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The Acquisition of National Parkland: A Challenge for the Future

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I. Introduction

Since the inception of a national park system in Canada, land acquisition for national parks has been sporadic and is now at a virtual standstill. In 1930, when legislation was introduced to designate national parks and govern their use, fourteen parks areas had been established.¹ Four parks were set up between 1930 and 1968, and seven parks and three national park reserves were established between 1968 and 1982. With the exception of the establishment of Grasslands National Park in Saskatchewan in 1982, there has been no further expansion to date. Thus, there are currently twenty-six national parks and three national park reserves in Canada, covering an area of some 129,945 square kilometers.² These lands, which are representative of a number of natural terrestrial and marine landforms characteristic of Canada, range in size from 4 square kilometers (St. Lawrence Islands National Park in Ontario) to 44,807 square kilometers (Wood Buffalo National Park in Alberta). They are diverse, ranging from the beaches and seascapes of Prince Edward Island National Park and the mountainous parks of Alberta and British Columbia to the northern landscapes of the Kluane National Park Reserve in the Yukon. Although the area included in Canada's national park system may appear large, it does not constitute a large proportion of the country's total landmass.

The objective of present Parks Canada policy is the protection, for all time, of representative areas of Canadian significance and the encouragement of public understanding and enjoyment of this

*Of Burnet, Duckworth and Palmer, Calgary, Alberta.

1. National Parks Act, S. C. 1930 (20-21 Geo V), c. 33.

2. Only twenty-three of these park areas are legally under the jurisdiction of the National Parks Act. Two areas have yet to be formally included (agreements have been signed and many of the indicia of a park are there, but some lands are still in the process of being acquired in these two areas), and Grasslands National Park is not legally a park at this time, although it would seem that the negotiations relating to this area have been completed.

natural heritage.³ Parks Canada has recognized thirty-nine terrestrial natural regions and nine marine natural regions as being worthy of protection; to date, less than half of these are included in the parks system.⁴

As Canada's population grows and the country becomes increasingly industrialized, the idea, rooted in Canadian history and heritage, that nature and the wilderness are to be fought against and conquered has begun to change. The encroachment of civilization on the natural landscape has brought about a growing awareness of the need to preserve wilderness, representative natural landforms, and space for flora and fauna to live as unaffected by human exploitation and activity as possible. Although some of the scientifically inclined members of the public see these lands as providing comparative gene pools of biological life, most of the public favour preservation not for its own sake, but for the pleasure the parks would afford to man: its "Walden-style" inspirations, recreational challenges, or enjoyable escapes from modern life.

This article will examine the steps involved in establishing a natural park and the problems which have arisen in the process. It will also examine possible ways to alleviate these problems and to facilitate the process in order to end the present standstill in land acquisition and produce a truly representative national park system in Canada.

II. *The Present Acquisition Process*

To facilitate discussion, the acquisition process will be presented and examined as a progression through eight stages. The stages are: (1) the identification of areas of interest; (2) informal discussion between bureaucrats of Parks Canada and the relevant provincial departments dealing with parks; (3) ministerial consent at the provincial and federal level, leading to (4) more negotiation and a memorandum of intention; (5) public consultation; (6) a formal agreement to create a park; (7) the acquisition of title and all interests in the land by the provincial government, and the transfer

3. As articulated in: Department of Indian and Northern Affairs, *Parks Canada Policy* (Ottawa: 1979) at 38. This policy will be referred to throughout the text of this paper as the "1979 Policy".

4. For a description and a map of the natural areas, see Department of Indian and Northern Affairs, Parks Canada, *National Parks System Planning Manual* (Ottawa: 1972). The 1976 annual report for Parks Canada stated that twenty-two areas are represented in the national parks system.

of them to the federal government; and (8) legal inclusion of the land in the national park system, thus making it subject to the provisions of the National Parks Act.⁵ It should be stressed that these eight steps are not always clearly distinguishable from one another and will not necessarily occur in the order presented, nor is this procedure prescribed by statute or clearly set out in departmental policy. In fact, the entire process of acquisition can occur without federal or provincial statutory sanction until the final step, in which the land is legally included under the National Parks Act and which occurs several years after the actual formal agreement to establish a park is made and after the land has been transferred to the federal government.⁶

(a) *Identification of Areas of Interest*

The initial impetus for the establishment of a park has been difficult to isolate in past acquisitions. Impetus may come from an individual, from a group of citizens, from the provinces, or from Parks Canada itself.

From the 1930s to the 1950s, the federal department's policy appears to have been one of encouraging the provinces to isolate potential national park sites and present them to the department for scrutiny. In general, an unenthusiastic attitude was taken towards national parkland acquisition until the 1960s. This attitude could be explained by the fact that the need for parkland and nature preservation had not yet received the publicity which the ecology movement gave it in the late 1960s, and had not been brought to the attention of both the government and the public. In 1968, the federal parks department increased its emphasis on acquisition. The need to outline guidelines for the identification of potential national park areas was recognized, and very general guidelines were set out.⁷ However, not until the 1970s was a more detailed and organized

5. The National Parks Act, R. S. C. 1970, c. N-13.

6. However, in some cases the provincial governments have passed acts to authorize entry into the formal agreement. See, for example, An Act to Provide for Establishing a National Park in Nova Scotia, N. S. S. 1935, c. 11, for Terra Nova Park; West Coast National Park Act, B. C. S. 1969, c. 41, for Pacific Rim Park.

7. See Government of Canada, Department of Northern Affairs and Natural Resources, *Requirements of a National Park* (Ottawa: Queen's Printer, 1964), in which various criteria, such as unique features, an area large enough to support flora and fauna, suitability for recreation and visitor services, and a type of land of enough value, now and in the future, to justify the expenditure required, were set out for assessing proposed national park areas.

approach to identifying areas of interest developed. The department has now adopted a map which identifies forty-eight natural terrestrial and marine regions in Canada, representative areas of which should be protected through inclusion in the national parks system,⁸ and has identified fifty-five natural areas of Canadian significance which fall within these regions.⁹

(b) *Informal Discussions*

The second step in the acquisition process is informal, and is perhaps best described as a testing by federal government officials of the provincial government attitude toward the establishment of parks in certain areas. From the regions as yet unrepresented in the national park system, Parks Canada officials, at a regional level, isolate some areas and approach the parkland officials of that province for negotiations. The negotiations generally occur at a fairly high level (usually that of director or assistant deputy minister) and through conversations held between two bureaucrats. This informality makes it virtually impossible to trace how many parks proposals fail at this level, as discussions often occur without any public attention and, possibly, with little departmental participation.¹⁰ Once informal discussions have determined that feeling towards the establishment of a national park is favourable and once the location for the park has been agreed upon, more formal action is required.

(c) *Ministerial Consent*

To allow both money and more staff time to be spent on formal negotiations, ministerial consent is required from both the federal and provincial levels of government. The consent may be verbal or written, and conveys a departmental commitment to consider the possibility of establishing a park; in essence, it lends legitimacy to the ensuing discussions. Consent can be limited in scope and may be simply an agreement to allow staff the time to solicit the feelings of the community and to consider various park proposals.¹¹ At this

8. *Supra*, note 4.

9. Department of Indian and Northern Affairs, Parks Canada, *Natural Areas of Canadian Significance: A Preliminary Study* (Ottawa: 1977).

10. It has been suggested to the writer by several Parks Canada planners that many potential proposals for national parks never proceed beyond this point.

11. For example, there are at present some efforts to establish a national park in Labrador. To date, commitment has only been made to solicit public feeling regarding the proposal.

stage, some form of press release, announcing that a national park proposal is being contemplated, will be produced. The completion of this step usually indicates that there is a genuine interest, on the part of both the federal and provincial governments, in exploring the possibility of establishing a national park in the proposed area.

(d) *Formal Negotiations/Memorandum of Intent*

More formal negotiations follow the granting of ministerial consent and may be contained in a formalized document, called a memorandum of intent. This memorandum sets out an intention to create a park in a certain area and lists specifically the various conditions each government wants fulfilled before a formal agreement is signed.¹² These may include the cost of the project, the suitability of the proposed site for a Parks Canada project, and the effect the park would have upon the province. The agreement is not a legally enforceable contract and may not yield a conclusive decision about the park, but it serves to illustrate the matters which need to be clarified before a final agreement can occur. For example, the ramifications for a provincial government if it enters into an agreement to create a national park should be discussed. Under the present legislative and administrative systems, the requirement that the title and control over lands within a national park be in the hands of the federal government means that the province loses legislative control over a parcel of land that is physically within its boundaries. Not only does the province face losing the tax base of the actual land and the benefits of any present or future resource use or extraction, but it is also faced with the onus, expense, and often negative political repercussions of acquiring (through negotiation or expropriation) all title to and proprietary interests in the proposed park areas. This process can be difficult, as efforts to repurchase commercial use permits can be lengthy and expensive and may lead to conflict with industry. In addition, local residents may protest against expropriation or sale of their land and the need to be relocated and, possibly, retrained.

These difficulties often make the province reluctant to enter into a national park agreement, especially with the present trend for

12. This may include such provisions as the federal government's desire for clear title to lands, the provincial desire to consult the public, etc. The most recent Memorandum of Intent, dated March 27, 1975, relates to the Saskatchewan Grasslands proposal and sets out twenty points of concern.

provinces to guard their constitutional rights more jealously. In addition, most provinces have the power, under provincial statutes, to designate land as provincial parks, wilderness areas, ecological reserves, or equivalents thereof, with the advantage of retaining provincial control.¹³ Therefore, the federal government offers the province incentives such as a monetary commitment (generally fifty percent) towards the costs of establishing the park, including those involved in land acquisition, relocation and retraining of residents, and legal costs; the possibility of initiatives, in the region surrounding the park, from other federal departments (for example, DREE grants); the new jobs which would be created; tourism benefits; and the prestige associated with a national park. Since the provinces evaluate these offers in light of the loss of jurisdiction and the anticipated resistance from industry and the public, a considerable amount of tough bargaining, which may extend over a period of years, often ensues.¹⁴ If negotiations are successful to this point, a memorandum of intent is usually executed between the two ministers of the provincial and federal parks departments. The ministers generally sign in their ministerial capacity only, with the understanding that formal agreement will be subject to authorization by the federal government and the province.

(e) *Public Consultation and Participation*

Although it is usually at this stage that consultation with the public may be initiated by the federal or provincial government, or by a joint delegation, consultation may be initiated at any step in the process. In the past, consultation was generally held to be a provincial responsibility, but it is increasingly being treated as a joint venture. There is no statutory duty for either the federal or the provincial government to consult with the public. However, Parks Canada's policy does state that the public will be consulted

13. The problem is that federal funding would not be forthcoming in those arrangements. See L. Brooks, *The Role of National Parks as Perceived by the Senior Administrators of Provincial and Territorial Parks and Outdoor Recreation Systems* (Ottawa: Parks Canada, 1975) at 8 and 9, which records indications by senior personnel involved in at least five provincial park departments that disagreements over national park management in the past has hindered other acquisition negotiations. The provinces felt they could do a better job of administering the parkland under provincial legislation, but admitted that federal funding was an attraction.

14. The Saskatchewan Grasslands proposal has been under negotiation for over twenty years and a final agreement was only signed in 1982.

concerning the establishment of a new national park, although the details of how this is to occur are left to bureaucratic discretion.¹⁵ Some of the numerous ways through which the public's feelings can be discovered include: public hearings, small group seminars or workshops, advisory boards, soliciting letters and briefs, and questionnaires. Public opinion has usually been solicited through public hearings, although other methods have also been used. These meetings have often been characterized by the intense feelings of the members of a strongly organized and vocal group of local landowners who oppose the park, due to their fear of expropriation. A more diffuse and less organized group usually speaks in support of the parkland.

Public meetings have had varying results. In the early 1970s, hearings with regard to an Eastern Shore proposal in Nova Scotia and the East Point proposal in Prince Edward Island led both provinces to withdraw from the negotiations on the basis of the objections that were voiced,¹⁶ while the advisory board that was established to hold public hearings in Saskatchewan on the grasslands proposal reported that, on the whole, citizens favoured the establishment of a national park.¹⁷ As an alternative to public hearings, small group meetings are also utilized to increase public sentiment, as they were in Labrador.¹⁸ In these meetings, previously distributed material, containing information about the proposal, is explained and discussed. The expression of public feeling with regard to the acquisition of parks does not occur solely through administratively provided methods of consultation. Public participation in the process has also been attempted through political

15. 1979 Parks Canada Policy, *supra*, note 9, s. 1.2.3. (p. 39).

16. For a discussion of the East Point hearings, see J. Mathieson, *A Case Study: Public Participation in the East Point Park Proposal*, in J.D. McNiven, *Evaluation of the Public Participation Program Embodied in the P.E.I. Development Plan* (Halifax, Dalhousie Institute of Public Affairs, 1974) Appendix II.

17. See G. MacEwan, H. Richards & J. Beamish, *Report of the Public Hearings Board on the Proposed Grasslands National Park* (August 9, 1976).

18. See the joint publications of Parks Canada and the Department of Tourism for Newfoundland and Labrador, entitled *Will There Be National Parks in Labrador??* (June 1977), and *The Summary and the Proceedings of Meetings held in Labrador Communities* (Aug.-Sept., 1977).

action¹⁹ and through appeal to the courts.²⁰

To sum up, at what stage of the acquisition process public consultation is to occur, what method is to be used, and who is to be consulted are at the discretion of the provincial and federal government departments that are involved. The public has usually been given a chance to make known its views and concerns regarding the development of a proposed park. However, it has, at times, also attempted to affect the negotiation process through political or legal pressure.

(f) *Formal Agreement to Establish a Park*

The last step in the negotiations between federal and provincial officials is the signing of an agreement to establish the park. The agreement is made between the minister of the department responsible for Parks Canada (formerly the Department of Indian and Northern Affairs and, at present, the Department of the Environment) and the minister of the relevant provincial department, and is executed on behalf of their governments. It is a formal contract, enforceable by either party but open to amendment with the consent of both parties, although in the event of a default there would probably be reluctance to take any legal action to enforce the terms of agreement, due to political repercussions between the two governments. In general, the agreement includes a description of the land and of the various responsibilities of both levels of government, and sets out the stages through which land areas within the park are to be transferred to federal ownership and the period of time in which this is to be accomplished. It is usually in this agreement that the strict necessity that the land pass to the federal government free of all encumbrances is found. The date of the agreement is considered, for most purposes, to be the date the park is established, although often no land is in federal government

19. The most dramatic of these were protest marches, an occupation of the administration building, and the return of residents to squat on land expropriated for Kouchibouguac National Park. These actions began primarily among those whose land was expropriated after an agreement for a park had been signed. There was also a demonstration in 1977 at LaHave River, Nova Scotia, when it was thought that the area was being considered for a park. Negotiations there were only in the beginning stages.

20. The many legal appeals (in excess of thirty) of expropriation payments in the Kouchibouguac Park acquisitions (of which some are not yet settled) were an attempt to use the legal system to draw attention to the dissatisfaction of citizens during a later stage of the acquisition process.

ownership at that time and there are no physical indicia of a national park at that location.²¹ Due to treasury regulations, authority to sign the agreement must be supported by cabinet approval at both levels, since the amount of money to be spent on parkland establishment is usually in the millions of dollars. In the past, some provinces have done more than pass an order-in-council and have actually passed legislation authorizing the establishment both of a national park and of various administrative policies which would relate to its establishment.²²

(g) *Title Transfer*

After a formal agreement has been executed, the onus is on the province to obtain title to all land in the park. This involves the negotiated purchase or expropriation of privately owned lands and buildings inside the park boundaries, and the purchase of any claims to the use of the land (for example, permits for resource extraction on provincial crown lands in the park area). This is, obviously, one of the most politically unpleasant steps in the process and one in which much reaction and opposition, directed against both Parks Canada and the province, is demonstrated by those affected. Values paid for land or interests in land, relocation issues, land use, and retraining programs are just some of the many points often in contention. Expropriation, when necessary, is carried out under the relevant provincial expropriation legislation.²³ Land is then held by the provincial Crown and is administered under provincial legislation dealing with crown lands. The agreement to create the park usually specifies that the land be administered in light of its ultimate use as a national park, although in reality, the province has

21. This policy can obviously be very confusing. The dates attributed to parks established before 1930 are also confusing, since, due to numerous changes to legislation and boundaries, all that is necessary to establish the date of inception is that some land within the present boundaries of the park have been designated as a park at the date given.

22. *Supra*, note 6.

23. It is the provincial government that takes action to expropriate land. Legally, the federal government may have the power to do so under the federal Expropriation Act, R. S. C. 1970 (1st sup) c. 16, which allows expropriation for a public work or other public interest, although the constitutionality of such action may be at issue. It should be noted that Parks Canada may require the province to initiate expropriation proceedings even if a price for the land is arrived at through negotiation, since expropriation creates "a legally more secure" title in the federal government. This was the case in the Gros Morne acquisition, due to problems in the Newfoundland land registry and survey system.

considerable latitude regarding the administrative details. Land in provincial title is transferred, by an order-in-council, from the Queen in the right of that province to the Queen in the right of Canada and is done so according to the stages set out in the agreement. Once these lands have been accepted by the federal government, Parks Canada officials administer the land under the Public Lands Grants Act.²⁴ This act is a catchall piece of legislation and relates to lands in federal government title. It allows the cabinet to authorize the lease, sale, or disposition of the land, but unfortunately contains no regulatory powers for administration of the land. Land is administered under this act until the final step in the acquisition process, legal inclusion into the national parks system, occurs.

(h) *Legal Inclusion of Lands into the National Park System*

The final step in the process of acquiring parkland is the amendment of the schedule of the National Parks Act to designate the lands as a park and, therefore, as being subject to the provisions of the act. Amendment requires passing a bill through parliament and setting out the name of the park and the legal description of the land. This process often takes several years and usually occurs long after the park is physically apparent and open to visitors. In 1974, the National Parks Act was amended to allow parks in certain areas (specifically those five that were under negotiation at the time of the amendment) to be established by proclamation.²⁵ Although subject to a motion within parliament, a proclamation can be passed without debate and, thus, greatly decreases the time involved in having lands brought legally within the confines of the National Parks Act. Once the parkland is legally subject to the terms of the act, whether by proclamation or amendment, the acquisition process is complete. Lands can, at a future date, be added to an existing park²⁶ or, by an act of Parliament, be taken away from parks, or parks can be totally

24. Public Lands Grants Act, R. S. C. 1970, c. P-29.

25. See the National Parks Amendment Act, R. S. C. 1974, c. 11, s. 2. The section also sets out various procedural requirements that are necessary when the proclamation is passed. It should be noted that this amendment was prompted by the period of approximately five years that it took to get the assembled lands of Kejimikujik National Park in Nova Scotia subject to the act.

26. This may be done by proclamation if the lands are already in the schedule (see the amendments cited above in note 25). However, it would seem that if lands are only proclaimed, an act would be needed to effect the amendment.

deleted from the system.²⁷

III. *Problems Arising from the Acquisition Process*

Through examination of the steps necessary for the acquisition of national parklands, significant problems become apparent. There is a lack of a clear starting point or initiative for obtaining more parkland, and a lack of understanding as to where acquisition effects should be directed. The federal landholding requirement causes a number of problems in negotiations and obtaining lands, often resulting in provincial government uneasiness and public objection. Because two levels of government are involved, cooperation and communication may be difficult. The lack of a legislative format for interim management after land acquisition, but before formal inclusion in the national park system, raises concern. In the discussions below, these problems will be examined with a view to setting out reforms which might facilitate the completion of acquisition attempts.

(a) *Initial Procedure*

There is a need for a strong initiative to be taken by Parks Canada in establishing new national parks, and for procedures, and standards for them, to be developed. The move to establish a map of natural regions requiring protection and to pinpoint significant areas in these regions is laudable. However, more must be done to clarify the acquisition process, especially with regard to the selection of areas from that map and the initiation of the negotiating process. Although the areas are described in a public document, it has not been widely circulated and there is little or no public awareness of the need to expand the park system to include unrepresented areas. Certainly, no articulated priority system, indicating upon which of the twenty-six unrepresented areas the national park system should concentrate its efforts, exists.

27. Numerous land and park deletions have occurred. See, for example, the deletion of Buffalo and Nemiskam Parks (The National Parks Amendment Act, S. C. 1947 (11 Geo. VI) c. 66, s. 6) and the removal of a section of Cape Breton National Park to facilitate a provincial hydro development (National Parks Amendment Act, S. C. 1958 (7 Eliz. II) c. 8). The boundaries of what is now Banff National Park changed eight times between 1885 and 1964. Note also the boundary changes proposed in Bill C-152 in the 2nd session, 28th parliament (relating to a leasehold corporation) and Bill C-200 in the 4th session, 28th parliament, in which it was suggested that land be transferred to the provinces to provide for visitor service centres.

In addition to the need for public awareness of federal direction and priorities, the initial stages of the acquisition process need to be opened to more public and departmental scrutiny. It is granted that some informality and, therefore, a lack of records of the proceedings may be helpful initially; however, it would seem that the reasons given for an area being declared unsuitable for park usage, such as the wishes of a strong industrial lobby or the political clout of particular landholders, should be available and discussed. At present, entire parkland plans may never be launched because only a few or even just one government employee feels that a move would not be justified at that time. There is a definite lack in the present system of some sort of structure in which the first overtures for national parkland negotiation can take place. In conclusion, the initial stages of parks acquisitions fail in three areas: setting priorities, involving citizens, and keeping the initial phases of the negotiation process open to public and departmental attention and scrutiny.

(b) *The Federal Landholding Issue*

The definition in the National Parks Act of public lands is such that it precludes any type of provincial or private land ownership within national park boundaries.²⁸ As a result, the onus is on the province to negotiate for or expropriate lands and interests in order to meet the schedule of land transfers to the federal government as set out in the park agreement. The often high costs of the negotiated purchase or expropriation of land and the repurchase of extractive industry rights may contribute to a province's reluctance to become involved in national parkland agreements. In addition, political pressure and protest from land or interest holders within the proposed park area has recently constituted a disincentive for provincial involvement. During negotiations in the early 1970s regarding the two park proposals, East Point in Prince Edward Island and Eastern Shore (Ship Harbour) in Nova Scotia, locally based protests against the parks and the associated expropriation led the Prince Edward Island government to withdraw from the negotiations and the Nova Scotia

28. This definition, found in the National Parks Amendment Act, *supra*, note 25, s. 1, can be traced to the 1906 (s. 12) and 1911 (s. 11) forest reserve and park legislation, the Dominion Forest Reserves Act S. C. 1906 (2 Edward VII), c. 14, and The Dominion Forest Reserves and Parks Act, S. C. 1911, (1-2 Geo. V), c. 10, which expressly excluded from the provisions of those acts any lands other than those vested in the federal Crown.

government to refuse to continue the negotiations on a formal basis, although a memorandum of intent had been signed in the latter case. The acquisition of land for both Forillon and Kouchibouguac Parks resulted in the relocation of approximately four hundred families, and feelings of resentment against this governmental action ran high among local residents. The dissatisfaction of the residents in the Kouchibouguac area has been studied extensively and the following reasons were given by them for their unhappiness about the establishment of the park: poor communications between the residents and governments involved; the lack of jobs created for the uneducated; unproductive retraining programs; unfair assessment of land and property values; and the abolition of fishing rights.²⁹ The residents were not opposed specifically to the idea of a park, but to being removed from their land.³⁰ Park officials had overlooked the fierce love and loyalty that these Maritimers felt for land which had been in their families for generations. Both the question of the sufficiency of government payment for land at the time of expropriation and the social problem of relocating residents will always be evident in national park acquisitions which require federal title.

Some would argue that, although expropriation seems harsh, it is a quick and legally desirable means for acquiring land. It delivers an unchallengeable title to the government, stops speculation and extended negotiations for purchase, sets a valuation day, and gives the citizen his day in court. However, despite its benefits, the fact that it could someday be used to acquire land from residents of an area that is considered for a national park will likely incite protest. This, when coupled with the loss of control over the area, is usually enough to reduce the willingness of a province to enter into a national park agreement.

The impact that provincial rights have had on national parks acquisition has been dramatic. The 1930 National Parks Act was passed at a time when acquiring federal title to landholdings presented very few problems. Before 1930, the establishment of parks in Western Canada involved passing an order-in-council or a federal act, since the federal government held the right to resources

29. M. L. Roder, *The Dilemma of Residents and National Parks* (Jan. 1978), *Park News* 14 at 11.

30. C. Bourque, *The Kouchibouguac National Park: A Policy Study*, an unpublished research paper submitted to the Department of Political Science, Dalhousie University, Halifax, Nova Scotia.

in these lands; the provinces had very little say in the matter.³¹ The majority of the lands included in three parks established in Eastern Canada before 1920 (all of which were in Ontario) was under the jurisdiction of the Department of the Interior, having formerly been admiralty lands (Point Pelee National Park) or purchased from lands held in trust for the Indians (St. Lawrence and Georgian Bay National Parks). The effect that the 1930 transfer of resource rights from the federal government to the western provinces has had on national park acquisition is illustrated dramatically when one realizes that, by 1930, seven large parks had been created in the western provinces, but, from 1930 to 1982, only two western parks, Pacific Rim National Park on Vancouver Island and Grasslands National Park in Saskatchewan, were established.³² Thus, the few parks acquired in the 1940s and 1950s and, more notably, those acquired in the burst of activity between 1968 and 1972 were the first to go through the present negotiation process and encounter provincial reluctance to enter agreements, due to the loss of resource ownership and problems of expropriating and negotiating purchase of land rights.

The problems arising from the necessity of federal government title and control and their braking effect on national park negotiations today call for two alternate proposals: either a more sensitive approach to the purchase of local land and interests therein, or an abandonment of the federal requirement. Both of these options will be discussed in more detail later in this article.

(c) Public Involvement in the Process

As discussed previously, the presence or lack of citizen support for a proposal can substantially affect the province's willingness to enter negotiations. The problems involved are illustrated when local

31. Under the British North America Act of 1867, the power to control the use of resources contained within a province's boundaries was retained by the province. This was also the case for British Columbia (with the exception of the railway belt) and Prince Edward Island when they joined Confederation in 1871 and 1873, respectively. However, by the time the Hudson's Bay Company transferred its interest in the western area to the Dominion of Canada, national policy was changing and the 1890 Manitoba Act reserved resource control for the federal government, to be used for purposes of the Dominion. This was also the case when the provinces of Saskatchewan and Alberta were established.

32. It should be noted that the boundaries and designations of various parks had been revised, so that the seven parks that existed in 1930 had been revised to comprise eleven parks by 1970 when Pacific Rim was established.

landowners resort to political and legal avenues to register their displeasure with expropriation. It is clear that there is, at present, no adequate, administratively provided avenue for public participation throughout the acquisition process, and that one is certainly needed.

An examination of Parks Canada's experience in its acquisition programs over the last ten years has revealed that public participation is vital if the government is to be more aware of the social effects of its decisions. The major aim of public participation in any government decision is to publicize the decision that is to be made, the parameters within which it must be made, and the factors which should be considered, and to then allow the public to articulate its feelings. This process can serve an educative function for both the bureaucrat and the public, as the bureaucrat is informed of any concerns about or aspects of the decision of which he might not have been aware and the public comes to understand the factors affecting the decision-making process and to appreciate the differing viewpoints held by the other members of the public.

The problems of determining who constitutes the "public" and what the public desire is are prominent in Parks Canada acquisition issues. For example, since present policy often involves the displacement of residents from areas designed for national parklands, members of the public who face expropriation are often suspicious or apprehensive and the majority will appear to be opposed to the particular park development on the basis of the loss of their lands. In contrast, however, there are often some organized groups that support park development, as will the general public, which is usually in favour of more parks, if only vaguely and on some sort of "motherhood" basis. The problems are further complicated by the fact that local groups are often small, well-organized, and are intensely involved in the issue, while the supporting public is more diffuse and apathetic, and is often without the leadership, time, money, or political awareness necessary to make its views known. The development of any organized avenues for public participation must recognize these various groups and deal with their different viewpoints. Even once adequate avenues for public participation are developed, there is no one public voice. Several different opinions will be articulated, and accommodation of them will demand that the eventual decision about the park provide for ways to deal with issues that are raised. In the event that a park is established, certain programs and policies must accommodate those people whose lives will be disrupted and, if the

proposal for that national park is, instead, dropped, perhaps alternate land uses can be implemented in order to accommodate the supporting public.³³ At the very least, departmental acknowledgment of the various feelings expressed by the public and an explanation of the reasons for the final decision might make the public more willing to accept it as being valid.

Both the Labrador and Grasslands National Parks' public participation programs have demonstrated the recent willingness of the provincial and the federal governments to jointly prepare and distribute material to the public, informing it of the proposal, to what stage negotiations have progressed, the issue to be considered by the public, and how it can participate. Formerly, the flow of information from the government to the public had been neglected or left up to one level of government only. Subsequent problems demonstrated the need for an emphasis on cooperative action between the two levels of government if information of value was to be gained through the exercise.³⁴

(d) *Federal-Provincial Coordination*

The constitutional division of powers in Canada necessitate the involvement of both the provincial and federal levels of government in the process of establishing a national park. Past experience has demonstrated a tendency for both the federal and provincial departments involved in acquisition negotiations to delineate their areas of action and concern along jurisdictional lines. There has been a failure to perceive the need to cooperate in areas where, although one government level has strict authority in a jurisdictional context, both government levels clearly have an interest.³⁵

33. For example, when the park was established, the residents of Forillon National Park probably felt that their protests against expropriation had not been heard. At the same time, when public meetings on the Eastern Shore park proposal in Nova Scotia were cancelled half-way through due to vehement local opposition to the plan, many felt that the voice of the diffuse yet supportive public had not been taken into account.

34. In the Eastern Shore proposal in the early 1970s, the task of informing local citizens and landowners before the public hearings was left mainly to the provincial Department of Lands and Forests. Various studies, such as those made of the economic impact of the proposal, the relocation and retraining programs, and the tourism potential, had been carried out by the government, but this was not communicated to the public. Various problems that resulted from those hearings have probably prompted Parks Canada to take more joint initiatives in this area to ensure that the job is done to its satisfaction.

35. Two examples of cases where the acquisition process has suffered from a lack

Obviously, one government or the other may have a primary responsibility for action regarding certain aspects of the acquisition process. Nevertheless, there is a definite need for a steering body which would act as a liaison or coordinator between the two levels of government, not only at the initial stages of acquisition, but throughout the formal negotiations, the public consultations, the acquisition of the land, and the interim management stages.

In view of the increasing pressure for parkland and the alternatives to national parkland designation at both a joint government level (for example, ARC proposals)³⁶ and at a provincial level (for example, ecological reserves and provincial parks), federal-provincial negotiations should examine potential parkland to determine its best park usage, not just to determine if it would be suitable for a national park. At present there is no assurance that land that is considered for a national park but is found unsuitable will be examined for its potential for another type of park, although there may be public support for such a move. During the Eastern shore proposal, there were indications that protests would not have been directed against a proposal for another type of park if it did not involve several of the features (such as expropriation) included in the national park proposal.³⁷ The increasing amount of time and the complexity of issues that are involved in national park acquisition present problems which are only exacerbated when there is no inter-governmental coordinating committee to keep the project moving and on track.

of coordination between the two governments are the public sensitization program that was developed in response to a proposal for an Eastern Shore park in Nova Scotia (discussed above in note 34), and the Kouchibouguac protest situation. In the latter case, the province began expropriation proceedings to acquire lands for the proposed park and was met by strong protest from some landowners that were affected. Parks Canada's response was to keep a low profile and direct protest to the provincial government, on the basis that expropriation was strictly within provincial jurisdiction. This ignored the reasons the province was expropriating, a point which was brought forcefully to the federal government's attention when citizens occupied the park administration buildings and forced temporary closure of the parkland. Joint concern and action when the problem first arises can avoid the subsequent bad publicity and feelings which result when citizens protest against the federal government after land transfers are made.

36. See discussion of ARC programs, *infra*, note 72.

37. As discussed in the articles "Shore Park Opponents Warned to Check Alternatives", *The Chronicle Herald*, Nov. 20, 1972, and "National Park Under A Microscope", *The Chronicle Herald*, Nov. 8, 1971.

(e) *Problems in Formal Negotiations: Finding the Facts*

In an acquisition procedure where formal negotiations occur in a bargaining context, the process is affected by the perception, by both parties, of past negotiations. A feeling on the part of either the federal or provincial government that matters are being or have, in the past, been misrepresented hinders the negotiation process.

Research has been carried out on the accuracy of various representations of the benefits that would accrue to the establishment of a national park. One study indicated that the number of job opportunities that would be created by establishing a park have, in the past, been vastly over-estimated by the federal government.³⁸ Local citizens reported that, in the negotiations for Forillon National Park, although approximately one thousand jobs had been promised, less than two hundred full-time jobs resulted.³⁹ In La Maurice National Park, two hundred seasonal jobs were created over a five-year period, in contrast to a promised five hundred jobs.⁴⁰ In general, the initial activities in a park do generate seasonal jobs, but their impact decreases once the preliminary work is completed. An additional problem is that the materials used to develop park areas are often specialized and, hence, are not purchased in the local area, just as management personnel are usually imported, rather than chosen from local community areas. These misrepresentations, which can be attributed both to federal enthusiasm and to citizens' misunderstandings, cause problems in terms of bitter hindsight regarding the specific situation and add fuel for future opposition, both by local groups and by provincial governments.

Another area in the bargaining process to which the provinces are becoming increasingly sensitive is the various effects (economic or otherwise) that a park may have on areas in close proximity to it. The view that the tourist trade will increase and, as a result, stimulate local businesses in the surrounding area has generally been offered by the federal government as one of the advantages of establishing a national park. However, the overall relationship of national parks to their surrounding areas and their impact on them has been recently debated.⁴¹ In the past, so-called hidden costs of

38. M.L. Roder, *supra*, note 29, p. 10.

39. *Ibid.*, p. 11.

40. *Ibid.*

41. L. Brooks, *supra*, note 13, p. 10.

parklands (for example, upgraded access roads which, unless otherwise stated, are a provincial expense) have often clouded the economic advantages. The late 1960s and early 1970s saw a number of studies that attempted to assess the economic impact of established parks, and recent steps have been taken toward demanding economic impact predictions before a park agreement is signed.⁴² In short, past experience with misrepresentations or insufficient attention to the effects of establishing a park has alerted the governments to take the time during negotiation sessions to accurately assess the alleged benefits of the parkland.

(f) The Problem of Interim Land Management During the Land Transfer Stage

During the time between the signing of a national parks agreement and legal inclusion of the lands under the act, private landholdings and interests in land must be acquired by the province and transferred to and accepted by the federal government. Thus, the first stage of the administration of an area that has been designated to be a park is solely under provincial control. The province may be under a contractual duty, as a result of the park agreement, to administer the land according to national park principles, or there may be only a tacit agreement between the provincial and federal governments that Parks Canada policy will be followed as nearly as possible when decisions are made about the land. There is no direct federal control in the matter, and provincial enactments to cover the administration may be inadequate or not fully enforced when needed.⁴³ Clearly, there is a need for an adequate provincial

42. Take note of studies such as Department of Indian Affairs and Northern Development: National and Historic Parks Board, *The Economic Impact of National Parks in Canada* (Ottawa: 1970), M. S. Foster & A. S. Harvey, *The Regional Socio-Economic Impact of a National Park: Before and After Kejimikujik* (Halifax, Institute of Public Affairs, 1976). These studies concluded that, although the park was important to the area, it had not been a major generator of growth. See also H. F. Wise, Robert Gladstone & Associates, *The Economic Impact of Riding Mountain National Park* (Ottawa: Department of Indian Affairs and Northern Development, 1968). They looked at the economic impact of the park in terms of its effect on personal incomes and the local economy. In terms of recent proposals, an independent study of the possible effects of the Grasslands proposal in Saskatchewan and the local area was commissioned jointly by the federal and provincial governments.

43. For example, in connection with the establishment of Pacific Rim National Park, a provincial act was passed in 1969 which provided that various extractive industries (including logging) would not be allowed in areas fixed by regulation

legislative framework to be in existence during this period. However, it is still an unavoidable fact that the way the legislative power would be used and enforced will depend on the province's goodwill and its deference to Parks Canada's objectives.

Lands, once they are transferred to and accepted by the federal government, are administered by Parks Canada. Although there is no risk that bureaucrats may choose not to implement or enforce the policy directives of Parks Canada, the legislation under which the land is held is totally inadequate and in itself causes problems. The Public Lands Grants Act was never meant to deal with such problems as the interim administration of parklands, for it provides no regulatory powers.⁴⁴ This poses problems for the enforcement of departmental policies and, just when the local public is uncomfortable with the new, restricted land usage, administrators are without a suitable enforcement system. They must either rely on the public's deference to administration or call in the Royal Canadian Mounted Police to enforce their wishes by way of Criminal Code charges. The latter approach, as illustrated in the Gros Morne rabbit snaring problem, is regarded as being rather hardline, and may damage the credibility of the administration in the eyes of the local public during a rather sensitive period in the existence of the park.⁴⁵ The lack of a regulatory device also presents a problem in terms of granting rights. Rights may be granted by regulations which apply to general situations and can be changed at any time by governmental action. Without this power, rights must be granted by license or contract, neither of which can be altered during their term without the consent of both parties. Thus, such interim rights as the right to cut timber within park boundaries must be granted by licence to each woodcutter. Regulation would probably be more

during the interim administration by the province. The failure to pass regulations for one year meant that logging occurred in substantial areas within the proposed park boundaries. See R. Robinson, *Legal Problems in the Protection of Recreational Values* (1971) 6 U.B.C. Law Review 236.

44. *Supra*, note 24.

45. Rabbit snaring was traditionally done by a number of residents in the area adjacent to the park, and trap lines had extended over lands designated for park use. Rabbit snaring was considered an extractive use, not to be allowed in national parklands, and was prohibited. Local residents protested, but the administration remained firm. When trappers set their lines in restricted areas, the RCMP, the available enforcement mechanism, were called in to lay criminal charges. Criminal Code sanctions have far more ramifications for the individual than sanctions under other federal statutes (for example, the National Parks Act), and their action put both the administration and the RCMP in an unpopular position.

desirable for the administration of lands during this phase.⁴⁶

To sum up, at a time when general parkland policy must be applied to a particular park area and administrators are trying to be responsible to park aims while being sensitive to local needs, they are faced with a totally inadequate legislative framework within which to exercise administrative powers. The problem is accentuated when one realizes that there is often a period of several years between the establishment of the park and when the lands are actually proclaimed or the schedule of the act is amended. For example, Kejimikujik National Park, established in 1968, was not added to the schedule until 1974.⁴⁷ Forillon and La Maurice Parks, as well as Kouchibouguac, were all established in 1970 and came under the provisions of the National Parks Act in 1974,⁴⁸ 1977,⁴⁹ and 1979,⁵⁰ respectively. And Pacific Rim National Park, established in 1969, and Gros Morne Park, established in 1970, have at this time not yet been included under the act.

Over the last eight years, many attempts have been made to resolve the problems arising from the large number of agreements to establish national parks that were signed between 1968 and 1972. Nevertheless, the present system for the inclusion of parkland under the National Parks Act still needs to be revised. Stopgap measures which were introduced in 1974 to allow inclusion by proclamation have a very restricted application.⁵¹ In addition, since lands that are proclaimed to be a park are not automatically included in the schedule of the act, subsequent amendment of land descriptions contained therein may be difficult. There is a need for a faster and more effective way to make lands subject to national park legislation, especially if the difficulties of interim management are not alleviated.

46. Timber cutting is an extractive resource use and would normally not be allowed to occur inside park boundaries. It was decided in Gros Morne to allow cutting on an experimental basis during the interim period, since it was a traditional use and citizens were protesting its discontinuance. Allowing such activities by licensing them makes the policy less easy to change after review, since licences are issued for a set period of time. By contrast, regulations can be changed when the administrators want and, thus, allow more flexibility for controlling experimental usages.

47. National Parks Amendment Act, *supra*, note 25, s. 7.

48. *Ibid.*, s. 9.

49. By Order-in-Council, July 13, 1977 Canada Gazette, Part II, SOR 77/499.

50. Canada Gazette, Part II, SOR 79/73, Amended by 82/398.

51. National Parks Amendment Act, *supra*, note 25.

IV. *Suggested Reforms in National Parkland Acquisition*

In the remainder of this article, a number of reforms are presented and discussed as possible solutions to some of the problems associated with national parkland acquisition in Canada. They involve: a more concerted initial thrust by the federal government, including citizen involvement and interdepartmental coordination; a federal-provincial body to deal with potential parkland acquisition; an advisory board as a focal point for citizen participation; and alternate landholding arrangements. Before turning to these specific suggestions, however, it should be pointed out that Parks Canada's legislative mandate for acquisition puts little emphasis on the acquisition of parklands. The major portion of the National Parks Act deals with maintenance and use issues, and there is only one subsection which, in general terms, authorizes the cabinet to allow the minister to purchase, expropriate, or otherwise acquire lands.⁵² The present legislative mandate also leaves unclear whether or not the minister has the authority to enter into or authorize negotiations for national parklands. Strictly speaking, it would appear that this is the federal cabinet's responsibility; however, in practice it is the minister who signs and approves all agreements and memoranda of intent. This ambiguity of authority could be grounds for contesting the legal validity of some steps in the negotiating process.⁵³

To remedy this problem, it is suggested that a division of the National Parks Act be devoted to the process of acquisition, setting out a specific mandate to expand the system and making specific legislative reforms in order to facilitate the process. This would give guidance to the departmental policy, as well as additional emphasis to this activity from the public's point of view. It would be naive to suggest that legislation would itself elevate the process of acquisition to a position of importance. However, once stated as a definite aim, or even duty, other legal and administrative ramifications may follow which could reinforce acquisition efforts.

52. National Parks Act, *supra*, note 5, s. 6(3) as amended in S.C. 1974, c. 11, s. 2.1.

53. If the section cited in note 52 was found not to authorize the minister to carry out (or supervise) the rather lengthy negotiations necessary for acquiring national parkland, various stages of negotiations, if attacked in court, might be found to be void under the *ultra vires* doctrine if such negotiations were authorized by only the minister and not the cabinet.

(a) *A More Concerted Initial Federal Approach*

It is suggested that Parks Canada take more initiative in the early stages of acquisition in terms of setting priorities and approaching the province with a more unified federal position. Obviously, with projected expansion to include approximately nineteen new parks, a priority system must be developed to designate those areas to which acquisition resources are to be allocated and in what order.⁵⁴ This creates a focal point for acquisition efforts and allows them to be channelled into a few specific areas, rather than into a number of areas which would be less productive. Although it is conceded that factors such as the political atmosphere in the province and general public opinion may play a role in determining whether an area is administratively suitable for acquisition attention or should be a priority, complete dependence on these factors with no ranking of acquisition priorities gives the impression that acquisition is haphazard and disorganized. Ranking should initially be based on natural criteria and, where political and other considerations would change that ranking, these should be stated. A formalized system of ranking and reporting on the progress made in acquisitions would draw interest to areas being considered and would also publicize problems.⁵⁵ The priority list could be looked at as a shopping list: one does not always get everything on the list, or at the price one wanted, but one enters with objectives and priorities of things to obtain, and at the end the reason should be clear as to why some items were missed or why substitutes were made.

National park legislation in the United States contains a section expressly requiring the Secretary of the Interior to look for areas that are suitable for parks and to present annually a list of not less than twelve such areas for consideration.⁵⁶ The British park legislation sets out, in general terms, the qualifications desirable for national parks and then puts a duty on a commission to define those areas that are suitable, to determine in what order they should be

54. As indicated in a speech given by the Honourable Mr. Hugh Faulkner, Minister of Indian and Northern Affairs, in Banff, Alberta, on October 9, 1978. Reported in "Provinces must help to add to Parks System, Banff Meeting Told", *The Calgary Herald*, October 10, 1978, p. A-3.

55. Public pressure may be able to change the provincial approach with regard to national park acquisition. However, in order for the public to mobilize, they must have easy access to information on the stand being taken by the province. At present, this information does not have high visibility, especially during the early, informal stages.

56. National Parks Act, 16 U.S.C. 1(a)-5 (1976).

designated and to proceed working toward establishing a park.⁵⁷ The Canadian system needs a clear statutory statement that expansion of the system is desirable and a description of the basis on which that expansion is to occur. A statutory duty on the department to present annually a number of areas to be considered and to report on the previous year's negotiations would serve to publicize both acquisition directives and the nature of the problems which have arisen.

(b) *A Federal-Provincial Structure*

There is an acute need for a formalized federal-provincial liaison group, ideally set by statute, to deal specifically with potential national park acquisition. Whether the form of this group would be a committee or a board, its purpose would be to combine, in one body, representatives of the relevant federal and provincial government departments. This body would examine both potential sites for parks and concerns about their establishment, and would have the power to oversee the acquisition process from the first proposal to the final agreement. Each standing committee would represent one province and would be comprised of a core group to include two members from both the federal and provincial park departments. One of these members should be an individual who is employed at the level of director or assistant director and the other should be a planner whose duties involve, to a large degree, park acquisition. This would provide both the necessary prestige and power and would also allow one planning member from each department to have a major responsibility for new initiatives. The various government departments whose concerns include park acquisition (for example, DREE, Environment Canada, and provincial tourism departments) would appoint individuals to serve as consultants to the core group as required, depending on the stage of acquisition and the nature of the department's connection. A consultant system would prevent the body from growing to an unwieldy size, thereby avoiding the resulting difficulties in communication and scheduling while allowing all of the government departments involved to have their say. Although decisions and recommendations made by this representative body would be subject to ministerial approval, it would be assumed that, due to the

57. The National Parks and Access to the Countryside Act, 1949 (12-14 Geo. 6), c. 97.

ministerial contact with officials in the body, consent would rarely be denied. This would facilitate the acquisition process and would in no way detract from the present arrangement of the administrative hierarchy and powers.

A federal-provincial body would be necessary in every province that has areas of national significance which are unrepresented in the national park system. Members would work on proposals and be involved in negotiations, should they occur. The group would exist until its utility ended (that is, when all natural areas of national significance within the province were represented in the national park system). Each body would serve as a place where attitudes and efforts related to acquisition, including both governmental concerns and citizen feeling or pressure, could be focused. Once the need for a park area was felt or a potential site within the province was given a high federal priority, the matter would come before this standing body. Considering the increasing time that negotiations currently take before a final agreement is reached (the Saskatchewan Grasslands proceedings, for example, have lasted for more than twenty years), such a body might serve to direct attention to and encourage concentration on the issue, rather than allowing the continual tablings and lapses into inattention that often plague such proposals. The constitution of this federal-provincial body could allow numerous options to be considered during the negotiation process. Thus, if land was found not to be suitable for a national park or if the province withdrew support for a national park proposal, its suitability as a provincial park or an ecological reserve could still be considered and realistically approved. This would be especially valuable in view of the fact that both the provincial park representatives and Parks Canada members in this body would, in essence, have veto power against a national park proposal, since as soon as one side withdrew its support, the option would be defeated. Thus, if another level of government became interested in that park proposal at a later date, repetition of much of the initial work and research could be avoided.⁵⁸

58. A few years after the defeat of a national park plan, both the Eastern Shore and East Point National Park proposals were considered or are still under consideration for a provincial park program and national landmark arrangement, respectively. The amount of time that has lapsed has required new studies in both areas and has aroused suspicions on the part of residents who question the government's motives and think that this is a continuation of the expropriation issue that has already been fought and won.

This standing body should have the clear statutory responsibility to see that the public's opinion of a park proposal is solicited. This explicit responsibility would serve to assure citizens that their opinions will be considered in the process of acquisition. Discretion would be left to the body as to the methods by which public opinion would be collected. The power to initiate formal input should be extended to cover any period of the process at which it is felt to be necessary, but it should be required to occur at least once. The board also would be the obvious place for letters, briefs, or questions about acquisition to be directed at any time, and would serve as an avenue for the participation and contributions of citizens.

The presence of such a joint federal and provincial body might help to alleviate the problems that dual jurisdiction often presents. It could also provide coordination between the two government departments involved and a steering group, essential for any intergovernmental action that spans a period of years.

(c) *An Advisory Board for Public Participation*

In park acquisition, the specific method of collecting public opinion cannot be legislated; it must be left to the discretion of the body dealing with each specific situation, and will be modeled by the nature of the questions that are to be answered and the public that is to be approached. It is suggested, however, that an advisory board be established as the framework through which public opinion would be collected, regardless of what specific method is used. Such a board would have a number of desirable features: a relatively short period of existence, a specific task, and no involvement in the negotiation process or other activities of the federal-provincial body. These features would lend a high visibility to the process of soliciting citizen input and would remove it one step from the government board involved in decision-making. The provision of this buffer between the citizens and the decision-makers may be beneficial. It may prevent the federal-provincial body from withdrawing suddenly from negotiations, should vehement opposition be expressed by citizens.⁵⁹ By contrast, some may argue that

59. For example, the federal-provincial committee established by the memorandum of intent in regard to the Eastern Shore proposal in Nova Scotia had a mandate to examine all matters pertaining to the establishment of a park, including the question of boundaries, residential property that was not required, and how the

the board will stifle necessary contact between citizens and government decision-makers. Nevertheless, the fact is that a separate advisory board would serve to eliminate this duty, which is often time consuming, from the mandate of the federal-provincial coordinating body. The greatest value of a separate board is that a specific report on the result of citizen participation would have to be produced and the recommendations that arose from citizen participation would then be obvious. Since a specific report would demand a specific response from the federal-provincial body making the ultimate decision, the way in which public opinion was used and which recommendations were agreed to or rejected would be made clear. If, in a specific proposal, a need for more contact between the federal-provincial body and the public was perceived, members of that body could attend, but not convene, the public participation sessions. In addition, one member of the advisory board could act as a consultant to the federal-provincial body in order to provide any details it might require.

The advisory board should be comprised of a small number of persons, perhaps three: one should be a resident in the area proposed for the park, one should have a provincial image, and one should have involvement or a background from outside the province. This would ensure a variety of perspectives while allowing citizens to identify with the members of the board, and would eliminate the need for government officials to chair the meetings, although they should certainly be present as resource people. The cost of the advisory board should be borne in an agreed proportion by both the federal and provincial governments.

Despite the advantages of an advisory board, there are problems with the proposal, among them the lack of power held by the board, the proliferation of steps in the decision-making process, and the conflict of personalities. First, since the board would be created by statute but appointed by the federal-provincial body which would also set its terms of reference, including the methods it was to use to collect public opinion, the advisory board would be rather powerless. Other than by fulfilling its mandate and making a report,

dislocation of people could be minimized. The committee was composed of high-ranking officials, including the assistant director of National Parks from Ottawa and the deputy minister of the provincial Department of Lands and Forests. It held public hearings in 1972 and cancelled them half-way through due to loud local opposition. If an advisory board had been used, perhaps the ultimate decision about the park could have been made in a more removed, objective situation.

it would be unable either to influence how the report is used or to force a reply from the federal-provincial body, other than by publicizing any lack of response. A legislative directive requiring the body to respond to the board's recommendations could open a legal avenue through which a response could be forced, thus giving the advisory board more power. Second, while it is conceded that the addition of this board may initially seem to complicate the decision-making process, it is suggested that the benefits would outweigh this problem. There would have to be a clear explanation to the public of the steps included in the process and an outline of the limits of the power held by the various boards and bodies involved, making it clear that it is the federal-provincial body that makes the ultimate decision. Finally, although the problem of conflicting personalities on the advisory board is real, it is difficult to resolve other than to recognize it and exercise care in the selection of members. Members should be representative of the area or faction from which they are selected, yet their personalities should be such that they can work together.

An advisory board was used in the Saskatchewan Grasslands National Park proposal. A public hearing board, consisting of three members and responsible to the Provincial Minister of Tourism and Renewable Resources, conducted public meetings to evaluate the public's response to and support for a park in southwestern Saskatchewan. The feelings of the board after the hearings was that the inquiry process they had used was sound and that its terms of reference, as published, were accepted by the public.⁶⁰ In addition, the report made by the advisory board was favourable to the establishment of a park. However, the result is not as important as the public's general feeling that an effort had been made to set up a specific group which was responsible for gathering and compiling opinion, publishing a report on whether or not a park should be established, and making special recommendations based on points raised at the hearings. A specific reply to that report was made by the government, accepting the idea of establishing a park, accepting some and rejecting other recommendations, and presenting a revised memorandum of intention that reflected some of the board's suggestions.⁶¹ Thus, the indications are that an ad hoc advisory

60. G. MacEwan, J. Beamish and H. Richards, *supra*, note 17, p. 82.

61. See the reply to the Hearings Board's Report, *Federal-Provincial Position on the Recommendations of the Public Hearings Board*, dated June 24, 1977, and the revised memorandum of intention of that date.

board could provide the structure necessary to allow for the implementation, at any step in the acquisition process, of those modes of collecting citizen opinion that the federal-provincial body deems appropriate.

(d) *Statutory Provision for Interim Administration*

The increasing length of time involved in the administration of lands, from the date of the agreement to create a park until the formal inclusion under the National Park Act, is a problem that is often glossed over but which deserves attention. The problem is more than just a misunderstanding as to the date or meaning of the establishment of a park. As discussed earlier, administration is carried out under different statutes during different stages, enforcement patterns vary widely, and concessions granted in non-gazetted but established parks can cause problems that have to be solved in general policy terms before formal legal inclusion in the system can occur. An acknowledgement that lands will spend some time in transition between private, provincial, and federal control must be reflected both in the relevant statutes and in policies. Both federal and provincial legislative change is essential. For example, it should be a requirement of any park agreement that provincial legislation to set up the park be in place before the agreement is signed. Such legislation should allow the province to transfer to the Crown the administration and control of certain interests that the province may have in various lands,⁶² and should allow the province to regulate the use of land in the area, including the phasing out of licences and extractive uses. In addition, regulations should be in place before or soon after a park agreement is signed. This would allow incompatible uses to start to be phased out at the time of the park agreement, rather than necessitating extensive bargaining sessions during which extractive uses continue. It is also highly desirable that federal legislation be passed in order to allow Parks Canada the clear authority to manage and enforce policy in areas that are under its control during the acquisition phase. As discussed previously, the Public Lands Grants Act provides no regulatory powers, as it was not meant to cover the administration of land over a long period of time, and use of the Royal Canadian Mounted Police and the Criminal Code to enforce

62. An example of this type of legislation is the Administration and Control of Lands of the Crown (Transfer) Act, S. Nfld. 1966, c. 62.

interim stage management is thought to be politically unpopular. Specific statutory provisions must be made under the National Parks Act to give Parks Canada clear and effective administrative power over lands as soon as they are transferred to the federal government. This could be achieved by giving the cabinet powers of regulation which would extend to lands held by the federal government pursuant to an agreement to establish a national park. Such powers could be stated in a new acquisitions section in the National Parks Act. Some technique, such as publication in the Canada Gazette, would be necessary to identify the lands to which the regulations would apply.

Alternatively, a separate federal act could be passed for every national park that was established. This system would consist of one general statute, containing basic provisions which would be applicable to most parks and specific acts to cover matters relevant to a given park, and would allow for suitable interim administration during acquisition. This system would be analogous to the present legislative scheme for national parks in the United States,⁶³ in which problems that pertain to only one park are dealt with in detail by statute.⁶⁴ This system allows for greater flexibility in legislation addressing unique situations. However, this would be difficult in Canada, as passing a new act through Parliament with each new park acquisition would be a very lengthy process. It is clearly preferable that a legislative mandate be given for interim management, and that a tenable way to add lands by gazette and to pass regulations during the acquisition process be provided.

(e) *A Revised Landholding Scheme*

Discussions thus far have demonstrated that one of the most troublesome and recurrent problems in the acquisition process today

63. National Parks Act, *supra*, note 56.

64. The advantage of this type of system for dealing with specific administrative problems is clear. There has been a reluctance to treat national parks with different overall rules that would reflect regional differences. This has led to problems, since any adjustments that are made to reflect specific regional problems often mean a change in national policy. Increasingly, concessions granted during the acquisition stage will lead to problems in terms of producing one broad national policy statement. For example, on page 3 of the Gros Morne park agreement, a golf course in one of Newfoundland's national parks is provided for, yet the 1979 Policy states that no new golf courses will be developed in national parks. The problem arises when acquisition concessions for parks in Eastern Canada conflict with conservationist policies based on the situation in Western Canada.

is that of the federal land ownership requirement. Its various effects — the loss of provincial jurisdiction, the cost of acquiring lands and interests, and the political complications caused by citizens protesting against relocation — have often resulted in provincial reluctance to enter into agreements to create national parklands. The future of schemes requiring federal land ownership will be discussed below, and attention will then be turned to the possibility of cooperative landholdings.

(i) The Future of Acquisition Under Federal Land Ownership

At present, federal ownership of national lands is required, despite the problems that are created. This is due, in part, to the ease with which lands can be administered after acquisition when only one government level is involved in the decision-making process. In addition, the argument is often made that only a federal government agency is sufficiently removed from and in a position to resist the economic, industrial, and other pressures that may threaten the preservation of the area in question.⁶⁵ Other arguments for federal ownership are probably less convincing, and range from the claim that the national aspect of the system necessitates federal control to the fact that, historically, federal control has always been a requirement for national parklands. Regardless of how convincing these reasons are, the effect of such a requirement is that, in the last seven years, most acquisition attempts involving the provinces have halted.

Pressures against park acquisition in the provinces of southern Canada and pressures for a more diversified park system have increased acquisition initiatives in the unique but inherently fragile ecosystems of the north. It is hoped that parks can be established before industry and private ownership problems complicate preservation aims. The initiative constitutes a major challenge, since, despite the attractiveness of certain legislation allowing

65. It is probable that the federal government would be less pressured by industrial or extractive uses within the park, since it would not receive the benefit of tax dollars and potential jobs which some provinces may find persuasive. Two rather interesting examples are Point Pleasant Park in Halifax and Stanley Park in Vancouver, both of which are owned by Parks Canada and rented to the municipalities. These two large tracts of prime development land have withstood pressure, whereas similar lands that are owned by cities (for example, Beacons Hill Park in Victoria) have suffered encroachments and reductions over the years.

federal control,⁶⁶ the historical uses of the land (subsistence hunting, fishing, and trapping by the native people) create a problem in light of the administrative requirement that no resource extraction be allowed within a national park. The department's reaction to this challenge is found in the 1974 amendments to the National Park Act, which allow the governor-in-council to set aside reserves for national parks in certain scheduled areas, pending settlement of the interests of the people of native origin who would be affected.⁶⁷ The legislation further provides that the provisions of the National Parks Act apply to the reserves being declared, except that the exercise of traditional hunting, fishing, and trapping rights by the native people of the Yukon and Northwest Territories is allowed. Three areas presently have reserve status and five more are under negotiation.⁶⁸ These changes are commendable, although several administrative questions, such as the extent of native fishing and trapping, how it will be regulated, and what will happen if it threatens the ecosystems being protected by the reserves, must still be resolved.⁶⁹ The changes demonstrate a recognition by Parks Canada that both legislative and policy changes may be necessary to ease the present acquisition process. The northern thrust may partly

66. The land in the Yukon and Northwest Territories, comprising approximately forty percent of Canada's land area, is subject to the Territorial Lands Act, R. S. C. 1970, c. T-6, which, in s. 19(e), allows withdrawal of lands, by order-in-council of the federal cabinet, for a variety of public purposes including those relating to game and forest reserves. This provision, similar to those found in pre-1930 park legislation, effectively allows the federal government to unilaterally remove lands and, in effect, freezes the alienation of interests in land and prevents the staking of mineral claims while negotiations are in progress.

67. National Parks Amendment Act, *supra*, note 25, s. 11.

68. Kluane, Auyuittug, and Nahanni all have reserve status, despite the fact they are often referred to as "parks" (for example, see Parks Canada's information handout, "National Parks", publication #R62-1/1976). In 1978, 15,000 square miles of land were withdrawn (SOR/78-568, Canada Gazette, Part II, July 6, 1978) as part of the present negotiations for five more national park reserve areas, and a memorandum of understanding which related to the establishment of a national park reserve at Ellesmere Island was signed in 1982.

69. It is suggested that these general rights should be outlined more clearly, since the native people have not fared well in the past by relying on the court's interpretations of treaties that use such vague phrases. See *R. v. Rider* (1968) 70 D.L.R. (2d) 77 (Alta. Mag. Ct.), with regard to the interpretation of general treaty rights in light of specific national park legislation. Also, see general comments in this regard in C. Hunt, *People and Parks: Selected Legal Issues in Canada*, a paper presented at the Canadian National Parks Conference II: today and tomorrow, Oct. 11, 1978, pp. 2-6. The 1979 Policy refers to joint management regimes for northern parks at 1.0 (p. 38) and 1.3.13 (p. 40).

be attributable to the enthusiasm of the former minister for northern initiatives, Hugh Faulkner, but it also may constitute an admission that present requirements for national parks are presenting even more problems in acquisition. Examples of the attempts to eliminate some of the obstacles to acquisition are seen in the new tendency toward negotiating the settlement of claims, rather than expropriating local citizens' lands (the Grasslands proposal), as well as in efforts to jog park boundaries to bypass major communities (Gros Morne) and a softening attitude toward allowing traditional resource use by local residents to continue (1979 Policy).

Parks Canada's approach to problems of land acquisition in southern Canada has not been as progressive as its approach to the problems in northern areas. When dealing with areas in southern Canada, the department has opted to remain within the present legislative structure, retain the federal landholding requirement, and introduce various policies designed to alleviate and mitigate some of the pressures that stall present acquisition attempts. However, since a major change in policy and statute has been made in order to allow traditional native extractive uses, perhaps other policies, such as federal land control, will also be re-thought in the context of southern Canada. The next decade will determine whether the changes that are currently being made are adequate to mitigate local public protest and reverse the feeling of the provinces that too much would be lost, and too little gained, by the existence of more national parks within provincial boundaries.

(ii) Cooperative Landholding Arrangements

Cooperative landholding, involving private, provincial, and federal ownership possibilities and administered by a federal-provincial board, has been proposed as a solution to the problems caused by the present special landholding requirement. This solution would entail some sacrifice of the ease of federal control and the concept of a park as an area free of residents and all extractive uses. However, it would be justifiable on the premise that this is the only way that the national park system can expand enough to be totally representative of Canada's significant landforms. A cooperative landholding system would involve both federal and provincial legislation and joint arrangements, since the provincial government would control industry and privately owned land within the park through a system of permits and zoning regulations, while the

federal government would control lands held in its name and would decide policy jointly with the provincial government. The object would be to freeze settlement and development in the park at the time that the park is set up. Administration of the land would be undertaken with a gradual return to wilderness as its ideal, long-term goal, but with immediate concentration on the prevention of any further breakdown of the ecosystems and formations under protection. Although residents would be permitted to stay, they would be encouraged to sell to the government. Extractive uses such as fishing would be allowed to continue unless they posed a great threat to the protected systems, in which case they would gradually be phased out and the residents would be compensated. This arrangement would allow a cultural landscape to remain, in which the relationship of man and his environment would be portrayed.⁷⁰ It must be made clear that cooperative federal-provincial control of lands should not affect parks that are already in federal ownership; indeed, these should be preserved carefully, since history has proven them to be a rare prize. Rather, this new approach is based on the supposition that some preservation is superior to none at all.

Proponents of this type of system offer a number of convincing arguments, the main one being that the problems caused by expropriating land and displacing people can be solved, since expropriation does not need to occur. This would greatly reduce the initial economic cost of acquisition and the criticism of the park establishment by citizens. This, in turn, could alleviate some of the provinces' reluctance to establish parks, since the political and monetary expenses of entering into agreements would be reduced and jurisdiction over lands within their boundaries would not be completely lost. Another argument supporting the system is based on the claim that local residents often dispute the ability of the government to "understand" the land. This feeling is often articulated at hearings where local opposition is not directed against the goal of preserving the land or establishing a national park, but against removing the residents, the people who feel they have a knowledge and understanding of the land. Government policies that function without that knowledge may fail to protect the lands any

70. Note that the portrayal of the relationship of man and nature is approved in the 1979 Policy, *supra*, note 3, s. 3.2.11 (p. 42).

better than the residents did.⁷¹ Their ability to retain their land and remain in the park may make them more amiable and available to participate and give advice in eventual park planning. It is also argued, in support of cooperative arrangements, that Parks Canada is losing its monopoly in providing strict conservation areas. The present legislation of wilderness areas and ecological reserves by the provincial governments is aimed at conservation, but with less of an emphasis on public use.

Although preservation of the wilderness is an admirable aim, land that has been developed and changed by man will not simply revert to its wilderness state when the occupants are removed and extractive activities are terminated. The concept of a pristine wilderness, protected by the federal government which is under a mandate to allow people to enjoy the land, is no longer realistic. Areas of significance that have been exposed to human influence for many years should be preserved at that level of development, with the goal of preserving the land as much as possible. It seems somewhat ironic that a government department that regulates and leases land within national park boundaries to thousands of residents in the western national park townsites deems it necessary not only to hold all land in newly acquired parks, but also to attempt to remove the residents.

The two major criticisms of this cooperative type of approach are, first, that only the federal government can withstand development pressures and, second, that the problems of intergovernmental coordination may be of some magnitude. The first criticism is perhaps easier to answer. It is interesting to note that, although most citizens associate national parks with preservation, preservation first appeared as a major thrust of Parks Canada's efforts in the 1964 Policy and was clearly articulated only in the 1979 Policy. In fact, national parks may actually have contributed to the breakdown of ecosystems through the effects of tourism, industrial use, and townsite development. In short, the preservation record of federal government control does not inspire awe, and it is not clear that provincial influence would result in a worse job being done. The second criticism seems to arise from concern over the provinces having substantial regulatory control, since legislation over private

71. See the articulation of this feeling in the Grasslands report, *supra*, note 17, pp. 22 and 23. Also note that the major concern of local residents acquainted with the area was that the cessation of grazing might increase the fire hazard.

landholdings, persons within the park, or provincial lands would occur at the provincial level. It should be remembered that an agreement would be signed when the park was established, setting out administrative directions upon which the various levels of government agreed, and that the agreement could be enforced by either government against the other, although such action would often not be politically desirable. At present, the federal government leases land to, and controls by regulation, thousands of residents and several industrial users in western national park townsites. It is not clear why the provinces would not be capable of extending these methods of control to residents and industry within a cooperatively administered area.

At present, it is actually a type of cooperative land-holding system that is in place during the interim management phase that occurs before the final transfer of land. As the time period at this stage increases, it will soon require only a small mental jump to the legislative and policy changes necessary to allow this system to continue as the desired administrative system. This type of structure is already being pioneered in the Parks Canada ARC program, although the lack of effort to promote the program may mean that it will flounder and will not provide a model for observation.⁷²

V. Conclusion

If one accepts that the aim of the Canadian National Parks System is to include within its parks natural areas that are of Canadian

72. The ARC program grew out of the 1972 Byways and Special Places idea which was designed to protect and provide for the use of various natural and/or cultural areas that represented unique aspects of Canada's heritage. The program, for which three agreements are in existence and several others are under study, uses a combination of federal, provincial, and possibly municipal government levels to complete the project. The process of establishing an ARC project involves a feasibility study, a concept plan (setting out possible developments, costs, and alternatives), a negotiation phase (to establish projects, timing, and funding), and, finally, an agreement. Each phase of negotiation requires an exchange of letters between the relevant provincial and federal ministers indicating a willingness to proceed to the next step. Agreements are usually made to last for approximately seven years, although they articulate a belief that the project will continue for a longer period of time. Once agreement has been reached, a joint management board, half of which is usually composed of federal senior bureaucrats from the departments involved in the agreement and the other half of provincial bureaucrats, is formed. An advisory council is nominated by the provincial and federal ministers to represent the people in the area and advise the management board of their feelings. Day-to-day administration is carried out by a joint planning group and the secretariat, both of which do the associated paperwork.

significance and are worthy of protection, then it is clear that our system is less than half way toward its objective. An examination of the acquisition process involved for national parklands highlights some of the attendant problems: the lack of direction in federal initiatives for acquiring land; the federal landholding requirement which causes protest from local populations and the provinces; the lack of intergovernmental coordination; and the need for statutory reform to provide a legislative framework for this activity. In this article, some reforms which may alleviate the above problems have been proposed and examined. It is suggested that the success of the National Park System will depend largely on the ability and willingness of both the provincial and federal governments to implement some of these reforms. The present system, with its defects and political realities, must be revised if it is to allow sufficient growth.