

We who have equal responsibility have time to spare, and are willing to share the load. This has been accomplished by mutual agreement as regards the disposal of divorce legislation. It might well be possible to accomplish it in some other matters as well.

May I now say a few words about my conception of the position and responsibility of the Senate generally? I am indebted to our Law Clerk and Parliamentary Counsel for a very excellent paper which he prepared last year on the ideas which the Fathers of Confederation had in mind when confederation was being proposed.

In introducing the motion for the approval of the resolutions passed at the Quebec Conference in the House of Assembly of Upper Canada, and after discussing the difficulties which had existed in the relations between the two Houses in the Legislature of Upper Canada, Attorney-General Macdonald, afterwards Sir John A. Macdonald, spoke of the Upper House to be established under the Canadian Constitution, as follows:

The Council was becoming less and less a substantial check on the legislation of the Assembly; but under the system now proposed, such will not be the case. No ministry can in future do what they have done in Canada before—they cannot, with the view of carrying any measure, or of strengthening the party, attempt to overrule the independent opinion of the Upper House by filling it with a number of its partisans and political supporters. The provision in the Constitution, that the Legislative Council shall consist of a limited number of members—that each of the great sections shall appoint twenty-four members and no more, will prevent the Upper House from being swamped from time to time by the ministry of the day, for the purpose of carrying out their own schemes of pleasing their partisans. The fact of the government being prevented from exceeding a limited number will preserve the independence of the Upper House, and make it, in reality, a separate and distinct chamber, having a legitimate and controlling influence in the legislation of the country. The objection has been taken that in consequence of the Crown being deprived of the right of unlimited appointment, there is a chance of a dead-lock arising between the two branches of the legislature; a chance that the Upper House being altogether independent of the Sovereign, of the Lower House, and of the advisers of the Crown, may act independently, and so independently as to produce a dead-lock. I do not anticipate any such result. In the first place we know that in England it does not arise. There would be no use of an Upper House if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent house, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill-considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people.

I believe, honourable senators, that Sir John A. Macdonald and the other Fathers of Confederation contemplated that the upper house would be an independent house, and that its constitution would prevent it ever becoming swamped by any one party. However, I am quite sure the Fathers of Confederation never considered the possibility that the efflux of time would bring about, in as effective a way as if there had been unlimited power of swamping, a composition of the membership which they sought to avoid. Honourable members will recall that when senators were appointed to represent three divisions, the British North America Act provided that, if at any time it was deemed fit, two additional senators for each division, or a total of six, could be appointed. With the amendment of the Act by which a fourth section was added, provision was made for the appointment of a total of eight additional senators, two from each division. This would hardly be regarded as power to swamp, in the ordinary sense of the term.

I emphasize the fact that the conception was that this house would be independent and would act in a semi-judicial capacity; and I believe it has fulfilled its functions in this regard. Speaking with a background of some experience, for I have been government leader for five and a half years, I confess that my most difficult moments in this house have been when the fate of some piece of government legislation which I have introduced has hung in the balance. Those difficult moments have not been occasioned wholly by the official opposition; they have come in large measure from honourable senators nominated by the same government that appointed me. I believe that this house adopts a much more judicial attitude towards legislation than the country gives it credit for. But while it is important to maintain this attitude, it is no less important to have it recognized by the public.

One of our problems at the moment is that, because of unusual conditions, the number of members of one party—appointees of a Liberal government—has exceeded in the last two or three years any party majority which has existed since Confederation. That disbalance is likely to become even greater in the next few years. That problem, I think, is one to which we should address ourselves if we desire the Senate to maintain the appearance of being what the Fathers of Confederation desired it to be, an independent house.

Until about 1945 the maximum number of senators appointed by any one government, representing either of the two major political