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**HISTORICAL PAPERS AND ADDRESSES ON CANADIAN
LANDMARKS**

**1. THE PASSING OF THE SECOND CHAMBER IN
PRINCE EDWARD ISLAND**

BY

D. C. HARVEY

Of all the provinces of the Dominion of Canada none has had a more interesting constitutional history than Prince Edward Island. In this little Island most of the problems which beset the other provinces together with some that were peculiar to itself were fought out with great persistence and with considerable spirit. As constitutional development was conditioned by no Imperial statute but flowed from the Royal Prerogative through Orders in Council, local enactments assented to by the Crown and royal instructions to the lieutenant-governors, it has been more flexible than it otherwise could have been.

This flexibility has found expression nowhere more clearly than in the history of the Second Chamber, which exercised both legislative and executive functions from 1770 to 1839, was the typical colonial second chamber nominated by the Crown from 1839 to 1862, and was elected by a restricted property franchise from 1862 to 1893. In the latter year it ceased to be a Second Chamber, being absorbed in the Assembly to which it still contributes one-half of the members who are supposed to represent the interests of property as distinct from the other half who are elected on a wider franchise.

From its final cession to the British in 1763 until it became a separate colony in 1769, Prince Edward Island (still known as St. John's Island until 1798) was governed from Nova Scotia; but from the arrival of Governor Patterson in 1770 until the present day it has enjoyed its own system of government. This Government at first consisted merely of a Governor appointed by the Crown and a Council of nine also in theory appointed by the Crown but in practice nominated by the Governor.

From 1773 onwards, the colony boasted of representative government, but owing to the sparse and inexperienced nature of the population the early Assemblies were content merely to give assent to the wishes of the Governor and his Council. Such with slight qualifications is the history of the representative chamber for the first fifty years of its existence, though it was gradually learning to do by doing, and in the fullness of time

was destined to take a high view of its rights and responsibilities. So too, the Council was wont to follow rather faithfully the lead of the Governor, though owing to the frequent absences of governors and to their occasional feuds it had learned to take sides and to discern its own interest. This development was facilitated by the fact that the early councillors resided in or near the capital and were thus enabled by continual intercourse to develop a sort of esprit de corps. Many of them in time became connected by social and commercial ties and by inter-marriage, so that, as the Assembly later showed, here, if anywhere in British North America, existed a real Family Compact.

The first serious friction between the Council and the Assembly was a reaction from the arbitrary government of Charles Douglas Smith, which, synchronising with an era of reform in England and in the colonies, gave the Assembly a fixed idea that they must maintain every right and make good every claim. Prior to 1810 the Assembly had occasionally submitted the items of their expenditure separately for the consideration of the Council. In 1803 the Council had originated a Committee "to take into consideration the state of the public accounts and the demands upon the Treasury." In 1809 the Council had amended an item sent up by the Assembly and the latter had accepted the amendment as well as a request of the Council to be joined by a Committee of the Assembly in considering the state of the public accounts.

But in 1813 Charles Douglas Smith, the outstanding benevolent despot of our Island history, became Lieutenant-Governor and during his long regime he was at constant feud with the Legislature: when the Houses were called together they were almost immediately prorogued or dismissed and but one revenue bill passed the Legislature which was rejected by the Lieutenant-Governor. During these twelve years the expenses of government were met by the receipts of two permanent revenue acts which the Assembly in the period of its faith had placed at the disposal of the Lieutenant-Governor in Council (25 Geo. III, cap. 4 and 35; Geo. III, cap. 10). During the later years of his administration Smith was able to command undivided support only from his family connexions in the Council. But when the Assembly had become thoroughly aroused against the autocratic governor, it soon learned to scrutinize the claims of the equally autocratic Council.

Accordingly with the administration of Colonel John Ready (1825-31) a quarrel broke out between the Council and the Assembly over the mode of appropriating supplies and the

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relative powers of the two branches of the Legislature. The Council insisted that it was the duty of the Assembly to submit each item of expenditure in detail in order that it might exercise its discretion in regard to individual items, without endangering the entire Bill of Supply, whereas the Assembly claimed full supremacy over the Council in all money matters, and declared that the Council had no right whatever to alter such bills. The controversy produced much argument and many appeals to precedent on both sides, but the Assembly steadily refused to be influenced by appeals to practice in Nova Scotia or New Brunswick and took its stand upon the "ancient and undisputed usage of the Legislature of the Island and the practice of the House of Commons." The controversy also led to considerable correspondence with the Colonial Office and was only temporarily hushed when Earl Bathurst regretted the action of the Council in raising "a claim of at least doubtful right, which has been more prudently suffered hitherto to lie dormant and which, in its nature, it is not easy to reconcile to the principles of the British Constitution."

From 1831 to 1834 the Assembly and Council kept up a reasonably good correspondence, but in the latter year they were again at loggerheads, the Council having rejected a bill for the extension of the franchise through fear of a growing democracy. The Assembly replied by an attack upon the nature and composition of the Council and prepared an address to the Crown, in which they stated "That the constitution of Your Majesty's Council in this Island, composed as it is of *nine* gentlemen (six of whom hold situations of emolument at the pleasure of the Crown) who act both in a Legislative and Executive capacity and one of whom, at least, is also the legal adviser of Your Majesty's Representative, is considered incompatible with the freedom and independence of the Second Branch of the Legislature and that such extensive powers conferred on so few individuals, however trustworthy or respectable in society, are contrary to the spirit of the British Constitution." They therefore prayed that the King would grant unto them "a Legislative Council, distinct from that of the Executive, to be composed of gentlemen possessing a knowledge of the wants and resources of the Colony, and who hold no situation or office of emolument at the pleasure of the Crown, thereby placing them on an equal footing with the sister province of New Brunswick." In regard to New Brunswick they were in error.

It is interesting to note that an amendment to this address, lost by a close vote of 6 to 8 (in a House of 18 members), fore-

shadowed a later insistent demand for an elective Legislative Council.

In the meantime an election had been held and the new Assembly declared the Colonial Secretary's reply—that he had not seen fit to advise His Majesty to accede to the prayer of the petition—to be satisfactory. In the Assembly there was still a minority of *four* who favored an *elective* Legislative Council and insisted that the reply was "disheartening to the loyal inhabitants of this Colony."

In 1835 the Council rejected the Revenue Bill because the appropriations were included in it, but for a time the Council and the Assembly found common ground in dealing with the Clergy Reserves. In 1838, on hearing that the Councils had been divided in Nova Scotia the Assembly returned to the subject, and this time they found a sympathetic ear in the Colonial Office, with the result that the desired change was effected in 1839. But the unsettled nature of public opinion may be gathered from the fact that the election of 1838 had so altered the temper of the New Assembly that it requested the Lieutenant-Governor to defer the change until it could present its views. From the discussions at the time it would seem that a majority of the new Assembly were in favor of an *elective* Legislative Council. But the fiat had gone forth, and on March 4, 1839, the Lieutenant-Governor issued a proclamation dividing the old Council and constituting the new. The powers formerly vested in the Council, as far as concerned the enactment of laws, were vested in the Legislative Council, which was to consist of 12 members, and all other powers whatsoever vested in the said Council were to be exercised by the new Executive Council of *nine* members. Henceforth the Chief Justice was not to have a seat in either of the Councils, as it was considered unwise to involve the judges in the discussion of party politics.

But the division of the Council did not produce the harmony that might reasonably have been expected. The Assembly (in 1839 increased to 24 members) was now on the scent of full Responsible Government, having been balked of such responsibility as might have been indirectly effected through an elective Legislative Council.

In April, 1840, the Assembly moved a series of Resolutions aiming in a general way towards Responsible Government but severely criticizing the Council for opposing progressive agricultural legislation, for obstructing because of vested interests their attempts to ameliorate the lot of the tenants, and for mis-

representing their motives to the Home Government. The Council made an elaborate defence which need not detain us here, except to note that they renewed their attempts to secure separate items of appropriation and denied any personal or family connexions with the proprietors. This led to a spirited reply on the part of the Assembly, and to a detailed analysis of the membership of the two Councils showing beyond a doubt a serious family connexion in both Councils and a very close relationship, on the part of several members, with the proprietors.

Mutual recriminations continued for several years and the Council was restrained from rejecting the Bills of Supply only by the influence of Lieutenant-Governor Huntley (1841-7) who asked them to withhold action until he could get a decision in their favor. This he eagerly tried to do, but Gladstone, the Colonial Secretary, declined to intervene first, because the Assembly had not asked his opinion on the point pressed by the Council; and secondly, because the interference of the Imperial Government would probably check rather than promote the growth of sound and just views of the question.

From 1846 to 1851 the Assembly concentrated in a remarkable manner upon the one principle of Responsible Government. This was finally granted after much wearisome negotiation over the provision of a Permanent Civil List. The Assembly endeavored to get the Crown to accept a modified Civil List as part of a contract conditional upon the grant by the Crown of Responsible Government. But Lord Grey explicitly refused anything in the nature of a contract laying down the following interesting principle: "The grant of Responsible Government has never been embodied as a condition in similar acts and there is good reason why it should not be so, for the term although very well understood for practical purposes, has no definite meaning in law, and it is therefore impossible to say what would be a fulfillment of the condition within the technical sense which might be put by legal interpretation on the word. The only conditions, therefore, to be inserted in such an Act on the part of Her Majesty's Government are those relative to the surrender of the Crown Revenues, the rest stand on the faith of the Crown."

The achievement of Responsible Government gave the Assembly effective control over legislation in general; for the Lieutenant-Governor could no longer openly espouse the claims of the Council, in view of the fact that he was now compelled to take the advice of his Executive Council, which in turn was

dependent upon the will of a majority in the Assembly. But the ill-spirit that had been engendered by an almost continuous controversy of twenty-five years was not easily laid; and within three years the Assembly and Council were again at feud over a definition of the meaning of Responsible Government and the right of the Legislative Council to contribute its quota to the departmental offices in the Executive Government.

The quarrel broke out in 1854 and was renewed in 1859. In both cases the Conservatives were in a majority in the Assembly and finding the Liberals in a majority in the Council, in a keen party spirit, they tried to constitute the Executive without reference to the Council and even included some departmental heads who had a seat in neither House; or, as the Council said, they were trying to "introduce ingredients of government from the United States into the constitution of this Her Majesty's Colony, to which Her Majesty's subjects are averse." It is not surprising to find that the leaders in this movement had been opponents of Responsible Government while the defenders of the Departmental System of Responsible Government as adopted in Canada, Nova Scotia and New Brunswick, were the veteran Reformers.

The controversy of 1854 was settled by a dissolution in order to put into effect an extension of the franchise, and in the election the Reformers triumphed. But in 1859 when the Conservatives were again in power, the Council petitioned the Queen to coerce the Assembly into accepting members of the Council as ministers. The Assembly sent a counter-petition defending their action in excluding Legislative Councillors, and asking the Queen "to authorize your representatives in this colony so to reconstruct the Legislative Council, previous to the next session of the Legislature, that its political prejudices may not continue to obstruct the efforts of the House of Assembly in perfecting those measures which, in their opinion, are best calculated to uphold the institutions and promote the welfare of the inhabitants of the Colony."

In reply to the petition of the Council, the Colonial Secretary declined to advise Her Majesty to interfere with the proper local authorities in the formation of a new administration, but in reply to the Assembly, he gave the Lieutenant-Governor authority "to make such alterations in the Legislative Council as would ensure the harmonious working of the two branches." Accordingly the Lieutenant-Governor added five members to the Council, increasing the number from 12 to 17.

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In the meantime the conviction had been growing locally that the problems of the Council could be solved only by making it elective. A bill to that end was introduced in 1856 and was given a three months' hoist by a small majority. It was introduced again in 1857 with the same result. In 1858 an election was held—the membership of the Assembly having been increased to 30 by an Act of 1856. When the House met early in 1859 it could not elect a speaker and was dissolved. When it met after another election the speaker was elected by a majority of *one*. In this session the Elective Council Bill was again introduced, accepted in principle by 23 to 2, and in detail by 17 to 9. It was then agreed to defer further consideration of the bill until next session and in the meantime to print it six times in the Royal Gazette.

The discussions on this Bill show that the local statesmen were still convinced that two chambers were necessary to prevent hasty legislation; but they favored the principle of election for reasons which may be summarized as follows:—

- (1) The Council once offered some analogy to the British Second Chamber in that the members were nominated by the Crown, but this analogy no longer exists since they are nominated by party leaders;
- (2) When not in harmony with the Assembly the Council merely obstructs it;
- (3) A nominated member has less weight than an elected one;
- (4) Fourteen members of the last House were pledged to support the Bill, and seventeen in this;
- (5) The experiment has proved successful elsewhere;
- (6) English statesmen favor it from "Lord Derby at one extreme to Mr. Roebuck at the other."

In the session of 1860, contrary to the expectations of those who had read the Royal Gazette, the Assembly resolved "That as the Legislative Council has but recently been reconstructed, the House does not now deem it expedient to go into the discussion of the Elective Council Bill—the subject being such as would necessarily greatly protract the business of the session." The question, however, was taken up in the session of 1861 and, after a conference between the two Houses, the Bill was carried through successfully; but, as it did not meet with the approval of the Colonial Secretary in all its details, it was recon-

sidered in the session of 1862 and amended in accordance with the Duke of Newcastle's suggestions.

The Colonial Secretary's chief objection to the proposed Bill was the heavy property qualification which it required from the candidates, thereby limiting the choice of the constituencies. He argued that the property qualification should be lighter and should be applied not to the candidate but to the elector. "If it is desired," he wrote, "that the two chambers shall somewhat differ in character from each other, the one supplying what the other may be supposed in some degree to want, this object (it appears to me) can only be effected by creating two somewhat different constituencies, and unreservedly trusting each of them to elect that person, whatever his property or station, whom they may deem the most able and trustworthy representative of their views."

The debates on the details of the Bill were rather more lively than those on the general principle although its opponents discussed the question as if it were still an open one, reiterating their objections that an elective Council would be more expensive than a nominated one, that if elected by the same constituency it would be an echo of the Assembly, and if by a different one it would be a source of obstruction. But on the whole there was remarkable unanimity in their desire to incorporate the suggestions of the Duke of Newcastle; and, finally, the amended Bill was assented to locally in April, receiving the Royal Sanction in November, 1862. On December 3 it came into force by proclamation.

The Bill provided for a Council of 13 members, four from each of the three counties and one from Charlottetown. Candidates must be thirty years of age, British subjects, resident in the colony for five years prior to the teste of the writ of election. Former Councillors otherwise qualified were eligible for re-election. Provision was made for periodical elections, one half retiring every four years, the general term of membership being for eight years. The elector must be a British subject over twenty-one years of age, possessing freehold or leasehold property to the value of £100 currency, and in possession for twelve months before the teste of the writ of election. Both candidate and elector must be male.

Such in brief was the Elective Council Act of 1862. In the debates of the session the most significant statement of the case was that made by Mr. George Sinclair of Princetown: "An Elective Legislative Council will increase the expense of the Legislature which now amounts to over £3,000. This sum shows

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that we have already altogether too expensive machinery for this small colony; nor does it seem to be required for most of the Bills passed here are only transcripts of acts in force in other Colonies. Under these circumstances, *I would rather vote for doing away with the Legislative Council entirely.*" In this speech Mr. Sinclair foreshadowed the future. It had taken the various Assemblies over 25 years to achieve what had been vaguely desired in 1834 and again it was to take as long to become convinced of what was but dimly seen at this time. But in 1893 the Council was allowed to disappear with hardly a word in its favor, and the sole argument used against it was the unnecessary expense of a second, elected chamber. As the preamble of the Act of 1893 is its own interpreter it will save further comment to quote it in full:—

"Whereas it is expedient to change the constitution of the Legislature for the purpose of reducing the cost of legislation in the province,

"And whereas the Legislative Council has agreed to surrender its separate powers and privileges and that a Legislature consisting of one House only be constituted, which agreement was made upon the express condition that at least one-half of the members of that House shall be chosen by electors possessing a real estate qualification of the value of at least \$325, similar to that now required by electors entitled to vote for members of the Legislative Council as at present constituted, such qualification of electors and proportion of members not to be altered or diminished unless agreed to by at least two-thirds of the members of the Legislative Assembly to be constituted by this Act."

The Act then provided for one House of 30 members, 15 to be styled councillors and 15 assemblymen, the life of the House to be four years with at least one session each year, and any resident male British subject of twenty-one years to be eligible for membership. The franchise for the respective Councillor and Assemblyman was to be as fixed by 53 Vic., Cap. I. And the new single chamber with the Lieutenant-Governor was to have all the powers hitherto exercised by the Legislative Council and the House of Assembly.

Thus the Council or Second Chamber in Prince Edward Island is seen reconciled to its own death and assisting at its own funeral in the faith that it would be born again in the Assembly. This peaceful solution of a thorny question is one that deserves considerable attention, for the principle that emerges here is capable of a wider application. The necessity

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of cutting down expenses is often as urgent in a large community as in a smaller one, and if this can be done by reducing machinery without loss of either efficiency or safety it is worthy of emulation. The aim of those who strove for an elective Legislative Council was to secure a Second Chamber that could claim equally with the Assembly to speak for the community but so constituted as "to reflect their settled wishes and principles rather than their transitory impulses." To this end they sought, on the advice of the Duke of Newcastle, to create two constituencies, the one to reflect the wishes of manhood suffrage, the other to reflect the more sluggish interests of property. But in due time they discovered that these two constituencies might be represented better in one chamber than in two. That it would save expense was obvious. But more important still was the fact that the representatives of property, having the greatest stake in the country, could exercise a restraining influence upon those with more transitory impulses in the same chamber; and that, by coalescing with the normal party groups there, they could do so without creating suspicion of class consciousness or of a family compact. In this way the Council, which had known a stormy life of six score years and three, passed quietly to a new life under other conditions. Its passing was more interesting than its life and the manner of its death might well be imitated by other Second Chambers.