SECTION A
THE ALLOCATION OF JURISDICTION

CHAPTER
I. The Social Services
II. Labour Legislation
III. Education
IV. The Regulation of Certain Economic Activities
V. Facilities for Dominion-Provincial Co-operation
SECTION A
THE ALLOCATION OF IMPEDITION

Chapter I
The Social Heritage

Chapter II
The Economic Position

III
The Education of Children

IV
The Family and Food Production

V
The Social Services and Prevention of Disease
SECTION A

THE ALLOCATION OF JURISDICTION

In this section of the Report the Commission makes certain recommendations with respect to the allocation of jurisdiction between the Dominion and the provinces with a view to promoting economy and efficiency in government. The Commission has constantly kept in mind throughout this section the qualification embodied in its terms of reference that its opinion on these matters should be expressed "subject to the retention of the distribution of legislative powers essential to a proper carrying out of the federal system in harmony with national needs and the promotion of national unity". It has also kept in mind the necessity for "a balanced relationship between the financial powers and the obligations and functions of each governing body". Its recommendations in the present section and those in the financial section which follows are thus intimately related. But the Commission believes that its recommendations on the allocation of jurisdiction are justified on their merits; that they will tend to provide efficiency and economy in government; that they are in harmony with national needs and the promotion of national unity; and that they will tend to make the federal system work with less friction.

The Commission does not consider it necessary or desirable to review the whole field of legislative jurisdiction as distributed by the British North America Act. It has confined its attention to those matters in which the present allocation of jurisdiction appeared, either from its own researches or from its public hearings, to be unsatisfactory. The topics which call for discussion are surprisingly few when it is considered that the present distribution of legislative powers was made over seventy years ago when British North America was still in the pre-industrial stage of development and when the prevailing views of the functions of the state were far different from those of today. The topics which call for discussion are the great spending functions of social services and education and certain powers having to do with the regulation of economic activities. In certain cases, despite dissatisfaction voiced in the Commission's hearings about the existing allocation of jurisdiction, the Commission concludes that there are compelling reasons for leaving the present situation undisturbed, the more so if the Commission's financial proposals are implemented. In other matters the Commission concludes that there are stronger reasons for a change in jurisdiction. In the present section it has been found convenient to bring together all recommendations relating to jurisdiction (other than in the matter of taxation) whether a change in jurisdiction or the continuance of the present jurisdiction is recommended.\(^1\)

In devising the most appropriate allocation of jurisdiction in the light of present conditions and probable future developments, the Commission has been guided by the following considerations:

\(\text{(a) the presumption that existing constitutional arrangements should not be disturbed except for compelling reasons;}
\)

\(\text{(b) existence of pronounced differences in social philosophy between different regions in Canada;}
\)

\(\text{(c) the need for economy and efficiency in administration;}
\)

\(\text{(d) the suitability of different jurisdictions for carrying the financial burdens involved.}
\)

In applying these considerations we shall have to recommend that certain functions now under the jurisdiction of the provinces should be allocated to the Dominion on grounds of the need for uniformity throughout Canada, or of the economy incidental to unified administration, or of the unequal financial ability of provinces to perform them. But in so doing we carefully respect the federal system. We aim throughout to safeguard the autonomy of the provinces, and to ensure to each province the ability to decide issues of peculiar importance to itself. We emphasize throughout this whole section the importance of limiting the transfer of jurisdiction to the Dominion to what is strictly necessary.\(^2\)

But it should be noted here that, although it may be possible to divide clearly the field of legislative power between the Dominion and the provinces, this does not of itself promote harmony between them or efficiency of administration. The division of legislative power may in fact mean division of responsibility for the performance of a governmental function inherently unitary in

---

1 For recommendations on taxation see Section B, Ch. III.

2 Attention of the Commission has been drawn to the legitimate apprehension of Quebec that the allocation of new powers to the Dominion might carry with them auxillary power likely to trench upon rights defined by the Quebec Civil Code. In so far as our recommendations are implemented by legislation, it will be the duty of the draftsmen to guard against this possibility.
character. The growing complexity of our society, and the growing demands for governmental action to promote social welfare and control economic life, are compelling both the provinces and the Dominion to assume functions for the efficient performance of which they may have very inadequate jurisdiction. Control of marketing is an example. In such instances two courses are theoretically possible: either constitutional amendment to place full responsibility for the new function on one authority, or co-operation between the province and the Dominion to cover the new function by joint efforts. But the rigidity of the division of powers in a federal system is notorious, and especially so in Canada. The difficulty of amendment is often increased by the fact that the demand for undertaking the new function is likely to differ greatly as between provinces,—a fact which itself points to the need for greater flexibility in the federal system. Co-operation between the governments of a federal system may be no less difficult to achieve than constitutional amendment. But co-operation is becoming increasingly desirable, especially in those functions which tend to straddle the division of powers between the Dominion and the provinces, if provincial autonomy is to be preserved and efficiency in government at the same time achieved. We have, therefore, felt it necessary to include as a final chapter to this section discussion of certain devices to promote flexibility in the federal system and to facilitate co-operation between governments.

* * * *

The Civil Service and the Reallocation of Functions.—The Commission is fully alive to the fact that there are some interests which will be affected by any substantial reallocation of the functions of government. Important among these interests are those of members of the Dominion and provincial civil services whose present position and future prospects may be jeopardized. For instance, a change in the responsibility for the administration of unemployment relief, a change in the machinery for imposing or collecting certain tax revenues, or the transfer of the responsibility for performing any of the functions of government, would affect the position of the civil servants who now administer these functions. While the personal fortunes or ambitions of civil servants should not be allowed to stand in the way of desirable changes we feel that every effort should be made to find suitable positions for efficient servants of the state who may be deprived of their present employment by the changes which we recommend. There may occasionally be a reduction in the number of civil servants who are required, but in most cases the same or similar functions will continue to be performed by one or other unit of government and we feel that in protecting the legitimate interests of efficient civil servants each unit of government will be promoting its own interests as well as securing the services of able and experienced men and women.

We do not wish to leave our treatment of this question in general terms. In cases in which a function is transferred from the province to the Dominion we recommend that the rules of the Dominion Civil Service Commission as to qualifications and examinations should (subject, perhaps, to certain necessary exceptions) be so modified as to facilitate the absorption of provincial officials into the federal service. This recommendation is particularly important in respect to provincial officials of the Province of Quebec. The performance of functions of the Dominion Government in Quebec should always be in the hands of officials with knowledge both of the French language and of local conditions and customs in the Province; and if any functions now performed by a province are taken over by the Dominion common sense dictates that generally speaking the men who perform them now should continue to do so. It seems to us obvious that the selection for the performance of Dominion functions of officials who are familiar with the language and local conditions and customs of the groups of citizens with whom they have to deal is important both for efficiency of service and for fostering a national viewpoint.

---

*This is the situation in the administration of justice. Provincial courts are constituted and their procedure in civil matters is regulated by the provinces; judges are appointed and paid by the Dominion, and the Dominion Parliament regulates criminal procedure and has constituted a high court of appeal (the Supreme Court of Canada) from provincial courts.