



What's in a Name:

Parliament and Legislature

The debate over the distinction between the terms "Parliament" and "Legislature" can be traced to the year immediately following Confederation, but it has continued to plague subsequent generations of politicians, officials and translators.

The *British North America Act* established a federal Parliament and provincial Legislatures. In 1868 Ontario passed a law declaring the immunities and privileges of its Legislative Assembly were the same as those of the House of Commons. The Act was disallowed on the recommendation of Sir John A. Macdonald who said that it went beyond the powers granted to provincial legislatures. Under the *BNA Act* Parliament could confer no privileges greater than those enjoyed by the United Kingdom Parliament. Provincial legislatures, however, were bound by no such limitations and if Ontario's Act was not disallowed, Macdonald argued, they might attempt to confer upon themselves and their members privileges in excess of those belonging to the British Parliament. Ontario's Premier, Stanfield Macdonald, said that without such a law members would be more feeble than a Justice of the Peace and the legislature unable to maintain its dignity.

Sir John was adamant on this question but after his defeat in 1874 Ontario passed another Act which set out the specific privileges and immunities which the Ontario Legislature was claiming. This time the federal government did not disallow the Act but the Clerk Assistant of the Senate, Fennings Taylor, took up the issue in a book published in 1879. He said the discrimination made by the *British North America Act 1867* between "legislature" and "parliaments" was not an idle one. On the contrary it drew broad distinctions and carried real meanings whose importance could scarcely be exaggerated. The Parliament of Canada had been made the recipient of honours and trusts that had not only been withheld from the legislatures of the Provinces but which had not, till then, been conferred on any of the colonies.¹

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This view was challenged immediately by S.J. Watson, the Parliamentary Librarian of Ontario. He called it a political heresy which would make the uninformed believe that these legislatures are little better than deliberative bodies; that they possess of right, few executive functions; that their usefulness is a debatable question, and that their existence may almost be said to depend upon suffrage.² Watson argued that the old Assembly of Upper Canada was referred to in official documents as the Provincial Parliament. Furthermore the Lieutenant-Governor, Lord Simcoe, had clearly stated in 1792 that the *Constitutional Act* had established a British Constitution with all the forms which secure and maintain it.

Fennings Taylor responded that Simcoe had no authority to make such statements. But according to Watson the great self-evident fact remains unassailed and unassailable, that the Legislature of the Province of Upper Canada, as long as it existed, continued to do all things pertaining to a Parliament. It raised money by taxes, made, enforced and repealed law; exercised the right to arrest and imprison. In a word the Upper Canada Legislature, in its local sphere, was as much a Parliament as, in its Imperial sphere, was the House of Commons in Westminster.³

Years later the debate was still going on although the participants had changed. In 1943 Arthur Beauchesne, long-time Clerk of the House of Commons dismissed as worthless the custom of the old colonial legislatures of calling themselves Parliaments. Furthermore, according to Beauchesne, the procedure prescribed in the *BNA Act* for appointing members to the Cabinet also showed that a real parliamentary system did not exist in the Provinces, since the Executive Council of a Province is composed of such persons the Lieutenant-Governor "thinks fit" whereas for the Dominion, there is a Privy Council, summoned by the Governor-General. It is from that Council the Cabinet is chosen in accordance with the principles of the Constitution of the United Kingdom.⁴

Beauchesne's position was attacked immediately by the Law Clerk of the Quebec Legislature, Louis Phillippe Pi-

geon. He countered the argument about rights and privileges with citations from a dozen different judicial decisions which affirmed that provincial legislatures are as supreme as any other Parliament in areas of their jurisdiction. As for the question of appointing Cabinet members he argued that usage is the key issue. In the Provinces, as in the Dominion, the official lives of the ministers depend on the Prime Ministers because such is the usage, not because such is the law.⁵

In Quebec the distinction between *législature* and *parlement* is further complicated because *législature* has been used to mean either (1) the Assembly of the Legislative Assembly or (2) the period for which the assembly is elected. Prior to 1968 the *Quebec Legislature Act* defined *législature* as consisting of the Lieutenant Governor, the Legislative Council (Upper House) and the Legislative Assembly. After abolition of the Legislative Council in 1968 the *législature* consisted of the Lieutenant Governor and the National Assembly.

In December 1982 a new bill was introduced which goes some way to clarifying this situation. Article 2 of Bill 90 stipulates that the Lieutenant-Governor and the National Assembly constitute the *parlement* of Quebec. It further states, in article 6, that *législature* is the maximum five year period following publication in the Official Gazette of the list of candidates elected in a general election. Thus Bill 90, which follows recommendations in a report to the Assembly by Jean-Charles Bonenfant, would seem to have the effect of raising, linguistically at least, the provincial assembly to the same status as the federal one.

1. Fennings Taylor, *Are Legislatures Parliaments?* John Lovell, Montreal, 1879, p. 207.

2. S.J. Watson, "The Powers of Canadian Legislatures", *Rose Belford's Canadian Monthly and National Review*, vol. 3 (November 1879) p. 519.

3. *Ibid.*

4. Arthur Beauchesne, *Rules and Forms of the House of Commons*, 3rd edition, Canada Law Book Co., Toronto, 1943, p. XXV.

5. Louis Phillippe Pigeon, "Are the Provincial Legislatures Parliaments?", *Canadian Bar Review*, vol. 21 (December 1943) p. 233.