

A HISTORICAL AND LEGAL STUDY OF SOVEREIGNTY IN THE CANADIAN NORTH: TERRESTRIAL SOVEREIGNTY, 1870-1939

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Organization and Administration of the NWT, 1895-1918

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Canada's attempts to make definite provision for the organization and administration of the northernmost territories may be dated from the promulgation of a federal order in council on 2 October 1895 which formed the hitherto "unorganized and unnamed districts of the North-west Territories" into the four provisional districts of Ungava, Mackenzie, Yukon, and Franklin.¹ Franklin was stated to be "of indefinite extent," but, apart from some coastal and Hudson Bay islands, it was defined so as to include the entire arctic archipelago, as it was then known.

The circumstances surrounding the promulgation of this order in council, and the reasons for it, have remained rather mysterious. Dr. William Frederick King, in line with his belief that Canada regarded the transfer of 1880 as incomplete until the British Parliament passed the Colonial Boundaries Act, seems to take the view that the Canadian order in council was a direct consequence of this British act.² Hensley R. Holmden, on the other hand, believes that the close proximity in time between the act and the order in council was pure coincidence. Although the Colonial Boundaries Act was dated 6 July 1895, a copy of it was not sent to Canada until 26 July, accompanied by the circular from Colonial Secretary Joseph Chamberlain discussed in the previous chapter. Although the Canadian order in council organizing the territories was not issued until 2 October 1895, it was preceded by (and evidently resulted from) a report submitted earlier by Canadian Minister of the Interior Thomas Daly which advised the government to organize the four provisional districts. The odd feature pointed out by Holmden is that this report is also dated 26 July 1895 – the same date that Chamberlain's circular and the copy of the colonial Boundaries Act were sent to Canada. If the order in council was a consequence of Daly's report, and if Daly's report was a consequence of the Colonial Boundaries Act and Chamberlain's circular, then the latter must have been sent to Canada by transatlantic cable and Daly must have handed in his report and recommendations on the same day. Holmden, after asking if there was any "common inspiration" in these events, implies that there was none, noting "there is nothing in the Order in Council to show that it was prompted by the passage of the Imperial Act."³ He prefers to believe that it was a motion by the Hon. David Mills, the Liberal member for Bothwell, in the House of Commons on 28 May 1894 requesting "copies of all correspondence since 1867, between the Government of Canada and the Imperial Government in reference to Her Majesty's exclusive sovereignty over Hudson Bay,"⁴ and ensuing remarks by Mills and Minister of Marine and Fisheries Sir Charles Tupper which

“called attention to Canada’s possessions in the far north.” In Holmden’s view, these remarks and the events that provoked them caused Daly to make his report.⁵

Holmden notes that Parliament agreed to and “brought down” Mills’s motion but adds that the requested papers were destroyed in the 1916 fire that burned the Parliament building.⁶ The remarks by Mills and Tupper to which he attached such importance went as follows:

[Mr. Mills] said: This, Mr. Speaker, is a matter of very considerable importance. The Government, of course, know right well that Hudson’s Bay has always been claimed by Great Britain as part of the sovereignty of the Crown ever since the discovery of the bay. It was a matter of dispute for some time, during a former century, between Great Britain and France as to whom this bay, of right, belonged; but that question was settled in favour of the British contention by the Treaty of Utrecht in 1713, and since then I believe, it has been recognized as between Great Britain and France and acquiesced generally by christendom that this is a portion of the British possessions in North America. I understand, Mr. Speaker, that lately American vessels have been going in there, engaged in whale, porpoise, and other fishing operations, and I do not understand that any steps have been taken by the Government to assert the jurisdiction of Canada over these waters. Now, the whole coast of Hudson’s Bay lies within British territory. The bay is a land-locked bay, only connected with the high seas by the

narrow passage of water called the Hudson’s Straits. But, Sir, if the ships of foreign countries are allowed to go into these waters without question, and without taking out any license, to engage in fishing operations there, it might very well be, at no distant day, according to the rules of acquiescence, that the parties whose ships so engaged might claim to go there, as a matter of right, regarding these waters as part of the high seas. I think it is important to know how far there has been any departure from the long and continuous contention that these are British waters. Under the modern doctrine there has been a disposition to limit the rights of states to waters within their own territory and upon their own coasts, and it is important to know whether any correspondence has taken place between the Government of Canada and the Government of the United Kingdom with reference to our sovereignty over these waters as part of the territory of Canada. I am not going to detain the House with any statement of the elementary principles of international law applicable to the case. These are generally well known. What it is important to know is what steps the Government have taken to assert their authority and to prevent any rights or pretensions of rights being acquired by any other people or community on the ground of acquiescence and because of our indifference with regard to these matters. There is no difference in point of law, between the rule of acquiescence as applicable between

private individuals and between states. It is therefore of consequence that we should not, by our indifference, permit any loss to be sustained by the Canadian people, and for this reason I move for this correspondence. I assume that the Government have not been indifferent to the rights of the people of Canada; I assume that the Government have not, by negligence, or by sleeping upon their rights, permitted rights of other parties to spring up. It is true that it may involve some expense to this country to exercise proper police supervision over the waters of Hudson's Bay. It seems to me, however, that on account of the narrowness of the straits which connected this bay with the Atlantic, that right should be very easily exercised, and at no great expense to the country. But whether that expense be more or less, I think it is important that it should be incurred for the purpose of maintaining our rights; and I am sure that the House and the public would not be indifferent to the maintenance of the sovereignty of Canada over these waters. I am told that they are valuable at the present time, that the whale fisheries and porpoise fisheries are both extensive, and that the hair seal fisheries in the vicinity are also extensive, and have of late years greatly increased. This being so, and it being probably that at no distant date the bay will be connected with the settled portions of Canada by railway communication, it is highly important that our exclusive jurisdiction over those waters should not

be lost, and for these reasons I move the motion now in your hands.

Sir Charles Hibbert Tupper: The importance of this question is fully recognized by the Government. The hon. Gentleman has referred to the fisheries of the Hudson's Bay and the Canadian interests in those waters, and it is perhaps only right that I should say in advance of the return being brought down, that the question has received due attention, and its importance is fully recognized. The hon. Gentleman has referred to the invasion of our territorial rights by fishing and hunting that are carried on in Canadian waters in Hudson's Bay by foreign fishing vessels. I may say that from time to time rumours of that character have reached me. The remoteness of the region, however, has made it extremely difficult to ascertain with any degree of accuracy the correctness of these rumours. Some steps have been taken, through the agency of the Department of Marine and Fisheries, to publish notices that the laws of Canada apply in those waters; but it is only fair to say that since we are not as yet familiar with either the time that those vessels are likely to arrive or the portions of the bay where they may be found at any time, these notices have been to a great extent formal. Nevertheless, so far as the records of my department show, there had been no inaction in that connection that would in the slightest degree prejudice the rights of Canada over this region. On one

or two occasions we have, through the agency of the Hudson's Bay Company and through the Indian Department, endeavoured to obtain full information in regard to the illicit trading which is said to have been carried on by small foreign vessels going there possibly to hunt, or engage in the whale or porpoise fishery, but the result of those efforts so far has not been such as to give us much definite information. Even the Hudson's Bay Company officials themselves, though they believe and assert that a good deal of smuggling is carried on in violation of our revenue laws, have not been able, up to date, to furnish such information as would enable us to take definite action. However, the whole subject and the important interests that are there involved have been under consideration for some time with the object of ascertaining what definite course should now be taken in regard to the various propositions for protecting such rights as we think should be conserved, for instance, the very question of jurisdiction to which the hon. gentleman has referred, and propositions relating to the establishment of a revenue ship for the purpose of maintaining those rights. There would be ample opportunity to assert exclusive sovereignty over those waters because of the narrow approaches to the great waters of the bay. Most of the channels are under six miles in width, and all, I think, are outside the main entrance of the Hudson's Bay itself. So that when it becomes necessary actively

to assert such rights as we possess, there would be, as the hon. gentleman says, no great difficulty; and I am inclined to agree with him in the view that no great expense would be entailed. The papers, so far as they relate to the various departments, will, no doubt, be soon collected and brought down, in answer to the hon. gentleman's motion.⁷

Holmden does not give any further evidence to support his belief that these speeches, along with the related circumstances, led to the promulgation of the order in council of 2 October 1895 and an apparently new interest in the most northerly territories. Other evidence not only strengthens his contention but also helps to make the pattern of developments logical and understandable. The remarks by both Mills and Tupper about the activities of American whaling ships in Hudson Bay, for example, call to mind the complaints and recommendations of Lieutenant A. R. Gordon a few years earlier. The same question was brought up in the House of Commons on 27 June 1892, when reference was made to complaints by Lieutenant-Governor John Christian Schultz of Manitoba and Keewatin to the Minister of the Interior about the same activities. Schultz mentioned the matter frequently in his reports (see chapter 4 on whaling) and seems to have been largely responsible for bringing it to the attention of the authorities in Ottawa in 1890 and 1891.⁸ In 1894 he again urged the government to stop the American whaling fleet's wanton destruction of sea life and illegal trade with Inuit.⁹ Deputy Minister of the Interior Alexander Mackinnon Burgess underlined both of these points in his own report dated 17 April 1895,¹⁰ which would presumably have been in Daly's hands long

before he made his own report to the cabinet on 26 July.

The reports of the Department of the Interior also indicate a rising concern over the Alaska boundary and the Yukon gold mining industry. Deputy Minister Burgess noted that William Ogilvie, in his 1887–88 survey, had found that the 141st meridian crossed the Yukon River about ninety miles farther down the river than it was shown on American maps, and that some of the best gold-bearing districts were really in Canadian territory.¹¹ Four years later, he commented upon the British-American convention of 22 July 1892, which provided for a joint survey of the Panhandle boundary and the appointment of Dominion Chief Astronomer W. F. King and Dr. Thomas C. Mendenhall as British and American commissioners respectively.¹² In his 1895 report, he gave details about the importation of merchandise into the Yukon by American concerns via the Yukon River and the coastal mountain passes without paying duty, and also about the illicit traffic in intoxicating liquor. Therefore, he said, the facts clearly established that

the time had arrived when it became the duty of the Government of Canada to make more efficient provision for the maintenance of order, the enforcement of the laws, and the administration of justice in the Yukon country, especially in that section of it in which placer mining gold is being prosecuted upon such an extensive scale, situated near to the boundary separating the Northwest Territories from the possessions of the United States in Alaska.¹³

Inspector Charles Constantine of the North West Mounted Police (NWMP) had already

been sent to the Yukon in the spring of 1894 to investigate and report, and in June 1895 was sent back at the head of twenty members of the force to represent the Canadian government temporarily in all respects. At the same time William Ogilvie was also sent back to locate the 141st meridian both south and north of the Yukon River, preferably with American co-operation.¹⁴

Other factors may also have contributed to the Canadian government passing Order in Council No. 2640 of 2 October 1895, but on the basis of the evidence discovered these were the important ones.¹⁵ The order in council recommended the establishment of four new provisional districts in the hitherto “unorganized and unnamed districts of the North West Territories”:

Ungava, which was stated to be “of indefinite extent,” included the territory enclosed by Hudson Strait on the north, Hudson and James Bays on the west, the uncertain northern boundary of Quebec on the south, and the equally uncertain western boundary of Labrador on the east. The islands in Hudson Strait, Hudson Bay, and James Bay less than three sea miles from the coast were to be included within Ungava; those beyond this limit would fall under the control of the Dominion government.

The *Yukon District* was bounded by the 141st meridian (Alaska) on the west, the 60th parallel on the south, an irregular line along the summits of the mountain ranges west of the Mackenzie River on the east, and the Arctic Ocean on the north, with a small portion on the southwest against the Alaskan Panhandle undetermined because it was in dispute with the United States. The order specified that the district should include Herschel Island and all other islands within three geographical miles of its Arctic coast.

The *Mackenzie District* was to comprise the area enclosed by the Yukon District boundary on the west, approximately the 60th parallel (actually the 32nd correction line of the Dominion lands survey) on the south, the 100th meridian on the east, and the Arctic Ocean on the north. Like the Yukon, Mackenzie was to include all islands within three geographical miles of its Arctic coast.

The *District of Franklin*, which also was stated to be “of indefinite extent,” was to be bounded as follows:

Beginning at Cape Best, at the entrance to Hudson Strait from the Atlantic; thence westerly, through said Strait, Fox Channel, Gulf of Boothia, Franklin Strait, Ross Strait, Simpson Strait, Victoria Strait, Dease Strait, Coronation Gulf, and Dolphin and Union Strait, to a point in the Arctic Sea, longitude about 125° 30' West, and in latitude about 7° north; thence northerly, including Baring Land, Prince Patrick Island, and the Polynea Islands; thence north-easterly to the “farthest of Commander Markham’s and Lieutenant Parry’s sledge-journey” in 1876, in longitude about 63 1/2° West, and latitude about 83 1/4° north; thence southerly through Robeson Channel, Kennedy Channel, Smith Sound, Baffin Bay, and Davis Strait to the place of beginning.

The order in council also recommended the enlargement of the already existing districts of Athabaska and Keewatin, by adding to them the large remaining areas directly north of Saskatchewan and Ontario respectively. It was evidently intended that the addition to Athabaska

would be accomplished by the order in council itself, and the enlarged district would comprise the territory enclosed by British Columbia on the west, Alberta and Saskatchewan on the south, the 100th meridian on the east, and the 32nd correction line (Mackenzie) on the north. The addition to Keewatin would be brought about at the next session of Parliament by a federal act (presumably because this was how Keewatin had been created), and this district would thereafter comprise those territories enclosed by Ontario (as constituted by the Imperial act of 1889), Manitoba, Saskatchewan, the 100th meridian, and the Arctic, Hudson Bay, and James Bay coasts. The order concluded that “should the foregoing recommendations be adopted, the whole of the unorganized and unnamed portions of Canada will have been divided into Provisional Districts.”¹⁶

Boundary Corrections and Adjustments (1895–1918)

As events turned out, however, no steps were taken to carry out the recommendations of the 1895 order in council, and instead another order in council was issued two years later, on 18 December 1897, to rectify mistakes which had been made in the first one.¹⁷ The opening sentences of the new order give some indication as to why it had been found necessary:

On a Report dated 10th December, 1897, from the Minister of the Interior, stating that by Order in Council of the 2nd October, 1895, the unorganized portions of Canada were divided into Provisional Districts, four new districts being created and changes made in the

boundaries of one of the old districts. It was further provided that at the next session of Parliament, a Bill should be introduced having for its object the addition of territory to the District of Keewatin. Shortly after the date of the above Order deficiencies were found in the descriptions of the district boundaries, and as doubts existed as to the form of the proposed amendments to the Keewatin Act, no steps were taken to carry out the directions of the Order.

The Minister recommends that the Order in Council of the 2nd, of October, 1895, be canceled, and that such legislation as may be necessary be introduced at the next session of Parliament to authorize the division of the portions of Canada not comprised within any Province into nine Provisional Districts in accordance with the annexed description and map.

The deficiencies in the 1895 order in council may be summarized as follows. The order had stated that the new districts of Ungava, Mackenzie, and Yukon should include all islands in Hudson Strait, Hudson Bay, James Bay, and the Arctic Ocean within three miles of their coasts ("sea" miles in the case of Ungava, "geographical" miles in the cases of Mackenzie and Yukon). The islands more than three miles from the Ungava coast, in Hudson Strait and Bay and James Bay, had supposedly been accounted for, as the order stated specifically that they were to be under the control of the Dominion

Government. However, the attached map showed islands much more than three miles from the coast in Hudson Strait and Bay as part of Ungava. Also, although the recommended boundary for Keewatin was to follow the western shoreline of Hudson Bay, the same map showed Southampton and other islands in the Bay as territories to be added to this district. So far as the islands more than three miles from the Yukon and Mackenzie coasts were concerned, it appeared that no specific provisions had been made for them. Franklin District was to extend west only as far as $125^{\circ} 30'$, but the western boundary of the Yukon was 141° , and thus there obviously more than three miles from the coast, between $125^{\circ} 30'$ and 141° , which had not been included in any of the new provisional districts. Also, the southern boundary of Franklin had not been clearly defined, other than that it was to run through the channels north of the mainland, and thus it could be argued that this district would not necessarily include all islands north of Mackenzie beyond the three-mile limit. If the boundary were presumed to run through the middle of the channel separating the archipelago from the mainland, then wherever this channel was wider than six miles all islands north of Mackenzie between the three-mile limit and the mid-channel line would be excluded from both districts. And no mention whatever had been made of the islands north of the Keewatin coast. Finally, the order in recommending

the division of “the unorganized and unnamed districts of the North-west Territories” into the four provisional districts of Ungava, Franklin, Mackenzie, and Yukon seemed to assume that the archipelago was already a part of the Northwest Territories, even though, as already noted, the statutory definition of the Northwest Territories had actually excluded the archipelago.¹⁸

By the new plan Keewatin, and also the eastern part of Mackenzie, were to be extended northward to the middle of the channel separating the archipelago from the mainland – to what would be the southern limit of Franklin. Farther west, in the Beaufort Sea area, Mackenzie and Yukon were to include all islands within twenty miles of the coast. The boundary between Mackenzie and Yukon was to be altered so as to follow a watershed line rather than the summit of the highest range of mountains. Keewatin was to receive the territory between northwestern Ontario and Hudson Bay that the order in council of 1895 had recommended should be added to it, and also those parts of James and Hudson Bays west of an irregular line drawn through the middle of James Bay and then through Hudson Bay, Foxe Channel, and Frozen Strait to the head of Repulse Bay. Keewatin would lose Melville and Boothia Peninsulas, however, which were assigned to Franklin. Ungava was to be extended to the middle of Hudson Strait (the southern boundary of Franklin), and to the eastern boundary of Keewatin in Hudson and James Bays. Franklin, besides gaining Melville and Boothia Peninsulas, was to be extended westward to the 141st meridian, and would include “all those lands and islands comprised between the one hundred and forty-first meridian of longitude

west of Greenwich on the west and Davis Strait, Baffin Bay, Smith Sound, Kennedy Channel and Robeson Channel on the east which are not included in any other Provisional District.” No northern boundary was mentioned. The order also described the boundaries of Assiniboia, Saskatchewan, Alberta, and Athabaska, but said that these districts would “remain as they were established by the Order in Council of the 2nd October, 1895, and previous Orders.”

Thus the order in council of 1897 overcame the deficiencies in that of 1895 and, without overlapping, included within one or another of the several provisional districts all previously unorganized lands and islands to which Canada laid claim between Davis Strait and the 141st meridian.¹⁹ The 1897 order also asked for “such legislation as may be necessary” to authorize the new division, and this legislation did not materialize. Thus, as historian Lawrence Johnstone Burpee observed, it might appear that the districts had no legal existence except insofar as they were created in 1882. Nevertheless, the federal government evidently considered the orders in council of 1895 and 1897 to have taken effect when it redefined the districts in 1918.²⁰

The enactment of the Yukon Territory Act on 13 June 1898 introduced further complications.²¹ This measure, passed while the Klondike Gold Rush was at its height, removed the Yukon from the rest of the Northwest Territories and constituted it a separate territory with a local government of its own, under a commissioner and council. A preliminary step in providing for law and order in the Yukon had already been taken almost one year earlier, when a Dominion order in council (16 August 1897) had created the so-called “Yukon Judicial District,” with a resident judge.²² This order, in describing the limits of the new judicial district, had duplicated exactly the description of the



FIGURE 3-1: MAP SHOWING THE NEW PROVISIONAL DISTRICTS OF UNGAVA, YUKON, MACKENZIE, FRANKLIN IN 1897. JENNIFER ARTHUR-LACKENBAUER.

Yukon Provincial District given in the defective order of 2 October 1895. The act of 1898 in defining the Yukon Territory reverted, apparently by oversight, to the definition in these two orders in council instead of following that of the corrected order of 18 December 1897. Thus the act included within the new Yukon Territory only those islands which were located within three geographical miles of its coast. W. F. King pointed out this error²³ and suggested that since the 1898 measure was a parliamentary statute it would have annulled the order in council of 18

December 1897, at least insofar as the Yukon Territory was concerned. It might even have annulled the order altogether with respect to the definition of northern boundaries, not only for the Yukon but also for the other districts. The act did not mention these other districts, but if it did annul completely the boundary provisions in the corrected order in council of 1897, King asked, were the boundaries of 1897 once again in force for them as well as for the Yukon? Or did the act recreate the boundaries of 1895 only for the Yukon, leaving the other

districts as redefined by the corrected order in council of 1897? Here King pointed to what he thought was a basic difference in principle between the order in council of 1895 and that of 1897. Where the former claimed the northern mainland, the offshore islands within three miles, and the Arctic Archipelago as a separate territory divided from the mainland by a channel which in some parts became high sea, the latter claimed all land, both continental and insular, within certain prescribed limits. Dr. King seemed to lean to the view that the act of 1898 renounced the principle of the order of 1897 and adopted that of the order of 1895, and thus itself asserted a principle which "would involve the abrogation of the Order in Council of 1897, as regards the whole northern limit of Canada."²⁴

Another Yukon Territory Act was passed in 1901,²⁵ the final two sections of which were obviously intended to correct the flaw in the act of 1898. Again it was open to doubt whether the object had been achieved. The new act extended the northern boundary of the Yukon Territory to include the islands within twenty (rather than within three) miles of the coast, in line with the order in council of 18 December 1897. Dr. King, still doubtful, held that the act of 1901 would have no other re-enacting effect upon the order in council of 1897, and if the latter were completely annulled by the act of 1898, then all the islands east of the Yukon coast and beyond the three-mile limit (except those which might be included in Franklin District) would be left outside Canadian jurisdiction, because the act of 1901 reaffirmed the twenty-mile limit only for the Yukon itself.²⁶

Thus, as matters stood after this act had been passed, the Canadian authorities had tried by means of three orders in council and two acts of Parliament to achieve a satisfactory delimitation of Canada's northern territories.

If Dr. King's interpretation is well founded, the situation in 1901 remained as confused as it had been in 1895. One may add that the failure to enact the legislation requested in the order in council of 18 December 1897 would certainly appear to have left the authority of that document in doubt, and it is particularly difficult to see how its provisions could have applied to Keewatin, which had been created and defined by act of parliament.²⁷

Another chunk was bitten from the Northwest Territories in 1905, when the provinces of Alberta and Saskatchewan were created from the former districts of Alberta, Athabaska, Assiniboia, and Saskatchewan.²⁸ During the years immediately preceding 1905 there was much dispute over various aspects of this project, for example, the number of new provinces that should be created and the boundaries they should have.²⁹ Under the terms of the solution finally adopted by the federal government, the two new provinces assumed their present form, extending north to the 60th parallel (which now replaced the 32nd correction line as the northern boundary for these units), and being separated by the 4th meridian in the system of Dominion Lands Surveys (the 110th meridian of longitude).³⁰ The boundary line between Manitoba and former Assiniboia became the boundary line between the provinces of Manitoba and Saskatchewan. This line (the centre of the road allowance between the twenty-ninth and thirtieth ranges west of the principal meridian) was extended northward until it met the 102nd meridian, and then was prolonged on this meridian due north as far as the 60th parallel, continuing in its extension to form the eastern boundary of Saskatchewan. Small portions of former Saskatchewan and Athabaska were cut off east of this line, and the separated parts were apparently added to Keewatin,³¹ which was re-annexed to the Northwest Territories by

order in council four days after the Alberta and Saskatchewan Acts were passed.³²

On the same day that the provinces of Alberta and Saskatchewan were created, a Northwest Territories Amendment Act was passed, which defined the remaining Northwest Territories in the following terms:

The North-west Territories shall hereafter comprise the territories formerly known as Rupert's Land and the North-western Territory, except such portions thereof as form the provinces of Manitoba, Saskatchewan and Alberta, the district of Keewatin and the Yukon Territory, together with all British territories and possessions in North America and all islands adjacent to any such territories or possessions except the colony of Newfoundland and its dependencies.³³

This evidently constitutes another attempt to achieve a satisfactory description of Canada's northern possessions. The terminology of the act is such that it might have taken care of the point about the offshore islands which was in doubt in 1895, 1897, 1898, and 1901, but it was imperfect in other respects. It revived (and almost duplicated) the language of the original Imperial order in council transferring Britain's Arctic territories to Canada in 1880, and thus was subject to that document's deficiencies.

The Northwest Territories Act of the *Revised Statutes of Canada* (1906) further defined the Northwest Territories,³⁴ but it differed little from the one just discussed, except that it included Keewatin as part of the Territories³⁵ in accordance with the order in council of 24 July 1905. It also excluded from the Territories any islands belonging to the provinces, a

point which apparently had been overlooked before. The islands in question were not further identified.

In 1912 the Northwest Territories were again reduced, when the provinces of Manitoba, Ontario, and Quebec were all enlarged at their expenses.³⁶ The northern boundary of Quebec had already been extended in 1898, when it was fixed at the Eastmain and Hamilton Rivers and the parallel of latitude (approximately 52° 55') joining Lakes Patamisk and Ashuanipi at the sources of these two rivers.³⁷ By the act of 1912,³⁸ Quebec was again extended northward to swallow up the entire Ungava peninsula, all the way to Hudson Bay and Strait, leaving out whatever portion of the disputed territory in the northeast might be the property of Newfoundland. Matters were otherwise uncomplicated here because Quebec had no provincial rival. Such was not the case farther west, where Saskatchewan, Manitoba, and Ontario all contended vigorously for the available territory. It was impossible to satisfy completely the conflicting claims of all the provinces; the solution adopted by the federal government was to pay no heed to the demands of Saskatchewan but rather to divide between Manitoba and Ontario all of southern Keewatin up to the 60th parallel of latitude.³⁹ The 60th parallel thus became the dividing line between the four western provinces and the Northwest Territories, all the way from the northwestern extremity of British Columbia to Hudson Bay. The division of territory between Manitoba and Ontario was accomplished by extending their common boundary line due north along the meridian where it had been fixed by the Ontario Boundary Act in 1889 as far as the twelfth base line of the system of Dominion Land Surveys, from which point it was continued northeasterly in a straight line to the easternmost point of Island Lake, and thence again northeasterly in a

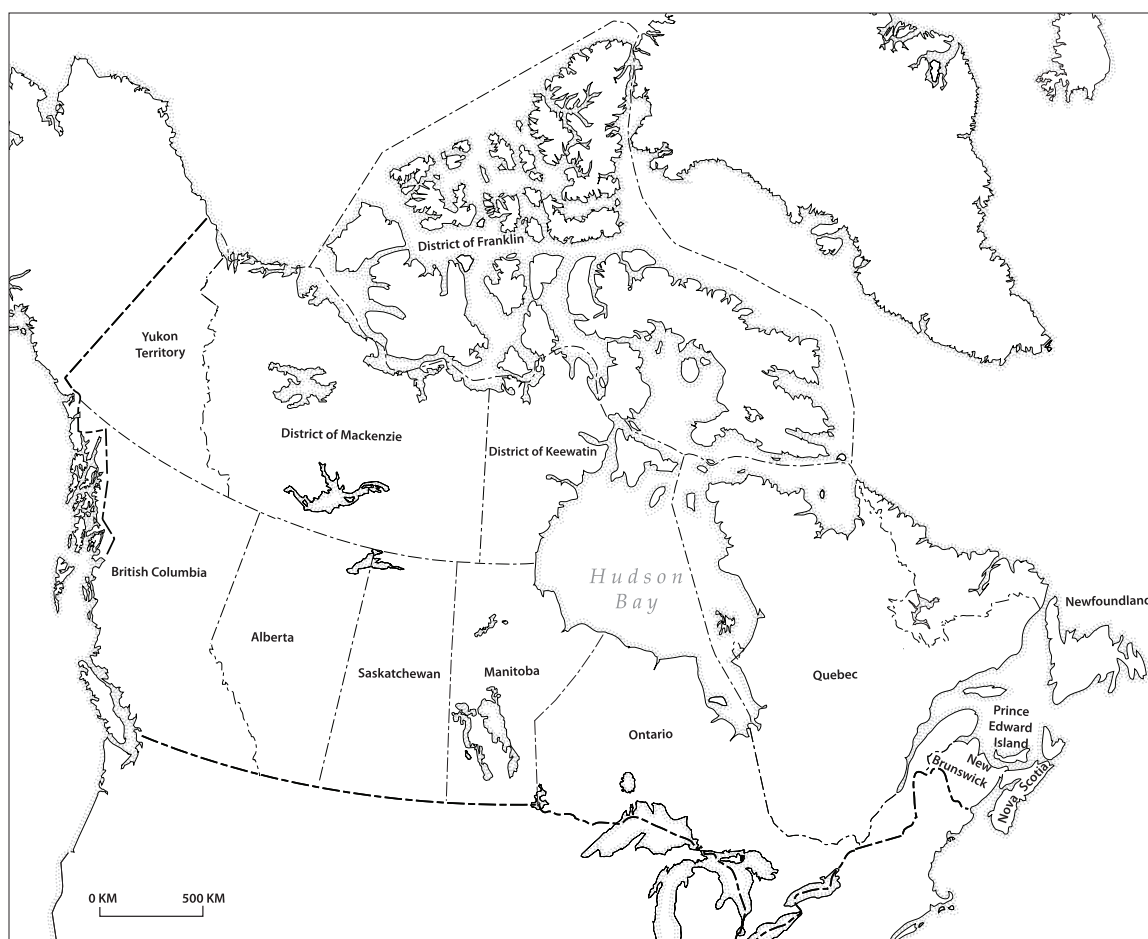


FIGURE 3-2: MAP OF CANADA IN 1912. JENNIFER ARTHUR-LACKENBAUER.

straight line to the point where the 89th meridian intersected the southern shore of Hudson Bay. None of the islands off the coast in Hudson and James Bays and Hudson Strait were given to the provinces at this time, although Quebec, in particular, had pushed strongly for this. Prime Minister Borden justified the denial by citing the difficulty of describing the islands with sufficient accuracy and the possibility that they would be needed for Dominion purposes in connection with navigation and defence.⁴⁰

Manitoba and Ontario had thus by 1912 assumed their modern configurations. Quebec,

however, by a 1927 opinion of the Judicial Committee of the Privy Council, lost a considerable amount of the territory along her northeastern border which was in dispute with Newfoundland, and which both she and Newfoundland had been claiming since 1763.⁴¹

The elimination of the District of Ungava in 1912⁴² left Mackenzie, Keewatin, and Franklin as the only remaining units of the Northwest Territories and the only parts of Canada (except the Yukon Territory) without provincial status. These three provisional districts were again defined by an order in council of 16 March 1918,

which was not effective until 1 January 1920.⁴³ By its terms they were to comprise the following territories: (1) Mackenzie was to be bounded on the west by the Yukon Territory, on the south by the 60th parallel, on the east by the second meridian in the system of Dominion land surveys (i.e., 102° West longitude), and on the north by the continental shore of the Arctic Ocean. (2) Keewatin was to be bounded on the north by the continental shore of the Arctic Ocean (excluding Boothia and Melville Peninsulas) and a somewhat irregular line from Repulse Bay to Cape Wolstenholme at the northwestern extremity of Quebec, on the east and south by the shoreline boundaries of the provinces of Quebec, Ontario, and Manitoba, and then by the 60th parallel forming the northern boundary of Manitoba, and on the west by Mackenzie District. (3) Franklin was simply stated to consist of “that portion of the Northwest Territories not included in the provisional districts of Mackenzie and Keewatin.” Presumably this was intended to mean Boothia and Melville Peninsulas plus the entire Arctic Archipelago, including the islands in Hudson Strait but excluding the islands in Hudson and James Bays which had been assigned to Keewatin. Evidently Franklin was supposed to include the islands in the channel immediately north of Keewatin and Mackenzie. On the other hand, nothing was said specifically about the islands north of the Yukon coast, and one would presume that all those less than twenty

miles from the shore would remain within that territory under the terms of the act of 1901.⁴⁴

It seems evident that the principal purpose of the order in council was to assign all islands in Hudson and James Bays to Keewatin, and, by implication and with the possible exception noted above, all other islands north of the continental shoreline to Franklin. A section of the preamble suggests obliquely that this was so: “And Whereas it is considered that a revision of the provisional districts is expedient and that their boundaries should be made coterminous with those of the provinces.” It is also evident, as Burpee observed,⁴⁵ that the adoption of this order in council indicates that the Dominion authorities still held the opinion that districts could be created and defined by this means. It does not appear, however, that the order in council itself conflicted directly with previous legislation on the same subject, notably the Northwest Territories Amendment Act of 1905 and chapter 62 of the *Revised Statutes* of 1906. These statutes attempted, in rather imprecise fashion, to describe the overall composition of the Northwest Territories as a unit, without saying anything about the boundaries of the individual districts. On the other hand, the order in council of 1918 attempted to define the district boundaries. The definitions of Mackenzie and Keewatin were clear enough, but that of Franklin, as in previous instances, remained extremely vague.

