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EVOLUTION AND REFORM OF THE CANADIAN CABINET.

It has been pointed out that the unique feature of the evolution of the cabinet system in Canada is the principle of representation of province, race, and religion which has been adopted in the composition of the executive in response to political conditions and mental attitudes which were recognized and encouraged by the adoption of the federal constitution.¹ It remains to discuss the effect of this development upon the operation of government, and to describe other significant changes in the composition of the executive which have taken place within recent years. Consideration may then be given to various proposals for the correction of specific abuses in the conduct of the executive branch of the government with a view to an improvement in its efficiency as a deliberative and administrative organ of the constitution.

The most obvious result of the federalization of the Canadian cabinet is the increase it has brought about in the size of ministries. In the last pre-federation ministry there were twelve members.² This number, however, was abnormally large because of the double-headed governments of that period which included an Attorney-General and a Solicitor-General for each of the united provinces of Upper Canada and Lower Canada. Had this arrangement not been deemed necessary, the administration which carried forward the proposals for federation would have been reduced to ten members. In the period of the Act of Union 1841-1867, the numerical strength of the Canadian ministries varied from eight to twelve.³ The first Dominion cabinet consisted of thirteen members. This number, as Sir Joseph Pope has explained, was not determined by consideration for an efficient and economical departmental division

¹ Federal Influences on the Canadian Cabinet, *The Canadian Bar Review*, Feb. 1933.

² J. O. Coté, *Political Appointments and Elections in the Province of Canada from 1841 to 1865*, p. 35.

³ J. O. Coté, *op. cit.* pp. 24-35.

of the executive authority, but was the result of the acceptance of the principle of provincial, racial, and religious representation in the first federal administration formed by Sir John Macdonald.⁴ Subsequent additions to the number of ministerial posts have been due in large measure to the extension of this principle of cabinet representation as new provinces were admitted to the Dominion. With the tentative acceptance of the principle of direct provincial representation by the Union Government in 1917, the post-war cabinets have included from seventeen to twenty members. The present conventions respecting cabinet representation call for sixteen members as a minimum.⁵

Various attempts have been made to arrest this tendency towards an enlargement of the cabinet. For a considerable period it was held in check by the practice of giving the newer western provinces a combined territorial representation in the cabinet. But this expedient was only feasible when these provinces were in a stage of adolescence. Its abandonment in favour of direct provincial representation would mean inevitably an increase in the size of the cabinet. A more hopeful method of arresting the growth of the executive was recommended by British usage and involved the recognition of a distinction between ministerial posts and cabinet posts. In 1887 an Act was passed creating a new department of Trade and Commerce which embraced within its organization the older departments of Customs and Inland Revenue.⁶ The legislation providing for this change did not come into force by proclamation until five years later. It reduced the number of cabinet ministers to twelve, but under the new department two new offices were created, a Controller of Customs and a Controller of Inland Revenue, these positions being analagous to under-secretaries of state or parliamentary heads of departments not of the cabinet. At the same time, provision was made for the office of Solicitor-General, another ministerial post which was not of the cabinet.⁷ As a result of these changes, the cabinet of 1893 numbered twelve ministers with portfolios, and two without, besides the three ministers who were not members of the cabinet.

⁴ Joseph Pope, *Sir John A. Macdonald*, Vol. I, p. 330.

⁵ This assumes three representatives of the French-speaking population in Quebec, one from the Protestant English-speaking minority in Quebec, five from Ontario, and one each from the remaining seven provinces. An equal number of representatives from Ontario and Quebec would reduce the total membership of the cabinet to fifteen. A Minister from one of the provinces would represent the Irish-Catholic population.

⁶ 50-51 Vict. Chap. 11 (1887). This Act came into force by Proclamation on Dec. 3rd, 1892.

⁷ 50-51 Vict. Chap. 14 (1887). This Act also came into force by Proclamation on Dec. 3rd, 1892.

In conjunction with this policy of reducing the number of departmental posts with cabinet rank there is evidence of a curious attempt to conciliate provincial claims to representation by increasing the number of ministers without portfolio. It is noteworthy that there were no ministers without portfolio in Sir John Macdonald's first administration. In Alexander Mackenzie's government Hon. Edward Blake and Hon. Richard Scott were of the cabinet but without portfolio for a few months pending their assumption of departmental posts. In Macdonald's administration 1878-1891, there were never more than two ministers without portfolio at the same time, and usually only one.⁸ In the Mackenzie Bowell ministry of 1894 there were three ministers without portfolio.⁹ Evidently it was found necessary to increase the number of cabinet posts without portfolio as soon as the departmental posts were reduced under the Act of 1887. But this means of satisfying provincial claims to seats in the cabinet was foredoomed to failure. A Controller of Customs or a Minister without Portfolio was not regarded as a suitable substitute for a minister of full cabinet rank. What was most desired by the provinces was representation in the cabinet and the control by their representatives of departments of government, with patronage in their gift. If the experiment of 1892 was intended to sound out the willingness of the provinces to accept lesser ministerial posts or cabinet posts without portfolio in lieu of departmental posts with full cabinet rank it proved that there was no disposition on their part to exchange substance for shadow. The new policy was of brief duration. In 1895 the ministers holding the inferior departmental posts were brought into the cabinet of Mackenzie Bowell.¹⁰ Two years later under the Laurier administration the Act of 1887 was repealed and the then incumbents of the offices of Controller of Customs and Controller of Inland Revenue were promoted to full cabinet rank as the Minister of Customs and the Minister of Inland Revenue.¹¹ This restoration of the *status quo* led also to a reduction of the number of ministers without portfolio. In subsequent cabinets there has seldom been more than one minister without portfolio, although a modification of this practice has arisen with the growth of a new relationship which developed in due course between the cabinet and the Senate.

⁸ N. O. Coté, *Political Appointments, Parliaments, and the Judicial Bench in the Dominion of Canada*, p. 42.

⁹ N. O. Coté, *op. cit.* p. 49.

¹⁰ Arthur Berriedale Keith, *Responsible Government in the Dominions*, (1928) Vol. I, p. 237. See also Debates of the House of Commons (Canada), 1896, Vol. I, p. 1065 *et seq.*

¹¹ 60-61 Vict. Chap. 18 (1897).

A significant result of the federalization of the cabinet has been the displacement of the Senate as the protector of provincial rights and the guarantor of rights accorded to racial and religious minorities. When the federal scheme was worked out around the conference table at Quebec and London it was anticipated that the Senate as a co-ordinate branch of the legislature in which Quebec, Ontario, and the Maritime Provinces were equally represented, would counter-balance the preponderance given to the larger provinces and the English-speaking majority in the House of Commons. Had the composition of the Senate been based upon the commonly accepted federal principle of equal representation from the provinces, it might have established itself as the guardian of provincial rights. But the rejection of the principle of absolute provincial equality in the original scheme of federation, the increase in the size of the Senate consequent upon the admission of new provinces, and the more recent decline of its prestige and power since the passage of the Parliament Act of 1911, have combined to deprive that body of any real title to guardianship of provincial and minority rights. As the bulk of legislation is now introduced by the government after full discussion by the cabinet, the presence of minority and provincial representatives on the federal executive has come to be regarded as a more effectual safeguard for provincial, racial, and religious interests than the representation of these interests in the Upper House. This, indeed, had been foreseen by that clear-visioned statesman, Hon. Christopher Dunkin, when the Quebec Resolutions were under discussion in the Parliament of the United Provinces in 1865. He said:

I think I may defy them to shew that the Cabinet can be formed on any other principle than that of a representation of the several provinces in that Cabinet. It is admitted that the provinces are not really represented to any Federal intent in the Legislative Council. The Cabinet here must discharge all that kind of function which in the United States is performed in the Federal sense by the Senate. And precisely as in the United States, wherever a Federal check is needed, the Senate has to do Federal duty as an integral part of the Executive Government. So here, when that check cannot be so got, we must seek such substitute for it as we may in a Federal composition of the Executive Council; that is to say, by making it distinctly representative of the provinces . . .¹²

Your federal problem will have to be worked out around the table of the Executive Council. But this principle, which must enter into the formation of the Executive Council, is clearly inconsistent with the principle of the British Constitution, which holds the whole Cabinet jointly responsible for every act of the Government. In our present union of the Canadas, we have latterly gone upon the plan of having almost two ministries.

¹² *Confederation Debates*, p. 497.

The plan urged upon our acceptance purposes the experiment of six or more sections in the Executive Council, instead of the two we have found one too many. Among the difficulties that will grow out of that plan is this, the absolute necessity of either having an Executive Council that will be ridiculously too numerous, or else one that will represent the different provinces in sections entirely too small.¹³

Although the results of the federalization of the Canadian cabinet have not proved to be as alarming as Mr. Dunkin suggested, his remarks on this head stand as one of the most accurate of the several predictions of future constitutional developments which were uttered in the course of the memorable debate on the Quebec Resolutions.

Along with the federalization of the cabinet there has been a growing tendency to assign certain portfolios or departments to particular sections of the country. This practice, it would appear, is the result of a localization of the broad economic interests of the Dominion. Thus, in Western Canada agriculture is the predominant industry, while the fisheries form an important economic interest of the Atlantic seaboard. So it has come to pass that certain portfolios most closely related to agriculture, land policy, and immigration have come to be regarded as belonging to cabinet members from the western provinces, while others are considered as belonging properly to representatives of the eastern provinces. Almost from the time of its creation, the Department of the Interior has been held by a minister from Western Canada.¹⁴ With very few exceptions the Department of Immigration has been given to a western minister since its organization as a separate department in 1917. The Department of Agriculture has been assigned to a western member of the cabinet from 1911 to the present without exception. The Department of Marine and Fisheries has never gone west of Quebec and has been given usually to a representative of one of the Maritime Provinces. When provision was made for a Minister of Fisheries in 1930, it was contemplated that this portfolio would be placed under a minister from one of the Maritime Provinces.¹⁵ In the earlier period when the Intercolonial was the only state-owned railway, the Department of Railways was given usually to an eastern

¹³ *Ibid.*, p. 513.

¹⁴ Hon. Edgar Dewdney was the first western representative to receive this portfolio. From this time (1889) to the present the Department of the Interior has been administered by a Minister from one of the western provinces.

¹⁵ The first appointee to this office was Hon. Cyrus MacMillan who entered the cabinet of Mr. Mackenzie King in 1930 as a representative from Prince Edward Island. In the administration formed by Mr. Bennett in 1930, the Department of Fisheries has been administered by the Minister of Marine.

representative.¹⁶ In more recent years, with the expansion of the state-owned railways into a continental system, this portfolio has been assigned to a representative from Central Canada or from the western provinces. There are now five portfolios which appear to be quite definitely attached to particular sections of the Dominion, Interior, Immigration, Agriculture, Marine, and Fisheries.

Another interesting feature of the evolution of the Canadian cabinet is the significant diminution of Senate representation on the federal executive. The earlier usage was to assign a number of portfolios, never less than two, to members of the Senate. As Todd observes:

Following the practice previously observed from the first introduction of responsible government into the old province of Canada, it has been customary that at least two members of the cabinet should have seats in the upper house, to take charge of public business therein, and generally to represent the administration in the legislative council, or, as it is now termed, the senate. It is understood that less than two members would not suffice for this purpose.¹⁷

In Sir John Macdonald's first administration there were three members of the Senate, the President of the Privy Council, the Minister of Marine and Fisheries, and the Receiver-General.¹⁸ During this same administration the Minister of Agriculture was for almost two years a member of the Senate, and the Secretary of State for almost four years.¹⁹ These several portfolios were not held by Senators simultaneously, but there were never less than three Senators in the cabinet each holding a portfolio. In the succeeding Liberal administration under Alexander Mackenzie the number of Senators in the cabinet was reduced to two. With the return of Sir John Macdonald to power in 1878 the number varied from two to three until the close of the long Conservative regime in 1896. Evidently the Senate at this time was most insistent in pressing its claims for seats in the cabinet and was not satisfied with the practice, occasionally followed, of assigning only cabinet posts without portfolio to members of the Upper House. This view was emphasized strongly in a letter written to Sir John Macdonald by Senator Sanford in 1891. Mr. Sanford, in this instance, was the spokesman of the Con-

¹⁶ The following is an extract from a letter to Sir John Macdonald from one of his influential supporters in New Brunswick: "I presume the office of Minister of Railways and Canals is still vacant, and I venture to suggest that it be given to a New Brunswick representative. Nova Scotia has now held it for some time and there is quite a feeling that our Province should have its turn."—*Macdonald Papers (Cabinet Office)*, p. 404.

¹⁷ Alpheus Todd, *Parliamentary Government in the British Colonies*, p. 63.

¹⁸ N. O. Coté, *op. cit.* p. 33.

¹⁹ *Ibid.*

servative members of the Senate who had discussed the matter previously in caucus. The relevant portion of the letter follows:—

Respecting the Senators holding Portfolios. The members will feel keenly disappointed if there are no Portfolios in our House, and I hope you will see your way clear to give us one more. It will do you and us good, more than I can express. During the McKenzie reign, if you remember, Mr. Scott lost his election, but he retained his Portfolio and occupied a seat in the Senate. It gives us a certain amount of prestige and strength which we do not otherwise hold in the country. I hope you will give this matter a second thought, as there are departments that could be represented without disadvantage to the other House, and will make our people more content.²⁰

As a matter of fact the records show that in the period 1867-1896 every cabinet portfolio except Finance, Railways and Canals, and Customs, was held at one time or another by a member of the Senate. Moreover, in the closing years of this period, two administrations were presided over by members of the Senate, one by Sir John Abbott and the other by Sir Mackenzie Bowell. When Sir Wilfrid Laurier formed his administration in 1896 there was no evidence of any significant change in the relation between the cabinet and the Senate. In his original ministry the Secretary of State and the Minister of Justice were members of the Senate. At the close of his administration in 1911, however, Sir Richard Cartwright as Minister of Trade and Commerce, was the only member of his cabinet from the Senate who held a portfolio. The first definite break in Senate representation in the cabinet occurred at the time of the formation of the Borden administration. This ministry included no Senators holding cabinet portfolios, Sir James Loughheed being the only member of the Senate who was also a member of the cabinet. In the Union Government of 1917 there were two Senators holding portfolios. The same was true of Mr. Meighen's brief administration of 1920-21. Mr. Mackenzie King, however, after giving the Senate one portfolio in his original cabinet soon reverted to the practice adopted by Sir Robert Borden on his accession to office ten years before. From 1922 onwards no portfolios were assigned to Senators. The only member of the Senate who was also a member of the cabinet was Mr. Dandurand who was Leader of the Government in the Senate. This practice prevailed throughout the period of Liberal rule. Mr. Bennett, however, in forming his government in 1930 selected a Senator, Hon. Gideon Robertson, as Minister of Labour. Subsequently, on the resignation of Mr. Robertson, he returned to the usage first adopted by Sir Robert Borden and confirmed by Mr. Mackenzie King in 1921. The practice now appears to be well established to have only one member of the Senate in the cabinet,

²⁰ *Macdonald Papers (Cabinet Office)*, p. 731.

and apart from exceptional circumstances this member will not be assigned to a portfolio. It cannot be said that this development has arisen from conditions peculiar to Canada. It is to be regarded rather as an incident in the rapid advance of democratic principles during the past few decades. A change of similar significance may be noted in the relation between the cabinet and the House of Lords in England. The implications of responsible government call for the presence of heads of departments in the more representative branch of the legislature. This is especially true of the spending departments where the presence of the responsible minister is of particular importance when the departmental estimates are under discussion in the House of Commons.

An incidental result of the changing relation of the cabinet and the Senate has been the alteration from time to time of the status of the Speaker of the Senate. Lord Monck suggested to Sir John Macdonald that the Speakers both of the House of Commons and the Senate should be sworn of the Privy Council.²¹ As there would be an obvious incongruity in the Speaker of the House being a member of the cabinet it is evident that Lord Monck's proposal was based on the assumption that a distinction was to be drawn in Canada as in England between the Privy Council and the cabinet. Macdonald did not carry out the suggestion as regards the Speaker of the House of Commons although it has become the general practice to summon retiring Speakers to the Privy Council at the termination of their periods of office. But the Speaker of the Senate was on a different footing. Unlike the Speaker of the Commons he was appointed by the Governor-General on the recommendation of the Prime Minister, and in the earlier administrations there appeared to be a disposition to make his position closely analagous to that of the Lord Chancellor in England. As Bourinot points out:

He has in all cases a vote, and he decides questions of order when called upon for his decision. If he wishes to address the house he leaves the chair—like the Lord Chancellor in the House of Lords—and speaks from the floor like other members, but this is a privilege which is rarely exercised.²²

In England the Lord Chancellor is Speaker of the House of Lords, is a member of the ministry and in normal times is also a member

²¹ "No title is given to the Speaker of the House of Commons though his place is marked in the Table of Precedence. In this respect he stands on the same footing as the Speaker in England. The latter officer is however always sworn of the Privy Council and I would propose that a similar course should be pursued in Canada. This would give him the title of "Honourable" for life. It might be perhaps well that the Speaker of the Senate should be treated in a similar manner."—*Macdonald Papers, Governor-Generals' Correspondence*, 1867-68, p. 322.

²² Sir John Bourinot. *Parliamentary Procedure*, 4th ed., p. 165.

of the cabinet.²³ At one time it seemed likely that the position of Speaker of the Senate in Canada would be assimilated to that of the Lord Chancellor so far as political functions were concerned. In Sir John Macdonald's administration of 1878 Hon. R. D. Wilmot became a member of the cabinet without portfolio while holding also the position of Speaker of the Senate. The reasons leading to this departure from previous practice are given by Macdonald in a letter written to Mr. Wilmot on October 23, 1878:

You will have seen by the newspaper reports that I have made up my mind to ask you to take the position of Speaker of the Senate with a seat in the cabinet. The unfortunate result of the vote in New Brunswick at the last election prevented me from giving New Brunswick two Portfolios. At the same time, I did not desire to deprive her of her old position in the Councils of the country, and I thought that I might meet the difficulty by the arrangement which I now propose.²⁴

Mr. Wilmot continued as a member of the cabinet while holding his position as Speaker of the Senate until 1880 when he was appointed Lieutenant-Governor of New Brunswick.²⁵ As indicated in the letter from Macdonald, there were special circumstances to account for this innovation at the time, but it is interesting to discover that Mr. Wilmot's successor as Speaker of the Senate, Sir David MacPherson, was also a member of the cabinet without portfolio from 1880 to 1883.²⁶ The practice was then discontinued and has not been revived. The usage of the past sixty years suggests that apart from special circumstances the Speaker of the Senate will not be invited to enter the cabinet. In this respect the position has become distinguished clearly from that of the Lord Chancellor in England who is always a member of the ministry and is normally a member of the cabinet.

It cannot be said that the changes in the Canadian cabinet, as indicated in this study of its growth, were adopted in accordance with any deliberate plan of increasing its efficiency. It would not be inaccurate to describe them as the product of an automatic response to changing conditions in the political situation of the Dominion. The addition of new provinces and the assumption of new governmental functions incident to national development led quite naturally to an increase in the size of the cabinet. The onward march of democratic sentiment resulted in the reduction of Senate representation in the federal executive and made the cabinet essentially a committee of the House of Commons. These developments

²³ 1918, Cd. 9230.

²⁴ *Macdonald Letter-book*, Vol. 21, p. 13.

²⁵ N. O. Côté, *op. cit.* p. 123.

²⁶ N. O. Côté, *op. cit.* p. 106.

were so gradual as to be almost imperceptible during the period of transition. Apart from sporadic protests against the enlargement of the cabinet they excited little comment either in Parliament or in the country. Almost a half-century passed before any attempt was made to reconsider the composition and function of the federal executive. When Sir Robert Borden came into office following the general elections of 1911, he appointed Sir George Murray, a distinguished member of the civil service of Great Britain, to investigate and report on the public service of Canada. The publication of this report marks the first attempt to secure deliberate reforms in the cabinet system as it had developed in Canada within the structure of federal institutions. At the close of the war, in 1919, the cabinet also came under the scrutiny of the special Senate Committee on Machinery of Government. The admirable report presented by this Committee together with the earlier recommendations of Sir George Murray provides an excellent point of departure for the consideration of ways and means of effecting reforms in the executive branch of Canadian government.

For the purpose of its investigation the Senate Committee accepted the conclusions of the Haldane Committee of the Parliament of the United Kingdom as to the proper functions of the cabinet. These were:—

- (a) the final determination of the policy to be submitted to Parliament;
- (b) the supreme control of the national executive in accordance with the policy prescribed by Parliament; and
- (c) the continuous co-ordination and delimitation of the activities of the several Departments of State.²⁷

It also accepted by implication the recommendations of the Haldane Committee regarding the conditions essential for the performance of these functions. These were:—

- (i) The Cabinet should be small in number—preferably ten, or, at most, twelve;
- (ii) It should meet frequently;
- (iii) It should be supplied in the most convenient form with all the information and material necessary to enable it to arrive at expeditious decisions;
- (iv) It should make a point of consulting personally all the Ministers whose work is likely to be affected by its decisions, and

²⁷ 1918, Cd. 9230. See also *Journals of the Senate*, Vol. LX, 1919, pp. 340 et seq.

- (v) It should have a systematic method of securing that its decisions are effectually carried out by the several Departments concerned.²⁸

Upon the basis of this definition of functions and this analysis of the conditions necessary for the performance of such functions Sir George Murray and the Senate Committee proposed a number of specific reforms in the structure and practice of the federal executive in Canada. In general there was a significant agreement in the two reports as to the existing defects in the organization of the Canadian cabinet, but the conclusions of the Senate Committee extended over a wider field and revealed, as was to be expected, a more accurate understanding of the political difficulties to be encountered in the application of particular remedies.

There was substantial agreement between Sir George Murray and the Senate Committee in the criticism that the organization of the Canadian cabinet was unsatisfactory for the efficient performance of its deliberative function. This was attributed to two major defects. The cabinet was overburdened with the routine of administration. It was also alleged to be too large for the purpose of deliberation and supervision. On the former point Sir George Murray had this to say:

Nothing has impressed me so much in the course of my inquiry as the almost intolerable burden which the present system of transacting business imposes on Ministers themselves. They both have too much to do and do too much.

Speaking broadly, it may be said that every act of the Executive Government, or of any member of it, requires the sanction of the Governor-in-Council which under present practice, is identical with the Cabinet.

The number of these Orders-in-Council averages from 3,000 to 4,000 per annum, and their subject-matter ranges from questions of the highest importance, such as the approval of a treaty with some foreign Power, the disallowance of provincial legislation, the appointment of a Judge, or the exercise of the prerogative of mercy, down to the acceptance of a tender for the erection of a pump, the promotion of a clerk from one grade to another and the appointment of a lighthouse-keeper or an exciseman.

Almost every decision of a Minister, even of the most trivial importance, is thus—at least in theory—brought before his colleagues for the purpose of obtaining their collective approval which is necessary for its validity.

Provisions to this effect can be traced in almost every Act of Parliament which has been passed since Confederation, and it seems clear that the statesmen of that time thought it necessary to ensure that the collective responsibility of the Cabinet for the action of individual Ministers should be protected by safeguards of this kind.²⁹

²⁸ 1918, Cd. 9230.

²⁹ *Sessional Papers (Canada)*, Vol. XLVII, 1913, No. 27. Sir George Murray was later a member of the Special Committee on Machinery of Government under the Chairmanship of Lord Haldane (1917).

Although he does not say so directly, Sir George Murray was evidently of the opinion that the mass of routine business which under existing practice was brought before the cabinet for approval had resulted in a serious impairment of the capacity of that body for the discharge of its more important deliberative functions. His remedy for this situation contained little of novelty and consisted in the main of a recommendation that a larger amount of executive business should be left either to individual Ministers or to the formal approval of the Governor-in-Council on the analogy of the practice followed in the United Kingdom:

The first suggestion which I have to offer is that many of the powers now vested in the Governor-in-Council should by some process of devolution, be transferred to individual Ministers. . . .

Even after this relief has been given to the Governor-in-Council, there will still remain many matters which, though of small intrinsic importance, must for various reasons receive the approval of the highest administrative authority. There will always be some decisions which, though properly taken by an individual Minister on his own responsibility, may yet require the outward form of sanction by the Governor-in-Council.

Wherever this sanction is merely formal and does not require the collective consideration of Ministers it should be given at a meeting of Council constituted for the purpose. It is not necessary that the whole body of Ministers should attend; the minimum quorum would be sufficient for the purpose, and the business, being formal, would be rapidly transacted.

In other words a distinction should be drawn between a meeting of the Cabinet and a meeting of the Council. At present the Cabinet, besides performing its proper function of discussing and deciding questions of high policy, is compelled to conduct a large amount of purely routine business. If the latter were relegated to a meeting of Council summoned *ad hoc* and in much smaller numbers, the time at the disposal of the Cabinet for its more important duties could be better employed.²⁰

This proposal appears to have much merit. Despite the partial relief given by the Civil Service Act with respect to cabinet consideration of public appointments, Sir George Murray's criticism was still applicable and was reiterated when the Senate Committee made its investigation in 1919. Few would dissent from the opinion that the cabinet under existing usages has been overburdened with decisions of minor administrative importance and has had far too little time for the serious consideration of policy. This is true especially when Parliament is in session. The constant pressure upon Ministers of their parliamentary duties, the frequent interviews with members and office-seekers, and the necessity of devoting much attention to the discussion of party tactics are not conducive to the development of the deliberative faculty. Moreover, at the close of

²⁰ *Ibid.*

the session some Ministers living at great distances from the capital return to their respective provinces for a portion of the summer months and it is difficult to bring together full meetings of the cabinet except in the weeks immediately preceding and following the parliamentary session. Any proposal is to be commended which has as its object the relief of a situation which impairs the deliberative capacity of the executive. The present practice undoubtedly tends to convert cabinet ministers into what Walter Lippmann has termed "routineers."³¹ It is interesting to note, however, that the suggestion made by Sir George Murray was given serious consideration by Sir John Macdonald in 1873 but was not adopted.³² The reasons for its rejection are not made evident, but it was undoubtedly true then as now that many executive decisions which in England would be regarded as matters of administrative routine are in Canada the potential source of political antagonisms. Nevertheless the reasons for the relief of the cabinet from its burden of routine are more compelling at present than they were sixty years ago, and there would seem to be no insuperable objections to the recognition of a distinction between meetings of the cabinet for the discussion of policy and meetings of the Council for the formal approval of matters which require action by the Governor-in-Council. Fundamentally it is a matter of internal economy and arrangement. Certainly such a procedure would allow more scope for the consideration of policy, a function which admittedly has been neglected too much in past years.

Another proposal made by Sir George Murray for the relief of the cabinet is the recognition of a ministry as distinct from the cabinet, involving the appointment of Parliamentary Under-Secretaries to assist Ministers both in the performance of departmental and parliamentary duties, thus leaving them a greater freedom for deliberation. On this head his recommendation was as follows:—

Under present conditions there is only one political officer in each Department, namely, the Minister in charge of it. As a Cabinet Minister he has work of the highest importance to perform outside his Department; and even if the relief which I have indicated could be afforded to him within his Department, his parliamentary and other duties would still be a heavy tax on his time, especially in the case of those Ministers who are in charge of the more important Departments. I suggest that in these Departments, probably four or five in number, a political Deputy Minister should be appointed who would be able to relieve the Minister himself not only of some of his departmental work but of many interviews and negotiations with members of Parliament and others. It would, of course, be necessary

³¹ Walter Lippman, *A Preface to Politics*, p. 8.

³² The Introduction of Cabinet Government in Canada, *The Canadian Bar Review*, Jan. 1933.

that he should enjoy the full confidence of the Minister so that he could speak generally in the name of the latter without specific reference to him, and in other cases could refer for directions as occasion required.³³

To this recommendation the Senate Committee of 1919 gave its cordial approval. Like the first proposal it did not break new ground but contemplated the extension of a policy which on two occasions had been adopted experimentally in Canada. Reference has been made already to the Act of 1887 which created the offices of Controller of Customs and Controller of Inland Revenue, these posts being of the character of Under-Secretaryships within the organization of the Department of Trade and Commerce. Again in 1917-18 provision was made for the appointment of three Parliamentary Under-Secretaries, a Parliamentary Secretary of the Department of Soldiers' Civil Re-establishment, a Parliamentary Secretary of the Department of Militia and Defence, and a Parliamentary Under-Secretary for External Affairs. It was explained by Sir Robert Borden during the discussion of this proposal that the incumbents of the new posts would not attend meetings of the cabinet.³⁴ He also made it clear in the course of the debate that he attached great value to the proposed innovation.

My only regret is that I did not take steps early in the war to have an Under-Secretary of State for External Affairs appointed; it would have been better for the interests of the country had I done so. I would have had more time to give to general considerations; my attention would not have been so much taken up with matters which, though important, were nevertheless of a somewhat routine character.³⁵

It will be recalled that this was precisely the point made by Sir George Murray in submitting his proposal some years before. Undoubtedly the abnormal pressure on the departments for which Under-Secretaries were appointed gave additional emphasis to the advantages of this division of authority during the war period. This change, however, like the earlier one, was of short duration. A Parliamentary Under-Secretary for External Affairs was continued for a brief period under the peace-time administration of Mr. Mackenzie King in 1921, but the principle was not extended to other departments, and even in the case of External Affairs where there were special reasons for favouring its continuance, it did not become

³³ *Sessional Papers (Canada)*, Vol. XLVII, 1913, No. 27.

³⁴ *Debates of the House of Commons (Canada)*, 1917, p. 4454. Mr. Lemieux—The Under-Secretaries are not to be Ministers of the Crown? Sir Robert Borden—No, that has been changed so that they will not be. Mr. Lemieux—Will they attend sessions of the Cabinet? Sir Robert Borden—No, they will not.

³⁵ *Debates of the House of Commons (Canada)*, 1917, p. 4204.

a part of the permanent apparatus of government.³⁶ It is also to be noted that the appointment of Under-Secretaries at this period did not have the effect of reducing the size of the cabinet. They were simply additional posts established for the relief of Ministers affected especially by the abnormal conditions of the war.

The proposal to appoint Under-Secretaries is closely bound up with the question of a reduction of the size of the cabinet which may now be considered. It will be remembered that the Haldane Committee recommended a cabinet of ten to twelve members for Great Britain. The Senate Committee in Canada accepted the same number as the desideratum, and proposed to reach it by adopting the suggested distinction between the cabinet and the ministry and so organizing the departments of government as to obtain the requisite number of departmental posts of cabinet rank.³⁷ Within these departments it proposed to organize a number of ministries under Parliamentary Under-Secretaries who should rank as Ministers but would not be members of the cabinet. The re-organization of government departments has much to commend it from the standpoint of efficiency and economy. It may also be conceded that no serious obstacles of a legal or administrative character lie in the way of its consummation. The difficulty lies rather in accepting as the object of re-organization a substantial reduction in the size of the cabinet. While the objection to reduction is political in character it is no less formidable as a barrier to any far-reaching reform. The Canadian cabinet is a federal executive. Conventions which have their roots in the history of the Dominion have established it on a representative basis. It is doubtful if any province would accept as a suitable representative a Minister or Under-Secretary who was not at the same time a member of the cabinet. The nine provinces demand representation in the body that controls the formulation of policy. The French-speaking minority has never had less than three members in the cabinet except in the abnormal period of the war. The Protestant minority in Quebec has always had its own representative. Ontario has shown no disposition to be satisfied with a smaller representation than Quebec. The realities of this political situation have never been better expressed than by

³⁶ The Solicitor-General has also become ordinarily a member of the cabinet.

³⁷ *Journals of the Senate*, Vol. LV, 1919, pp. 340 *et seq.* "We suggest tentatively the following composition of a Cabinet. I. Prime Minister, President of Council, Minister of External Affairs. II. Secretary of State. III. Justice. IV. Finance (including Customs, Internal Revenue). V. Interior (including Immigration and Colonization). VI. Defence. VII. Communication and Transport. (Railways, Canals, Marine, Post Office). VIII. Production and Distribution. (Trade, Commerce, Fisheries, Agriculture). IX. Labour. X. Public Works.

Sir Wilfrid Laurier in a letter to one of his parliamentary supporters who had been urging the reduction of the Dominion cabinet.

I have always holden to the view that to govern effectively a country like Canada with a population spread over such a very large territory, and with the necessity of giving cabinet representation to all sections, no prime minister could undertake to reduce the cabinet . . . Supposing you were to drop one cabinet minister, that would be an economy of \$7,000, but if the reduction was from the Province of Ontario I do not believe that the people of Ontario would be satisfied. The comparison is often made between Canada and the United States in this respect. The United States has only seven cabinet ministers, but you must remember that these ministers have no legislative duties; they can give all their time to the administration of their departments.³⁸

In this as in other political problems the explanation lies in the peculiar position accorded by necessity to the French-speaking minority and the province of Quebec in the federal constitution. The Ontario cabinet representation has been based upon that of Quebec. This was more logical in 1867 than it is at the present day when the English-speaking representation has been increased through the addition of new provinces. From a political standpoint it might be difficult to reduce the cabinet representation from Ontario without effecting a proportionate reduction in Quebec. It is in this province, however, that the prospect of reducing cabinet representation is most promising at the present time.

This aspect of the problem of reducing the size of the Canadian cabinet was recognized by the Senate Committee but was not given sufficient weight in its final conclusions.³⁹ To admit the strength of the existing conventions regarding cabinet representation does not, however, exclude some of the remedies proposed for the improvement of the federal executive. It does not rule out a re-organization of governmental departments. Nor does it involve the rejection of the proposal to appoint Parliamentary Under-Secretaries provided it is understood that the latter will not be acceptable as substitutes for cabinet representatives. Moreover, it should be remembered that even with the existing conventions regarding cabinet representation the federal executive could be reduced to fifteen or sixteen members. Although such a reduction would not be spectacular it is eminently feasible and would be a movement in the right direction. Finally, in conjunction with a reduction in the number of departments an increase might be made in the number of ministers without portfolio. This would do no violence to the principle of cabinet representation and would at the same time permit a group within

³⁸ O. D. Skelton, *Life and Letters of Sir Wilfrid Laurier*, Vol. II, p. 5, footnote.

³⁹ *Journals of the Senate*, Vol. LV, 1919, pp. 340 *et seq.*

the executive to devote its main attention to the study of policy without the embarrassments and preoccupations incident to departmental administration. Additional facilities for the deliberative function of the cabinet might well be provided through the establishment of a Cabinet Secretariat similar to that developed in Great Britain during the war period and continued in later years. As proposed by the Senate Committee in Canada the duties of the Secretariat would be:—

- (a) the keeping of such notes of Cabinet meetings as seemed desirable to its members.
- (b) to prepare for the approval of the Prime Minister the agenda of meetings.
- (c) the preparation and submission to the members of the cabinet, in advance, of such information as may be necessary to the formation of opinion.
- (d) communication to Ministers concerned of decisions of the Cabinet.
- (e) to act as a liaison between the Cabinet and Ministerial Committees of the Privy Council, as well as between departments.
- (f) to arrange for and be present at interdepartmental conferences.⁴⁰

It is a common observation by foreign commentators on the Canadian constitution that the process of federalizing the cabinet in this country must lead inevitably to a deterioration in the quality of its personnel. Undoubtedly a Canadian Prime Minister, in choosing his cabinet, is compelled to make his selections within a restricted field and in cases where his party following from a particular province is reduced to small dimensions may have to take into his administration a representative who is lacking in the requisite qualifications. At the same time, the provinces are not lacking in pride of place, and means have usually been found to meet a situation of this kind. As Professor W. P. M. Kennedy has truly said "the amazing thing is the high average of success which we have achieved. Indeed, it may be that the common statement that we were the first to succeed in combining federalism and parliamentary government has only been proved true because we have been forced to federalize the national Cabinet."⁴¹ Certainly the conventions respecting representation are too firmly established to permit of interference with impunity except by means of a *concordat* agreed

⁴⁰ *Ibid.*

⁴¹ See *The Round Table*, Vol. 20, p. 158.

to by all interested groups now having recognized claims to cabinet representation. Any scheme of immediate reform must take the existing conventions as a point of departure and seek first to improve the deliberative capacity of the executive by measures which are presently available.

NORMAN McL. ROGERS.

Queen's University, Kingston, Ont.

"PROCEEDING IN AN ACTION."—The meaning of this phrase as used in Ord. XXVI, r. 1, of the English Judicature practice was up for determination before Maugham, J., in the case of *Mundy v. The Butterley Co.*, [1932] 2 Ch. 227, and that case and others bearing on the interpretation of the phrase are discussed in the April number of *Law Notes*, at p. 115. The rule in question provides in substance that a plaintiff may at any time before receipt of the defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing wholly discontinue his action upon payment of the defendant's costs of the action. In the case before Maugham, J., the plaintiffs' solicitors, after defence, and in pursuance of an order made on summons for directions, gave the defendants' solicitors formal notice requiring delivery of an affidavit of documents. After giving such notice the plaintiffs decided to abandon the action and to that end served a notice of discontinuance. Refusing to accept the latter notice, the defendants' solicitors issued a summons to dismiss the action for want of prosecution. It became necessary under the facts stated to decide whether the service of the formal notice requiring an affidavit of documents was "a proceeding in the action" by the plaintiffs. Maugham, J., held that the notice to defendants' solicitors under the summons for directions requiring an affidavit of documents, was not a "proceeding in the action."
