms an important alternative to economic regulation - is found under the general category of direct ownership of real property. The importance of these federally owned lands is more significant than their share of the market might suggest since these lands are generally "high profile", large scale and attract considerable local attention. In aggregate, federal land holdings, exclusive of Indian lands and national parks, account for 38.7 percent of the total land area in Canada. However, excluding the Yukon and the Northwest Territories, federal

public lands account for less than 0.25 percent of all lands in Canada and Indian reserve lands account for approximately 0.40 percent. Of this total owned by the federal government, 210,000 acres are located within the 22 largest urban centres, but this figure declines to 132,000 acres if the National Capital Region is excluded.[175]

The statistics concerning the land holdings of the federal government illustrate an important difference between the situation in Canada and the United States. In the United States the federal government owns 760 million acres of land, or about one-third of the nation's land resources.[176] Even if one excludes their holdings in Alaska (325 million acres), the U.S.A. federal holdings are clearly more significant than is the case in Canada. Hence the proper management of the federal land holdings in the United States is of greater consequence simply because of the volume of land both directly and indirectly affected.

Three federal statutes, classified under the heading of "direct ownership", should be considered explicitly. The Harbour Commissions Act, R.S.C. 1970,c.H-1) provides that the federal government "shall regulate and control the use and development of all lands, buildings and other property within the limits of the harbour and all docks, wharfs and equipment erected or used..." (s. 9). Since the harbour represents a significant focal point in any waterfront community, these regulatory controls will play a major role in setting the pattern of local land use not only at the waterfront, but for complementary activities away from the harbour.

In a similar vein, the National Harbours Board Act, R.S.C. 1970,c.N-8,s.10, provides that the federal government, through the National Harbours Board, may:

> establish at any time a limit in the waters of any harbour under its jurisdiction beyond which construction from the shore may not be extended...

Taken together, these two statutes provide extensive federal control over the off-shore and shoreline of harbours and influence in a significant way the development of municipalities possessing harbours.

The final specific act under which the federal government exercises ownership rights is the Railway Act, R.S.C. 1970,c.R-2. In addition to the powers to acquire and take lands for the construction, maintenance and operation of a railway (s. 102(c)), the railways may also "fell or remove trees that stand within 100 feet from either side of the right-of-way of the railway or are liable to fall across the railway".

While these provisions are not likely to be of great consequence in most urban areas, they do represent a potential point of conflict in several environmentally sensitive rural areas.

Several comments might be made concerning omissions from this list of federal statutes having (regulatory) impact on land and real property. There exist a number of minor provisions in the federal Acts where the government can regulate buildings as a condition of granting a subsidy or a license (such as the Cheese and Cheese Factory Improvement Act, R.S.C. 1970,c.C-17,s.7(a) or the Excise Act, R.S.C. 1970,c.E-12,s.17(1), (Section 17-1)), but in these cases the requirements are clearly limited to the particular property and they are not likely to significantly influence real property markets. The Expropriation Act, R.S.C. 1970,c.16(1st Supp) and Public Works Act, R.S.C. 1970,c.P-38 are two other potential candidates for inclusion. These were omitted on the grounds that they are only "administrative statutes" and, by themselves, provide no significant economic regulatory element.

3.7.4 Ministry of the State for Urban Affairs - An Instrument That Failed

Before leaving the review of federal government regulatory activity, it is instructive to consider the short-lived Ministry of State for Urban Affairs (MSUA). In creating MSUA in June 1971, the government stated that:

> The Ministry of State for Urban Affairs shall formulate and develop policies for implementation through measures within fields of federal jurisdiction in respect to
> a) the most appropriate means by which the Government of Canada may have a beneficial influence on the evolution of the process of urbanization in Canada;
> b) the integration of urban policy with other policies and programmes of the Government of Canada; (Hansard, House of Commons, March 13, 1973, pp.766 - 770)

The wording of this proclamation makes it abundantly clear that the federal government recognized that they were coming close to encroaching on provincial rights.[177] In every sense, the MSUA represented the most ambitious attempt by the federal government to create a role for itself in urban affairs. Moreover, the wording of the announcement reflects a new dimension or direction in the administration of the federal government.

The background leading up to the establishment of the MSUA reflects a conflict between a desire for strong central government control and the decentralized constitutional provisions granting the provinces control of land use matters (Gertler, 1975 and Goldberg, 1978). The general question of why Ministries of State as a form of organization came into being should be addressed first. Aucoin and French (1974, p. 12) summarized their version of this organizational arrangement as follows:

> The new ministers of state would have neither significant statutory authority nor a major program capability. Rather, they would be assigned the responsibility for the formulation of policy and for coordination of those parts of the programs of existing departments and agencies which impacted upon the newly designated policy field.

Under these provisions, the government established MSUA and the Ministry of State for Science and Technology (MSST). The desire was to have Ministries of State which could better formulate and coordinate policies in specific areas - "priority problems" - and "to enshrine rational analysis and planning in place of the interplay of traditional sources of power in the cabinet" (Aucoin and French, 1974, p. 13).[178]

This approach was not unique to the federal government as a number of provinces were also establishing interdepartmental committees to coordinate and plan. These new administrative committees were a response to the growing awareness that many of the major planning activities required integration of the traditional functions. In early 1979 the federal government discontinued MSUA. During its short life, the Ministry was ever mindful of the proper role of the provinces in land use matters. In 1977, the Minister noted:

> Constitutionally, responsibility for Canada's municipalities and matters of local concern rests solely with provincial and municipal governments. The Federal Government recognizes and supports this arrangement. The Federal Government also recognizes that it has constitutional responsibilities to carry out, and in doing so, federal policies, programs and projects may affect the pattern, economic base and quality of life in Canadian settlements. (MSUA, 1976 - 77, p.5)

The Ministry outlined a role to promote coordination with and cooperation between the federal and provincial governments and also between the various federal agencies and ministries.

Just what went wrong? Do we need a federal Ministry for Urban Affairs? Some insight can be obtained in the debates of the House of Commons. In a speech given in October 27, 1970, the Minister of State for Urban Affairs said:

> Let me repeat the words I have just used - consult, cooperate, coordinate. These are meant to be neither soothing motherhood words nor words to gloss over any supposed lack of real intentions by this government. They are, in fact, precise indicators of how we will approach the problems posed by rapid urbanization in Canada at the federal level.

By November 1978, members of the House of Commons were prompted to ask - and observe that:

> I have with me tonight a copy of a report dated September 1975. I ask the Ministers why this Committee of deputy ministers has not met since 1975....These were not just joe-boys or boys from the mail room; these were deputy ministers.(Hansard, November 28, 1978 p.1606)[179]

In reponse to these changes the Government noted:

> The Department of Urban Affairs effectively fulfilled its role for which it was created, that of coordinating delivery of federal urban-oriented policies and programs and of identifying priority concerns (p. 1607).[180]

The demise of the MSUA leaves unanswered the question of the appropriate role for the federal government in the regulation of real property markets. Even in the absence of constitutional difficulties there is no agreement as to the "proper" roles for each level of government. Clearly Hellyer (1969) and Lithwick (1971) wanted a large role for the federal government, but support for these positions is by no means universal. The Ontario Planning Act Review Committee (1978) outlined certain principles concerning the role of each level of government.

> In distributing planning responsibility among the three government levels, each level should concern itself only with matters of direct interest to it.
>
> No level of government should act beyond its own explicitly defined interests.

> The activities of a lower level of government should be supervised only to the extent necessary to protect or secure the explicitly defined interests of the higher level.
>
> A higher level of government should not intervene in the actions of a lower level on the presumption that the higher level possesses a superior knowledge or wisdom about local matters.

The principles are essentially a proposal for decentralized planning. They have been endorsed by the Urban Development Institute of Ontario.[181]

Baxter and Hamilton (1975) recommended that the federal role should concentrate on playing a minor role in land matters. They argue there should be no direct federal policies relating to urban land, except as they are required to meet national objectives or to support local government actions. At approximately the same time, Martin (1975 p.3) observes:

> It is the belief of this writer that comprehensive and consistent urban land policy integrated among levels of government is a pre-condition to the solution of urban land problems.

He concludes that:

> The Federal Government is urged to rehabilitate or replace the poorly functioning urban land market and to take the lead in formulating an effective urban land policy.

More recently, Frankena and Scheffman (1980 p.59) urge that the provincial role in the land planning process should be reduced, save the importance of the efficiency of resource allocation as a provincial concern. While the authors are silent concerning the role of the federal government, a logical extension of their analysis suggests they would support an equally small or perhaps smaller role for the federal government in land matters.

While there is no general agreement between those who argue for a greater federal role and those who favour decentralization, the federal government does not appear to be assuming a more central role in land use matters but it does appear to be more selective in the exercise of their existing activities.

3.7.5 Growth of and Change in the Federal Role

The statutes selected and included in this section do not suggest any significant growth in the federal role. The number of new statutes introduced in recent years is minor. Of the 14 statutes included, only one has been proclaimed in the decade of the 1970s and five in the decade of the 1960s. This does not represent a major growth.[182] This excludes, however, the establishment of MSUA as part of the real property administrative structure of the federal government.

In contrast, the focus of the federal statutes has changed. The trend is clearly to use the federal statutes to achieve more specific objectives in the form of home ownership, redistribution of housing support for low-income families; subsidies for owner-occupiers, etc.[183] These objectives are frequently being achieved with the use of conditional grants or subsidies. Smith (1977) summarized this evolution of federal housing policy as following into three quite distinct stages. Prior to 1954, federal policy was mainly directed toward stimulating demand. The period 1954-70 was mainly to stimulate supply. The post-1970 period has concentrated on the redistribution of income, a focus on housing for particular social groups.

Several examples of the change in focus include major shifts in the National Housing Act which direct public funds to low-income housing (assisted Home-Ownership Programme, or AHOP, and Assisted Rental Programme, or ARP). In addition, the CMHC has imposed limits to direct their insurance and direct loans to moderately sized and priced housing (specific target programmes).

4.0 CONCLUSIONS

The foregoing description and analysis indicate that all areas of government are actively involved in the regulation of real property. Moreover, the various areas of government have quite different constitutional authorities and, as a consequence, they rely upon different forms of regulatory tools. Local governments rely most heavily upon directives in the form of by-laws or administrative directives; provincial governments use a greater variety of tools including both voluntary and non-voluntary regulations and direct ownership; and the federal government relies most heavily upon voluntary regulations and direct ownership.

CHART 4.1 Frequently Used Forms of Regulation

Regulatory Instruments	Local	Provincial	Federal
1. Directives	Frequent	Frequent	Infrequent
2. Taxation	Infrequent	Frequent	Frequent
3. Moral Suasion	Frequent	Infrequent	Infrequent
Voluntary			
1. Tax Expenditures	Infrequent	Frequent	Frequent
2. Subsidies	Infrequent	Frequent	Frequent

Directives have become a more commonly used tool at the provincial level as has been illustrated with the increasing use of provincial wide codes for construction, plumbing and electrical; for environmental controls; and for preservation of agricultural lands. While the provinces have opted to make

greater use of directives, as opposed to either local control or other regulatory instruments, local governments continue to be seriously limited in their scope of regulatory tools. This reflects, in large part, the limited financial capacity of local governments.

The federal government is limited, constitutionally, to the use of voluntary tools or direct ownership. The one occasion when the federal government sought to obtain a more direct major voice in real property problems (MSUA) was judged to be a failure. On the other hand, the federal government has become much more selective in the use and application of their various voluntary programmes.

COMPLEX AND CONFUSING

The present system of real property regulation has been described elsewhere as complex and confusing (Planning Act Review Committee, 1977) and the analysis in this paper suggests that the current system promotes complexity and confusion. The complexity arises because of the many areas of government involved (the "layering effect") and the ever growing number of agencies in each area of government. The regulatory system is made more complex by the wide variety of regulatory tools that are in use, frequently by more tha one area of government.

The system is confusing in that participants are often getting mixed messages from each area of government and find that there is little or no accountability inherent in the system. The federal government promotes a programme to encourage the construction of residential rental accomodation at a time the provinces expand rent controls and local councils promote higher density construction. Local councils promote higher density construction but simultaneously down-zone lands (to encourage or force developers to negotiate some fees) while the provincial and federal governments promote larger single detached construction.

The list of examples of conflicting messages is long and confusing, indicative of a variety of goals or objectives in each area of government. Frequently these objectives are mutually exclusive, sometimes complementary but seldom coordinated.

INCONSISTENT

The present system is clearly marked by a high degree of inconsistency and apparently founded upon ad hoc decisions. The frequent changes in government regulations, the lack of standard procedures from one issue to the next or from one municipality to the next, the lack of consistency from one council to the next all tend to give an impression of ad hoc decisions. Moreover the system does not require that explanations be given or reasons made public on many occassions. Hence it becomes difficult to determine the patterns of decisions.

LACK OF ACCOUNTABILITY

The present system provides for modest processes of accountability. At the local area of governments some reviews are undertaken by the provincial governments but these reviews are not uniformly applied in all provinces nor do they cover all aspects of the regulatory process. Hence the province may require that all community plans be provincially approved yet the by-laws (tools to implement the plans) are not necessarily approved by the province.

Perhaps the most obvious lack of accountability occurs at the local level where land is purposely down-zoned in order to force negotiation on terms and conditions for higher density zoning. There is nothing in the various provincial plans (except British Columbia) to promote a more responsible zoning. As a "taxing device" the down-zoning - up-zoning" system is complex, costly and inefficient. Municipalities should have greater accountability in this area. Less obvious, but equally important, is the lack of accountability in both the provincial and federal areas of government for the various tax expenditure programmes.

CONFLICTS

The present system does not provide a useful method of resolving conflicts between the various areas of governments. Basically either the provincial or federal areas of government can force their wishes on a local government. While it is recognized that some supremacy must exist when provincial and national interests are at stake, however the notion of "public interest" now seems to include a far ranging list. An example is the federal control of Indian reserved lands. These lands need not (and often do not) conform to local plans. There is absolutely no justification for exempting these lands from local controls.

Another area of conflict is in the case of the use of provincial directives, especially in the areas of agricultural reserves and environmental protections. Frequently these provincial regulations are in conflict with local government seeking to develop lands and upgrade the tax base. A further area of conflict exists between adjacent municipalities or between adjacent urban and rural governments - the public externalities - and the conflicts will intensify as central municipalities use up their vacant lands and compete for new growth for redevelopment. Presently no province seems to have found an acceptable mechanism to resolve such conflicts.

In concluding this report, it should be noted that urban centres in every province; independent of the process of regulation that has been used, have made impressive gains in new development and construction. Generally there is no consistent dissatisfaction expressed for the physical results of the process but rather for the process itself and the consequential costs of the process. It seems clear that the multi-government (and multi-agency) approach will prompt criticism of the process as it lacks accountability and incentives to streamline. Fortunately all areas of government appear willing to adapt their processes in the interests of efficiency but conflicting goals and objectives continue to be a major issue.

NOTES

PART I

1. The background of the establishment of the Regulation Reference is well documented in Regulation Reference: A Preliminary Report to First Ministers; (Ottawa: Regulation Reference, Economic Council of Canada, November, 1978)

2. These framework and specific studies are outlined in Responsible Regulation: An Interim Report by the Economic Council of Canada, November, 1979 (Ottawa: Regulation Reference, Economic Council of Canada, 1979, p. xiii).

3. Subsequently, a decision was made to undertake only an explanatory study of the methodology for determining building standards.

4. The division of powers between the provincial and federal governments are discussed in a later section of this paper along with a discussion of the delegation of powers from provinces to local governments.

5. This excludes the Yukon and the Northwest Territories, both under direct federal control. Because of the sparse population in these two areas and their unique climatic conditions, they have been excluded from these studies.

6. S.W. Hamilton, Land Use and Building Code Regulation: A Research Proposal Prepared for the Regulation Reference of the Economic Council of Canada, (Ottawa:Regulation Reference, Economic Council of Canada, 1979, p. 7).

7. The four case studies include: A.F. Eger (1980), David Dale-Johnson (1980), Stuart Proudfoot (1980) and Stuart McFadyen and D. Johnson (1980) for the Metropolitan areas of Montreal, Vancouver, Toronto and Edmonton.

8. See Irving Silver (1980).

9. See M. A. Goldberg (1980).

10. A comprehensive treatment may be found in Margot Priest, W.T. Stanbury and Fred Thompson, "On the Definition of Economic Regulation", in Government Regulation: Scope, Growth, Process,(ed. W.T. Stanbury), (1980)(Montreal: Institute for Research on Public Policy).

11. Priest, et al., (1980), have reviewed a number of definitions of the term "regulation". In most cases, the definitions of regulation they found were too broad. As a consequence, they suggest a definition for the term "economic regulation" which,

with some modification, will be adopted in this paper. In their context, economic regulation is defined as "the imposition of rules by a government, backed by the use of penalties, that are intended specifically to modify the economic behavior of individuals and firms in the private sector" (Priest, et al., 1980, p. 10). This definition differs from that selected by Priest, Stanbury and Thompson in that either positive (subsidies) or negative (penalties) sanctions may be involved.

12. It is not necessary that everyone must elect to behave in such a way as to enjoy the subsidy. Any one market participant participating in the subsidy programme may be sufficient to achieve the desired goals of government providing their market share is sufficiently large.

13. Some attempts have been made to distinguish "direct" or "economic" regulation from "social regulation". It is generally maintained that "direct regulation" is industry specific (the "old" or "traditional" regulation) whereas "social regulation" refers to the "new" or "health, safety and environmental" regulation where the "social" refers to the broad objectives of the regulation. In either case, the regulations alter economic behavior. See, for example, William Lilley III and James C. Miller, who note: "While all regulation is essentially 'social' in that it affects human welfare, the economic/social distinctions emphasizes some very significant differences. The old-style economic regulation typically focuses on markets, rates, and the obligation to serve .... On the other hand ... social regulation affects the conditions under which goods and services are produced [and sold] and the physical characteristics of the products that are manufactured ..." (1977, pp. 53-54). See also Mitnick (1980) and Doern (1978).

14. See Margot Priest, W.T Stanbury and Fred Thompson (1980, p. 4). These authors provide a rather more detailed list including "rate of return", "disclosure of information", "methods of production" and "conditions of service". These can, however, be included as part of the price, and supply classifications suggested in Section 1.3 of this study.

15. See Margot Priest and Aron Wohl (1980, pp. 69-71).

16. See also G.B. Doern (ed., 1978) and Mitnick (1980). Priest et al use regulation in the narrow sense of "directives".

17. Moral suasion is most frequently used at the local level where authorities have considerable discretion and where anyone challenging the local authority has a high probability of facing the same individual authority in the future.

18. Abuses of the "threat to expropriate", either real or perceived, have prompted amendments to the various expropriation acts to afford the private property owner a more equal voice in negotiation. For example, under the Federal Expropriation Act, R.S.C.

1970, c.16 (1st supp.), a property owner can request a public hearing; can accept the initial cash offer without prejudice; and can expect the expropriating authority to pay reasonable costs for an independent appraisal. Moreover, the expropriating authority must provide the property owner with a copy of their appraisal. For a commentary on the abuses, see Shenfield (1978).

19. Direct expenditures in the form of conditional transfers are critical to local government and play an important role in shaping local decisions. Approximately one-half of all local revenue is derived from transfers and of this, an estimated 88% is in the form of conditional grants. (See Tindal, 1979, pp. 36-38).

20. This represents an attempt to introduce a special tax (intended to make land speculation financially unattractive) on land speculators. The notion has some historic basis as an attempt to collect "betterment" for private profits created by public expenditures. Unfortunately, it is difficult in practice to define, a priori, the speculator. See, for example, Hamilton and Baxter (1978) or Smith (1979) and later section in this paper.

21. The land transfer tax is generally a modest tax to cover expenses of recording the transfer at the various registry offices. However, in both Ontario and Quebec this particular tax has been used to discourage the sale of land to foreigners or non-residents of the province - a classic case of the use of taxation to achieve a non-revenue related goal. See Hamilton and Baxter (1978).

22. The list of favourite "candidates for support" under the various tax expenditure plans varies from time to time but owner-occupiers, senior citizens and farmers appear to be constant beneficiaries under these programmes, particularly the exemptions and relief from real property tax. See Pickard (1962).

23. For a discussion of public land ownership, see Hamilton and Baxter (1977, p. 74), Bryant (1974), Denman (1957) and Kehoe (1976).

24. The total land areas owned by the Federal Crown, the provincial Crowns and the private sector as of 1976 are as follows:

	Federal[a]	Province[b]	Privately	Total Area[c]
Newfoundland	0.6%	95.0%	4.4%	404517
PEI	0.7	7.9	91.4	5657
Nova Scotia	2.9	28.7	68.4	55490
New Brunswick	3.0	42.9	54.1	73437
Quebec	0.2	92.5	7.3	1540680
Ontario	0.9	87.9	11.2	1068582
Manitoba	0.8	76.9	22.3	650087
Saskatchewan	2.3	59.7	38.0	651900
Alberta	9.6	59.9	30.5	661185
British Columbia	1.0	93.3	5.7	948596
Canada	40.4%	49.8%	9.8%	9976138[d]

a) Includes national parks, Indian reserve lands and forest experimental farms and other Federal Crown Lands.
b) Includes crown agencies.
c) Measured in square kilometers.
d) Includes Yukon (536,324 square kilometers) and Northwest Territories (3379683 square kilometers).

Source: Statistics Canada, The Canada Yearbook, (1978/79 Ottawa, Statistics Canada, p. 29, Table 1.7)

25. The literature relating to public ownership of land and the planned acquisition of land in locations appropriate to promote current objectives can be found under the general theme of "public land banking". See, for example, Hamilton (1977), Smith (1978) and Kehoe (1976).

NOTES PART II

1. The "legal description" of land refers to the identifying measurements regarding the location, and extent of a parcel of land. The legal description is based upon a survey reference system, and is used to unambiguously define the location, and boundaries of a single portion of the earth's surface. A parcel's legal description is generally determined at the time a certificate of title for ownership is created. The legal description generally refers to a subdivision plan filed in a provincial land registry office.

2. "Ownership" of land basically entails ownership of an interest or estate in land. The holding of a fee simple or freehold estate is the highest private ownership rights available in Canada. At common law, the owner of a fee simple estate owned his land down to the centre of the earth and up to the heavens. The latter concept has been modified so that one now likely owns or has rights in the airspace above his property only insofar as it can effectively be used. In a similar vein, the subsurface rights have been restricted, mainly by provincial governments which have reserved most of the precious minerals, metals and petroleum rights.

3. See, for example, Land Ownership Rights: Law and Land: An Overview (Alberta Land Use Forum, 1974), Summary Report No. 9 and Anger and Hansberger (1959).

4. The terms "real property" or "realty" are used to distinguish land from "personal property" which includes goods and chattels. However, once a chattel is affixed to land, it may become a "fixture" and part of the real property. It should be noted that the term "fixture" is the subject of some legal conflicts and much inconsistency in meaning. The legal uncertainties concerning the term fixture is not of major consequence to this paper since the improvements (infrastructure and buildings) which are the subject of land and building code regulations will quite clearly be in the nature of "fixtures" which become part of the real property. For a more comprehensive review on this topic, see H.O. Anger, (1959). The tests to be used to determine if a "chattel" has become a "fixture" are best described in the case Stack v. T. Eaton Co. [1902] 4 O.L.R. 335 (Ontario Divisional Court).

5. The private ownership of land is not absolute, nor has it ever been absolute under English law. Rather, a relationship of "tenure" was established between the crown and the "land possessor". These relationships have gradually evolved to the abstract legal entity called "estates in land" and among these estates are the fee simple, life estates and life estates autre vie. The fee simple represents the highest order of private "ownership" possible, a right which has no time limit, may be sold, inherited or otherwise dealt with, at the owner's discretion, subject to the powers of the Crown.

6. It should be noted that, in Canada, because all land is still essentially part of the "regal estate", the government is not required (or more correctly, does not require itself) to pay compensation to an owner whose use and enjoyment of a property is reduced as the result of a change in permitted use. While traditionally this treatment has been matched with a decision not to charge the owner when an increase in value results from a change in zoning, the widespread use of impost fees may be viewed as a form of tax on increased land values.

7. "Trespass" is generally considered to occur when one directly goes on or interferes with another person's property.

8. "Negligence" refers to a material injury resulting from conduct that is below standard, such as poor maintenance of one's property which results in injury.

9. "Nuisance" refers to the use of one's own property in such a manner as to interfere with rights of other property occupiers.

10. Condominium units or strata units represent a relatively recent form of land tenure in Canada, the first being created in 1968 in British Columbia. Condominiums represent a form of vertical and/or horizontal subdivision of land and buildings involving some element of fee simple ownership combined with some element of common ownership as tenants-in-common, for example, owning an apartment (in fee simple) on the 10th floor of a building. These condominium units are created by enabling statutes and are not found in common law. In contrast, a prepaid lease is simply a contract granting exclusive possession to a property for a certain and limited time period and where all rent is prepaid. Lease terms of up to 100 years are common. Fee simple ownership is at the other extreme, involving perpetual ownership but no element of tenancy-in-common. See Hamilton (1977), Rosenberg (1969) and Pennance (1976).

11. At the time the condominium legislation was being introduced across Canada, the various governments heralded this legislation as a means of reducing "the cost of housing". In reality, what had happened under the condominium legislation is that new packages of private ownership rights had been created by statute. Housing was not made cheaper; rather, new products were brought on the market. In a similar vein, a number of provincial authorities have attempted to use 60- or 100-year prepaid leases as a means of "reducing the cost of land". Once again, this does not involve a reduction of the cost, but rather the establishment of yet another alternative for a bundle of rights in the private sector. See Pennance (1976) and Development Planning Associates (1978).

12. Zoning is a form of regulation to control the type of land use, the bulk of building which may be errected, the location of improvements on a particular site, building heights and setbacks from the street. See M.A. Goldberg and P. Horwood (1980). For an alternative to zoning, see Siegan (1972). The original intent of zoning was to "separate incompatible land uses". An examination of the original zoning bylaws reveals a simplistic approach to "districting" or land use separation. Only later did the height, bulk, set-back standards arise. See Seidel (1978) and Beaton (1974).

13. The reverse process - of land amalgamation or replotting - is generally ignored in the literature. The problem of land assembly or replotting generally arises because the current development regulations require standards which are not consistent with those originally in force at the time of the first subdivision. In fact, in many cases, no regulations were in force at the time of the first subdivision.

14. The capital improvements are themselves the subject of regulation as to the type of improvements, the quality of improvements and who bears the costs - at least initially - for these improvements. The extent of the improvements may be limited to those "on-site" improvements (i.e. contributions to new school construction).

15. In 2200 B.C. the Code of Hammurabi included provisions for the construction safety of houses:

> If a builder built a house for a man and do make its construction firm and the house which he has built collapse and cause the death of the owner of the house - the builder shall be put to death ...

Of more recent vintage, the Peterloo episode in Manchester (1819) which drew attention to the poor quality housing for the industrial workers is claimed to have had a direct influence on the 1846 building codes in England and the first Public Health Act in 1848 (1967, Leonardo Benevolo, pp. 126-131).

16. See, for example Seidel (1978) and Erwin (1977).

17. One exception relates to a class of land uses referred to as "non-conforming" uses. These are legal uses which no longer conform to a revised zoning status. See Rogers (1975).

18. See Spencer (1974).

19. See Arnett (1972), Smith (1978).

20. See Rogers (1975), especially Ch. VII.

21. See later section on Occupancy and Maintenance Standards.

22. For a review of rent controls generally see Fraser Institute (1975), Baxter and Hamilton (1975) and Heung (1975).

23. POST 1973 LANDLORD AND TENANT LEGISLATION IN CANADA

RENT LIMITS

	B.C.	Alta.	Sask.	Man.	Ont.
1. Date of Rent Limitation	1/1/74	1/1/76 to 6/30/77	10/14/75	7/1/75	7/29/75
2. Act/Section	S.27	S.7	S.34A	S.13	S.4
3. Permitted Increases:					
1974	8%	--	--	Jly/75-Sept/76	--
1975	10.6%	--	10%	10%	8%
1976	10.6%	10%	8%	10%/8%	8%
1977	7%	9%	10%	8%/7%	8% to Oct.
1978	7%	8%	Review	7%	6%
1979	7%	8%	Review	6-5 1/2 -5%	6%
4. Extra Rent Increases Permitted?	Yes	Yes	Yes	Yes	Yes
5. Exemptions:					
New construction	Yes	Yes	Yes	Yes	Yes (post 76)
Public housing	Yes	Yes	Yes	Yes	Yes
Housing for employees		Yes			
Mobile home land		Less 4 units			
6. Extra Increase for Renovation	Yes	Yes	Yes	Yes	Yes
7. Increases Permitted per Year	1	2 in 76 1 now 76	1	1	1
8. Conversion to Condominium	Limited	Limited			Limited
9. Right to Sublet		Yes, no P.R.			

23. continued

POST 1973 LANDLORD AND TENANT LEGISLATION IN CANADA

RENT LIMITS

	Que.	N.B.	N.S.	P.E.I.	Nfld.
1. Date of Rent Limitation	1973	10/14/75 -12/31/78	10/14/75	10/14/75	10/14/75
2. Act/Section		S.5	S.8	S.4(1) S.4(2)	S.20(d)
3. Permitted Increases:					
1974	Review	Oct. to Oct.	--	--	--
1975	Review	8%	Freeze Oct. - Dec. or 8%	Freeze Oct. - Dec.	Review
1976	Review	8%	8%	8%	Review
1977	Review	8%	6-8%	8%	Review
1978	Review	8%	6%	4-6%	Review
1979	Review	Out 6/30/79	4%	4-10%	Review
4. Extra Rent Increases Permitted?	Yes	No	Yes	Yes	Review
5. Exemptions:					
New construction	Yes (5 yrs.)	Yes	Yes	Yes (5 yrs.)	No
Public housing	Yes	Yes	Yes	Yes	Yes
6. Extra Increase for Renovation	Yes	Yes	Yes	Yes	Yes
7. Increases Permitted Per Year	1	1	--	--	--

24. The rate of net addition to the housing stock seldom exceeds 3 percent. See Smith (1978).

NOTES

PART III

1. The general practice is to have either regional or direct provincial control over lands in unorganized (rural) areas. Wherever these lands are adjacent to an expanding urban municipality, the practice is to grant the municipality some control over the rural areas. It is interesting to note that the federal government has concurrent legislative powers over "Agriculture", likely including farm houses.

2. The number of agencies involved may vary depending upon the province, the sensitivity of the subject area and the stage of development. See, for example, Ontario Advisory Task Force on Housing Policy (Volume 2, 1973, Ch.7) and Derkowski (1972).

3. In the case of publically owned lands, the provincial government has no control (technically) over lands of the federal crown. Conversely the federal government exercises only limited controls over provincially owned lands. However once these lands are either leased or sold to private citizens, all regulations for privately owned lands will apply. In common law, the rule is that the Crown is not bound by statute except where it is so expressed or by necessary implication. The federal government has set this out in the Interpretation Act R.S.C. 1970, c.I-23, s.16. In the case of Ottawa v. Shore & Horwitz Construction Co. Ltd. (1960), 22 DLR (2d) 247 (Ont. H.C.) it was held that a contractor erecting a building on federal crown land did not have to obtain a building permit as required by provincial statute.

4. Section 91 of the Act appears to grant parliamentary supremacy in Canada. The exception is the British North America Act itself which is a statute of the British Parliament. See Favreau (1965).

5. See, for example, Landis (1980), Milner (1963), especially Chapter 8, and Favreau (1965). Scott and Lederman (1972) provided a useful summary:

> A unanimous Supreme Court of Canada made this clear in Munro v. National Capital Commission (1966) 57 D.L.R. (2d) p. 753. The Court upheld the power of the National Capital Commission under the federal National Capital Act to define a National Capital Region, to make an official land use plan for different parts of the region, and to expropriate the land of private owners within the region to implement the plan. Potentially, the physical features of the whole area - roads, parks and zones for various limited buiding uses - came under federal legislative jurisdiction. Nevertheless, Mr. Justice Cartwright made it clear that the National Capital Region was a special case under the federal general power, in the opening words of section 91 of the B.N.A. Act. He pointed out that the normal situation was that such powers were exclusively provincial under section 92 of the B.N.A. Act. The following are relevant quotations from the judgement.

> The learned trial Judge [(1965) 2 Ex.C.R. 579)] has made a careful review of the legislative history of the National Capital Act and of the Planning Act, R.S.O. 1960, c.296, and of the development of the Master Plan for the Region. I do not find it necessary to repeat this review because I propose, for the purposes of this appeal, to accept the following conclusions that counsel for the appellant and for the intervenant seek to draw, in part, from that history: (i) that the making of zoning regulations and the imposition of controls of the use of land situate in any Province of the sort provided, for example, in the Planning Act (Ontario) are matters which, generally speaking, come within the classes of subjects assigned to the Legislatures by x.92 of the B.N.A. Act; (ii) that the legislative history of the predecessors of the National Capital Act indicates that Parliament, up to the time of the passing of that Act, contemplated that the "zoning" of the lands comprised in the National Capital Region should be effected by co-operation between the Commission established by Parliament and the municipalities which derive their powers from the Provincial Legislatures, and (iii) that it was only after prolonged and unsuccessful efforts to achieve the desired result by such co-operation that Parliament decided to confer upon the National Capital Commission the powers necessary to enable it to carry out the zoning contemplated in the Master Plan. (p. 2.112-2.113)

6. For example, the federal government has control of transportation and communication, monetary policy, financial institutions, foreign trade (and investment),and play the major role in designing the Income Tax Act. As a consequence, the federal government can use these powers to selectively direct real property markets through the use of voluntary programmes and tax incentives. See LaForest (1967) and Smiley (1963).

7. The conflicts are particularly great where the ownership and use of realty owned by one area of government conflicts with the objectives of regulation of another area of government as, for example, in the siting of airports. The Munro v. National Capital Commission case, supra, illustrates the complexity of the areas of conflict.

> "It has been said repeatedly that, in dealing with questions that arise under the B.N.A. Act as to the allocation of law-making powers between Parliament and the Legislatures of the Provinces, the Court will be well advised to confine itself to the precise question raised in the proceeding which is before it. It is sufficient in this case to say that in my opinion it is within the powers of Parliament to authorize the Commission, for the attainment of its objects and purposes as defined in the Act, to make the expropriation of the lands of the

appelant referred to in the question submitted to the Exchequer Court."

8. These cases frequently arise at the time control is exercised under section 91 (the "Peace, Order and Good Government of Canada in All Matters Not Coming Within the Clauses of Subjects by this Act Assigned Exclusively to the Legislatures of the Provinces" clause).

9. Except in the Yukon and Northwest Territories or on lands directly owned by the federal government.

10. While only "municipal institutions" are mentioned, this has been taken to include all forms of delegated institutions including "district" and "regional" (s.92(8)).

11. The exceptions are those municipalities which received their own Charters prior to the general municipal Acts (Tindal and Tindal, 1979). Historically these local powers came by Royal Charter, a means of granting special privileges to cities or organizations (eg., McGill University). This was later replaced by special statutes of parliament and later by the general Acts.

    Initially, local governments were provided with considerable autonomy, but over time this autonomy has been eroded. Even at the peak of autonomy, local governments were still subject to potential provincial control. The various provincial departments of municipal affairs, "established in the late 1800s and early 1900s to give leadership and guidance in municipal development and to provide for the continuous study of the problems of the municipalities" were the initial monitoring agents (Crawford, 1954, p. 345). This provincial role was strengthened following the Depression, in large part to provide supervision of municipalities who defaulted on their financial obligations. By the late 1930s, all provinces, except Prince Edward Island, has established extensive municipal supervisory departments (Tindal, 1979, p. 41).

12. See section 3.5 of this paper.

13. If the courts agree that a municipality has exceeded its authority, the by-law may be declared "ultra vires" (beyond power). In practice, individuals seldom challenge the by-laws since, if the matter is important, the municipality will enact alternative by-laws or the province will amend the enabling legislation.

    The difference between a "law" and a "by-law" - in so far as Canadian law is concerned - is that the word "law" normally refers to a statute of the Legislature enpowering a delegated authority (e.g. a Municipal Corporation or a Planning Board) to exercise certain controls, whereas the word "by-law" refers to an enactment by some such delegated authority, specifying a particular control with reference to a given area or circumstance.

By-laws are not of course the only means whereby a sovereign legislature can delegate and exercise its authority to establish legal controls.

14. It is important at this point to comment on the constitutional limitations which exist in Canada, Great Britain and the United States since Canadian land use laws are developed using ideas borrowed from both Great Britain and the U.S.A. Under the provisions of the B.N.A. Act, all legislative power resides within some Canadian legislative body (except the B.N.A. Act itself). Therefore it follows that in Canada either the federal or provincial legislature has an absolute right to make laws and if these laws are challenged on constitutional grounds, it can only be argued that the laws should have been enacted by the other level of government. There is no basis for arguing, in Canada or Great Britain, that a particular type of legislation is outside the authority of both the federal and provincial legislatures. In contrast to the Canadian situation, laws passed in the United States, either by the federal or state legislatures, can be challenged on constitutional grounds that neither level of government has the authority to pass such laws. With respect to land law, the basis for the constitutional challenges are generally found in the Fifth and Fourteenth Amendments which provide, in part, that "... nor shall any state deprive any person of life, liberty or property without due process of law...". The courts in the United States traditionally play a much larger role as adjudicator of constitutional rights. See Favreau (1965).

15. Constitution of the United States of America

"Amentment V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment XIV. Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

16. This is particularly true of the zoning provisions in the United States. The leading case in the United States concerning land regulation is Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926)(U.S.S.C.). In this case Mr. Justice Sutherland noted, "the ordinance now under review, and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public good." The Court also noted that "...for while the meaning of constitutional guarantees never varies, the scope of their

application must expand or contract to meet the new and difference conditions..."

17. The Supreme Court in the United States has upheld zoning to be a proper exercise of "police powers" and have refused to hear further zoning appeals based upon constitutional arguments. However, this decision does not permit "down zoning" of land so as to constitute expropriation. (See Ambler v. Euclid, supra).

18. The courts generally apply the doctrine of strict construction, particularly in those cases where private property rights are to be adversely affected. Common law rights cannot be taken away or affected by statute, or by-law, unless it is so expressed in clear language. See Calgary v. Reid (1959) 27 W.W.R. 193, 17 D.L.R. (2d) 198 (Alta.S.Ct.-A.D.).

19. See, for example, Aykroyd (1969).

20. For an alternative analysis of the various statutes and subordinate legislation, see Priest and Wohl (1980). Whether one adopts the broad definition to identify statutes which provide for the regulation of land, or a somewhat narrower version of the definition, there is still a substantial difference between the number of statutes included in these counts than those provided by Priest and Wohl.(1980). Priest and Wohl attempted to measure the number of statutes which had, as their main focus, the regulation of land and/or building codes. The purpose in this paper, on the other hand, is to consider the full range of regulations, from the point of view of the private sector, which may alter economic behavior. In this present paper, a particular section found in some obscure statute, is assigned the same weight as a full statute if the effect is to alter the economic behavior of private owners with respect to land. See also Mitnick (1980).

21. Presently these statutes include: Urban and Rural Planning Act, R.S.Nfld. 1970, c.387; The Planning Act, S.N.S. 1969,c.16; Planning Act, R.S.P.E.I. 1974, c.P-6; Community Planning Act, R.S.N.B. 1973, c.C-12; The Planning Act, R.S.O. 1970, c.349; The Planning Act, S.M. 1975, c.29; The Planning And Development Act, R.S.S. 1978, c.P-3; and The Planning Act, 1977, S.A. 1977, c.89. In British Columbia it is the Municipal Act, R.S.B.C. 1979, c.290 and in Quebec the Quebec Urban Community Act, S. Que. 1964, c.83 and The Cities and Towns Act, R.S.Q. 1964, c.193.

The original provincial planning Acts included: British Columbia Town Planning Act, S.B.C. 1925,c.55; Alberta Town Planning Act, S.A. 1913, c.18; Saskatchewan Town Planning and Rural Development Act, R.S.S. 1917, c.104; Manitoba Town Planning Act, S.M. 1916, c.114; Ontario Planning and Development Act, S.O. 1917, c.44; New Brunswick Town Planning Act, S.N.B. 1912, c.19; Nova Scotia Town Planning Act, S.N.S. 1912, c.6; Prince Edward Island, Laws of P.E.I. 1918, c.7.

22. For a brief history of town planning in Canada see Adamson (1973), Spragge and Hodge (1978) and Kaser and Sugarman (1973). Kaser and Sugarman also discuss some of the early efforts to promote regional planning (p. 177). Spragge and Hodge attribute the early work (1909) of the Commission of Conservation with planting the seeds for community planning in Canada. Adamson, on the other hand, refers to planning as "a vicious bureaucracy fungussed on the body politic...just a fight between sets of selfish groups." (p. 4)

23. The Planning Act, 1977, S.A. 1977, c.89, s.26(3).

24. It should be noted that the form of the community plan is not well documented in the statutes.

25. The decision of whether to adopt an official plan will, in every province, involve a positive role of the local council. In some cases no plan can be approved without their prior approval while in other cases the province can rule against but not force acceptance of an official plan.

26. The local government is not compelled or committed to undertake any of the items on the official plan but they cannot undertake any activity at variance with the plan without an official amendment.

27. There are a few minor exceptions to this general observation and they are noted later in the paper.

28. These lay bodies are variously known as: Advisory Planning Commissions (British Columbia); Municipal or Regional Planning Commissions (Alberta); Advisory Committee (Manitoba); Planning Board (Ontario) and Committee of Adjustment (Ontario); District Planning Committee (Nova Scotia); Planning Board (Prince Edward Island). In most provinces these boards are advisory only.

29. However, in Ontario and Prince Edward Island, the planning commissions must be involved in the municipal planning process. (Ontario Planning Act, R.S.O. 1970, c.349, s.12(1); P.E.I. Planning Act, R.S.P.E.I. 1974, c.P-6, s.24(1)(c).

30. In Manitoba and Saskatchewan the Minister may direct a municipality to prepare a plan. (Manitoba Planning Act, S.M. 1975, c.29, s.26(1); Saskatchewan Planning and Development Act, R.S.S. 1978, c. P-13, s. 35).

31. In New Brunswick councils may be directed by the regional plan to prepare a municipal plan.

32. In some cases provision is made for written objections, in other cases public meetings are held. Only four provinces require public hearings at the local level (Saskatchewan, Alberta, Nova Scotia and New Brunswick).

33. See, for example, Proudfoot (1980) and Derkowski (1973).

34. The Planning Act, S.A. 1977, c.89, s.26(3).

35. Municipal Act, R.S.B.C. 1979, c.290, s.942

36. The wording varies from province to province but generally the Minister may refuse to approve whenever "in his opinion, the plan doesn't conform to good planning practice" (Saskatchewan S.26.3) or is "contrary to public opinion" Saskatchewan Planning and Development Act, R.S.S. 1978, c.P-13, s.26(3); B. C. Municipal Act, R.S.B.C. 1979, c.290, s.992.

37. Generally the planning area includes two or more entire municipalities, joined into a planning area as a voluntary action (joint planning areas) or as a non-voluntary regional area.

38. See, for example, I. Robinson (1977) and Gertler, Low and Stewart (1975).

39. British Columbia provide their regional government with more authority than is typical in any other province.

40. See A. Adamson (1973).

41. Much of the original distinction between the development system and the system of zoning has been blurred over time. The original development system envisaged a system whereby zoning and other controls would be employed when land was about to be developed. This system anticipated the potential need to award compensation whenever property owners were damaged due to development controls. Under the use of zoning, entire communities are zoned, either under some broad zoning bylaws or under a multitude of specific bylaws, and no compensation is payable because of losses arising from zoning.

42. The reverse process, called "assembly" or "replotting",is ignored throughout this paper but it should be noted that every province has provision for replotting.

43. This process of subdivision usually involves bare land but since 1968 condominium development has been included as a subdivision process.

Condominiums represent a relatively recent form of land tenure in Canada, the first being created in 1968 in British Columbia. Condominiums represent a form of vertical and/or horizontal subdivision of land and buildings involving some element of fee simple ownership combined with some element of common ownership as tenants in common, for example, owning an apartment (in fee simple) on the 10th floor of a building. These condominium units are created by enabling statutes and have no basis in common law.

44. However recent (1977) amendments to the Municipal Act in British Columbia have made it necessary to obtain approval for levies or impost fees on subdivision, see Dale-Johnson (1980).

45. Ontario Planning Act, R.S.O. 1970, c.349, s.29(2). The entire subdivision approval process is currently under review in Ontario. The Ontario Municipal Board is the provincially appointed tribunal

charged with the responsibility of settling conflicts respecting land matters.

46. New Brunswick provides that municipalities "may by by-law prescribe..." but model by-laws are provided.

47. See New Brunswick Community Planning Act, R.S.N.B. 1973, c.C-12, s.s.109-110; Saskatchewan Planning and Development Act, R.S.S. 1978, c.P-13, s.111. Municipalities may make by-laws but they must, as far as possible, incorporate the regulations made by the minister.

48. In Edmonton and Calgary subdivisions would be approved by the Planning Commission unless the Council decides otherwise. Alberta, Planning Act 1977, S.A. 1977, c.89, s.159

49. Manitoba's subdivision controls are very similar to those in Ontario. The Lieutenant Governor in Council may pass subdivision by-laws (The Real Property Act, R.S.M. 1970, c.R-30, s.112).

50. In this case the developer has no means of recouping the capital costs, some of which may be beneficial to landowners who subdivide at a later date. For an analysis of the alternative forms of recouping servicing costs, see Downing (1974).

51. See Saskatchewan Planning and Development Act, R.S.S. 1978, c.P-13, s.81. The council or the Minister, as the case may be, may refuse to approve a plan of subdivision, if in their or his opinion: (a) the plan is inconsistent with any of the provisions of the Act "or of any order, regulation, bylaw or community planning scheme issued, made, passed or adopted" under the Act" (b) "the plan does not meet the re-quirements of the regulations of the minister of the council controlling the subdivision of land"; and (c) "the location of the subdivision or the land therein is unsuitable for building purposes".

    The regulations state that all land to be subdivided is to be "eminently suitable" having regard to topography, drainage, nature of the soil, use and adjacent uses, access, streets, traffic flow, the economic provision of services and utilities and lot size. No land is to be subdivided unless it may be expected to be used for the purpose for which it is proposed to be subdivided or if it is likely to prejudice future further subdivision of the land or the convenient subdivision of adjoining land. These are the factors which the council or the Planning Director, who is empowered to give approval on behalf of the Minister, may take into consideration in deciding whether to approve a proposed plan.

52. British Columbia Municipal Act, R.S.B.C. 1979, c.290, s.942.

53. See Dale-Johnson (1980) and the B.C. Municipal Act, R.S.B.C. 1979, c.290, s.719.

54. For an excellent review and analysis of the British experience, see Pennance (1967), Uthwatt (1942). For an early history of zoning in the United States, see Hason (1977) and for Canada, see Milner (1963A).

55. Milner describes this development control scheme as a system which "effectively freezes the existing land uses and requires everyone intending to develop his land to apply for permission from the local planning authority, the county or county borough council." (1963A, p. 89). The administrative problems are illustrated when Milner notes, "For the year ending March 31st, 1958, in England and Wales with a population of 44,425,000 there are here an estimated 400,000 applications for planning permission of which 360,000 were approved, with or without conditions; 40,000 were refused, of which 9,068 were appealed and about of third of them allowed. While this seems vast, it is to be remembered that in the City of Toronto with a population of 658,420 in 1958 there were 5,878 building permits issued, 386 applications to the Committee of Adjustment and 18 appeals..." (p. 89-90).

56. Newfoundland Urban and Rural Planning Act, R.S.Nfld. 1970, c.387,s.37 and Alberta Planning Act 1977, S.A. 1977, c.89, s.120(a).

57. Nova Scotia Planning Act, S.N.S. 1969, c.16, and Manitoba Municipal Act, S.M. 1970, c.100, s.310.

58. In Quebec and Saskatchewan the practice is to conform but no such provision is clearly set out in the statutes.

59. No province has established any limit on the number or size of zones but the courts seek to ensure the zones are not piecemeal to the point of being discriminatory (spot zoning). See, for example, Wood v. Winnipeg (1911) 21 Man.R. 426 (Man.C.A.)

60. In practice, major urban municipalities may have an extensive range of zones classified by use, density and height. For example, the zoning by-laws in Vancouver City is a document of some 200 plus pages.

61. These (zoning) restrictions interfere with common law rights (R. v. Clark Bros. and Hughes Ltd. (1924), 34 Man. L.R. 521 3 W.W.R. 689 and Toronto v. Williams (1912) 27 O.L.R. 186 at 190, 8 D.L.R. 299 (Ont. Div. Ct.)

62. It now seems well settled that no compensation becomes payable in Canada for zoning restrictions. However some provinces still make this clear in the statutes.

63. For example, rezoning from a residential zone to a park zone (R. v. Gibson; Ex Parte Cromiller [1959] O.W.N. 254 (Ont.H.C.)). Alberta restricts these types of quasi-expropriations (The Planning Act 1977, S.A. 1977, c.89 (s.120(c)) as does British Columbia (Municipal Act R.S.B.C. 1979, c.290, s.723.

64. Regina Auto Court v. Regina (City) (1958) 25 W.W.R. 167 (Sask.Q.B.)

65. Re: Caldwell and Toronto (1935) O.R. 255 at 257, 2 D.L.R. 623 (Ont.C.A.)

66. Sillery v. Sun Oil Co. (1962) Que. Q.B. 914, rvd (1964) S.C.R. 552.

67. Alberta Planning Act 1977, S.A. 1977, c.89, s.120(c).

68. B.C. Municipal Act, R.S.B.C. 1979, c.290, s.723.

69. Urban and Regional Planning Act, R.S.Nfld. 1970, c.387, s.130(2).

70. See later section on building codes and Rogers (1973) pp. 126-128.

71. Thus forcing the landowner to negotiate conditions.

72. See Proudfoot (1980), Eger (1980).

73. See Milner (1973), McFadyen (1980). Alberta Planning Act 1977, S.A. 1977, c.89, s.100(2).

74. Planning Act (Saskatchewan) Supra (ss. 36, 37) and Newfoundland, Supra (ss. 10, 11). In Newfoundland the development controls only apply if council has instituted the preparation of a plan in which case interim development control may be used. The maximum time is two years. In Saskatchewan the period of time is fixed by the Minister.

75. An Act to Amend the Municipal Act, S.B.C. 1968, c.33, s.166, and Dale-Johnson (1980)

76. Dale-Johnson (1980), Beveridge (1979).

77. Dale-Johnson (1980).

78. Dale-Johnson (1980) and Bill 42 (1979).

79. The system in Nova Scotia can only be applied after the adoption of a municipal development plan. The Planning Act, S.N.S. 1969, c.16, s.43.

80. New Brunswick Community Planning Act, S.N.B. 1973, c.C-12, ss.19,81.

81. Rogers (1973) c.5.

82. Quebec Urban Community Act, S.Que. 1969, c.83

83. Manitoba Planning Act, s.m. 1975, c.29

84. See Charts 3.6 and 3.7 to follow. The terms "building" and "structure" are usually defined in the Acts but unless otherwise provided would not cover repairs which do not prolong the life of the building. (R. v. Chisholm (1910) 15 W.L.R. 650 (Alta.Dist.C.). Conditions extraneous to the structure cannot become part of the building permit requirement (Roseburgh v. North Grimsby [1952] O.W.N. 745 (Ont.C.A.)).

85. Rogers (1975), Chapter VII and see also Howarth v. Can. Red Cross Society [1943] 2 W.W.R. 692 (Alta.S.C.).

86. Nova Scotia Planning Act, S.N.S. 1969, c.16, s.41; New Brunswick Community Planning Act, R.S.N.B. 1973, c.C-12, s.71; Quebec Urban Community Act, S.Que. 1969, c.83, s.? and Quebec Cities and Towns Act, R.S.Que. 1964, c.193, s.?; Manitoba Planning Act; S.M. 1975, c.29, s.39(4)-(7); Saskatchewan Planning and Development Act, R.S.S. 1978, c.P-13, s.55; British Columbia Municipal Act, R.S.B.C. 1979, c.290, s.724.

87. See P.E.I. Town Act, R.S.P.E.I. 1974, c.T-4, s.83(i.2); Nova Scotia Municipal Act, R.S.N.S. 1967, c.192, s.191(93); Design considerations would presumably be negotiated as part of the development permit. See R. v. Joy Oil Co. [1938] O.R. 662, [1938] 4 D.L.R. 132.

88. See Silver (1980). However what is added to the provincially-set standards must be within the capacity of the local government. The right to regulate construction will not be construed to include discretionary rights to refuse a permit.

89. See R. v. Howard (1884) 4 O.R. 377 (Ont.Q.B.D.)

90. Toronto v. Ellis [1954] O.W.N. 521 at 523 (Ont.H.C.)

91. Rogers (1975) "Construction may be regulated from the standpoint of public safety but this does not, in the absence of expressed authority, permit regulation of questions of detail such as fixtures and other non-structured matters which do not affect the general structure and which have no bearing on the size, strength and support of the building." (211).

92. See Silver (1980), Seidel (1978) and Henn (1978).

93. See Charts 3.6 and 3.7.

94. Detection is difficult because of the absence of construction (physical change) and the problem of determining what uses are being made in the property. Most municipalities do not have sufficient staff to inspect all new construction, let alone the existing stock.

95. The "in-law" problem is ever present in these situations as the courts attempt to determine just what constitutes a "family" as opposed to a "household".

96. See later section and also Spencer (1974)

97. See Note 15, Part 1.

98. In early 1973, a rush to convert rental units to condominiums occurred. Because of the shortage of rental accommodation, provinces and local councils moved to stem this flow. Presently in the U.S.A. such conversion is a major activity (see, Housing and Urban Development, 1981).

99. However the supply of ownership units would be correspondingly increased. Another victory for tunnel vision over common sense.

100. "Sold" in this context means the rent is prepaid for the term of the lease.

101. These powers for regulating of maintenance and occupation are generally limited to the residential sector.

102. In all four provinces the regulatory powers apply only to residential properties. See Ontario Planning Act R.S.O. 1970, c.349 s.37(a)(2) regarding demolition permits.

103. Owners includes the immediate family of the owners.

104. See Note 25, Part 1.

105. See Note 25, Part 1.

106. The practice of granting a real property tax relief or exemption to attact industry to a particular community is less commonly used today. However, some form of tax differential for all industry use is common. See Bird (1976), Clayton (1976) and Johnson (1976).

107. See Ravis (1973), Carr and Smith (1977) and Hamilton (1973).

108. See Greenspan (1978) and Clayton (1977), Ontario Committee on Taxation (1967).

109. "In all provinces, servicing standards and municipal lot development levies are set by individual municipalities, without any control by senior governments or input on behalf of the housing consumer to limit costs or even to induce standardization. Since in most provinces the initial cost of new services is borne by the developer, and the municipalities' sole concern is with their long-term operation and maintenance, standards are set to eliminate the possibility of any future problem, no matter how minor or at what cost." (From Derkowski's study, Costs in the Land Development Process, (Toronto: HUDAC, 1976), page 169).

110. Even with uniform codes, the inspection process can be extremely uneven. Complaints from the United States and throughout Canada indicate that building inspectors are frequently poorly trained, understaffed or ill-equipped to handle their assignments. See Seidel (1978), Schier (1980).

111. See Gertler et al. (1975), Krueger (1970), Gertler (1970).

112. The province of Ontario appears to have moved away from their earlier commitment to strong regional governments. (Frankena and Scheffman, 1980).

113. This is the case in the provinces of British Columbia and Alberta.

114. In Ontario the planning delays can reflect either a delay for the production of a regional plan or conversely a delay awaiting secondary plans (see Proudfoot (1980)). Similarly in Alberta the planning delay can be occasioned at either extreme. MacFadyen (1980).

115. The municipalities are unlikely to sacrifice voluntarily any of their authority. This is basically the problem of "political boundry externalities": discussed in Frankena and Scheffman (1980).

116. For a brief history on the provincial control of local governments, see Tindal and Tindal (1979).

117. See Robinson (1977), Gertler (1975).

118. This includes direct provincial planning in environmental matters, preservation of agricultural lands and intramunicipal transportation.

119. And in 1980 the Province of British Columbia proposed a new Planning Act which would require that all municipalities prepare plans under provincial direction (Planning Act, 1980).

120. In the case of Alberta and Ontario the amendments are underway. In the case of British Columbia the amendments are still in the draft stage. British Columbia Planning Act - Draft White Paper (1980).

121. Saskatchewan Planning and Development Act, R.S.S. 1978, c.P-13, s.30.

122. Ontario Planning Act, R.S.O. 1970, c.349, s.31.

123. The new planning jurisdictions cover environmentally sensitive areas, agricultural reserves and areas reserved for new towns.

124. See Frankensa and Scheffman (1980), Robinson (1977), Bacher (1978), Jackson (1976), and Harton (1977).

125. Frankensa and Scheffman (1980), pp. 44-50.

126. Alberta Planning Act, 1977, S.A. 1977, c.89, s.21(2).

127. British Columbia has also established the agricultural land reserves. Baxter (1974).

128. These economic planning activities are not well advanced and the linkages with real property planning are still weak. Robinson (1977).

129. Generally, however, local councils may choose to exceed these provincially set standards.

130. The movement towards a provincial subdivision standard follows a period when local councils had shifted subdivision costs to the developer and increased standards as a means of raising revenue (fiscal planning). In some cases the municipality was judged to have set arbitrarily high standards (see Ontario Economic Council, 1973).

131. See Beveridge (1980) and Dale-Johnson (1980).

132. See Robinson (1977).

133. See Baxter (1973).

134. Newfoundland Urban and Rural Planning Act, R.S.Nfld. 1970, c.387, s.2.

135. Recently Quebec has established similar controls on the ownership of farmlands within the Province.

136. Inasmuch as the local councils are responsible for enforcement, the provinces have permitted them exclusive jurisdiction to regulate. Exceptions occur in provincially licenced activities such as nursing homes, private hospitals, etc., where the provinces have direct regulatory powers.

137. See Note 25, Part II.

138. See the Fraser Institure (1973), Cragg (1974), Hamilton and Baxter (1973).

139. See Note 25, Part II.

140. This is taken to include alien ownership, foreign ownership and non-resident ownership. See Horwood (1975), Baxter and Hamilton (1974) and Spencer (1973).

141. Canadian Citizenship Act, R.S.C. 1970, c.C-19, s.24 provides "Real... property of every description may be...acquired...by an alien in the same manner in all respect as by a natural-born Canadian citizen..."

142. Report of the Legislative Committee on Foreign Ownership of Farm Land in Saskatchewan (1973).

143. Real Property Act, S.P.E.I. 1939, c.44 as amended 1964 c.27 and 1972 c.40. See also Interim Report of the Royal Commission on Land Ownership and Use (1973).

144. Richard A. Morgan and Alan M. Jacobson v. Attorney General of Prince Edward Island, (1975) 55 D.L.R.(3d) 527 (S.C.C.)

145. See Baxter and Hamilton (1973).

146. Priest and Wohl (1980) classified statutes according to the major purpose i.e.: the major purpose of the Aeronautic Act, R.S.C. 1970, c.A-3 is not land use even though it may have a major impact on land use adjacent to an airport.

147. If the lands are directly owned by the federal government, then local and provincial regulations would not (necessarily apply) and federal control is supreme. In common law, the rule is that the Crown is not bound by statute except where it is so expressed or by necessary implication. The Federal Government has set this out in the Interpretation Act. In the case of Ottawa v. Shore Horwitz Construction Co. Ltd. (1960) 22 D.L.R. (2d) 247 (Ont. H.C.) it was held that a contractor erecting a building on federal crown land did not have to obtain a building permit as required by provincial statute.

148. Surrey v. Peace Arch Enterprises Ltd. (1970), 74 W.W.R. 380. (B.C.A.A.). The Federal Government exercises their control under the Indian Act, R.S.C. 1970, c.I-6. This Act defines a reserve as: "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band" (s.2).

149. If the land is unconditionally surrendered, it is no longer part of the reserve. In practice, most lands are only conditionally surrendered in the form of a lease arrangement (Surrey v. Peace Arch Enterprises Ltd), (1970)74 W.W.R. 380).

150. While the quantity of land affected by this reserve status is small (981 square miles in the ten provinces), they do represent some prime develop-ment properties. Moreover, the Indian reserve lands are by no means uniformly distributed among the provinces or within the provinces. Newfoundland, for example, has no Indian reserves while Alberta has just under 1% of the total land in Indian reserves.

151. The land assembly (by expropriation) for the Mirabel, Pickering and Vancouver airports (the latter an expansion) created considerable controversary concerning first the need for such airports, second the particular site selection, especially in Pickering, and third the process of assembly and compensation payable.

152. The Canada Mortgage and Housing Act, R.S.C. 1970, c.C-16, came into force in 1944 and under this Act established Canada Mortgage and Housing Corporation, a crown corporation for the expressed purpose of conducting the business set out in the National Housing Act, R.S.C. 1970, c.N-10. The National Housing Act, or rather its predecessor the Dominion Housing Act came into force in 1935. However the "modern" version of these Acts came about with the 1954 revised National Housing Act. See Smith (1977) and Poapst (1964) for historical summaries.

153. The Mortgage Insurance Company of Canada began in 1963 and Insmour (an amalgamation of two other private insurance companies began in 1973. In 1977, the private companies insured 28.8% of all residential loans while CMHC insured 37.1%. CMHC insurance reached a maximum market share of 42.67% in 1956 (Hamilton and Ulinder, 1980).

154. CMHC characterize their activies in the areas of "social housing", "land assembly and municipal infrastructure", and "community revitalization". During 1978 the "social housing", which includes public housing, non-profit housing, cooperatives, rural and nature housing, received $459.3 million in loans and $212.1 million in grants and subsidies. The "market housing", which includes direct loans, assisted home-ownership, assisted rental and student housing, obtained $172.3 million in loans and $52.4 million in subsidies. The "land assembly" component represented $322.5 million in loans and $128.9 million in subsidies. The community revitalization category obtained $170.4 million in loans and $128.9 million in subsidies. A total of 87,014 housing starts (total for Canada was 227,667) were initiated under one of the NHA programmes. See CMHC, 1978 Annual Report (Ottawa, CMAC). For a brief review of the performance

of CMHC since 1946, see (Smith, 1977). For a review of the early attempts at urban renewal see (White, 1963) and for a review of land assembly, see (Ravis, 1973).

155. By limiting lending and insurance programmes to new housing, the government was able to get the maximum employment promotion. See Smith (1977), Smith (1968) and Poapst (1956).

156. See Smith (1977), CMHC (1962), Dennis and Fish (1972) and Smith (1968).

157. "Some sort of regulations, generally with regard to fire hazards, have been in use in Canada for almost three hundred years; ....But it (history) must be passed over and reference must be made only to the 1920's when it was found, in connection with the first Dominion Housing Act, that there was a simply chaotic condition with regard to these local laws. ...when this was reported to the President of the National Research Council by the Director of housing administration, ...he advanced the idea of preparing a model building by-law". Legget (1970, p.8).

158. NHA loans, either direct or insured, accounted for 45.8 percent of all loans in the period 1946-1969. CMHC Canadian Housing Statistics (Annual)

159. Generally this involved connection to a sewer main in urban areas.

160. See Smith (1977), Smith (1971).

161. While these programmes are in the nature of voluntary intergovernmental activities, CMHC was able to jointly assist many municipalities in servicing and land assembly. See Martin (1977), CMHC (1973) and Greenspan (1977).

162. These reserve funds and scholarships were made available on an annual basis to individuals and institutions under Part V of the National Housing Act, R.S.C. 1970, c.N-10.

163. See Adamson (1963). In 1945 CMHC promoted the creation of the Community Planning Association in Canada.

164. Concern for the impact of low income housing prompted the practice of undertaking fiscal impact studies, many of which confirmed that low income housing did pay its way in the community. See Loewenstein and Watters (1973), and Muller (1976).

165. See Greenspan (1977), and Urban Development Institute (1974) for a discussion of the importance of adequate (and early) installation of the services. See also Ontario Ministry of Housing (1975).

166. Public Accounts of Canada, 1971-76, Volume I, Summary Report and Financial Statements.

167. See Beach (1978), National Council of Welfare (1979), and Aaron (1974).

168. Except in the case of condominiums constructed in multi-unit dwellings.

169. See Beach (1978) and Aaron (1974).

170. Presently (1979) "real estate companies" are able to deduct land holding costs from other incomes but "nonreal estate companies" must capitalize these costs against the future sales price. The land holding costs include real property taxes and interest on the loans. It is argued that the capitalization requirement increases the after tax holding costs, prompting concentration of ownership in the hands of those who can afford the carrying costs, especially real estate companies (see Smith, 1979, pp. 374-83). See also CMHC (1979); CIPREC (1974) and HUDAC (1978).

171. The Income Tax Act provides for 5% capital cost allowance on concrete construction and 10% capital cost allowance on woodframe construction until 1980. The rate is now 5 percent for all units of either wood or concrete construction.

172. The "tax-shelters" refer to real property which, when they produce at an annual operating loss, can be combined with taxable income from other sources. The provision for tax shelters was removed in 1972 as part of the income tax reform but the Federal Government felt compelled to re-introduce a restricted version, the multi-unit residential building, or MURB, on November 1974. It is argued that the "tax-shelter" stimulates investors' interest and hence construction of qualifying buildings (see Smith, 1970, and Hamilton, 1978). See also Nister (1976), Canadian Council on Social Development (1970), and National Council of Welfare (1979).

173. The DREE grants in 1978/79 were as follows:

	Accepted offers	Estimated Incentive (000)
Newfoundland	40	$ 7,749
N.S.	84	9,649
PEI	30	2,911
N.B.	65	12,212
Quebec	422	47,483
Ontario	51	4,803
Manitoba	101	10,358
Saskatchewan	30	7,442
Alberta	5	2,353
B.C.	23	4,322
NWT	4	125
	855	109,785

174. The shelter provinces were re-introduced in 1974 and continue in operation today although they have been a year to year policy item since 1978.

175. Canada Year Book, (1975) Ottawa, Statistics Canada Table 1.8.

176. U.S. General Accounting Office (1978), Land Use Issue (Washington, General Accounting Office).

177. See Goldberg (1980) and the Government Organization Bill (1970).

178. Aucoin and French (1974) noted: When the Honourable C.M. Drury, President of the treasury Board, stated in the Host of Commons that "knowledge and power, in this world in which we live, are synonymous", he was not mouthing a platitude but stating a principle underlying the substantial changes in policy-making machinery contained in part of the Government Organization Bill, 1970. The remark was fitting because the specific organizational change under consideration was the establishment of ministers and ministries of state responsible for designated policy fields that were not encompassed within the jurisdiction of any single existing government portfolio. Drury's remark highlighted the degree to which the proposal for ministries of state was a departure from the principles of organization implicit in the existing structure of government. They continued to state that: Furthermore, the traditional 'vertical' demarcation of the responsibilities of government departments was unsuitable in that priority problems were usually novel aggregations of fragments of the responsibilities of a number of existing departments. Moreover, these fragments could not be removed from departmental mandates. They constituted important components of the capability necessary to achieve the mission of a given department. Thus, the policies and programs of a variety of departments impacted indirectly on a priority problem, often at cross purposes. A flexible mechanism was required to coordinate 'horizontally' the activities of departments relative to the problem and to add to the policy and planning resources at the disposal of the Cabinet (p.16). The immediate forces behind the formation of MSUA were two federally-sponsored studies. The first, The Task Force on Housing and Urban Development (the Hellyer Report) was tabled in 1969. Hellyer recommends, among other things, that "the Federal Government should establish a Department of Housing and Urban Affairs" with broad powers in the area of urban affairs (Hellyer, 1969, pp.70-75). Hellyer's Task Force had moved across the country holding public hearings and receiving wide publicity. As a consequence, housing - and more generally urban affairs - were in the public eye. While Hellyer was not able to convince his colleagues in the Cabinet to create a Department of Housing, he did manage to promote several significant changes in the National Housing Act and create a public awareness for housing.

Following the Hellyer report, and his resignation, the Honorable Robert Andras was appointed Minister responsible for housing and it was Andras who was instructed by Cabinet to prepare a report on urban development - a recognition that housing could not be separated from urban affairs. Andras chose H. Lithwick to prepare a report to Cabinet and one year later (March1970), the Lithwick Report - Urban Canada: Problems and Prospects - was presented to the government. The Lithwick Report called for a "National Urban Council" comprised of all three levels of government, the development of a national urban policy and a significantly expanded federal role in urban affairs. While the Lithwick Report received favorable reception from the Cabinet, the call for a major

federal role in housing and urban affairs gave rise to potential jurisdictional problems. In part, as a device to "appear" to minimize jurisdictional problems, the concept of a "ministry" was adopted.

179. The Honorable Member went on to note: I maintain, sir, that one of the reasons this government is following the suggestion of the official opposition, that the Ministry of State for Urban Affairs should be wound down is, that they failed to have the departmental heads meet as they were supposed to. You cannot have a ministry whose job it is to coordinate and report to the House of Commons through the Minister not knowing whether or not they are doing the job of coordination. The only way to evaluate the efficiency of the ministry and of the programs that ministry was coordinating was to have an evaluation; but the people who were to do that job, the deputy heads, did not meet. So there was confusion and mismanagement. As a result the government decided, because the ministry has not been working, to disband it: (House of Commons Debate, November 28, 1978, p. 1606).

180. Approximately one year later (February 23, 1979) an Opposition Member noted: It is interesting to note what transpired. In 1973 the government directed that a senior interdepartmental committee on urban affairs be established at the deputy minister level to coordinate government involvement in urban affairs. That committee, from all accounts, never met.
The policy research function of the ministry which is central to its mandate hardly exists, if it exists at all. This led one former director general of the ministry to state publicly: 'There is an irresistible presumption in the event of the past eight years that Trudeau rationalism, insofar as the urban policy field is concerned, has gone full circle and we are back to politics as usual.' Indeed, let us hope that the research people in the ministry can come up with some answers for the minister's new found concern for shelter allowances (House of Commons Debates, February 23, 1979, p. 3553). During this same debate, the Member of the Opposition observed: It is interesting to note that the Prime Minister (Trudeau) has given at least several different reasons for disbanding the Ministry of State for Urban Affairs. One wonders to what extent the Auditor General's criteria of effectiveness, efficiency and economy affected the analysis and decision to disband this agency. It is most surprising that no studies that I am aware of regarding the basis of this decision have been made public. There is no word from this minister in all of his speeches about what is going to happen regarding the concerns for urban policy. But we will take care of that later, of course. It probably would not matter anyway considering the view of the assistant secretary of the urban analysis branch who is quoted as saying, 'I'd hate to see an audit done on everything ordered by Cabinet'. Regardless of this, Mr. Speaker, I think I speak for most members of the House and a number of persons and agencies outside government when I say we are waiting most anxiously for a summary of seven years' of work by our best urban experts at a cost of millions of dollars. In fact, the government has never provided a complete explanation.

181 Urban Development Institute of Ontario (1975)

182. There have been, however, a number of very signifanct amendments redirecting old programmes. This is especially true of the National Housing Act and the Income Tax Act - two key parts of the federal programmes aimed towards regulation of some specific element of real property.

183. These objectives are persued in the National Housing Act and Income Tax Act.

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APPENDICIES

APPENDIX I
LIST OF ALL STATUTES AS OF JUNE, 1979 PROVIDING AUTHORITY TO REGULATE LAND
- ORGANIZED BY PROVINCE -

ALBERTA	DATE OF	
1. Subdivision	Original Act	Current Act
Condominium Property Act*	1966	1966
Land Titles Act*	1910	1965
New Towns Act	1956	1969
Planning Act*(1)	1913	1977
Public Health Act*	1877	1910
2. Building Codes		
Amusements Act	1912	1941
Boilers and Pressure Vessels Act*	1897	1975
Dairymen's Act	1889	1950
Electrical Protection Act*	1917	1941
Elevator and Fixed Conveyances Act*	1962	1962
Fire Prevention Act*	1916	1926
Fish Marketing Act	1931	1969
Frozen Food Act	1944	1944
Gas Protection Act*	1955	1955
Hydro and Electric Energy Act*	1944	1971
Alberta Hospitals Act	1892	1961
Improvement Districts Act*	1918	1965
Lightning Rod Act*	1928	1928
Liquor Control Act	1892	1958
Liquor Licensing Act	1958	1958
Livestock and Livestock Products Act	1936	1936
Meat Inspection Act	1972	1972
Municipal Government Act*	1888	1968
Nursing Homes Act	1964	1964
Plumbing and Drainage Act*	1976	1976
Public Health Act*	1877	1910
Public Highways Development Act	1918	1966
Rural Gas Act*	1973	1973
Alberta Uniform Buildings Standards Act	1973	1973
3. Land Development		
Cemeteries Act	1960	1960
City Transportation Act*	1970	1970
Clean Air Act	1971	1971
Clean Water Act*	1971	1971
Coal Conservation Act	1973	1973
Department of Environment Act*	1971	1971
Hydro and Electric Energy Act	1944	1971
Land Surface and Reclamation Act	1963	1973
Local Authorities Board Act*(1)	1961	1961
Municipal Government Act*	1888	1968
New Towns Act*	1956	1958
Oil and Gas Conservation Act	1926	1969
Pipeline Act	1925	1975
Planning Act*	1913	1977
Public Health Act*	1877	1910
Public Highways Development Act*	1918	1966
Public Lands Act	1949	1966
Public Works Act*	1906	1906
Railway Act	1907	1907
Rural Gas Act	1973	1973

4. Use	Original Act	Current Act
Agricultural Pests Act (S)	1908	1974
Department of Environment Act*(G)	1971	1971
Forest and Prairie Protection Act (S)	1879	1971
Fur Farms Act (S)	1960	1960
Hazardous Chemicals Act (S)	1978	1978
Improvement Districts Act* (G)	1918	1965
Litter Act* (G)	1972	1972
Livestock and Livestock Products Act	1936	1936
Municipal Government Act*	1888	1968
Planning Act*	1913	1977
Alberta Property Tax Reduction Act	1973	1973
Public Health Act*	1877	1910
Public Highways Development Act	1918	1966
Public Lands Act	1949	1966
Rent Decontrol Act*	1977	1977
Seed-Control Areas Act	1941	1941
Soil Conservation Act	1935	1962
Special Areas Act	1932	1964
Temporary Rent Regulation Measures Act*	1975	1975
Water Resources Act*	1931	1931
Weed Control Act	1896	1972
Wildlife Act	1883	1970
5. Ownership		
Condominium Property Act*	1966	1966
Land Titles Act*	1910	1965
Public Lands Act	1949	1966

BRITISH COLUMBIA

1. Subdivision	Original Act	Current Act
Agricultural Land Commission Act*	1973	1973
Environment and Land Use Act*	1971	1971
Land Registry Act*	1888	1921
Land Titles Act*	1888	1978
Local Services Act*	1957	1957
Municipal Act*	pre-1870	1957
Real Estate Act*	1920	1958
Strata Titles Act*	1966	1974
2. Building Codes		
Cemeteries Act	1924	1946
Cemetery Companies Act	1879	1923
Factories Act	1908	1966
Fire Marshall Act*	1921	1978
Fisheries Act	1901	1924
Forests Act	1874	1978
Health Act*	pre-1870	pre-1870
Hospital Act	1902	1902
Liquor Distribution Act	1975	1975
Railway Act*	1890	1911

Safety Engineering Services Act*	1972	1972
Municipal Act*	pre-1870	1957
Electrical Energy Inspection Act*	1910	1922

3. Land Development

Agricultural Land Commission Act*	1973	1973
Forests Act	1874	1978
Land Titles Act*	1888	1978
Pipe-Lines Act	1955	1955
Municipal Act*	pre-1870	1957
Railway Act*	1890	1911
Rural Telephone Act	1912	1923
Strata Titles Act*	1966	1974
Underground Storage Act	1964	1964

4. Use

Agricultural Land Commission Act*	1973	1973
BEE Act	1911	1975
Cemetery Companies Act	1879	1923
Certified Seed - Potato Act	1947	1947
Community Case Facilities Licensing Act	1937	1969
Controlled Access Highways Act*	1953	1953
Factories Act	1908	1966
Fisheries Act	1901	(1924)
Forest Act	1874	1978
Fur Farm Act	1947	1947
Greenbelt Act*	1972	1977
Heritage Conservation Act*	1925	1977
Hospital Act	1902	1902
Meat Inspection Act	1954	1954
Mental Health Act	1873	1964
Milk Industry Act	1913	1956
Motion Pictures Act	1913	1970
Municipal Act*	pre-1870	1957
Park Act	1965	1965
Pollution Control Act*	1956	1967
Railway Act*	1890	1911
Range Act	1876	1978
Residential Tenancy Act*	1951	1977
Seed Growers Protection Act	1935	1935
Soil Conservation Act	1956	1977
Strata Titles Act*	1966	1974
Weed Control Act	1877	1973
Wildlife Act	pre-1870	1966

5. Ownership

Land Titles Act*	1888	1978
Real Estate Act*	1920	1958
Statute Titles Act*	1966	1974

MANITOBA

1. Subdivision	Original Act	Current Act
Condominium Act*	1968	1968
Municipal Act*	1880	1970
Planning Act*	1916	1975
Real Property Act*	1885	1970
Registry Act*	1891	1970
2. Building Codes		
Building and Mobile Home Act*	1877	1974
Dairy Act	1885	1935
Electricians Licence Act*	1917	1917
Elevator Act*	1916	1963
Employment Standards Act	1900	1957
Fires Prevention Act*	1872	1917
Gas and Oil Burner Act*	1952	1952
Gas Pipe Line Act*	1956	1956
Hospitals Act	1958	1958
Manitoba Hydro Act	1919	1961
Liquor Control Act	1871	1956
Livestock and Livestock Products Act	1936	1936
Municipal Act*	1880	1970
Private Hospitals Act	1929	1929
Public Health Act*	1883	1965
Department of Public Works Act	1965	1976
Steam and Pressure Plants Act*	1894	1949
Tourism and Recreation Act	1966	1972
Workplace Safety and Health Act*	1914	1976
3. Land Development		
Agricultural Lands Protection Act*(1)	1977	1977
Building and Mobile Homes Act*	1877	1974
Condominium Act*	1968	1968
Conservation Districts Act	1958	1976
Fires Prevention Act	1872	1917
Ground Water and Water Well Act	1962	1962
Highways Department Act	1912	1965
Highways Protection Act*	1961	1966
Historic Sites and Objects Act*	1946	1967
Hospitals Act	1958	1958
Land Rehabilitation Act*	1939	1939
Municipal Act*	1880	1970
Pipe Line Act	1954	1954
Planning Act*	1916	1975
Department of Public Works Act	1965	1926
Rivers and Streams Act	1871	1905
Community Seed Cleaning Plant Loans Act	1958	1959
Seed and Fodder Relief Act	1940	1970
Tourism and Recreation Act	1966	1972
Water Resources Administration Act	1959	1967
Water Rights Act	1930	1930

4. Use	Original Act	Current Act
Animal Husbandry Act	1871	1933
Clean Environment Act*	1935	1972
Conservation Districts Act	1958	1976
Fires Prevention Act*	1872	1917
Gas Storage and Allocation Act	1975	1975
Highways Department Act*	1912	1965
Hospitals Act	1958	1958
Manitoba Hydro Act	1919	1961
Lake of the Woods Control Board Act	1958	1970
Land Rehabilitation Act	1939	1939
Municipal Act*	1880	1970
Municipal Assessment Act	1970	1978
Provincial Park Lands Act	1960	1972
Pipe Line Act	1954	1954
Planning Act*	1916	1975
Plant Pests and Diseases Act	1927	1963
Public Health Act*	1883	1965
Rent Stabilization Act*	1976	1976
Rivers and Streams Act	1871	1905
Manitoba Telephone Act	1906	1955
Water Resources Administration Act	1959	1967
5. Ownership		
Condominium Act*	1968	1968
Planning Act*	1916	1975
Real Property Act*	1885	1970
Registry Act*	1891	1970

NEW BRUNSWICK

1. Subdivision	Original Act	Current Act
Community Planning Act*	1912	1972
Condominium Property Act*	1969	1969
Municipalities Act*	pre-1870	1966
2. Building Codes		
Community Planning*	1912	1972
Dairy Industry	1904	1949
Electrical Installation and Inspection Act*	1931	1976
Elevators and Lifts Act*	1960	1960
Fire Prevention Act*	pre-1870	1943
Fish Inspection Act	1932	1964
Health Act*	pre-1870	1918
Highway Act*	pre-1870	1968
Liquor Control Act	pre-1870	1961
Mental Health Act	pre-1870	1969
Municipal Heritage Preservation Act*	1978	1978
Municipalities Act*	pre-1870	1966
Occupational Safety Act	1905	1976
Plumbing Installation and Inspection Act*	1955	1976
Residential Tenancies Act*	1975	1975
Theatres, Cinematographs & Amusements Act	1912	1926
3. Land Development		
Community Improvement Corporation Act*(1)	1965	1965
Community Planning Act*	1912	1972
Condominium Property Act*	1969	1969
Drainage of Farm Lands Act	1917	1917
Fire Prevention Act	pre-1870	1943
Historic Sites Protection Act*	1954	1954
Municipal Heritage Preservation Act*	1978	1978
Municipalities Act*	pre-1870	1966
Public Hospitals Act	1958	1966
Registry Act*	1883	1979
4. Use		
Cemetery Companies Act	1901	1901
Community Improvement Corporation Act*	1965	1965
Community Planning Act*	1912	1972
Condominium Property Act*	1969	1969
Day Care Act	1974	1974
Electric Power Act	1920	1962
Encouragement of Seed Growing Act	1941	1941
Fences Act	1877	1972
Fire Prevention Act*	pre-1870	1943

NEW BRUNSWICK

4. Use (continued)	Original Act	Current Act
Forest Fires	1885	1970
Highway Act*	pre-1870	1968
Historic Sites Protection Act*	1954	1954
Mental Health Act	pre-1870	1969
Municipalities Act*	pre-1870	1966
Occupational Safety Act	1905	1976
Public Hospitals Act	1958	1966
Residential Rent Review Act*	1975	1975
Special Care Homes Act	1975	1975
Theatres, Cinematographs & Amusements Act	1912	1926
Unsightly Premises Act*	1967	1975
5. Ownership		
Community Planning Act*	1912	1977
Condominium Property Act*	1969	1969
Registry Act*	1883	1979

NEWFOUNDLAND

1. Subdivision	Original Act	Current Act
City of Cornerbrook Act*	1955	1978
Local Government Act*	1952	1972
2. Building Codes		
Animal Protection Act	1952	1978
Boiler and Pressure Vessel Act*	1899	1959
Buildings Accessibility Act*	1978	1978
Buildings Standards Act*	1951	1955
Carbonear Fire Brigade Act	1916	1952
City of Cornerbrook Act*	1955	1978
City of St. John's Act*	1952	1978
Day Care and Homemaker Services Act	1975	1975
Egress From Buildings Act	1891	1925
Elevators Act*	1969	1969
Embalmers and Funeral Directors Act	1975	1975
Fire Prevention Act*	1954	1954
Fish Inspection Act	1954	1968
Fur Farms Act	1960	1960
Department of Health Act*	(1952)	1965
Liquor Control Act	pre-1870	1973
Logging Camps Act	1915	1960
Mental Health Act	1897	1971
Newfoundland and Labrador Hydro Act	1954	1975
Nuisances and Municipal Regulations Act*	pre-1870	1964
Poultry and Poultry Products Act	1951	1951
Rural Electrification Act*	1920	1963
Urban and Rural Planning Act*	1953	1965
Welfare Institutions Licensing Act	1967	1967
3. Land Development		
Building Standards Act*	1951	1955
City of Cornerbrook Act*	1955	1978
City of St. John's Act*	1952	1978
Clean Air, Water and Soil Authority Act*	1970	1973 (repealed)
Condominium Act*	1970	1970
Cornerbrook Housing Corporation Act*	1965	1965
Department of Consumer Affairs and Environment Act*	1966	1973
Department of Transportation and Communications Act	1957	1973
Development Areas (Lands) Act*	1964	1964
Egress from Buildings Act*	1891	1925
Evacuated Communities Act	1960	1960
Fur Farms Act	1960	1960

NEWFOUNDLAND

3. Land Development (continued)	Original Act	Current Act
Department of Municipal Affairs and Housing Act*	1952	1973
Department of Rural Development Act*	1973	1973
Housing Associations (Loans) Act	1952	1978
Labrador (Tax Exemption) Act	1966	1967
Larkin's Pond Reservoir Act	1956	1970
Local Government Act	1952	1972
Pothead and Minke Whales (Processing) Act	1955	1955
Railways Act*	1887	1887
Urban and Rural Planning Act*	1953	1965
Waste Material (Disposal) Act	1956	1976
Waters Protection Act	1964	1964
4. Use		
Building Standards Act*	1951	1955
City of Cornerbrook Act*	1955	1978
Building Supplies Act*	1974	1974
City of St. John's Act*	1952	1978
Clean Air, Water and Soil Authority Act*	1970	repealed-1973
Development Areas (Lands) Act*	1964	1964
Evacuated Communities Act	1960	1960
Forest Fires Act	pre-1870	1933
Forest Travel Act	1959	1959
Department of Health Act	(1952)	1965
Health and Public Welfare Act	(1872)	1931
Historic Objects, Sites and Records Act*	1955	1973
Newfoundland Human Rights Code	1969	1969
Landlord and Tenant (Residential Tendencies) Act*	(1896)	1973
Larkin's Pond Reservoir Act	1956	1970
Local Government Act*	1952	1972
Newfoundland and Labrador Hydro Act	1954	1975
Pesticides Control Act	1970	1970
Plant Protection Act	1954	1954
Pothead and Minke Whales (Processing)Act	1955	1955
Poultry and Poultry Products Act	1951	1951
Saw Mills Act	1906	1959
St. John's Housing Corporation Act*	1952	1978
Tourist Establishments Act	1927	1950
Waste Material (Disposal) Act	1956	1976
Waters Protection Act	1964	1964
5. Ownership		
Condominium Act*	1970	1970
Urban and Rural Planning Act*	1953	1965
Historic Objects, Sites and Records Dept.	1955	1973

NOVA SCOTIA

1. Subdivision	Original Act	Current Act
Municipal Act*	pre-1870	1955
Planning Act*(1)	1912	1969
2. Building Codes		
Agriculture and Marketing Act	1913	1939
Day Nurseries Act	1967	1967
Fences and Impounding of Animals Act	pre-1870	1900
Fisheries Act	1946	1977
Hotel Regulations Act	1945	1945
Liquor Control Act	1873	1930
Municipal Act*	pre-1870	1955
Municipal Mental Hospitals Act	1886	1965
Architects Act*	1932	1968
Building Access Act*	1968	1976
Camping Establishments Regulation Act	1969	1969
Construction Projects Labour-Management Relations Act	1971	1971
Electrical Installation and Inspection Act	1923	1969
Environmental Protection Act*	1970	1973
Fire Prevention Act*	(1884)	1976
Homeowners' Incentive Act	1970-71	1970-71
Homes for Special Care Act	1958	1976
Condominium Act*	1968	1971
Nursing Homes Act	1965	1976
Health Act*	pre-1870	1962
Public Hospitals Act	1896	1958
Public Utilities Act	1909	1943
Railway Act*	1873	1929
Theatres and Amusements Act	1915	1915
Towns Act*	1888	1941
3. Land Development		
Housing Development*	1932	1966
Condominium Act*	1968	1971
Agriculture and Marketing Act	1913	1939
Beaches Preservation and Protection Act	1960	1975
Parks Development Act	1967	1967
Planning Act*	1912	1969
Railway Act*	1873	1929
Towns Act*	1888	1941
Water Act*	pre-1870	1963
Well Drilling Act	1964	1964
4. Use		
Agriculture and Marketing Act	1913	1939
Cemetary Companies Act	1893	1940
Common Fields Act	pre-1870	pre-1870

NOVA SCOTIA

4. Use (continued)	Original Act	Current Act
Forest Improvement	1962	1965
Health Act	pre-1870	1962
Municipal Act*	pre-1870	1955
Amusement Devices Safety Act	1975	1975
Beaches Preservation Protection Act	1960	1975
Homes for Special Care Act	1958	1976
Fences and Detention of Stray Livestock Act	1975	1975
Planning Act*	1912	1969
Liquor Control Act	1873	1930
Potato Industry Act	1940	1940
Private Ways Act	pre-1870	(1954)
Public Hospitals Act	1896	1958
Public Highways Act*	pre-1870	1953
Rent Review Act*	1975	1975
Residential Tenancies Act*	1970	1970
Towns Act*	1888	1941
Trade Schools Regulation Act	1939	1939
Unsightly Premises Act*	1960	1960
Village Service Act*	1923	1947
Water Act*	pre-1870	1963
5. Ownership		
Condominium Act*	1968	1971
Beaches Preservation and Protection Act	1960	1975
Planning Act*	1912	1969

ONTARIO

1. Subdivision	Original Act	Current Act
Condominium Act*	1967	1978
Land Titles Act*	1885	1979
Planning Act*	1946	1955
Registry Act*	pre-1870	1979
2. Building Codes		
Building Code Act*	1974	1974
Boilers and Pressure Vessels Act*	1913	1963
Children's Boarding Homes	1957	1957
Construction Safety Act	1962	1973
Elevators and Lifts*	1953	1953
Fire Marshals*	1914	1914
Hotel Fire Safety	1888	1971
Landlord and Tenant Act*	1874	1911
Industrial Safety Act	1884	1971
Livestock and Livestock Products	1950	1950
Milk	1888	1965
Municipal Act*	pre-1870	1922
Nursing Homes	1966	1972
Ontario New Homes Warranties Plan Act	1976	1976
Planning Act*	1946	1955
Public Health	pre-1870	1927
Public Hospitals	1874	1957
Theatres	1911	1953
3. Land Development		
Building Code Act*	1974	1974
Children's Institutions	1962	1962
Community Recreation Centres	1949	1974
Condominium Act*	1967	1978
Construction Safety Act (now Occupational Health & Safety)	1962	1978
Conservation Authorities	1946	1968
Development Corporations	1973	1973
Elderly Persons Centres	1962	1972
Elderly Persons Housing Aid	1952	1970
Environmental Protection*	1967	1971
Forest Fires Prevention	1913	1968
Homes for Retarded Persons	1963	1966
Homes for the Aged and Rest Homes	1890	1955
Hotel Fire Safety	1888	1971
Housing Development Act	1948	1976
Industrial Safety Act	1884	1971
Landlord and Tenant Act*	1874	1911
Milk Act	1888	1965
Municipal Act*	pre-1870	1922
Niagara Escarpment Planning and Development Act*(1)	1970	1973

ONTARIO

3. Land Development (continued)	Original Act	Current Act
Nursing Homes	1966	1972
Ontario New Home Warranties Plan Act	1976	1976
Ontario Planning and Development Act*	1973	1973
Ontario Planning & Development Act*(1)	1973	1973
Ontario Municipal Board Act*(1)	1906	1932
Parkway Best Planning & Development Act*(1)	1973	1973
Planning Act*(1)	1946	1955
Private Hospitals	1931	1957
Public Health	pre-1870	1927
Public Hospitals	1874	1957
Public Lands	pre-1870	1913
Public Transportation and Highway Improvement	1901	1957
Theatres	1911	1953
Tourism	1946	1966
Training Schools	1931	1978
4. Use		
Abandoned Orchards	1966	1966
Assessment Act	pre-1870	1979
Building Code Act*	1974	1974
Children's Boarding Homes	1957	1957
Boilers and Pressure Vessels*	1913	1963
Children's Institutions	1962	1962
Community Recreation Centres	1949	1974
Condominium Act*	1967	1978
Conservation Authorities	1946	1968
Elderly Persons Centres	1962	1972
Elderly Persons Housing Aid	1952	1970
Elevators and Lifts*	1953	1953
Environmental Protection Act*	1967	1971
Forest Fires Prevention	1913	1968
Forestry	1927	1952
Industrial Safety Act	1884	1971
Landlord and Tenant*	1874	1911
Milk	1888	1965
Municipal Act*	pre-1870	1922
Niagara Escarpment Planning and Development*	1970	1973
Nursing Homes	1966	1972
Planning Act*	1946	1955
Private Hospitals	1931	1957
Public Halls	1950	1950
Public Health	pre-1870	1927
Public Hospitals	1874	1957

ONTARIO

4. Use (continued)	Original Act	Current Act
Public Lands	pre-1870	1913
Public Transportation and Highway Improvement	1901	1957
Public Utilities	1882	1913
Seed Potatoes	1950	1950
Theatres	1911	1953
Tourism	1946	1966
Trees	1946	1950
Training Schools	1931	1978
5. Ownership		
Condominium Act*	1967	1978
Land Titles Act*	1885	1979
Planning Act*	1946	1955
Public Lands	1870	1927
Registry At*	1870	1979

PRINCE EDWARD ISLAND

1. Subdivision	Original Act	Current Act
Field-Root Seeds Zoning Act	1941	1941
Planning Act*	1945	1974
2. Building Codes		
Division Fence Act	1937	1951
Electric Power and Telephone Act*	1948	1948
Electrical Inspection Act*	1932	1940
Elevators and Lifts Act*	1970	1970
Environmental Protection Act*	1965	1975
Highway Traffic Act*	1913	1964
Hospitals Act	1949	1959
Innkeepers Act	1938	1972
Lightning Rod Act*	1935	1972
Liquor Control Act	pre-1870	1948
Milk Act	1938	1974
Planning Act*	1945	1974
Provincial Building Code Act*	1971	1975
Public Health Act	pre-1870	1946
3. Land Development		
Area Industrial Commission Act	1967	1967
Community Improvement Act*	1968	1976
Development Borrowing Act	1969	1969
Electric Power and Telephone Act	1948	1948
Environmental Protection Act*	1965	1975
Greater Charlottetown Environmental District Act*	1977	1977
Housing Corporation Act*	1969	1975
Industrial Enterprises Incorporated Act	1965	1965
Land Development Corporation Act*	1969	1974
Planning Act*	1945	1974
Recreation Development Act	1963	1969
4. Use		
Archeological Investigation Act	1970	1970
Area Industrial Commission Act	1967	1967
Automobile Junk Yards Act	1969	1969
Cemeteries Act	1956	1956
Child Care Facilities Act	1973	1973
Electric Power & Telephone Act	1948	1948
Elevators and Lifts Act*	1970	1970
Field-Root Seeds Zoning Act	1941	1941
Fire Prevention Act*	1919	1940
Fish and Game Protection Act	1906	1959
Hospitals Act	1949	1959
Innkeepers'Act	1938	1972
Division Fence Act	1937	1951
Landlord and Tenant Act*	pre-1870	1939
Mobile Homes Act*	1969	1969
Public Health Act*	pre-1870	1946

PRINCE EDWARD ISLAND

4. Use	Original Act	Current Act
Roads Act	pre-1870	1965
Rent Review Act*	1975	1978
Town Act*	1948	1948
Unsightly Property Act* (Was Unsightly Premises Act)	1966	1975
5. Ownership		
Planning Act*	1945	1974

QUEBEC

1. Subdivision	Original Act	Current Act
R.C.179-Public Streets (Loi des rues publiques)	1888	1925
R.C.320 -Cadastre (Loi du Cadastre)	pre-1870	1925
1966/67 c.55 -Quebec Housing Corporation Loi de la Société d'Habitation du Quebec	1967	1974
Development of Site/Neighbourhood of New International Airport	1969	1970
Cultural Property	1922	1972
Preservation of Agricultural Land	1978	1978
1965 c.80-Civil Code [re Co-Ownership] (Code de procedure civile)	pre-1870	1977
1965 c.80 -Civil Code [re Registration of Real Rights] (Code de procedure civile)		
Municipal Code	1871	1916
An Act to Promote Conciliation between Lessees & Property Owners	1951	1951

2. Building Codes		
R.c.55 Cinema (Loi des vues animées; Loi sur le cinéma)	1911	1975
R.c.110- Family Housing (Loi de l'habitation familiale)	1948	1970
Public Buildings Safety	pre-1870	1908
Industrial & Commercial Establishments	1885	1894
Electricians & Electrical Installations	1921	1928
Pipe Mechanics Act	1933	1933
Pressure Vessels	1933	1933
Lightning Rods	1928	1928
Cities and Towns	1876	1922
Hotels	1914	1963
1966/7 c.55 - Quebec Housing Corporation (Loi de la societe d'habitation du Quebec)	1967	1974
Fire Prevention	1912	1968
Wildlife Conservation	pre-1870	1969
Petroleum Products Trade	1971	1971
Cultural Property	1922	1972
Public Health Protection (Loi de l'hygiene publique)	pre-1870	1972
Environmental Quality	1964	1972
1965c.80 -Civil Code (re Lease) (Code de procedure civile)	pre-1870	1977
Municipal Code	1871	1916

3. Land Development		
Cinema	1911	1975
R.c.108 - Farm Credit (Loi du credit agricole)	1936	1978
R.c.109 - Farm Improvement (Loi de l'amélioration des fermes)	1960	1978
R.c.110 - Family Housing (Loi de l'habitation familiale)	1948	1970

QUEBEC

3. Land Development (continued)	Original Act	Current Act
Public Building Safety	pre-1870	1908
Industrial & Commercial Establishments	1885	1894
Cities & Towns		1876
1922		
Public Buildings Municipal Regulation	1927	1927
Hotels	1914	1963
Railway	pre-1870	1880
1966/7 c.55 Quebec Housing Corporation (Loi de la Societe d'habitation du Quebec)	1967	1974
Development of Site/Neighbourhood of New Int'l Airport	1969	1970
Wildlife Conservation	pre-1870	1969
International Airport		
Health Services & Social Services	1921	1971
Cultural Property	1922	1972
Environmental Quality	1964	1972
Preservation of Agricultural Land	1978	1978
Municipal Code	1871	1916
4. Use		
Cinéma	1911	1975
Watercourses	pre-1870	1909
R.c.102 -Colonization Land Sales 1966/7 c.41 (Loi des terres de colonization)	pre-1870	1963
R.c.108 - Farm Credit (Loi du credit agricole)	1936	1978
R.c.110 - Family Housing (Loi de l'habitation familiale)	1948	1970
Roads	1912	1922
Auto Routes	1957	1961
Signboards and Posters	1933	1933
Public Building Safety	pre-1870	1908
Industrial and Commercial Establishments	1885	1894
Cities and Towns	1876	1922
Public Buildings Municipal Regulation	1927	1927
Hotels	1914	1963
R.c.309 -Non-Catholic Cemeteries	1888	1925
1966/7c.55 -Quebec Housing Corporation (Loi de la Société d'habitation du Quebec)	1967	1974
1969 c.5770c.48 Development of Site Neighbourhood of New Int'l Airport (Act respecting the Board for the development of the neighbourhood of a new international airport in the province of Quebec)	1969	1970
Private Education	1941	1968
Agricultural Exploitations	pre-1870	pre-1870
Wildlife Conservation	pre-1870	1969
Quebec Liquor Corporation	1971	1971
Petroleum Products Trade	1971	1971
1971 c.50Real Estate Assessment	1971	1975
Cultural Property	1922	1972
Public Health Protection	pre-1870	1972

	Original Act	Current Act
Environmental Quality	1964	1972
Preservation of Agricultural Land	1978	1978
1965 c.80 - Civil Code (re Lease)		
Code de procedure civile	pre-1870	1977
Municipal Code	1871	1916
An Act to Promote Conciliation Between Lessees & Property Owners	1951	1951

5. Ownership

Preservation of Agricultural Lands	1978	1978
An Act to Promote Conciliation Between Lessee and Property Owners	1951	1951

SASKATCHEWAN

		Original Act	Current Act
1.	Subdivision		
	Condominium Property Act*	1968	1968
	Farming Communities Land Act*	1936	1965
	Land Titles Act*	1906	1978
	Local Improvement Districts Act*	1906	1946
	Planning and Development Act*	1917	1973
	Subdivision Act*(1)	1914	1914
2.	Building Codes		
	Apiaries Act	1924	1973
	Boiler and Pressure Vessel Act*	1897	1977
	Dairy Products Act	1906	1948
	Electrical Inspection and Licensing Act*	1929	1949
	Family Services Act	1973	1973
	Fire Prevention Act*	1912	1951
	Fisheries Act	1944	1951
	Gas Inspection and Licensing Act*	1953	1953
	Hospitals Standards Act	1892	1949
	Housing and Special-Cares Homes Act	1954	1965
	Labour Standards Act	1912	1977
	Liquor Licensing Act	1959	1959
	Local Districts Improvements Act	1906	1946
	Mental Health Act	1906	1961
	Occupational Health and Safety Act	1934	1977
	Passenger and Freight Elevators Act	1942	1949
	Public Health Act*	1877	1950
	Public Utilities Companies Act	1901	1936
	Residential Tenancies Act*	1973	1973
	Rural Municipalities Act*	1909	1972
	Saskatchewan Railways Act	1906	1906
	Stray Animals Act	1888	1977
	Theatres and Cinematographs Act	1911	1968
	Urban Municipality Act*	1888	1970
	Animal Products Act	1923	1978
	Urban&Rural Planning & Development Act*(1)	1917	1973
	Sask. Farm Ownership Act 1974*(1)	1974	
3.	Land Development		
	Cemeteries Act	1888	1965
	Coal Conservation Act	1976	1976
	Co-operative Production Associations Act	1967	1967
	Dairy Products Act	1906	1948
	Drainage Act*	1909	1919
	Electrical Inspection and Licensing Act*	1929	1949
	Gas Inspection and Licensing Act*	1953	1953
	Highways Act*	1912	1961
	House Building Assistance Act	1970	1974
	Housing and Special-Care Act	1939	1979
	Industrial Towns Act	1964	1964
	Local Government Board Act*	1916	1976
	Local Improvement Districts Act*	1906	1946
	Northern Administration Act	1948	1948

SASKATCHEWAN

3. Land Development (continued)	Original Act	Current Act
Oil and Gas Conservation Act	1936	1952
Pipe Lines Act	1954	1954
Planning and Development Act*	1917	1973
Pollution (by Livestock) Control Act	1971	1971
Private Ditches Act	1909	1909
Public Utilities Companies Act	1901	1936
Radiation Health and Safety Act	1961	1961
Rural Municipalities Act*	1909	1972
Rural Telephone Act	1908	1962
Saskatchewan Railways Act	1906	1906
Urban Municipality Act*	1888	1970
Wacana Centre Act	1962	1975
Water Resources Management Act	1959	1972
Water Rights Act	1931	1932
Home Energy Loan Act	1978	1978
4. Use		
Air Pollution Act*	1965	1973
Department of Environment Act*	1972	1972
Drainage Act*	1909	1919
Fisheries Act	1944	1951
Ground Water Conservation Act	1959	1959
Highways Act*	1912	1961
Housing and Special-Care Homes Act	1954	1965
Land Bank Act	1972	1979
Land Titles Act*	1906	1978
Local Improvement Districts Act*	1906	1946
Local Improvements Act	1906	1969
Mental Health Act	1906	1961
Municipal Public Works Act	1906	1950
Northern Administration Act	1948	1948
Noxious Weed Act	1913	1930
Pest Control Act	1946	1956
Pipe Lines Act	1954	1954
Planning and Development Act*	1917	1973
Pollution* (Air Poll. Control; Litter Control; Water Poll. Control; Pollution (by livestock) Control)	1971	1971
Prairie and Forest Fires Act	1872	1964
Residential Tenancies Act*	1973	1973
Rural Municipalities Act*	1909	1972
Saskatchewan Bill of Rights	1947	1972
Saskatchewan Heritage Act	1975	1975
Saskatchewan Railways Act	1906	1906
Seed-Control Areas Act	1938	1951
Soil Drifting Control Act	1938	1938
Theatres and Cinematographs Act	1911	1968
Urban Municipality Act*	1888	1970

SASKATCHEWAN

4. Use (continued)	Original Act	Current Act
Water Resources Management Act	1959	1972
Water Rights Act	1931	1931
Theatres and Cinematographs Act	1911	1968
5. Ownership		
Condominium Property Act*	1968	1968
Farming Communities Land Act*	1936	1965
Land Titles Act	1906	1946
Planning Act	1917	1973

APPENDIX II

PROVINCIAL REGULATION SERVICES

1 . ALBERTA:

Part II Alberta Gazette - see annual volumes beginning in 1957.

See Index of Regulations filed under the Regulations Act since July 1, 1957 and subsisting to December 31, 1978.

Cumulative monthly listings for 1979 available, pursuant to Part II Alberta Gazette.

2. BRITISH COLUMBIA:

Part II B.C. Gazette - see annual volumes 1958 to present, as well as unbound portions of Regulations, 1979, published every two weeks.

See Index of Current B.C. Regulations (those filed under Regulations Act) 1958 to December 31, 1978, published by Ministry of Attorney General (Registrar of Regulations).

See also British Columbia STATUTE Citator (looseleaf current service), Index of Regulations, published by Canada Law Book Limited.

3. MANITOBA:

See Revised Regulations of 1971.

See annual volumes 1972 to present.

Note 1. All annual volumes of Part II of Manitoba Gazette, from 1951 to 1972, include a cumulative "Table of Regulations and Amendments" from 1945.

Note 2. All annual volumes have index of new and amending regulations for the particular year's volume.

Note 3. 1973 volume includes index of regulations existing as at December 31, 1973, but not included as part of the Manitoba Revised Regulations of 1971. Includes also a Table of Manitoba Regulations repealed by O.C. 1308/73 (effective December 31, 1973) from 1945 to 1972.

4. NEW BRUNSWICK:

See S.O.R. (Statutory Orders and Regulations) 1963. Consolidation published pursuant to Regulations Act in force May 1, 1963.

See yearly (annual) volumes 1963 to present, being the bound consolications of Part ii of the N.B. Gazette.

Note: 1978 volume includes Table of Regulations as appearing in S.O.R. 1963 Consolidations, with new and amending regulations of subsequent years. (Table will also indicate whether a regulation, appearing in the '63 consolidation or subsequently, was repealed, and if so, by what instrument).At S.C.C. See Index to Statory Orders and Regulations 1963 to mid-1977 published by N.B. office of Queen's Printer.

5. NEWFOUNDLAND:

See annual bound volumes (1973-76) of Part II of Nfld. Gazette.

See also current (1978,1979) unbound issues of said Gazette.

See a chronological index to Part II of Gazette, of Orders and Regulations from 1973 to 1976 (At McGill University Law Library) - Just out now.

6. NOVA SCOTIA:

See annual volumes 1973 (2nd Sess.) to 1977 (Feb.-May) with looseleaf service to current.

7. ONTARIO:

See Cumulative Index entitled "Table of Regulations Filed under The Regulations Act to the 31st day of December, 1978".

Part I of said table shows Regulations contained in Revised Regulations of Ontario (RRO), 1970 and subsequent Regulations filed to 31st December 1978, other than those set out in Part II of table.

Part II of table shows the Regulations contained in RRO,1970 and subsequent Regulations filed to 31st December 1978 that have been revoked, are revoking only or have expired.

See also monthly (but cumulative from beginning of 1979) index of Ontario Regulations, 1979, to be used in conjunction with the above noted cumulative index of December 31, 1978. (monthly index published by Carswell's Regulations Service)

See also RRO 1960 and RRO 1950, and annual volumes 1961 to present.

8. PRINCE EDWARD ISLAND:

See annual bound volumes of Part 2 of P.E.I. GAZETTE, 1975-1977, plus current unbound issues of said Gazette.

9. QUEBEC:

See Statutory Regulations (looseleaf) Service, first published in January 1973.

Updated twice yearly, and arranged firstly according to order of Statutes in RSQ 1964 and secondly according to chronological order.

10. SASKATCHEWAN:

See annual bound volumes of Part 2 of Saskatchewan Gazette, 1964 to present (each with annual index only!).

LAND REGULATION STUDY

APPENDIX III

PROVINCIAL REGULATION OF SUBDIVISION

SUMMARY - SUBDIVISION AUTHORITIES

System 1	Largely Local Control	British Columbia Newfoundland Quebec
System 2	Lieutenant Governor in Council sets up the system (broad powers) Board or Minister adds regulations Local does specifics and carries out	Alberta Saskatchewan New Brunswick Nova Scotia
System 3	Same as System 2 but with appeal from local decision to Board or Minister	Manitoba Prince Edward Island
System 4	Large provincial role	Ontario

BRITISH COLUMBIA

Approving Officer

No subdivision is allowed unless a Subdivision Plan is approved by the Approving Officer (minor exceptions).

No lots or units can be sold unless the Subdivision Plan is deposited and registered.

The same system applies to air space parcels.

Has wide discretion in deciding whether to approve. "May" reject if it feels the cost of providing public utilities would be excessive, that it would injuriously affect established amenities, has inadequate drainage, would adversely affect the natural environment, would be against the public interest, or does not conform to the Municipal Act or Regional District Bylaws.

Approving Officer may require dedication without compensation of land for public open space; that works and services be constructed prior to approval unless the subdivider gives a bond in the form and amount satisfactory to Approving Officer.

Municipality to appoint him from among Municipal Engineer, Chief Planning Officer, or some other employee of the Municipality.

For territories not within municipal boundaries, is Deputy Minister of Highways or some other person appointed by Lieutenant Governor in Council.

Registrar

Before the Registrar can deposit the Subdivision Plan, he must be satisfied that no confusion as to the title of parcels will result, or that all owners whose interests are affected have signed. (LTA s. 91-98)

Shall not accept for deposit a plan of subdivision part of which consists of land in the A.L.R.

Council

May regulate the subdivision of land.

May by bylaw regulate the area, shape, and dimensions of parcels, prescribe minimum standards, require that the subdivision be suited to the configuration and to the use and that it shall not make impracticable future subdivision.

May require that highways be cleared and surfaced.

May require water distribution, sewage collection and drainage collection systems of a certain standard.

Minister

The Lieutenant Governor in Council may establish areas of the province not incorporated as a city as a "Local Area" for the regulation of land use. In such event, the Minister may exercise powers exercisable by Council under the Municipal Act.

Deputy Minister of the Environment

Approval is required to subdivide land subject to flooding.

Lieutenant Governor in Council

May forbid the deposit of a Plan where it is against the public interest.

Director of Insurance

A Prospectus must be filed for all but the smallest subdivisions.

Extent to which Condominiums, Air Parcels, and Strata Plans Must Be Registered.

For Conversions must get Council approval. Council may refuse or set conditions. The Act suggests Council

consider the priority of rental accommodation, proposals for relocation of current occupants, and the life expectancy of the building.

Phased Developments

The Approving Officer has a similar but narrower role. He must approve the application before the buildings can be constructed. He shall not do so unless the requirements in the "Plan of Phased Development" are substantially complied with.

ALBERTA

Approving Authority

The Registrar shall not accept for registration an instrument that has the effect of subdividing a parcel unless the subdivision has been approved by Approving Authority (exceptions).

Shall not approve unless the land is suitable for the purpose for which the subdivision is intended and conforms to the Regional Plan, Statutory Plan, and Land Use Bylaw.

May impose conditions. Has quite wide scope with respect to roadways, utilities. Is to ensure the regulations and Act are complied with.

May require land for roads, utilities, schools, etc. be provided without compensation.

Municipal Planning Commission (Calgary and Edmonton), Regional Planning Commission or Planning Services Division (Provincial) where no commission exists.

Lieutenant Governor in Council

May make regulations with respect to subdivisions. Broad power to set up the whole framework.

Council

The Alberta Planning Board. With the consent of the interested parties, may order the plan of subdivision cancelled. Lieutenant Governor in Council may impose on it such duties or conditions or functions as he considers necessary. May summon witnesses, administer oaths.

Registrar

Before conveying, shall deposit with the Registrar a plan. Plan shall not be registered unless the subdivision complies in all respects with the Planning Act, is approved by all encumbrances, etc.

Condominiums Handled Differently

Must be approved by the local authority before it can be registered. General regulatory power of the Lieutenant Governor in Council.

New Towns Handled In Special Way

Board of Administrators can prohibit subdivision pending an agreement between Landowners and Developers.

SASKATCHEWAN

Minister

No subdivision shall be done unless in accord with this Act and the regulations and plans submitted to the Minister.

General power of Minister to make regulations controlling the subdivision of land. Can make regulations not inconsistent with the Act.

Approving Authority

Council is the Approving Authority within the area under its jurisdiction. The "Director of Community Planning" is the Approving Authority elsewhere.

Where a proposed plan complies in all respects with the Act and is considered desirable by the Approving Authority, the Approving Authority shall issue its Certificate of Approval.

Has the power to revoke an approval where the plan hasn't been registered or the Certificate of Title has not been issued.

The application shall not be approved unless the land, in the opinion of the Approving Authority, is suited to the intended purpose.

Council

The application shall not be approved unless it conforms to existing Community Plan, the Development Plan, and the Zoning Bylaw.

General power of Council to make regulations controlling the subdivision of land. Is narrower - can by bylaw make regulations not inconsistent with the Act. The Minister can refuse to approve these regulations if he feels they are contrary to the spirit of the Act.

Power of Council to adopt a replotting scheme with the approval of the Minister and of owners of parcels constituting two-thirds of the scheme.

Lieutenant Governor in Council

General regulatory power. This power is essentially a power to make regulations to fill out the system. Can create discretionary powers to be exercised by the other bodies.

Chief Surveyor

No plan of subdivision shall be registered unless it has been approved by the Chief Surveyor or the Land Titles Office.

Condominiums

The Planning and Development Act doesn't apply. Subdivision is to be by registration of Plan. The Plan must be approved by the "Local Authority".

MANITOBA

Lieutenant Governor in Council

Sets the context of the whole system. Can add regulations not inconsistent with the Act - prescribing conditions, locations for specific types of development, providing that Approving Officer approval not required with respect to certain classes of subdivision.

Broad Lieutenant Governor in Council powers over the subdivision of land.

Council

The Act creates a requirement for approval of subdivisions, including the requirement in all cases of Council approval by resolution (the Act does not define this further) and conformity with established provincial land use policy. Subject to a Planning Scheme adopted under Planning Act, Council may pass bylaws restricting the number and size of lots and imposing conditions.

Approving Authority

Will be the Board of a district where the Minister is satisfied it has the necessary technical staff.

Will be the Director of Planning or person acting for him otherwise.

Where the proposed subdivision complies in all respects with the Act and the regulations, the Approving Authority shall issue a Certificate of Approval. But this of course takes into account the Approving Authority's discretion with respect to suitability of purpose.

The Approving Authority may impose conditions with respect to subdivision approval.

May require dedication of land without compensation.

May require approval where a Subdivision Plan is not registered, if he considers it advisable.

Minister

Approval necessary to pass Development Plan Bylaw.

(Applies only with respect to schemes in force prior to this Act and in opinion of Minister inconsistent.)

May require amendment or repeal of existing planning scheme.

Reapplication for approval within 6 months of original application only with permission of the Minister.

Municipal Board

The decision of the Approving Authority is final if no complaint is received within time fixed.

Council may apply for and the Municipal Board order cancellation, amendment, or alteration of a registered plan.

The Board is bound by Act and regulations except where compliance with regulation is impractical and non-compliance doesn't prevent the attainment of the Act's objectives.

Registrar General

No Subdivision Plan is to be registered unless it is approved by the Registrar General and is in accordance with form requirements.

District Registrar

May require explanatory plans prior to registration.

Condominiums Handled Differently

But is under the general regulatory power of the Lieutenant Governor in Council.

ONTARIO

Committee of Adjustement

Except where consent is given by the Committee, there shall be no conveyance unless the land is within a registered plan or subdivision. (No further explanation - but it is an important body. It may Authorize such variances from the provisions of the bylaw with respect to land, structure or use as it feels is desirable for appropriate development, so long as intent of bylaw and plan are maintained.)

Minister

Application process specified, including items Minister is to consider, what applicant is to indicate. Minister seems to have the complete say. (Although there is a provision that the owner of land may enter into a contract with the municipality dealing with such matters as the Minister may consider necessary.)

Ontario Municipal Board

The owner or municipality, where not satisfied, can refer Minister's imposed conditions to Ontario Municipal Board. Appeal decision is final.

Director

Where land is being subdivided for purpose of being conveyed in lots, the person making the subdivision shall register in the proper Land Titles Office a plan prepared by the Ontario Land Surveyor.

The Director is to designate Subdivision Plan Areas within which the above applies. Can further designate that the land, although within a registered paln of subdivision, shall be deemed not be within a registered plan or subdivision as far as compliance with this Act is concerned.

Condominiums may be handled differently - Look to exceptions in Act.

NEW BRUNSWICK

Lieutenant Governor in Council

Has the power to make regulations re subdividing. (The Act does not expand on the what the exact intent of this power is).

Council

May provide that as a condition of subdivision approval, the owner must provide and and pay the expense of local improvements.

Subject to this section, a Council may enact subdivision by-laws to regulate the subdivision of land. The regulations shall be consistent with the Municipal Plan. May prescribe various standards and requirements (i.e., vesting, access, facilities, lot sizes, dedication).

Purpose of Act

Divides the province into 7 regions.

Sets up Planning Districts to coordinate community planning within the context of the Regional Plan.

Director of Planning District

The Director to administer subdivision bylaws and regulations where (and only where) he is appointed the Development Officer. (The Development Officer plays the role of a planner, etc.) (Will be case where role not performed by Council, etc.)

Condominiums

Subdivision bylaws and regulations under the Community Planning Act don't apply.

The Lieutenant Governor in Council has the power to make regulations with respect to surveys, registration procedures.

NOVA SCOTIA

Minister

May prescribe regulations respecting the subdividing of land including:

- procedure
- requirements for tentative and final plans
- general provisions with respect to areas reserved for public purpose, access, lot frontage, size and shape of lots, where such is not dealt within a zoning bylaw.

Council

Filing required before can subdivide.

Council approval of subdivision plan required prior to registration.

Council may pass bylaws zoning property.

PRINCE EDWARD ISLAND

Land is not to be sold or conveyed unless subdivided according to an approved plan.

Lieutenant Governor in Council

The Lieutenant Governor in Council (with respect to any area except city of Charlottetown or the towns) may make regulations governing the subdivision and development of land.

Land Use Commission

May, subject to approval of the Lieutenant Governor in Council, make regulations generally for the better carrying out of the intent and purpose of this Part.

An appeal to the Commission shall lie at the instance of any party to any proposed transaction refered to in S 41(2). Its decision is final.

Council

May approve and file a map defining areas in which the sale of land is restricted as provided.

Land in the areas refered to shall not be sold or conveyed unless:

- the land is subdivided according to a plan of subdivision approved by Council in accordance with regulations made by the Lieutenant Governor in Council or the Commission;
- the sale or conveyance is approved by Council S 41(2).

Minister

Where the subdivision contains greater than 10 lots, the Minister may require the Developer to enter a subdivison contract with respect to phasing, road construction, sewage, etc.

NEWFOUNDLAND

Council

Whenever Council proceeds either on own initiative or upon the application of owners of more than one half the land concerned to open up any locality and lay out any land for building purposes, notices shall be given in the newspaper. Council shall consider any objections and representations.

May assess costs for laying water mains, sewers, and the construction of curbs, gutters and sidewalks.

Owners of land may be required by Council to effect improvements at their own expense, or the deposit with Council an amount equal to estimated cost.

(The City of Cornerbrook Act - no subdivision without the consent of Council.)

Subdivision: Approving Officers and By-laws

British Columbia:
- Appointee of Council or Highway Department Official (Unor ganized)
- Council

Alberta:
- Municipal Planning Commission (Edmonton and Calgary)
- Regional Planning Commission
- Director (in all other cases)
- L-G in Council; Council if not inconsistent

Saskatchewan:
- Council as named by Minister -Directors as named by Minister
- Minister shall make regulations and Council may, when designated, pass by-laws not inconsistent with provincial.

Manitoba:
- District Boards (where Minister satisfied they have competence and staff)

or
- Director of Planning
- L-G in Council may make regulations

Ontario:
- Committee of Adjustment
- Minister (Unorganized)

Quebec:
- Local Corporation Council
- Lieutenant Governor in Council or if not then the Council

New Brunswick:
- Councils
- Provincial Planning Committee
- Director (outside planning district)
- Council may enact by-law.

Nova Scotia:
- Delegated by Council, subject to Minister's approval
- Highways Department (Unorganized)
- Minister may prescribe regulations but Council, with permission, may add to these.

Prince Edward Island:
- Council
- City or Town may make regulations.

Newfoundland:
- Council
- Director of Planning in protected areas.

APPENDIX IV

LAND DEVELOPMENT REGULATION

A SHORT SYNOPSIS OF

PROVINCIAL PLANNING

SCHEMES

LAND DEVELOPMENT REGULATION

I. A short synopsis of Provincial Planning Schemes

1. Regional Plans
2. Municipal Plans
3. District Plans (Joint Municipal)
4. Basic Planning Statements
5. Development Schemes
6. Bylaws
7. Development Permits
8. Appeals
9. General Regulatory Powers
10. Special Control Areas

REGIONAL PLANS

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Planning Regions										
Who establishes them										
- Lieutenant Governor in Council				X			X	X		
- Lieutenant Governor in Council on Minister's recommendation	X									
- Minister		X			X					X
- Provincially appointed board (makes recommendations)				X	X			X		
- No regions established			X							
- Local Government agreement						X				
Regional Plans										
Who prepares them										
- Minister, upon consultation with Councils and the Commission							X	X		
- Provincial Board (established by the Lieutenant Governor in Council)									X	X
- Regional Board (number of members set by the LGiC, Councils nominate)				X						
- Regional Board (number of members set by the Minister, Councils nominate)		X			X					
- Regional Board (number of members set by the LGiC, voters elect)	X									
- No regional planning or just local joint			X			X				
Adoption procedure										
- The LGiC may approve or amend								X		
- The LGiC. May overrule Council and Commission complaints							X			
- The Minister may approve, disapprove, or subject to qualifications.									?	X
- The Minister is to make recommendations and the LGiC is to approve it before the Regional Board (or Council, where the municipality comprises the district) adopts it.				X						

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
- The Regional Board adopts it after a public hearing. It then goes to the Provincial Planning Board and the Minister for approval. It comes into effect when the Minister ratifies it.		X								
- Same, but substitute Council into the Regional Board role.					X					
- No regional planning			X							
Effect of Regional Plans										
- May control the use and development of land in the region		X								
- Adoption of the plan does not require the Board/Council to undertake any proposal therein outlined, but no development shall be carried out that is inconsistent	X			X			X			
- When approved, the LGiC may make a Regional Development Order prohibiting the undertaking of developments inconsistent with it, or authorizing the Provincial Planning Board to make regulations for its implementation.										X
- Projects not conforming with it shall not be undertaken without approval of the Land Use Commission (an LGiC-appointed board representing the private sector)									X	
- Where a Regional Plan is in effect and no Municipal Development Plan is required, no one shall undertake a development without first obtaining a Regional Development Permit. The Minister may prescribe developments that don't require it. The Minister may establish District Planning Commissions to issue permits.								X		
- Development Permits issued by the Provincial Board shall comply with it.		X								
- Council may enact a zoning bylaw only where the Regional Development Plan or Basic Planning Statement is adopted.				X						
- Official Plan must conform with it.									X	
- Prevails over Local Plans and Zoning Bylaws					X		X	X	X	

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
- No development permit shall be issued unless it conforms with the plan.				X						
- Where the Regional Plan is in force, no development shall be allowed without a permit. May attach conditions.							X			
- Adoption enables the Regional Board to prepare and Official Settlement Plan which shall contain a general statement of policies with respect to land use patterns in the rural areas of the district. It is to be the basis for the preparation of regulating bylaws.	X									
MUNICIPAL PLANS										
Area affected by them										
- Municipality, in whole or in part	X		X			X	X	X		
- The Minister may allow the Municipal Plan to include areas outside municipal boundaries where such a situation is necessary to have effective control.		X		X	X				X	X
- Oftentimes the "Region" of the Regional Plan will be a single municipality. Consequently the Municipal Plan and Regional Plans merge. There is no Municipal Plan otherwise.				X						
- Generally speaking the same situation. Where the boundaries do not correspond exactly to those of the municipality, Ministerial approval of Council's plan must be obtained.					X					
Who is to prepare a Municipal Plan										
- Councils of cities or towns of more than 1,000 people, and counties or districts of more than 10,000 people shall adopt a General Municipal Plan.		X								
- Council may choose to prepare one.	X		X	X	X	X	X	X	X	X
- Council may be required to prepare one by the Regional Plan or by order of the Minister.			X	X			X			

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Approval procedure										
- Council may by bylaw adopt it. The Minister shall approve, disapprove or alter it.			X					X		
- Council may adopt it. The Minister shall appoint a Commissioner and hold a hearing with respect to it. The Minister may then approve, disapprove or amend it.				X	X	X				X
- Council may appoint a Planning Board to prepare the plan. Council may adopt it. The LGiC may approve it. Thereupon it becomes the Official Plan.		X							X	
- Council may by bylaw adopt it. They may also be required to do so by the Regional Plan or by the Minister.							X			
- The District Planning Commission may assist in its preparation.	X			X				X		
- Council may by bylaw adopt it, in which case it becomes the Official Plan. Must have a public hearing and at least a two-thirds affirmative vote.	X									
Effect										
- It does not commit Council to undertake any project outlined therein, but it prevents the undertaking of any development inconsistent.	X	X	X	X	X	X	X	X		
- No effect if not adopted as Official.	X									
- No Development Permit shall be refused by reason only that it conflicts with the Municipal Plan.								X	X	
- No project that does not conform with it shall be undertaken without Land Use Commission (an LGiC-appointed board representing the private sector) approval.									X	
- Municipal bylaws shall conform with it.									X	
- It is binding on Council and other persons, corporations, etc.										X
- Zoning controls are the means of implementation.			X							
- Merely prescribes land use purposes.		X								

DISTRICT PLANS (JOINT PLANS)

Two or more municipalities may by the agreement of their Councils constitute a Joint Planning Board. The Board shall have such duties as the Councils agree to assign to it. They are then to make their Official Plan jointly, covering the entire district. (The Plan's provisions are therefore as described in the "Municipal Plans" section).

Prince Edward Island

The Minister, upon application of one or more Councils, may declare a Joint Planning Area. He shall then set up a Joint Planning Authority consisting of such numbers of provincial and municipal representatives as the Lieutenant Governor in Council considers advisable. The municipal planning function is adjusted to account for the fact that more than one municipality is involved.

Newfoundland

The situation in Manitoba is described thoroughly in the prior sections of this synopsis.

Manitoba

BASIC PLANNING STATEMENT

When there is no Development Plan in effect, the District Planning Board (Councils appoint according to shares determined by the Lieutenant Governor in Council, district-wide scope) or Council, after advising the Minister, may, and when so ordered by the Minister, shall, prepare a Basic Planning Statement of objectives.

No Development Permit shall be issued unless it conforms with the adopted Planning Statement.

Manitoba

Where there is no Municipal Plan in effect, Council may with the consent of the Minister, prepare a Basic Planning Statement for the municipality. It shall do so if so required by the Regional Plan or by order of the Minister. It shall state objectives for the future development of the municipality.

New Brunswick

DEVELOPMENT SCHEMES

Council may by bylaw designate an area of the municipality as a "Redevelopment Area" for the purpose of rehabilitating buildings, improving or relocating public roadways, etc.

Where Council has adopted a Municipal Plan and considers it desireable to exercise particular control over the use and development of land or buildings within an area of the municipality, it may designate the area as a "Direct Control District" and control use and development in such a manner as it considers necessary.

Alberta

Where a Municipal Plan or Basic Planning Statement is in effect, Council may by bylaw adopt a "Development Scheme" to carry out any proposal therein outlined or that is not inconsistent with it. Adoption does not commit the municipality to undertake the proposal, but prevents the undertaking of developments that are inconsistent with it. Development Schemes prevail over Zoning and Subdivision Bylaws.

New Brunswick

At any time after the adoption of the Municipal Plan, Council may prepare and adopt a "Development Scheme" to ensure that a proposal contained therein will be carried out. The Development Scheme forms part of the Municipal Plan.

Newfoundland

MUNICIPAL DEVELOPMENT BYLAWS

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Relationship with Regional Plans, Basic Planning Statements and Municipal Plans										
- It shall be based on the Municipal Plan or on a survey of existing conditions.									X	
- It shall be in strict conformity with the Municipal Plan.										X
- In adopting standards, Council shall have regard to the policies set out in the Development Plan or Basic Planning Statement. (Recall that in Manitoba and Ontario there are no distinct Regional and Municipal Plans. Consequently the term "Development Plan" is used.)				X						
The nature of the requirement for a Zoning Bylaw										
- Council, upon adoption of the Municipal Plan, shall draft and enact a Zoning Bylaw to carry out the intent of the Plan.							X	X	X	X
- Council, upon adoption of a Basic Planning Statement, may enact a Zoning Bylaw to carry out the intent of the Statement.							X			
- Council may pass a bylaw controlling the use and development of land and buildings. The bylaw shall prescribe permitted and discretionary uses and a Development Permit scheme.		X								
- Council may enact a Zoning Bylaw, but only where a Development Plan or Basic Planning Statement is adopted for the area.			X							
- Council may pass a Zoning Bylaw.	X									
Types of provisions the bylaw is to include										
- It shall prescribe zones and permitted or conditional uses.		X		X						
- Council may prescribe such additional conditions as are necessary to secure the objectives of the Zoning Bylaw. Council's decision is final and binding.				X						

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
- It shall prescribe permitted uses.									X	
- It shall provide for the issuing of Development Permits.		X		X						
- It may provide for a system of Development and Use Permits, and prescribe the terms and conditions under which any permit may be issued, suspended or revoked.			X				X			
- The bylaw may provide specifically with respect to:										
- Lot areas		X	X	X			X	X		
- Height, size and location of buildings	X	X	X	X			X	X		
- Landscaping	X	X					X			
- Fences and walks		X		X			X			
- Offstreet parking	X	X	X		X		X			
- Design and character of buildings	X	X					X	X		
- Floodlands		X	X	X	X		X	X		
- Billboards	X	X	X	X			X	X		
- Density		X	X	X			X	X		
- Non-conforming use protection	X	X	X	X				X		
- Use of land or buildings	X		X		X		X	X		
- Mobile homes			X							
- Noise			X							
- Hours of use				X						
- Permits for buildings housing dangerous substances					X					
- 5% donation of land for parks					X					
- Access							X			
- Land with steep slopes							X	X		
Approval and amendment procedures										
- No part of the Bylaw comes into force without the approval of the Ontario Municipal Board (a provincially appointed board, province-wide scope). Such approval conclusively deems the Bylaw to be in conformity with the Official Plan.					X					
- Before adopting, shall submit it to the provincial Planning Board (LGiC-appointed with province-wide scope) for advice as to conformity with the Municipal Plan. Upon adoption, it shall be sent to the Minister. Upon Ministerial approval, it comes into effect. May add qualifications.										X

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
- The Development Officer may grant a minor variance from it.								X		
- Council shall not alter the Bylaw without so advertising and opening for inspections, except where the Minister dispenses with it on account of its minor nature.			X							
- Those objecting to a refusal to amend may apply to the Municipal Board (province-wide scope) or the District Board (Council appointed, regional scope). The Board shall hold a hearing and confirm Council's decision or order the amendment. The decision is final and binding.				X						
- No Zoning Bylaw shall be adopted, amended, or repealed except after a public hearing and upon a two-thirds majority vote of Council. Council shall have due regard to health, safety, land values, overcrowding, area character, etc.	X									
Remedy upon breach										
- When any act is carried out that is contrary to a bylaw which is in conformity with the Municipal or Regional Plan, the act may be restrained by action at the instance of the Planning Board (Council appointed, local scope).										X
DEVELOPMENT PERMITS										
Regional development permits										
- Where a Regional Development Plan is in effect and no Municipal Development Plan is required, no one shall undertake a development without first obtaining a Regional Development Permit. The Minister may prescribe developments for which no permit is required. Council shall not issue Development Permits inconsistent with them.									X	

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
- Where a Regional Plan is in force, development shall not be undertaken unless a Regional Development Permit has been issued. Where the development conforms with the Regional Plan, the Officer shall issue it. He may make it subject to such conditions as he considers necessary to ensure consistency with the Plan.							X			
Relationship to Development Plans, Municipal Plans, etc.										
- No Development Permit shall be refused by reason only that it conflicts with the Municipal Plan.								X	X	
- LGiC may make regulations providing that no application shall be approved by Council unless it conforms with an outline plan designated therein.										X
- No Development Permit shall be issued unless it conforms with the Development Plan, Basic Planning Statement, Planning Scheme and Zoning Bylaws. Where none of these have been adopted, the authority may make the permit subject to such terms and conditions as he considers necessary.				X						
The nature of the requirement for the creation of Development Permit Schemes										
- Council shall set up a Permit Scheme.		X								
- The Zoning Bylaw may prescribe a Permit scheme.	X		X				X			
- The Lieutenant Governor in Council may make regulations prohibiting development without Council approval.										X

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Extent to which the developer can avoid the need for a permit										
- Except as otherwise provided in the land use bylaw, no person shall commence any development unless he has been issued a permit with respect to it.		X								
- Except in accordance with the terms of a permit, no person shall within the municipality erect, repair or change the use of a building; build a sewer; make or use a new water supply.										X
- The Bylaw may prescribe developments for which no permit is necessary.			X							
- Two types of permits are provided for. (1) Area permits: where in Council's opinion special provisions prevail with respect to physical environment or design or siting considerations, Council may in a Zoning Bylaw designate areas of land within a zone as Development Permit Areas and provide that the owner of land within it shall prior to commencing a development obtain a Development Permit. (2) Site permits: Council establishes a Development Permit scheme. No developer needs to apply for a permit (i.e. - if he otherwise satisfies all the zoning requirements), although the set-up of the permit system might mean it is in his interest to do so.	X									
Extent to which permits may be made conditional										
- The bylaw may prescribe conditions under which any permit may be issued, suspended or revoked.			X							
- Subject to approval by the Minister, Council may make regulations with respect to the conditions upon which a permit may be granted.										X
- The Lieutenant Governor in Council may make regulations providing for the issuing by Council of conditional consent with respect to specified forms of development.										X

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
- Council may delegate, with or without conditions, the power to make decisions with respect to applications for Development Permits to the Municipal Planning Commission (Council appointed, local scope). The Commission may attach conditions to its orders.		X								
Appeals/variance										
- Council may appoint a Zoning Appeal Board (no members of Council are to be on it) which may cancel or vary restrictions. A further appeal is available to the Newfoundland Supreme Court on issues of law or jurisdiction.										X
- Any person affected by an order of a Development Officer (the local permit approver, Council appointed) may appeal to the Development Permit Board. The Board shall comply with the Regional Plan and Land Use Bylaw. It shall confirm, revoke or vary the order or condition. The Board may allow a breach of the Land Use Bylaw if the proposed development would not materially interfere with the neighbourhood and does not conflict with the use prescribed.		X								

APPEALS

Zoning And Development Permits : Appeals And Variance

(a) Appeals at a local level

Where Council has adopted a Zoning Bylaw, it shall establish by bylaw a Board of Variance. (The municipality is to appoint 2 members, the Minister appoints 2, and another is chosen by those four.) The Board shall determine any appeal by a person who alleges that enforcement of the Bylaw with respect to siting, shape or size of a building or structure would cause him undue hardship, in which case the Board may authorize such minor variance as in its opinion maintains the general intent and purpose of the Bylaw and does not vary permitted uses or densities. Such a decision is final and binding.

British Columbia

Council shall appoint a Zoning Appeals Board. If the population represented is greater than 5,000, it shall not have any councillors on it.

Saskatchewan

Any person affected by an order of a Development Officer may appeal to a Development Permit Board (local scope). The Board may confirm, revoke or vary the order or condition. It may allow breach of the Land Use Bylaw if the proposed bylaw would not materially interfere with the neighborhood and does not conflict with the use prescribed.

Alberta

Council shall appoint a Zoning Appeal Board which may cancel or vary restrictions. It shall not have members of Council on it.

There is a further appeal available to the Newfoundland Supreme Court on questions of law or jurisdiction.

Newfoundland

(b) Appeals at a regional level

People objecting to a Council decision with respect to the Zoning Bylaws may apply to the Municipal Board (province-wide scope) or the District Board (Council appointed, regional scope). The Board shall have a hearing and either confirm Council's decision or order an amendment. The decision is final and binding.

Manitoba

(c) Appeals to provincial bodies

Any interested person may appeal to the Provincial Planning Appeals Board (province-wide scope). They may confirm the Council's decision or refer it back for further consideration. They shall not interfere with Council's decision unless it can't reasonably be said to carry out the intent of the Municipal Development Plan.

The Development Officer may grant a minor variance from the bylaw.

Nova Scotia

Where, subsequent to the acquisition of land by a person, a Zoning Bylaw is adopted or amended so that no use of the land is permitted, the Minister may grant such relief as he considers proper.

British Columbia

The Provincial Planning Appeals Board (appointed by the Lieutenant Governor in Council; two members from each planning region and one other, no civil servants; province-wide scope). Any person may appeal a refusal or the terms of approval where it results from the misapplication of the Act or the Bylaw or where it would cause him special or unreasonable hardship. One may appeal approval of another person's development on the same grounds (hardship to the appelant).

The Board may vary terms and conditions, dismiss, approve developments, attach terms.

New Brunswick

Where there is an application to Council to amend the Bylaw, and it is refused, there is an appeal to the Ontario Municipal Board (province-wide scope). One may also appeal to this body with respect to the failure of a municipality to grant approval within thirty days of submission, and against the terms of a permit.

The Committee of Adjustment may grant minor variances from the Bylaw if it deems it desirable for the appropriate development or use of the land or building, provided it feels that the general intent and purpose of the Bylaw and Official Plan are maintained.

Ontario

Demolition Permits

One may apply to Council for relief from the permit's conditions.

One may appeal to the Ontario Municipal Board Council's refusal to issue a demolition permit or it's failure to decide within one month of the application.

Ontario

Council Decisions In General

A person affected by a decision of Council may appeal to the Appeal Board. (The Appeal Board is a Board established by the Minister for the entire province. He chooses between three and five persons that he considers desirable. They hold office during pleasure.) Their decision is final and binding on all parties.

Newfoundland

Regional Development Permits

Any person who considers himself aggrieved by the granting of a Regional Development Permit may appeal to the Provincial Planning Appeals Board (province-wide scope). The Board may confirm, vary, or revoke conditions and confirm or revoke the permit.

Nova Scotia

If the Council-appointed Municipal Planning Commission refuses to adopt an amendment, the applicant may appeal to the Alberta Planning Board (members of which are appointed by the Lieutenant Governor in Council; province-wide scope). If the Board approves the amendment, it shall be submitted to the Minister, who may ratify it.

Alberta

Regional Board Decisions In General

The Council of, or a member representing, any member municipality may appeal any bylaw or decision of the Regional Board to the Inspector of Municipalities (a Lieutenant Governor in Council-appointed individual;

to the public. The order made as a result shall, upon Lieutenant Governor in Council approval, be binding on the Regional Board and member municipalities.

British Columbia

Any Decision Under The Act

Where any person is dissatisfied with a decision made in the administration of this Act or in the carrying out of duties established under this Act, that person may appeal the Land Use Commission. The Commission's (appointed by the Lieutenant Governor in Council; province-wide scope; representing the private sector) decision is final and binding on the parties to the appeal, but it may reopen any appeal and confirm, vary, or overturn its earlier decision.

Prince Edward Island

GENERAL REGULATORY POWERS

	BC	Alt	Sas	Man	Ont	Que	NB	NS	PEI	Nfl
Lieutenant Governor in Council										
- General power to regulate.		X	X						X	X
- General power to regulate with respect to building permits.					X					
- May make such regulations as he deems desirable to control the use of land with respect to location, design, and construction of buildings, with respect to permissible densities, yard areas, open spaces, etc.										X
- Broad regulatory powers with respect to Municipal Plan.										X
- May make regulations with respect to any area except Charlottetown or the towns implementing an Official Plan, governing subdivision, or establishing building standards.									X	
- May, on the recommendation of the Minister, regulate with respect to setbacks mobile homes parks and sites, licensing of public adds, subdividing of lands, demolishing of buildings.							X			
- May, on the Minister's recommendation, establish provincial land use policies.				X						
Minister										
- Shall administer the act.							X			
- In order to promote the objects of the Act, may, subject to Lieutenant Governor in Council approval, make such regulations as in his opinion are necessary to carry out the spirit of the act.										X
- May supervise, control and direct all matters relating to housing (except rent control) and urban renewal.										X

SPECIAL CONTROL AREAS

Alberta

"Public Works Development Areas"

No person shall construct an improvement on any land within such an area. The Minister is to define the area. The Lieutenant Governor in Council has a general regulatory power.

"Restricted Development Areas"

Consent of the Minister is required for the use or development of land within such areas. The Lieutenant Governor in Council has a general regulatory power.

Saskatchewan

"Planned Unit Developments"

The Municipality may establish districts and prescribe the kinds of development that may be carried out within them. The Minister is empowered to regulate and to delegate powers with respect to them.

"Special Planning Areas"

Notwithstanding any Municipal Development Plan or Zoning Bylaw, the Minister may by order establish such an area, if in his opinion the actual or possible development thereof is of greater than local interest. The Minister has all the powers of Council with respect to them. He can designate such powers to a Special Planning Area Commission. The Lieutenant Governor in Council has general regulatory power.

Manitoba

"Special Planning Areas"

Are established by an Order in Council shall establish an Advisory Committee of such a number of municipal councillors as is set out. They are to advise the Minister on the preparation and implementation of the Development Plan, Zoning Bylaw, or any other regulation required.

"Interim Development Control Areas"

No development is allowed within them without a permit from Council or the District Board. Has discretion.

Ontario

There is a special scheme for the Niagara Escarpment

The Niagara Escarpment Planning And Development Act, 1973

This Act provides for the maintenance of the Niagare Escarpment and the land in its vicinity as a continuous natural environment, and is to ensure development compatible with the natural environment.

Minister - shall direct Commission to prepare a Niagara Escarpment Plan.

May make regulations with respect to areas within the Niagara Escarpment Planning Area as an area of development control.

Commission - In the preparation of the Plan, is to ensure that all new development is compatible with the above-mentioned purpose.

- The plan may contain policies with respect to development, both public and private.

System

- May provide for the issuance of development permits including terms and conditions.
- May exempt classes of development from development permit requirements.
- Minister may exempt a person by granting him a Development Permit under the regulations.

Prince Edward Island

"Community Improvement Committees"

Where more than twelve people want one established, they may apply to the Minister. Where the residents of the community so recommend at the hearing, the Lieutenant Governor in Council may establish a Committee. The Lieutenant Governor in Council appoints six or more people from those recommended at the meeting. The Committee has the power to enter agreements on behalf of the residents of the community with respect to fire protection, electricity and sewers. They may represent the community with respect to parks, playgrounds and dilapidated buildings.

Newfoundland

"Local Planning Areas"

The Minister is empowered to declare them. Establishes a Board which shall review the Local Area Plan every five years.

"Development Control Areas"

The Minister may designate such areas.

"Protected Areas"

Lieutenant Governor in Council is empowered to declare them. The Minister may authorize the preparation of plans covering them. When such a plan is declared, the LGiC may make an order prohibiting development in conflict with it.

APPENDIX V

HISTORICAL DEVELOPMENTS IN LAND REGULATION AND LAND PLANNING PROFESSION

EARLY LAND REGULATIONS - PLANNING IN THE 1900's

Province	Year	Events
British Columbia	1872	Municipal Act - Empowered municipalities to pass bylaws relating to roads and bridges; saloons, taverns & billiard rooms; regulation of fences, dykes & ditches; prevention of fires; preservation of public health; and to regulate the erection of wooden buildings.
	1881	Municipal Act - Powers of municipal councils increased to accept and hold lands, beyond their boundaries for parks; to regulate the construction of dwelling units; to limit the number of occupants per unit; to regulate the width, type and surface of streets and sidewalks; to regulate the dimensions, form and mode of construction [full construction control].
	1906	Land Registry Act - New subdivision controls (in addition to adequate descriptions) for width of roads; straight line streets that meet
	1908	Municipal Clauses Act - Amended to increase powers of municipal councils to regulate the location, construction and use of breweries, stables, sawmills, chemical works, soap works, livery stables, foundaries, laundry & washhouse buildings and other businesses which may tend to reduce the value of assessable property.
	1910	Land Registry Act - Amended to provide that a municipal council may refuse to approve a map or plan on the ground of insufficient provision for lanes at the rear of lots.

1914 — Municipal Act of 1914 (replacing Municipal Clauses Act of 1906) - Enacted and provided for the making of compulsory development schemes within the municipality when approved by 3/4's in number & value of the land owners within the area & after approval of provincial government.

1919 — Land Registry Act - Amended to provide that a municipal approving officer may refuse to approve a subdivision plan where it does not conform to municipal bylaws regulating the size of lots or parcels for building or other purposes.

1925 — Town Planning Act - Enacted providing for extensive planning and zoning of municipalities. "Whereas it has been realized that large municipal expenditures have become necessary owing to the fortuitous development of urban centres, and that it is advisable to make provision whereby the natural growth of cities and towns may be planned in a systematic and orderly way, so that adequate means of communication for an increasing population may be provided and congestion avoided, and that economies may be effected in the industrial and business activities of communities, and so that the serviceableness of business property and the amenity of residential districts may be preserved and adequate areas may be provided for protecting the health of and providing recreation for the public:"

- Permissive zoning, height, bulk, set-backs.
- Must consider

In determining the regulations to be made under this section, the Council shall have due regard to the following considerations:

		(a) The promotion of public health, safety, convenience, and welfare:
		(b) The prevention of the overcrowding of land and the preservation of the amenity of residential districts:
		(c) The securing of adequate provisions for light, air, and reasonable access:
		(d) The value of the land and the nature of its use and occupancy:
		(e) The character of each district, the character of the buildings already erected and the peculiar suitability of the district for particular uses:
		(f) The conservation of property values and the direction of building development.
		- May create Town Planning Commission.
Alberta	1906	First Legislative Assembly
	1906	Land Titles Act - Owner of land subdividing land into town plot for purposes of selling lots shall register a plan meeting certain requirements (scale, numbering, etc.)
	1909	Amended - (4) no subdivision plan within corporate limits of any city or town shall be registered unless it conforms to the regulations made by the council of the city or town (& the regulations have been approved by the Minister of Public Works).

1911-12 Amended further to delete the requirement of conformity to local council regulations - subdivision of any land required conformity with regulations of Department of Public Works.

1911-12 Public Works Act - Amended by adding power of Minister to make subdivision regulations.

1913 Town Planning Act - A town planning scheme may be prepared in accordance with the provisions of this Act with respect to any land which is in course of development or appears likely to be used for building purposes, with the general object of securing suitable provision for traffic, proper sanitary conditions, amenity and convenience in connection with the laying out of streets and use of the land and of any neighbouring lands for building or other purposes.
(Based on English Act of 1909)
- Also provided for Town Planning Commission (permission, s. 2.2)
- Addressed the question of compensation and offset.

Any person whose property is injuriously affected by the making of a town planning scheme, shall if he makes a claim, for the purpose within the time (if any) limited by the scheme not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the Minister, be entitled to obtain compensation in respect thereof from the responsible authority.
Reserves 5% of lands for public use

	1928	Act to Facilitate Town Planning and the Preservation of National Beauties - Created Town and Rural Planning Advisory Board (now the Town Planning Board)
	1929	Town Planning Act - Embodied 1913 and 1928 Acts. Included extensive provisions for zoning. (Permissive) including districts, building heights, lot size, density. Required Ministerial approval.
Saskatchewan	1906	First session of First Legislative Assembly.
	1906	Land Titles Act - Owner subdividing land into town plot for sale of lots shall register a plan of the town plot meeting certain requirements as to scale, numbering, detail, etc.
	1908	Present system of urban and rural municipal grant.
	1912-13	Land Titles Act - Requiring owner of land being subdivided to have subdivision plan: - if within corporate limits, conform to regulations of local council provided the regulations were approved by Minister of Public Works; - if within corporate limits but no local regulations, then plan endorsed by Dept of Public Works as conforming with its regulations; - if outside corporate limits, plan must be endorsed by Dept of Public Works as conforming to applicable regulations. - lots within plan could not be sold until plan registered.

	1917	Town Planning and Rural Development Act, 1917 - Enacted - Local authorities to enact "development bylaws" encompassing much of a modern zoning concept (Schedule A). A development scheme may be prepared in accordance with the provisions of this Act with the general object of securing the best economic use of the land and proper sanitary conditions, amenity, and convenience, including suitable provision for traffic, in connection with the laying out of streets and use of the lands included therein, and of any neighbouring lands for building or other purposes.
Manitoba	1889	Real Property Act - Introduced Torrens system into Province of Manitoba - Required owner subdividing land for the purpose of sale of lots to register subdivision plan meeting certain requirements respecting detail shown, scale, accuracy, etc.
	1906	Real Property Act - Amended to require approval of municipal council in municipality in which subdivision located if plan provides inadequate roadways or would obstruct roadways from neighbouring lands before registration.
	1908	Municipal Act - Amended to require approval by municipal council of any subdivision plan.
	1913	Real Property Act - Amended to require approval of municipal council in municipality in which subdivision located before registration.
	1916	The Town Planning Act - Enacted - "Town planning scheme" & zoning - based on English Act of 1909.

Ontario	1904	Under ss. 409 & 410 of the Ontario Municipal Act, Toronto began to create industrial and residential districts.
	1912	City and Suburbs Plans Act - Short Act requiring any person desirous of subdividing into lots (and registering the survey & subdivision) any land within 5 miles of a city of more than 50,000 to submit a plan to the Ontario Railway & Municipal Board (later the Ontario Municipal Board). Had to conform to "general plans" and extended outside boundaries to fringe areas.
	1917	Planning & Development Act - Repealed City & Suburbs Plans Act and introduced provisions for a general plan, including the city or village & an "urban zone" surrounding it. . Provided for Town Planning Commission . Local control of subdivision
	1921	Municipal Amendment Act 1921 - Amended Municipal Act to give municipal councils the right to prohibit land use other than for detached residential and to impose building envelope restrictions. . If a subdivision was rejected, had to explain why . Emphasis on road patterns . Strengthened role of the Ontario Railway and Municipal Board . Subdivision controls were weak
	1946	The Planning Act . First major planning act in Ontario . Established planning areas . Established rules for planning boards . Approval of official plans

		. Acquisition of land for planning purposes . Established revised subdivision control areas . Municipal housing development provisions
Quebec	1903	Cities and Towns Act - Permitted height-of-building regulation & a building code, but not zoning, per se.
	1941	Amendments to Cities and Towns Act - Expressly permitted zoning bylaws
New Brunswick	1912	Act Relating to Town Planning - Based on English Act of 1909 - Copy attached
Nova Scotia	1912	The Town Planning Act of 1912 - Based on English Act of 1909 - Substantially similar to New Brunswick Act
Prince Edward Island	1918	The Planning and Development Act of 1918 - Based on English Act of 1909 - Substantially similar to other Acts, but with expanded exposition of matters to be dealt with under planning scheme
Newfoundland		Newfoundland enacted no planning legislation as such until the Urban and Rural Planning Act of 1953, which brought into effect full planning and zoning powers for municipalities. Prior to that time, the powers to plan and zone were limited to those contained in the individual incorporating statutes of municipalities, and some limited powers to control building size, use and mode of construction were found in the Local Government Act of 1933.

PLANNING EDUCATION AND PROFESSION
SOME HIGHLIGHT DATES

Date	Event
1902	Liverpool University begins a planning programme with a strong architectural flavour.
1904	Manchester University begins a planning programme.
1909	Housing and Town Planning Bill is passed in Great Britain. One of the main forces, Dr Thomas Adams, is later to play a key role in Canada.
1909	Creation of the Commission of Conservation (Canada).
1914	British Town Planning Institute formed.
1917	American Town Planning Institute formed.
1918	Town Planning Institute of Canada formed. First President was Dr T. Adams, brought to Canada to serve as consultant to 1909 Commission of Conservation.
1922	Dr T. Adams taught planning courses at MIT.
1932	Town Planning Institute of Canada becomes dormant.
1945	Central Mortgage and Housing Corporation formed. CMHC promotes the Community Planning Association. Imports British planners.
1948	Regional and City Planning begins at the University of California (Berkeley)
1949	McGill University begins planning school.
1950	University of British Columbia begins planning programme.
1951	University of Toronto begins planning programme.

Three points become fairly obvious when these highlights are considered. First, town planning or land use planning is clearly a product of the 20th Century. No formal training was available prior to 1902, either in North America or in the United Kingdom. In fact, it was not until 1922 that a formal programme was initiated at MIT.

In the absence of these training programmes, there was a general lack of qualified and trained planners - a fact borne out in the post-war period when Central Mortgage and Housing Corporation played a key role in importing town planners from England.[1] Hence, it was understandable that land planning was relatively dormant until the post-war period.[2]

A second major point to note is the emphasis on architecture. Since there were no professional planners as such, the role was generally filled by architects, engineers and lawyers. In 1918, the original memership of the Town Planning Institute of Canada was comprised of "112 original members, 20 were engineers, 25 architects, 20 surveyors, 17 engineers/surveyors, 6 landscape architects, 3 lawyers and assorted others. It is interesting to note that only six members were identified as being associated with a public planning office, two at the federal level, one at the provincial level and three associated with a muncipal office" (Kaser and Sugarman, p. 173). In fact, the professional planning institute in Canada fell dormant between 1934 and 1945, a fact which prompted Central Mortgage and Housing Corporation to subsidize another group - the Community Planning Association of Canada - to promote planning of land use.

The original membership of the planning institute illustrates the complete lack of formal economic training amongst the growing profession - a fact which helps to explain the lack of attention to economic analysis.

The third major point to note from Exhibit 1 is the strong link between Canada and Great Britain. Dr T. Adams, who played such a key role in writing the Housing and Town Planning Bill of 1909, later came to Canada as an advisor to the Commission of Conservation; subsequently, he wrote the first model town planning Act for Canada (not surprisingly, it was similar to the 1909 British Act), and later became the founding President of the Town Planning Institute of Canada. It was the Model Planning Act which served as the basis for the original Acts in most Canadian provinces.

FOOTNOTES

1. Adamson (1973) made this point so vividly when he noted that "it was then found that there were no planners in Canada. CMHC began importing them from Britain. They taught the Britishers the rudiments of colonial life and then let them loose in the blood stream of the country" (p. 7).

2. In 1943, only one city in Ontario (Toronto) had a town planner on staff. It was not until 1949 and 1951 that Edmonton and Calgary hired town planners on staff.

APPENDIX VI
PROCESS OF "PLANNING" IN EACH PROVINCE
- COMMUNITY PLANS -

Province

1. British Columbia
   - Council may prepare a Community Plan.
   - 2/3 Council vote may make plan Official.
   - Lieutenant Governor in Council must approve before plan is official.
   - Council cannot act contrary to official plan but need not undertake action.
   - Council may amend Community Plan - Council may establish an Advisory Planning Commission.
   - Council may pass zoning by-laws.
   - Council may include development permits in zoning by-laws.
   - Council may designate areas within a zone as Development Permit Areas.
   - Council may, by by-law, impose development cost charges.
   - Once a zoning by-law is adopted, Council shall establish a Board of Variance.
   - Lieutenant Governor in Council, on advice of Minister, may incorporate a Regional District.
   - Regional Board consists of members nominated by member Councils. Voting based on population.
   - Regional Board shall prepare Regional Plans.
   - Regional Board may adopt Official Regional Plan. No member council shall take action to inhibit realization of Official Regional Plan but Councils not committed to act.
   - Once Official Regional Plan is adopted, Board shall prepare Official Settlement Plans (applies only to unorganized areas).
   - Regional Board shall establish a Technical Planning Committee.
   - Outside organized areas, Minister may set "local areas".

2. Alberta
   - Councils in urban municipality of 1900+ and rural municipality of 10,000+ shall prepare a general plan; Any other municipality may.
   - Council may by by-law adopt the general plan.
   - Once a general plan is adopted, area structure plans and area redevelopment plans must be prepared.
   - Council may adopt general plan, area structure plan or area redevelopment plan.
   - Minister may amend, rescind or replace a development control order and may order plans prepared.
   - Council, on resolving to prepare a plan, shall apply to Minister for authorization to exercise development control.
   - Minister - on report of Provincial Planning Board, may authorize preparation of new land use by-laws.
   - Area Planning Advisory Committees, mandatory for cities of over 25,000.
   - All activities must conform to plans.
   - L-G in Council appoints the Alberta Planning Board.
   - L-G in Council may establish a Special Planning Area.
   - L-G in Council may, by regulation, create one or more Regional Planning Commissions, which shall prepare a Regional Plan.
   - Council may pass a Land Use By-law controlling use and development. Shall set up a Development Permit Scheme.
   - Council may create Direct Control Districts.
   - Regional Planning Commissions shall prepare a Plan on or before December 31, 1982.
   - Minister may create a Restricted Development Area where Ministerial consent is required for development.

3. Saskatchewan
   - Council may prepare Municipal Development Plan
   - Minister may direct plan preparation or, if council refuses, may prepare plan.
   - Council adopts plan by by-law.
   - Plan requires approval of the Minister.
   - All activity must conform to plan.
   - Council must make provision for public input and hold hearings.
   - Council may appoint Municipal Planning Commission.
   - Zoning by-laws may provide for a system of development and use permits.
   - Minister may require a Council to adopt zoning by-laws.
   - Two or more municipalities may establish a Planning District (joint district) and create a District Planning Commission.
   - Lieutenant-Governor in Council appoints Provincial Planning Appeals Board.
   - Minister may establish Special Planning Areas and create Special Planning Area Commission. (unorganized areas).

4. Manitoba
   - Planning Board, Council may prepare a Development Plan after advising the Minister or Minister may order it done.
   - Council may adopt a basic planning statement when no development plan in effect.
   - Board or Council shall adopt a Development Plan.
   - Lieutenant-Governor in Council must approve plan before the third reading.
   - Minister may order preparation of basic planning statement.
   - Once Lieutenant-Governor in Council approves basic planning statement or development plan, Council shall draft zoning by-laws. Council may enact zoning by-laws but only if a Development Plan or Statement is adopted.
   - Development plan shall be reviewed every 5 years, at Council's wish or upon the Minister's order.
   - Public hearings shall be held before second reading on development plan and basic statement.
   - Lieutenant-Governor in Council shall appoint a Director of Planning and may appoint an Interdepartmental Planning Board
   - Lieutenant-Governor in Council, on recommendations of Minister may establish provincial land use policies.
   - Lieutenant-Governor in Council may establish a Special Planning Area and an Advisory Committee - (Unorganized areas)
   - Municipal Board recommends establishing a Planning District.
     Lieutenant-Governor in Council may establish the District (which need not equal municipal boundaries) and establish District Board (members are Council members).
   - Interim development control exists.
   - Land use agreements exist.
   - Council may restrict the number of subdivisions.

5. Ontario
   - Minister, on own or on application may define a Planning Area (may be all or part of municipality).
   - Council shall appoint a Planning Board.
   - Board shall prepare an Official Plan and present to Council.
   - Council may adopt an Oficial Plan.
   - Official Plan requires Minister's Approval.
   - Minister may refer plan to the Ontario Municipal Board.
   - Council may pass by-laws - subject to approval (Zoning).
   - Council may impose costs.
   - Council may appoint Committee of Adjustment (Variance).
   - Minister may define Development Planning Area and order preparation of a Development Plan. (Unorganized).
   - Planning Boards shall hold public meetings.

6. New Brunswick
   - Council may prepare a Municipal Development Plan and shall prepare a plan where required by the Minister or Regional Plan.
   - Council, where no plan exists, may prepare - or - if ordered by the Minister or regional authority - shall prepare a Basic Planning Statement
   - Municipal plan and basic statement adopted by council as by-law.
   - Ministers approval required to validate.
   - When Municipal Plan or Basic Statement is in effect, Council may adopt a Development Scheme be by-law.
   - The Municipal plan and basic statement require public participation.
   - Councils having a Municipal Plan shall zone and those with Basic Statement may zone.
   - The Province is divided into seven regions; The Minister may require each region to adopt a Regional Development Plan. Shall consult with municipalities.
   - Lieutenant-Governor in Council has authority in unorganized areas.
   - Province pays for regional and area plans.
   - Lieutenant-Governor in Council determines Planning Regions.
   - Minister determines Planning Districts and shall establish District Planning Commissions.
   - Once Regional Plan is prepared, no development may occur without permit:
   - Lieutenant Governor in Council appoints a Provincial Planning Appeal Board.

7. Nova Scotia
   - Council may adopt Municipal Development Plan by by-law.
   - Minister must approve the plan
   - The Regional development plan and Minister may require council to adopt a plan.
   - Municipal Development Plan is to be reviewed every five years.
   - Council shall allow public input.
   - Council may appoint a Planning Advisory Committee.
   - Council shall pass zoning by-laws to implement the plan upon adoption.

7. Nova Scotia (continued)
   - Minister shall appoint a Director of Community Planning.
   - The Lieutenant-Governor in Council may designate Planning Areas.
   - The Minister may prepare a Regional Development Plan for each Planning Region. Governor in Council must approve the plan.
   - No activity is allowed without Regional Development Permit.
   - Regional Development Plan is superior to the Municipal Development plan and zoning by-laws.
   - Minister may create District Planning Committees.
   - Provincial Planning Appeal Board exists.

8. Prince Edward Island
   - Council of City or town may regulate land use.
   - Planning Board must prepare a plan and recommend it to be official plan.
   - Council (2/3) approves the plan.
   - Land Use Commission must approve Plan.
   - Lieutenant-Governor in Council may conduct planning if requested to do so.
   - Hearings must be held.
   - Council must enact zoning by-laws within six months of official plan.
   - Land Use Commission may create Planning Areas in unorganized territory.
   - Activities must conform existing plans.
   - The Minister shall create a provincial Land Use Commission to advise.
   - Every Council may appoint a Planning Board.
   - Joint Planning Areas are permitted on initiative of local Municipalities.
   - Lieutenant-Governor in Council may, where residents so recommend, form a Community Improvement Committee (re: parks, playgrounds, beautification).

9. Newfoundland
   - Council may propose to prepare a plan
   - Minister defines planning area. Once defined, Council may be authorized to exercise interim development control.
   - Councils exercising interim development controls shall prepare a plan within two years.
   - Council adopts a plan by resolution.
   - Minister must approve the plan.
   - Minister may order the preparation of plan.
   - Once a municipal plan is adopted, Council may implement it using a development scheme.
   - Council must hold public hearings.
   - When a plan is adopted, Council shall develop a scheme for land use control and shall prepare zoning plans, and subdivision regulations.
   - Municipal Planning Commission exists in St. John's.
   - The Lieutenant-Governor in Council may constitute a Provincial Planning Board to advise.
   - Joint Planning Areas are created by the Minister upon application.
   - Minister may create a Local Planning Area in unorganized territory.
   - Minister may create a Development Control Area and may create Regional Planning Area
   - Minister may establish a Protected area.