

## CABINET GOVERNMENT IN THE PROVINCES OF CANADA

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A fundamental part of the constitution of the provinces of Canada is responsible government: the executive power is exercised by advisers of the Lieutenant Governor who are accountable to the majority in the elected chamber of the legislature. It is generally thought that this principle of government is based upon convention rather than upon law. It is, however, reinforced by the law of the constitution.

The preamble to the *British North America Act* recites that the provinces desired to be "federally united into One Dominion under the Crown . . . with a constitution similar in Principle to that of the United Kingdom." While the words of a preamble are not enforceable law, they constitute a declaration of intention, and there is no doubt that in this case they were intended to imply the principles of responsible government.<sup>1</sup> Furthermore, as Dicey points out, the power of appropriation possessed by the legislature is itself a round-about safeguard of responsible government, since a ministry without a majority could not get supply and would therefore come ultimately into conflict with the law.<sup>2</sup> The *British North America Act* goes somewhat further. Section 66 enacts that "the Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof."

This, of course, does not ensure ministerial responsibility to the legislature, but it has the effect of asserting collective ministerial responsibility for executive acts. There is little doubt that this was its purpose. Sir Edmund Head, in a despatch to the Secretary of State on March 4, 1858, pointed out the relevance of the identical phrasing of the *Canada Interpretation Act* (12 Vict. c. 10) to the operating principles of responsible government.<sup>3</sup>

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<sup>1</sup>It was intended that this provision should be in the body of the Act. Speaking in the Canadian Confederation Debates on February 6, 1865, Sir John A. Macdonald said "in framing the Constitution, its first sentence should declare, that the Executive authority or government should be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well-understood principles of the British Constitution." Quoted in W. P. M. Kennedy, *Statutes, Treaties, and Documents of the Canadian Constitution* (London, 1929), p. 559. This declaration appeared in the *Quebec and London Resolutions*, but it was disarticulated by the parliamentary draftsmen. Section 9 of the *B.N.A. Act* vests executive authority in the Queen, but the "well-understood principles of the British constitution" were watered down to the phrase quoted above and relegated to the preamble.

<sup>2</sup>A. V. Dicey, *The law of the Constitution* (London, 1939, Ninth ed.), p. 446 ff.

<sup>3</sup>*Public Archives of Canada. Secret and Confidential Despatches, Colonial Secretary, 1856-1866 G-10. Vol. 2.*

The constitutional basis of the executive of the various provinces varies. New provisions had to be made for the Provinces of Ontario and Quebec, which were created *de novo* and some thirty sections of the B.N.A. Act deal with the framework of their constitutions. New Brunswick, Nova Scotia, Prince Edward Island, British Columbia and Newfoundland came into the union with pre-existing constitutions which were a largely "unwritten" mixture of royal grants, British statutes, custom, and colonial legislation. The self-governing institutions of both British Columbia and Newfoundland were in an imperfect state when they entered the union, and were supplemented by provincial legislation. The constitutions of the three provinces which were created out of the territories were initially provided for by federal statute. All of the provinces have the full power to amend their own constitutions ("except as regards the Office of Lieutenant Governor") and have made various modifications in them.

While the provinces have responsible government, this is not unrestricted, for there are limitations on provincial autonomy somewhat similar to those imposed on British self-governing colonies before the *Statute of Westminster*. The Lieutenant Governor is not only the constitutional head of state, insofar as the powers of the province extend, he is also a "dominion officer" required to exercise such reserve powers in the interests of the federal government as may be required. It is clear that, in addition to the normal discretionary powers inhering in his office, he has a legally unrestricted power to reserve his assent — or to withhold it altogether — against the advice of his provincial ministers.<sup>4</sup> In the ordinary administration of the government, provincial Lieutenant Governors are as likely to act in accordance with ministerial advice as the Queen or the Governor General, nevertheless the Lieutenant Governor's discretionary powers are clearly more alive — at least in some provinces — than would normally be expected in a constitutional head of state. It should be noted that the Lieutenant Governor of Alberta reserved three bills for the signification of the Governor General's pleasure in 1937.<sup>5</sup> Furthermore, the Lieutenant Governor of Prince Edward Island in 1924 withheld assent to a bill respecting the union of certain churches under the name of the United Church of Canada, and in 1945 the Lieutenant Governor refused assent to a bill to amend the *Prohibition Act*.<sup>6</sup> In spite of these comparatively recent examples of executive discretion, the Lieutenant Governor's dual status does not create a significant impairment of the operation of responsible government in the provinces, though such restriction on provincial power must be noticed.

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<sup>4</sup>See James L. McHenry, *Memorandum on the Office of Lieutenant-Governor of a Province*, (Ottawa, 1955).

<sup>5</sup>J. R. Mallory: "The Lieutenant-Governor as a Dominion Officer" *Canadian Journal of Economics and Political Science*, (November, 1948, pp. 503-7).

<sup>6</sup>Frank McKinnon, *The Government of Prince Edward Island* (Toronto, 1951), p. 155.

## CABINET AND COUNCIL

In law the executive government in a province is the Lieutenant Governor in Council. In fact, the working structure of the executive is the same as that in the federal government. The Executive Council presided over by the Lieutenant Governor, even for the formal approval of ministerial recommendations, is wholly extinct except in Newfoundland. There, a procedure similar to that followed by the government of Canada in the early years after Confederation is still followed. After draft minutes have been read aloud by the clerk of the Executive Council, they are presented to the Lieutenant Governor for signature.<sup>7</sup>

The holding of a Council by the Lieutenant Governor for the purpose of approving Minutes or Orders in Council is no longer the practice in any other province. It is possible that, in some provinces, this practice had already ceased at Confederation. In others, for example, Manitoba and Prince Edward Island, the Lieutenant Governor continued not only to preside over formal Executive Councils, but also to participate in the deliberations of his Ministers for some years after the province entered the union.

In general, however, the procedure in both the federal and provincial governments for as long as memory runs has been different. The Cabinet, meeting as the Committee of the Executive Council under the chairmanship of the Prime Minister, agrees to draft minutes and Orders in Council which are subsequently transmitted to the governor for signature in his office. It is called the Committee of Council, as Sir Edmund Head explained in 1858, because it is meeting in the absence of the Lieutenant Governor.<sup>8</sup>

Membership in the Executive Council is provided for in the case of Ontario and Quebec in the British North America Act, section 63 (subsequently amended by provincial statute) and by the statutes of the various provinces. Membership is limited to ministers, and is held only so long as ministers continue to hold office. There are no ministers outside the cabinet and no ministers who are not executive councillors in any of the provinces. In a number of provinces the premier holds office as President of the Executive Council, in a few this office is normally held by another minister, and in some the office is presently left vacant. New Brunswick appears to be the only province in which, as far as is known, the premier has never held the office of President of the Executive Council. In Ontario and Quebec the offices of Prime Minister and President of the Executive Council are coupled by statute. Section 6 of the *Executive Power Act* (1941 R. S. Q., c. 7) says

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<sup>7</sup>The Cabinet meets as the Committee of Council, and draft Minutes or Orders are later given approval by the Lieutenant Governor at a meeting of the Lieutenant Governor in Council. In urgent cases, a Minute may be approved by the Lieutenant Governor without the summons of a formal council, in the same manner as his approval is normally given in other provinces.

<sup>8</sup>See J. R. Mallory, "Cabinet Government in Canada" *Political Studies*, (June, 1954), pp. 142-4.

"The member of the Executive Council holding the recognized position of Prime Minister shall be ex-officio President of the Council", and similar provision is made in the *Executive Council Act* of Ontario.

As was the case with the federal cabinet before the introduction of the Secretariat, the only records of cabinet decisions are contained in the formal Executive Council instruments. Since practically all executive decisions are implemented by order in council, this has been on the whole a satisfactory system of keeping records and no need has arisen for the creation of a secretariat to prepare agenda, record decisions, and follow them up. To this generalization there are two recent exceptions. The provinces of Ontario and Saskatchewan have appointed Secretaries to the Cabinet. These officers are in both cases attached to the premier's office, and they perform duties similar to those discharged by the Secretary to the Cabinet in Ottawa. In Saskatchewan the Secretary to the Cabinet also performs these functions for cabinet committees (except the Treasury Board). The general rule in the other provinces is that no officials attend cabinet meetings. Orders in council are either drafted beforehand in the originating departments, or later on the basis of memoranda of what was decided, prepared by the premier.<sup>9</sup>

Except for the two large provinces of Ontario and Quebec, provincial cabinets are small, ranging from 8 to 14. Ontario had a cabinet of 19 in 1955, while Quebec in the same year had 21. The small size of cabinets has not created any problem of exclusion of ministers from the cabinet — and even in Ontario and Quebec there are no ministers who are not of cabinet rank. While there are *ad hoc*, and some standing committees in most provinces, there are several cabinets which have no committees whatever, except for a Treasury Board.

Quebec is the only province so far to create political offices outside of the cabinet. Parliamentary Assistants, whose duties are analogous to those of parliamentary assistants in Ottawa, were created by statute during the 1954-55 session (3-4 Eliz. II, c. 20).

Ministers without Portfolio exist in some, but not all provinces. It is to be assumed that when such are created the purpose is to secure balanced representation in the Cabinet. This may be of significance where there are not enough departments to go around, or where, as in some of the smaller provinces, the duties of a minister are sufficiently light to justify combining one or more portfolios under a single minister. The conflicting objectives of economy and representation are then secured by rounding out the cabinet with one or more ministers without portfolio who draw no salary as such.<sup>10</sup>

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<sup>9</sup>In Newfoundland, however, the Clerk of the Executive Council does attend all meetings both of the Cabinet (the Committee of Council) and the formal meetings of the Lieutenant Governor in Council.

<sup>10</sup>It should also be noted that sometimes the heads of such utilities as hydro commissions also hold cabinet rank as ministers without portfolio. Dr. MacKinnon has the

## TREASURY BOARDS

All of the provinces now have ministerial committees which exercise important powers of financial review and control over the departments. They are similar in composition and powers to the Treasury Board in Ottawa.<sup>11</sup> The usual size of the Treasury Board is three, and it is usually empowered by statute to act as a Committee of the Executive Council. In this way it is given powers to act in its own right, rather than the derivative and advisory powers usual in a ministerial committee.<sup>12</sup> The powers of the Treasury Board are wide. That of Saskatchewan exists for "the purpose of reference and decision in regard to the matters referred to it", and it has the power to make regulations respecting accounting and auditing and "any and all other matters concerning the finances of the province."

In general the most important power of the Treasury Boards, in addition to regulating the accounting practices of the departments, lies in the preliminary scrutiny of departmental estimates. "Once the Treasury Board is recognized as the Cabinet's financial and budgetary committee, it becomes, or can become, a most important instrument in the rational formulation of policy. This, it seems to me, is the chief objective of a cabinet government — to formulate public policy in a rational and logical fashion within, of course, the political or ideological framework of the government of the day" writes the Secretary of the Treasury Board of Saskatchewan.<sup>13</sup>

There are special features of the Treasury Boards of some provinces which are worthy of note. The Treasury Board in Nova Scotia appears to have a wider control over such matters as establishments than is specifically conferred on other Treasury Boards.<sup>14</sup> This may be because it was constituted

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following interesting note about ministers without portfolio in his native province: "Up to 1935 they had been prevented from taking offices of emolument which were not specially provided for by statute and at the same time retaining their seats in the Legislature. In that year a special act was passed which permitted them, as well as other members of the Legislature, to take certain paid positions such as purchasing agent, and Clerk of the Assembly. It was felt that their work could be done more economically by members of the Legislature than by outside officials. Other special duties, such as acting chairman of committees and piloting certain Government bills through the House, have sometimes been placed in their charge." *The Government of Prince Edward Island*, p. 175.

<sup>11</sup>A full and authoritative discussion of the federal Treasury Board is given by G. W. Stead in *Proceedings of the Seventh Annual Conference The Institute of Public Administration of Canada*, (Toronto, 1955), pp. 79-96. The same volume contains an equally admirable account of the Saskatchewan Treasury Board (*ibid*, pp. 99-112) by A. W. Johnson.

<sup>12</sup>The Treasury Board of Nova Scotia was set up by Order in Council on October 18, 1954. Its powers are almost identical with those of the federal Treasury Board.

<sup>13</sup>Johnson, *loc. cit.*, p. 100.

<sup>14</sup>In Manitoba establishments are dealt with by an Establishments Committee of the Cabinet of which a full time Civil Service Commissioner acts as Secretary. Since one of the other members of the Civil Service Commission is also the Deputy Provincial Treasurer, the Secretary of the Treasury Board is at all times reasonably familiar with

sufficiently recently to incorporate the specific powers conferred on the federal Treasury Board by the *Financial Administration Act* of 1951. The normal composition of a provincial Treasury Board is as follows: the chairman who is the Provincial Treasurer (or Minister of Finance), together with two other ministers. The usual quorum is two. The Secretary of the Board is the Deputy Provincial Treasurer (or Deputy Minister of Finance). In some cases the Secretary attends meetings of the Board, in others he does not. In New Brunswick the Secretary of the Board is not the Deputy Provincial Treasurer, but the Clerk of the Executive Council. An even more important departure from the pattern is noticeable in the Quebec Treasury Board. Section 10 of the *Treasury Department Act* (1941 R. S. Q. c. 71) provides that "The Prime Minister shall be the chairman of the Board."

In the case of Prince Edward Island, Dr. MacKinnon reaches the following conclusion:

"(The) inner Cabinet received statutory recognition and special powers when it was constituted the Treasury Board for the Province. The *Legislative Assembly Act* of 1940 provided that four members of the Cabinet were to form the Treasury Board with the Provincial Treasurer as chairman and the Deputy Provincial Treasurer as secretary. It became customary to confine membership in this body to Ministers with Portfolio, a practice which was recognized by a statute in 1947 which stated that the Board shall consist of the Premier and the heads of the Public Departments of the Government. The functions of the Treasury Board are to act as a committee of the Executive Council on all matters relating to finance, revenue, contracts, and expenditure of public moneys which are referred to it by the Council, or to which the Board thinks it necessary to call the attention of the Council, and to make regulations for the administration of the Public Service, subject to the approval of the Lieutenant-Governor-in-Council. While the status and functions of the Treasury Board are similar on paper to those of its namesake in the federal government, actually they are not of comparable significance in view of the small civil service and the restricted financial duties. They provide, however, a convenient justification for dispensing with the services of the whole Cabinet."<sup>15</sup>

#### CHARACTERISTICS OF CABINET GOVERNMENT

Generalization about cabinet government in the provinces is difficult. Some provinces are small, closely-knit communities which have made little alteration in their formal structure of government for a century. For them elaborate machinery is unnecessary and the realities of influence and power are often very different from the formal structure. At the other extreme large provinces are independent states in miniature. They require, and are beginning to have, highly skilled civil services, and the complexity of their business requires an intricate structure of organization in order to carry the heavy weight of government decisions.

Other differences are equally important. The character of the party systems, and of the operation of parliamentary government, differ widely. The chaotic

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the work of the Establishments Committee. In Alberta there is a Joint Council made up of three ministers and three members of the Civil Service Association. In addition to this there are in Alberta Standing Cabinet Committees on Civil Defense and on the Research Council.

<sup>15</sup>*The Government of Prince Edward Island*, p. 176.

politics of British Columbia, which has never cheerfully accepted a two-party system on national lines, has modified from time to time the normal operation of cabinet government. In British Columbia, as in Manitoba, coalition governments have eroded the clear lines of collective responsibility which cabinet government requires. In the prairies, the powerful impact of agrarian reform movements with their distrust of party politicians and their firm belief in constituency autonomy has undermined party discipline and weakened the unity and authority of cabinets. In the Atlantic provinces, politics still wears the raffish air of the eighteenth century. The scent of brimstone hangs about the hotel-rooms and caucus-rooms of politicians who have yet to receive the gospel of political reform. In Quebec, even among French Canadians, the phrase "boss-rule" is in common currency. Ontario has had, within the last twenty years, a regime at once radical, demagogic, and corrupt, in which it was difficult to distinguish the sober lineaments of the British cabinet system.

Party discipline and cabinet solidarity have been weakened by landslide elections which have enfeebled and even in one case extinguished the legislative opposition.<sup>16</sup> There were cases in Prince Edward Island in the 1940's of Ministers openly opposing government measures on the floor of the legislature,<sup>17</sup> while in Manitoba in 1940 the premier and some ministers abstained on a bill introduced by one of their colleagues.<sup>18</sup>

In general, while the principle of sectional representation in the cabinet is carefully followed, the strength of sectional veto groups is less. There being less "diffusion of power" in the cabinet, the position of the premier is notably stronger than in the federal cabinet. This is often enhanced by a generally lower level of ministerial salaries which produces, except among the few "key" members of a government, a large group of clearly part-time ministers who cannot afford to forsake their private business affairs and who thereby sacrifice political influence in the cabinet. In consequence, the provincial premier is often a one-man administration — the acknowledged chief of his party and the unchallenged head of his administration. Examples leap to mind: Aberhart, Hepburn, and Duplessis by no means exhaust a list that could be made.

In general provincial cabinets are considerably larger than is necessary for the transaction of business. Even Prince Edward Island, with a cabinet of nine, experiences a concentration of effective power in four or five ministers at the expense of the full cabinet. Indeed, it would appear that nearly all provincial cabinets are too large. A recent article in *The Economist*, with a witty and skilful deployment of tongue-in-cheek "scholarly apparatus", has conceptualized what has long been known by observation and common sense

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<sup>16</sup>This happened in Prince Edward Island in 1935.

<sup>17</sup>Frank MacKinnon, *op. cit.*, pp. 190-4.

<sup>18</sup>H. McD. Clokie, *Canadian Government and Politics* (Toronto, 1950), pp. 208-9.

about the real nature of committees.<sup>19</sup> There it is argued that, in considering size and effectiveness of committees, such bodies are afflicted by a law of growth which drives to a size which destroys their effectiveness. This point is reached at what is called "the co-efficient of inefficiency". This number is 20 or perhaps 21. "Cabinets with a membership in excess of 21 are losing the reality of power and those with a larger membership have already lost it."

If this is the case we surely need to know a great deal more than we do about the operation of the cabinets of Ontario (19 members) and Quebec (21 members). If they have lost central executive power, to whom have they lost it? In the case of the federal cabinet we can give some sort of an answer. There has been visible for years the blurred outline of an inner cabinet whose composition is based in part on personality and in part on some recognition of regional representation. Furthermore, the marked sectional character of Canadian politics has created a pattern of representation and sectional veto which still retains final power of decision in the cabinet. The development, since 1940, of a complex system of cabinet committees has assisted in preventing too great a concentration of power in the cabinet itself.

But how far do cabinet committees really operate in such provinces as Ontario and Quebec? The relative homogeneity of a single province (even a large one) removes a centrifugal force which could lead to a considerable concentration of power within the group of nominal equals which comprise the cabinet. We do not know how far a provincial cabinet is a genuine deliberative body whose considered agreement is necessary for policy to be arrived at, and how far it is simply a body which meets to ratify that which has already been settled by some other process. The essentially informal and secret character of cabinet government makes such questions hard to answer, for statutes, rules and orders which might support a conclusion are necessarily lacking.

Provincial government as a subject of serious study in Canada has suffered from inexplicable and almost total neglect. It is fairly clear that, for some time to come, we must await the production of serious studies of the constitutions and the politics of the provinces of Canada before meaningful conclusions can be reached about large parts of the structure of the government of Canada. It is of some importance to know where real power lies, and how it is exercised. For the moment we know something of the formal structure of government, but politicians, business men, and journalists who are in intimate contact with the process of government suggest that processes of decision-making in all the provinces operate in a manner which is not easily explained simply by reference to the known rules of cabinet government.

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<sup>19</sup>"Parkinson Looks at Cabinet Governments" *The Economist*, CLXXXI, No. 5906 (Nov. 3, 1956), pp. 395-7.