

No. 1.

Lord Glenelg to
Sir J. Colborne,
19 February 1838.

Habeas Corpus Act, which will enable you to detain such persons in prison till the arrival of Lord Durham. You will propose to the council this measure, if, for the reason I have stated, or for any other reason, you may think it expedient. You will thus be enabled immediately to revoke the proclamation of martial law in the district of Montreal, if still in force. You will also propose to the Council any other measure which the circumstances of the province may render necessary, and which cannot safely be postponed until the arrival of the Governor-general; and you will submit to it an ordinance in conformity with the 4th clause of the enclosed Act, authorizing the repayment out of the monies in the hands of the Receiver-general of the sums advanced from the Imperial Treasury, under the Act of the last Session of Parliament, for services connected with the administration of justice, and of the civil government of Lower Canada.

As you will avail yourself of the Crown revenues for the ordinary purposes of the government during your provisional administration, Her Majesty's Government recommend that, with the exception above-mentioned, you should not propose to the council any law for the appropriation of the public monies of the province, unless in the event of any urgent necessity for expenditure which cannot be defrayed from other sources.

It is the intention of Her Majesty's Government that the Earl of Durham should enter on the discharge of the duties with which he is entrusted wholly unfettered as to the choice of councillors; and with this view you will cause it to be distinctly understood by every gentleman whom you may nominate to the special council, that his appointment will be entirely provisional, and that the Royal instructions which I now send will be revoked and superseded by the commission and the instructions under the sign manual and signet, of which Lord Durham will be the bearer. It is of the utmost importance that, with the responsibility which will attach to the discharge of the important functions of the Governor-general, he should be wholly unrestricted by any previous selection in the composition of the council with which he will act. The tenure of the office of special councillor under the accompanying instructions will therefore be clearly understood as only temporary. There are some other topics affecting chiefly the manner of proceeding under this Act, to which it is necessary that I should direct your attention.

You will observe that, in the event of the delegation by The Queen to the Governor, of the power of appointing the special councillors, no particular form of making that appointment is prescribed. You will act in this respect under the opinion of the provincial law officers of the Crown. But I would suggest, that the proper form would be that of addressing to each special councillor a commission in Her Majesty's name, under the public seal of the province.

In conducting the business of a legislative body, novel in its constitution, many questions of form will present themselves which it is desirable to anticipate. The Crown, in the exercise of its prerogative, has repeatedly, of late years, established councils possessing legislative authority in other British colonies. It has been customary on such occasions to require, as a preliminary to any other proceeding, that some fixed rules should be laid down for regulating the procedure of the legislature, for the purpose of maintaining order and regularity, and for the prevention of possible abuses.

As an example, I may refer to the case of the Cape of Good Hope, where, in obedience to the Royal instructions, the Governor, with the assistance of his legal advisers, framed and proposed to the council, at their first meeting, a short code of rules, which, with a few subsequent alterations, have continued to the present day to form the guide of their legislative proceedings.

I enclose a copy of them, as they may be found useful in suggesting some corresponding regulations to be recommended to the special council of Lower Canada. I need hardly say that they are not to be regarded as precedents for exact imitation, some of them being obviously inapplicable to the special council in Lower Canada, but merely as affording an example which you will use so far, and only so far, as it may appear to you adapted to the case and the circumstances of the province. The rules adopted should likewise be provisional only.

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