

Provincial Requests for Amendments to the B.N.A. Act

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The Quebec Legislative Assembly's Address for an amendment to the British North America Act was by no means unprecedented. Even a rather hasty examination of the *Journals* of the various provincial Assemblies reveals at least nine other cases.

In 1868, the Nova Scotia Assembly unanimously passed an Address to the Queen asking for repeal of the Act as it affected Nova Scotia;¹ an Address to the Lieutenant-Governor asking him to "transmit the foregoing Address to be laid at the foot of the Throne";² and a further Address asking the Lieutenant-Governor to transmit to "Her Majesty's Principal Secretary of State for the Colonies" the resolutions unanimously adopted, and the debates of "the latter part of the present session," in order to let the Secretary of State know that he had been "misinformed as to the acquiescence of this Province in confederation," and to "make known to Her Majesty's Ministers the hope and confident expectation" of repeal.³

In 1877, the Nova Scotia Assembly passed an Address to the Queen for a British Act to give validity to various actions taken under the pre-Confederation Great Seal of Nova Scotia, which had been superseded, but which the provincial Government had gone on using for some considerable time.⁴ The Assembly also adopted an Address to the Governor-General asking him to transmit this Address to the Queen, and an Address to the Lieutenant-Governor asking him to transmit both Addresses to the Governor-General.⁵

In 1879, the Legislative Council of Nova Scotia having rejected a bill for its own abolition, the Assembly passed an Address to the Queen asking for an amendment to the British North America Act,

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¹ *Journals of the Legislative Assembly of Nova Scotia* (1868), February 22, pp. 37-39.

² *Ibid.*, p. 40.

³ *Ibid.*, pp. 118-19.

⁴ *Ibid.*, (1877), March 26, pp. 68-70; April 5, pp. 88-90; April 6, pp. 92-3. See *Canada Sessional Papers*, (1877), no. 86; *Lenoir v. Ritchie* (1880) 3 S.C.R. 575; 40 Vict. c. 3 (Can.); 40 Vict. c. 1, c. 2 (N.S.); Berriedale Keith, *Responsible Government in the Dominions*, (1912), I, 124 ff.

⁵ *Ibid.*, April 11, p. 104.

to abolish the Council. It also passed addresses to the Lieutenant-Governor and the Governor-General, as in 1877.⁶ The Legislative Council, on the same day, passed a counter-Address to the Queen asking her not to submit to Parliament any such amendment; it also passed the proper Addresses to the Lieutenant-Governor and the Governor-General to ensure transmittal of the main Address.⁷ The Addresses to the Queen were duly forwarded to the British Government, which replied that "the circumstances did not then call for"⁸ an amending Act.

In 1888, after the famous Interprovincial Conference at Quebec, the Nova Scotia Assembly passed an Address to the Lieutenant-Governor asking him to transmit "through His Excellency the Governor General to the Secretary of State for the Colonies" the resolutions of the Conference, with an "intimation" of the Assembly's approval of them, "with a view to" amendments to the B.N.A. Act. This was adopted *nem. con.*⁹

In 1894, the Nova Scotia Assembly, having again failed to abolish the Legislative Council by simple Act, again passed an Address to the Queen (with the usual supplementary Addresses to the Lieutenant-Governor and the Governor-General), asking for a British Act to do the job.¹⁰ The Legislative Council again passed a counter-Address to the Queen, with the usual procedural Addresses to the Lieutenant-Governor and the Governor-General.¹¹ Again, both Addresses to the Queen were forwarded to the British Government, which replied that an amending Act would be "inexpedient", since the provincial Legislature already had the power to alter the Constitution of the province.¹²

The New Brunswick Assembly, in 1888, passed an Address to the Lieutenant-Governor asking him to convey to the Queen its approval of the resolutions of the Interprovincial Conference,¹³ and the Legislative Council, three days later, passed a counter-Address.¹⁴

⁶ *Ibid.*, (1879), April 17, pp. 109-11.

⁷ *Journals of the Legislative Council of Nova Scotia* (1879), pp. 101, 107-12.

⁸ *Journals of the Legislative Assembly of Nova Scotia* (1894), Appendix 17, p. 1.

⁹ *Ibid.*, (1888), April 3, pp. 105-6.

¹⁰ *Ibid.*, (1894), February 9, pp. 113-14.

¹¹ *Journals of the Legislative Council of Nova Scotia* (1894), February 10, pp. 115-22.

¹² *Journals of the Legislative Assembly of Nova Scotia* (1896), Appendix 16, p. 12.

¹³ *Journals of the Legislative Assembly of New Brunswick* (1888), March 15, pp. 59-66; March 16, pp. 71-2; March 19, p. 79; March 20, pp. 86-7; Supplementary Appendix, p. 57.

¹⁴ *Journals of the Legislative Council of New Brunswick* (1888) March 23, pp. 48-56.

The Quebec Assembly, in 1888, passed an Address to the Lieutenant-Governor to communicate to the Governor-General and the Secretary of State for Canada its concurrence in the Interprovincial Conference resolutions.¹⁵ Later in the same session it passed a second Address to the Lieutenant-Governor asking him to transmit its concurrence in the resolutions through the Governor-General to the Secretary of State for the Colonies.¹⁶

The Ontario Assembly, in 1888, having concurred in the Interprovincial Conference resolutions, passed an Address to the Lieutenant-Governor asking him to transmit this approval to the Governor-General and the Secretary of State for Canada.¹⁷ In this case, there does not seem to have been an actual request to send anything to the Queen, but the intention was plain.

The Manitoba Assembly, in 1888, passed an Address to the Lieutenant-Governor asking him to communicate to the Governor-General "and the Secretary of State" (which one, Canadian or British, is not specified) its approval of the Interprovincial Conference resolutions. Here, the intention that the approval should be further communicated to the British Government is clear, as the Assembly defeated an amendment specifically proposing that "His Excellency be asked not to forward the same for submission to Her Majesty in Council."¹⁸

In all the cases from 1877 to 1894 (and there seem to have been no others from then until the recent Quebec Address), the Dominion Government seems to have acted as a mere pipeline to London, and the provincial Assemblies seem to have made no attempt to present their requests for amendments directly. The probability is that the Dominion Government firmly believed that, in accordance with the 1871 resolution of the House of Commons,¹⁹ requests for amendment could be properly made only by joint Address of both Houses of the Dominion Parliament, and that it therefore forwarded the provincial requests simply as it would have forwarded any petition to the Queen from any Tom, Dick or Harry in the Dominion. Advice would have been superfluous. It is also probable that the British Government, as late as 1894, thought itself fully entitled to act as it saw fit on provincial requests; its reply to the Nova Scotia Address of 1894 seems to imply such a view.

¹⁵ *Journals of the Legislative Assembly of Quebec* (1888), May 17, p. 48; May 25-6, pp. 64-77; May 28, p. 83.

¹⁶ *Ibid.*, July 5, p. 335.

¹⁷ *Journals of the Legislative Assembly of Ontario* (1888), February 29, pp. 78-83; March 1, p. 86; March 6, p. 94; March 8, pp. 96-9.

¹⁸ *Journals of the Legislative Assembly of Manitoba* (1888), May 7, pp. 65-76; May 8, pp. 83-4.

¹⁹ *Canadian House of Commons Debates* (1871), March 27, pp. 649-50.

II. — Interpreting The Fulton-Favreau Formula

