



# REFERENCE PAPERS

## CANADIAN INFORMATION SERVICE

OF THE DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA - CANADA

No. 5

June 17, 1946

### DOMINION DAY

Canada celebrates the founding of the Canadian nation on July 1st of each year. This date was fixed by royal proclamation, in 1867, following the passing of the British North America Act by the British Parliament. This national holiday is known as Dominion Day. Dominion Day is to Canadians what Independence Day is to Americans and Bastille Day to the French.

But the Canadian nation was not born of revolution. It evolved through a series of constitutional processes culminating in Confederation in 1867. The colonies which joined originally in the federation were Upper Canada (Ontario) Lower Canada (Quebec), New Brunswick and Nova Scotia.

With astonishing rapidity the Dominion proceeded to extend itself from the Atlantic to the Pacific. In 1869 the Dominion acquired the vast territories of the Hudson's Bay Company out of which have been carved the provinces of Manitoba, Saskatchewan and Alberta. In 1871, British Columbia came into the confederation and in 1873, Prince Edward Island also joined. Finally, in 1895, Canada took over from the United Kingdom the islands of the Arctic Archipelago: The face which Canada now presents on the map was finally formed only 28 years after the initial confederation.

From the constitutional point of view the year 1867 is a dividing line between two periods in Canada's history. With the cession of the French colonies to the British by the Peace of Paris, the first period of British rule began. From the year of this treaty, 1763, to Confederation the great constitutional achievement was the winning of responsible government. From Confederation to the present day the great constitutional achievement has been the winning of Canada's sovereignty within the British Commonwealth.

From 1763 to 1774 Canada was governed by the authority of a royal proclamation. In this proclamation by George III the British crown and the Imperial Parliament asserted their absolute sovereignty over all the North American colonies.

In 1774 the Quebec Act was passed by the Imperial parliament. The western territory which France had claimed, extending as far as the Mississippi and south to the Ohio, was included with Canada in what was called the province of Quebec. This vast territory was to be governed from Quebec. The French civil law which had been repealed by the Royal proclamation of 1763 was re-established along side of the English criminal law. The Quebec act as well ordained that the Roman Catholic clergy should continue to receive "their accustomed dues and rights".

After the American Revolution and the influx of the United Empire Loyalists it was apparent that a French type of government was no longer adequate throughout the whole of Canada. In 1791 the Constitutional Act was passed by the British parliament, separating Canada at the Ottawa river into two parts each with its own government. By virtue of this act Upper and Lower Canada came into being. Lower Canada, chiefly French, retained the old system of laws, that is French civil law and English criminal law. Upper Canada had English law in both civil and criminal fields. In lower Canada there was to be a legislative council of not less than fifteen members appointed for life by the governor, acting on the authority of the king and an assembly of not less than fifty members, elected on a property

holding franchise. Upper Canada was provided with a legislative council of not less than seven members appointed by the governor and an elective assembly of not less than fifteen. As the chief executive officers and the direct representatives of the Crown, a governor and a lieutenant-governor were provided for each province. The governor and lieutenant-governor could convoke or dissolve their legislatures, refuse assent to bills or reserve them for the pleasure of the Crown. All acts of the colonial legislatures could be disallowed by the home government within a period of two years.

In 1838 Lord Durham was sent to govern both Canadas with instructions to inquire into the political situation made precarious by the Papineau rebellion in Lower Canada and the Mackenzie rebellion in Upper Canada and to make recommendations on the form of government to be granted to the colony.

He recommended the union of the two Canadian provinces at once, the ultimate union of all British North America and the granting of this large state full self government.

In 1840 the Act of Union was passed to carry out the initial recommendation of Lord Durham's report. The law provided for the union of Lower and Upper Canada under a single government to consist of a governor, a legislative council and an assembly. The governor and the legislative Council of not less than twenty members were appointed by the Crown, the members of the council to hold office for life. The Lower House or House of Assembly consisting of eighty four members was to be chosen by popular suffrage, forty-two members from each of the old provinces. This equal division temporarily gave the advantage to Upper Canada which at that time had a smaller population than the sister province.

The most important omission from the Union Act was the fact that the law did not deal with the executive principle at all, and that no reference whatsoever was made to responsible government, the crux of the Papineau and Mackenzie trouble in 1837. So far as the executive principle was concerned the law showed no advance over the constitutional legislation of 1791.

The germ from which responsible government developed is to be found in Lord John Russell's dispatches of September 7 and October 16, 1839 rather than in the Act of Union. The latter instructions contained the significant sentence "The importance of maintaining the utmost possible harmony between the policy of the legislature and of the executive government admits of no question, and will of course be your anxious endeavor to call to your councils and to employ in the public service those persons who by their position and character have obtained the general confidence and esteem of the inhabitants of the province." A long struggle was necessary before the responsible government became fixed as one of the fundamental customs of the Canadian constitution.

Under a series of governors the Canadas approached and veered away from the accomplishment of responsible government, depending on the personality of the Governor. Nevertheless considerable progress was made under this governorship toward the recognition of at least the principle of responsible government. Robert Baldwin precipitated a discussion of what the governor viewed as "theoretical points of governments" by calling for copies of Lord John Russell's dispatches of 1839 and by moving a series of six resolutions the essence of which was the recognition of cabinet responsibility in colonial government. Sydenham at once drew up four amendments to Baldwin's proposals. They were introduced in the assembly by Samuel Bealey Harrison and were adopted. In conjunction with the contents of Russell's dispatch of October 14, 1839, the adoption of the Sydenham-Harrison Resolutions made responsible government inevitable.

Under Sir Charles Bagot the progress towards responsible government was accelerated. The admission of the French Canadians to the ministry during his regime and the increasing functions exercised by the ministry during his illness marked great steps forward in the struggle for responsible government.

Under his successor Sir Charles Metcalfe the process was once again retarded and it was not until Lord Elgin arrived as governor that responsible government was finally achieved. It was in the passage of the Rebellion Losses Bill in 1849 with the consequent furore over its endorsement by the governor and Elgin's refusal to shift responsibility in a matter of purely local concern to the imperial authorities that established completely the custom of responsible government. Extreme Tories sent petitions to England asking Parliament to intervene and demanding the disallowance of the Rebellion Losses Bill. In the end Lord Elgin's course was fully sustained and his offer to resign was refused by the Colonial Office.

By the end of Lord Elgin's administration many of the principles that the reform group had been fighting for so consistently had been recognized. No appointments to office were thenceforth to be made by the governor except after consultation with his cabinet. It was clearly established that the Governor must not identify himself with any specific political party and that he could not interfere in any election. Matters of purely local concern and application were not to be referred to the home government for decision. In Elgin's administration the governor ceased to attend regularly cabinet meetings.

Similar battles to the one in Upper and Lower Canada were being waged on a smaller scale in the provinces by the sea. By 1855 the evolution of responsible government in New Brunswick was entirely completed. In Prince Edward Island it was in 1863 that the legislative council was made elective and thus the last stage of its self government was achieved. In Nova Scotia through the efforts of Joseph Howe responsible government was won by 1848.

Returning to the picture of the two Canadas the union did not bring political stability. In 1864 the opportunity for change came when New Brunswick, Nova Scotia and Prince Edward Island were considering a federal union.

In that year Sir Charles Tupper, Prime Minister of Nova Scotia, after having received the assurance of the British Colonial Office that there would be no interference from the United Kingdom, arranged for the calling of a convention of delegates from the maritime provinces to meet in Charlottetown in September in order to consider plans for legislative union. The deliberations were interrupted at an early stage by the arrival of a delegation of eight members from United Canada who had previously received permission from the Maritime delegates to attend their conference. The Charlottetown convention, in secret session, agreed on a popularly elected Lower House and a system of equal representation in an Upper House. It adjourned to Halifax and St. John and finally postponed further deliberations until a conference of all the British North American provinces could be arranged to meet at Quebec in the following month.

The Quebec convention assembled on October 10 and adjourned on October 28. Its actual working time did not exceed fourteen days and its sessions were held behind closed doors. Thirty two members constituted this constitutional convention which was the first of its kind in the British Empire. The results of the Quebec conference were incorporated in seventy-two resolutions which became the basis of the British North America Act of 1867. The delegates of the Conference promised to get their respective legislatures to ratify the resolutions. The Resolutions recommended a federal union of all British North American provinces under the British Crown. They provided for a federal government and for provincial governments

in each of the provinces and they enumerated the powers and duties of the federal and the provincial legislatures leaving all the undefined residue or "reserved powers" to the federal government. The battle for ratification began when the seventy-two resolutions of the Quebec Convention were submitted, en bloc, to the respective legislatures. All provinces accepted them except Prince Edward Island who joined some years later.

Federation could not have been accomplished had not responsible government already been a reality in British North America. Responsible government had been achieved in all of British North America except British Columbia by 1863. The Canadian confederation is peculiar in one regard. It is the only case on record to that time in which a group of colonies practically remade their own constitution in a peaceful way.

After the ratification by the provinces concerned, the British North America Act was passed on 29 March, 1867 by the British Parliament. It was substantially unchanged from the proposals presented by the Canadian delegates. The royal proclamation fixing 1st of July as Canada's official birthday, followed immediately the passing of the act.

Since confederation there has taken place a steady development of the powers of the Canadian nation. The development in the status of the Dominion was evident at the successive Colonial Conferences, the name of which was changed in 1907 to Imperial Conferences. At the close of the First Great War, on the initiative of Sir Robert Borden, then Prime Minister of Canada, the Dominions secured recognition as signatory powers of The Treaty of Versailles and were accepted as members of the League of Nations. The present position of Canada in the British Commonwealth of Nations was clearly defined at the Imperial Conference of 1926, attended by Prime Minister King and the late Justice Minister Lapointe. The report of the Inter-Imperial Relations Committee defined the relative position of Great Britain and the self governing Dominions. The committee made the following statement which was endorsed at the conference:-

"They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations."

The statute of Westminster, an Imperial Act which was passed by the Parliament of the United Kingdom in 1931 recapitulated the principles declared at the Imperial Conference of 1926.

Thus to-day the evolution is completed. The nation born in 1867 stands within the British Commonwealth as a sovereign state.