



Yukon Legislative Assembly

Information Sheet No. 7

The Differences between Provinces and Territories

The Legal Basis for Territories

In 1867, the *British North America Act* (now called the *Constitution Act, 1867*) created the Dominion of Canada. It created a federal system of government with a national parliament and government responsible for national matters (described in section 91) and provincial legislatures and governments responsible for local matters (described in section 92). Areas of the country not included in the various provinces were left under the jurisdiction of the Parliament of Canada and the Government of Canada. In those areas the Parliament of Canada has created territorial governments to oversee local matters.

The existence of territorial governments was not, and still is not, entrenched in Canada's constitution. The existence, powers and forms of territorial governments are outlined in federal legislation – the *Yukon Act*, the *Northwest Territories Act* and the *Nunavut Act*. Because they are created by federal legislation, and not constitutionally entrenched, territories are less secure in their existence. Legally, the Parliament of Canada could change these Acts at any time, though section 56 of the *Yukon Act* says, “Before a bill that amends or repeals this Act is introduced in the House of Commons by a federal minister, the Minister shall consult with [Yukon's cabinet] with respect to the proposed amendment or repeal.” This section also says, “The [Yukon] Legislative Assembly may make any recommendations to the Minister that it considers appropriate with respect to the amendment or repeal of this Act.”

The lack of constitutional entrenchment also makes these arrangements more flexible. As section 56 makes clear, the *Yukon Act* can be changed without having to go through the formal constitutional amendment process outlined in sections 41 and 42 of the *Constitution Act, 1982*. The processes outlined in these sections dictate that the approval of the Parliament of Canada and a certain number of provincial legislatures representing a certain percentage of the population of Canada is needed, depending on the type of amendment sought. Also, as each territory is founded on a different piece of federal legislation there is no ‘one size fits all’ with regard to territorial status. Each territory can negotiate its own arrangement with the Government of Canada. For example, a new *Yukon Act* came into effect on April 1, 2003. The changes from the previous *Yukon Act* were negotiated between the Government of Canada and the Government of Yukon,

with some participation from Yukon First Nations; other provincial and territorial governments were not involved.

Responsible Government in Yukon

Under the *Constitution Act, 1867* provinces received, with certain exceptions, the range of powers set out in Section 92 when they entered Confederation. The situation is different for territories. For a long time after its creation, the Government of Yukon was a small institution with little authority. The Government of Canada ran almost all government activity in Yukon through various departments over the years, most recently the Department of Aboriginal Affairs and Northern Development. A Commissioner of Yukon, appointed by, and responsible to, the federal cabinet was responsible for running the Yukon Government on a daily basis.

The lack of jurisdiction of the Yukon Government, the lack of authority of the Territorial Council (now called the Legislative Assembly) and the control by the Commissioner, changed gradually. From 1898 to 1979 the Commissioner had the combined powers of the head of government (Premier) and the head of state (Lieutenant Governor). Over the years the Government of Canada transferred various ‘province-like’ powers to the Government of Yukon, and the Yukon Legislature received the authority to legislate in these areas.

Since 1979 Yukon has operated according to the principles of responsible government; that the head of state (the Commissioner) acts on advice received from the head of government (the Premier) who is, except in rare cases, the Member of the Legislative Assembly who ‘commands the confidence of the House.’ In practice this has meant the person who is the leader of the largest party in the Assembly, usually holding a majority of seats in the House.

The Yukon Government today

Today Yukon is governed in a manner similar to that of the provinces. Yukon has a Legislative Assembly with 19 elected members. Unlike the Northwest Territories and Nunavut who have a “consensus” form of government, Yukon has political parties that contest territorial elections. There is a territorial cabinet that is in form (but not size) similar to a provincial or federal cabinet.

The Yukon Legislature has the power to legislate in most of the same areas that a provincial legislature does; education, health care, social services, recreation, roads and other infrastructure, etc. One functional difference is that although the Government of Yukon has a department of Justice, some of the Attorney-General functions still rest with the federal government.

As of April 1, 2003 the Yukon gained control over its natural resources, a power the provinces have but the other territories do not. Crown land (land belonging to the government) is still owned by the federal government, though the territory manages it and has the right to get resource royalties from it as part of the transfer of control over natural resources. In the provinces Crown Land belongs to the provincial government.

Today the major political difference between provinces and territories is constitutional. Only the Parliament of Canada and the provincial legislatures are included in the amending formula that is used to change Canada's constitution. The territories are not.

For more information please see the Legislative Assembly's website:
<https://yukonassembly.ca/>