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**PRE-CONFEDERATION PARLIAMENTARY PROCEDURE:
THE EVOLUTION OF LEGISLATIVE PRACTICE IN THE
LOWER HOUSES OF CENTRAL CANADA, 1792-1866**

by

© GARY O'BRIEN, B.A., M.A.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

Doctor of Philosophy

Department of Political Science

Carleton University

Ottawa, Ontario

November 1988

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ISBN 0-315-51145-1

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The Faculty of Graduate Studies and Research
the acceptance of the thesis
"PRE-CONFEDERATION PARLIAMENTARY PROCEDURE: THE EVOLUTION OF
LEGISLATIVE PRACTICE IN THE LOWER HOUSES
OF CENTRAL CANADA, 1792 - 1866"

submitted by
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in partial fulfilment of the requirements
for the degree of Doctor of Philosophy

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Carleton University

March 9, 1989

**Abstract of Ph.D. Dissertation "Pre-Confederation
Parliamentary Procedure: The Evolution of Legislative
Practice in the Lower Houses of Central Canada, 1792-1866"**

Gary O'Brien, Carleton University, Ottawa, Ontario, Canada.

This thesis has used three approaches to the study of the practices of the elected Assemblies of Upper Canada (1792-1840), Lower Canada (1792-1837) and the United Province of Canada (1841-1866): (i) Erskine May's "constitutional" approach, whereby procedure is seen as a method of discharging constitutional functions; (ii) Jeremy Bentham's "goal orientation" approach, which emphasizes that the objectives set by the legislators themselves are the most important influence on the content of parliamentary forms, and (iii) Josef Redlich's "social context" approach, which emphasizes that an understanding of procedure can best be achieved from examining the social and political environment in which procedure functions. The thesis examines the impact on pre-Confederation procedure of the various constitutional and provincial acts, royal instructions, the coming of responsible government, the desire for rapid economic development, nationalism, political party development, population growth, the social structure of the Assemblies, the link between business and politics, and racial, religious and regional cleavages.

The study shows that Upper Canadian procedure was quite primitive in its early years but Lower Canadian practice was not. Canadian procedure was based not so much on custom but on legal instruments such as the Constitutional Act, 1791, royal instructions and certain provincial statutes as well as written rules. The major stimuli in procedural evolution were: (i) constitutional developments, in particular the movement from the old colonial system towards responsible government and later towards Confederation; (ii) the goal orientations of Upper Canadians toward rapid economic development and of French-speaking Lower Canadians toward national survival; and (iii) the development of political parties. The major tension in Canadian procedural evolution was not so much between government and private members for control of the time of the House, but between private business and public business.

Tables dealing with the number of sittings per session, bills and petitions presented, and selected Speakers' rulings are appended. Included also is a comprehensive table tracing the pre-Confederation origins of the present Canadian House of Commons Standing Orders.

Acknowledgements

This dissertation has been the product of work performed over a number of years. It originally stemmed from a paper written in 1982 under the guidance of Professor Reginald Whitaker and subsequently published in Ontario History.

There are a number of people I would like to thank for their encouragement and guidance. The first is my supervisor, Dr. Kenneth D. McRae, who took an early interest in the proposal and stayed with me all the way to its conclusion. Dr. J.K. Johnson of the History Department was also very helpful from the beginning. To both professors, I am extremely grateful.

Mr. Erik Spicer, the Parliamentary Librarian, was most supportive and gave me special permission to have access to the Library's collection of pre-Confederation Journals. I wish to thank him and all the excellent staff of the Library of Parliament for their assistance, in particular Mike Graham, Bruno Gnassi, Lynn Brodie, Lucienne Eshelman, Carol Sutherland, Don Curtin, Carole Lefebvre, Jocelyne Lafontaine, Irene Brown and Michel Léger.

Many of the ideas discussed in the thesis stemmed from long discussions with a number of people on Parliament Hill. Charles Robert and David Gussow of the House of Commons were very helpful and gave me much to think about. I wish to thank Senator John Stewart for taking time to discuss certain aspects of the thesis with me. I also thank Michael Kirby and Philip Laundy of the House of Commons for their encouragement.

In addition to Professors McRae and Johnson, I would like to thank the other members of my Ph.D. Examining Board: Professor W. Dawson of the University of Western Ontario, Professor G. Beaudoin of the University of Ottawa, Professor G. Neuspiel of Carleton University and Dean S.F. Wise, Faculty of Graduate Studies and Research, Carleton University.

I doubt if this thesis would ever have been completed without the kind effort of Bernice Lamer who spent many hours before and after her own work and on weekends to type the many drafts. I wish to thank Mrs. Lamer as well as Hlne Bouchard, Marie Claire Jak, Shirley Waller, Kathleen Ippersiel and Janelle Feldstein for their technical support. Suzanne Kinsman of the House of Commons and Garnet Barlow of the Senate were of great assistance in helping me prepare the final draft and I sincerely appreciated their efforts.

Finally, I wish to thank my family and friends for their understanding and support, especially Julie Brunet. I dedicate this dissertation to her.

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Chapter One - The Study of Parliamentary Procedure

Canadian parliamentary procedure has been an evolving process, the roots of which can be traced before 1867, the year in which Ontario, Quebec, New Brunswick and Nova Scotia combined to form the Dominion of Canada. This dissertation will examine the origin and formative years of the procedural tradition in Canada by focusing on the sources and content of the legislative practice of the lower houses of Upper Canada (Ontario) and Lower Canada (Quebec), from 1792 to 1840, and the United Province of Canada, from 1841 to 1866. The choice of the central Canadian legislatures is based on the fact that it was the rules and practices of the Legislative Assembly of the United Province which the newly established Canadian House of Commons adopted in 1867. In turn, the procedures agreed to in 1841 by the United Province were an amalgam of the regulations and practices of Lower Canada and Upper Canada. A considerable number of the rules adopted in the pre-Confederation period are still in effect today in the House of Commons. ¹

In order to study properly the evolution of Canadian practice, it is important to begin with an understanding of the various interpretations which have been given to parliamentary procedure in general, as well as of how the Canadian tradition has been understood. This chapter will therefore focus on (i) approaches to studying parliamentary procedure, (ii) a review of the literature on Canadian practice, and (iii) the methodology this dissertation will follow in its examination of the pre-Confederation period.

1. Interpretations of Parliamentary Procedure

Since the appearance of the Rotuli Parliamentorum, or the Rolls of Parliament in 1278, many books and treatises have been written on the subject.² From amongst this literature, three general approaches to the study of parliamentary procedure can be identified. They may be cited as (i) the constitutional approach as represented by the works of John Hatsell and Erskine May,³ (ii) the goal orientation approach used by Jeremy Bentham,⁴ and (iii) the social context approach followed by Josef Redlich.⁵

A. The Constitutional Approach

The constitutional approach is characteristic in its emphasis that law, custom and precedent are the basis of parliamentary procedure. Most important is the constitutional framework in which the legislature operates, for it provides procedure's purpose and direction. Parliamentary practice is therefore the means of implementing constitutional functions. The 20th edition of Erskine May's Parliamentary Practice gives the following definition of parliamentary procedure:

The law of Parliament provides the framework for, and determines the nature of, Parliamentary procedure, which

consists of the rules and arrangements made by either House for discharging its constitutional functions within that framework. ⁶

This interpretation of legislative practice portrays parliament as having a judicial role within the broad political system and procedure as a means by which juridically-oriented decisions are made. Writers using such an approach formulate statements as to the proper procedure legislators should follow but such statements are never made abstractly nor without reference to concrete and accepted practice. Erskine May described his methodology as follows: "... each subject has been treated, by itself, so as to present first, the rules or principle; secondly, the authorities, if any be applicable; and thirdly, the particular precedents in illustration of the practice". ⁷ Constitutionalists provide many references to the House Journals and other parliamentary records which, as John Hatsell says, "from whence alone can be derived a perfect knowledge of the Law and Proceedings of Parliament". ⁸ Hatsell provided over 1450 precedents with regard to various aspects of procedure. May's first edition gave over 1500 references in footnotes to the text. May's twentieth edition provides over 12,000.

Although Hatsell and May were not the first authors to use this approach when writing on parliamentary procedure, their works are certainly the most authoritative and best represent a constitutional orientation toward the subject. ⁹

John Hatsell was Clerk of the British House of Commons from 1768 to 1820. The first volume of his Precedents of Proceedings was published in 1776. Four volumes were published in all which went through various editions, the last in 1818, two years before his death. ¹⁰ Erskine May, Clerk of the House from 1871 to 1886, published his Treatise in 1844. He published nine revised editions, the last being in 1883. After May's death in 1886, the book was revised and updated by various Clerks of the House. In all Erskine May's Parliamentary Practice has gone through 20 editions, the last in 1983. It is the acknowledged textbook on parliamentary procedure and is used in all Commonwealth parliaments. ¹¹

B. The Goal Orientation Approach

This approach emphasizes that the objectives set by the legislators themselves are the most important influence on the content of parliamentary forms. This point of view is best represented by Jeremy Bentham in his 16-chapter Essay on Political Tactics, parts of which were written in 1789 in an attempt to influence the procedure of the Estates-General of revolutionary France.

Bentham's views on parliamentary practice were an extension of his general views on law and judicial procedure expressed in such works as A Fragment on Government, published in 1776 and An Introduction to the Principles of Morals and Legislation, published in 1789. ¹² In keeping with his utilitarian theories of public law, Bentham did not believe that custom or precedent should form the basis of legislative practice. Like all law, reason and convention and not parliamentary scholasticism should constitute the source of procedural rules. Since all laws should be written down so that their certainty would be known, so should legislative rules. As laws were to achieve specific goals, which Bentham saw in terms of increasing the total happiness of society, standing orders were to be established with specific ends in view. Legislative practice was not merely a means of keeping order. He begins his Essay as follows:

Order supposes an end. The tactics of political assemblies form the science, therefore, which teaches how to guide them to the end of their institution, by means of the order to be observed in their proceedings.

In this branch of government, as in many others, the end is, so to speak, of a negative character. The object is to avoid the inconveniences, to prevent the difficulties, which must result from a large assembly of men being called to deliberate in common. The art of the legislator is limited to the prevention of everything which might prevent the development of their liberty and their intelligence. ¹³

Bentham listed ten such inconveniences which legislators should avoid, such as inaction, surprise and falsehoods. ¹⁴ He provided an elaborate synoptical table showing the different inconveniences which corresponded to the several ends "proper to be kept in view in framing a System of Tactics for the Use of a Political Assembly". The table, he suggested, "may be made to serve as a Test of the propriety of all manner of Rules and other Institutions, proposed or proposable for the regulation of proceedings in a Political Assembly." ¹⁵

Bentham believed that the constitutional framework and political make-up of a legislature had little relationship to procedure. "The good or evil which an assembly may do depends upon two general causes: -- The most palpable and the most powerful is its composition. The other is its method of acting. The latter of these two cases alone belongs to our subject. The composition of the assembly -- the number and the quality of its members -- the mode of its election -- its relationship to the citizens or to government; -- these things all belong to its political constitution." ¹⁶ The purpose of procedure is derived from reason and its goal is to develop the liberty and intelligence of legislators. He

believed his theory of procedure was applicable to any deliberative assembly, regardless of its constitutional foundation.

Besides providing a list of the ends around which rules would be drawn up, he also established certain fundamental principles of parliamentary procedure. They were the law of publicity, the impartiality of the Speaker, the law that decisions were to be reached in sequential and separate stages, freedom of debate and the principle of the majority. Legislative technique should reflect these principles. Rules such as that bills should be read three times before being passed were to be implemented, not on the basis of precedent, but because they were reasonable. Reading a bill three times encouraged maturity of debate, gave the public an opportunity to be heard, prevented the effects of eloquence, protected the right of the minority to try to influence the decision and provided absent members an opportunity to participate in the debate. ¹⁷ Although Bentham forthrightly admits that the practice he advocates is that followed by the British parliament, he shows much original thinking regarding parliamentary rules.

C. The Social Context Approach

This approach emphasizes that an understanding of parliamentary procedure can best be achieved from examining the social and political environment in which procedure functions and is used by Josef Redlich in his 1905 study of the British House of Commons.

Redlich was a professor of constitutional law at the University of Vienna and served in the Austro-Hungarian Reichsrat from 1907 to 1918. He then went to the United States, lecturing on law at Columbia, John Hopkins and Harvard Universities. In the economic crisis of 1931, he was appointed Finance Minister of Austria, a position he held for four months. In addition to his book The Procedure of the House of Commons, Redlich's other work on British government was Local Government in England, co-authored with Francis W. Hirst and published in 1903. 18

In his introduction to a revised edition of Local Government in England, Bryan Keith-Lucas writes that Redlich had been influenced by Rudolf Gneist's works on English constitutional and administrative law although he was very much opposed to Gneist's interpretations. Gneist, who was born in 1816 and died in 1895, had been a professor of law at the University of Berlin. In The History of the English Constitution and The English Parliament in its Transformations Through a Thousand Years, Gneist analysed British institutions within their social context. He described parliament as a "connecting link between state and society", and stressed the importance of exposing institutions "in the living connection of all these reciprocal operators". 19

Redlich followed Gneist in using a social context approach in his examination of British parliamentary procedure, a subject Gneist did not discuss in much detail. Redlich was very critical of Erskine May's concentration on constitutional law and disregard of the political and social environment. He described May's Treatise as a "guide to English parliamentary practice. Treatment of the order of business from the

point of view of theory or of historical development was quite foreign to its plan". Redlich wrote:

No method of legally estimating constitutional principles, without taking into account the national, political and social factors in the life of the constitution, can be anything but a dry skeleton, unable to give any true knowledge of what actually occurs in the state. The true nature of a subject so apparently abstract as the theory of the forms and technique of parliamentary business can only be grasped and properly appreciated when it is treated as the living product of the men who are applying it to their work. 20

Although praising Jeremy Bentham as the only English thinker who had worked out a theory of parliamentary procedure, Redlich was critical of his goal orientation approach. Bentham's principles were individualistically oriented and "rest ultimately upon the elementary psychology of human condition for action, and on the elementary necessities of any arrangement". 21 They ignored the reality of collectivist politics. Redlich felt that Bentham's theory paid no attention to the role of government and the special relation of the ministry to the conduct, arrangement and leadership of parliamentary life. He also misjudged the role of parties in procedure. Bentham assumed parties would be "reasonable". "It never entered his mind", Redlich writes, "that there might be absolutely irreconcilable parties, which would only be spurred on by defeat to fresh exertions, that there might be minorities who would never submit without trying every conceivable means of carrying their wishes into effect." 22 Certain parties, such as the Irish Nationalists of the 1880s, have the potential of repudiating all existing principles of procedure in their attempt to

secure important political goals. Given such a political environment, parliamentary laws such as the principle of the majority lose all their moral force.

Redlich's aim was "to examine the law and practice of English parliamentary procedure as the expression of the historic and national characteristics of the English parliamentary system, both in its different stages of growth and in connection with the growth of the constitution." ²³ He periodized procedural development according to significant political events, the most important being the passage of the Reform Act of 1832. Unlike Rudolf Gneist, Redlich welcomed the changes the Reform Act initiated, particularly the reform of antiquated procedures. The enactment of that law, according to Redlich, ultimately changed the goal of procedure from that of a defence against Crown and government to that of an aid to the ministry in government. ²⁴ He also analysed the impact of certain variables, such as political parties and the social structure of the House of Commons, on legislative procedure. ²⁵

Redlich's analysis of the historical development of British practice led him to formulate an original theory of parliamentary procedure based on four postulates: (i) obstruction is nothing less than a repudiation of the existing constitution of a country; (ii) procedure is a political pressure-gauge, indicating the tension within a state; (iii) procedural reform should be elastic, subject to existing conditions; and (iv) procedural reform should be determined through

politics, not constitutional law or rational objectives. ²⁶ Redlich wrote: "The important problem how to alter the provisions of a code of procedure, like the question what can be expected from such a code, is not to be solved theoretically as a matter of constitutional law but practically as a matter of politics." ²⁷

. . .

The preceding reveals that the source and purpose attributed to parliamentary procedure by each author determined the approach he took. They all saw procedure as having a different function. Hatsell and May believed procedure had a constitutional purpose and therefore a legal interpretation was called for. Bentham saw procedure as having a psychological basis and that parliamentarians can choose the ends which procedural rules are to achieve. Redlich observed that social and political phenomena influenced parliamentary practice and thus analyzed the subject from a social context framework.

It appears that each of those interpretations has some validity. Unquestionably, parliaments modelled on the British tradition have important written and unwritten constitutional functions to perform and use procedure to that end. Legislative practice in most Commonwealth parliaments is formally played out on a constitutional basis. The manner by which business is arranged, the role of the presiding officer and the extensive use of precedent are proceedings which very much resemble those of a court of justice. May's Parliamentary Practice is generally regarded as the leading authority on procedure and is the model upon

which Commonwealth parliamentary textbooks are written. Procedure also includes a psychological component. The members belonging to democratic assemblies are not just parliamentarians but also politicians. They often feel they have roles to play which go beyond the discharging of constitutional functions. It would be fallacious to assume that legislators do not "think" about the rules they adopt or accept them blindly on the basis of precedent. The goals which legislators set for their rules, however, might not necessarily be limited to those listed in Bentham's essay. Finally, Redlich's emphasis on the contextual nature of procedure is important. Certain variables emanating from the political and social environment, such as political parties, the size and composition of an Assembly and the political values, beliefs and attitudes of the constituents the parliamentary system serves could potentially influence procedural evolution. Redlich's theory of procedure as a political pressure-gauge is revealing and provides an insightful perspective to parliamentary crises.

Given the variance in roles procedure seems to play within the parliamentary system, it appears that any analysis of legislative practice would be incomplete if reference were not made to all three interpretations.

2. The Literature on Canadian Parliamentary Practice

The early members of the Houses of Assembly of Upper Canada and Lower Canada learned about parliamentary procedure from a number of sources. In Upper Canada, some of the deputies came from families who had gained some parliamentary experience in colonial America. The father of Hazelton Spencer, a member of the First Provincial Parliament, had been a representative to the Provisional Assembly of Vermont.²⁸ A relative of another member, Christopher Robinson, had been the Speaker of the Virginia House of Burgesses for 27 years.²⁹ Members were

undoubtedly made aware of English practice from John Graves Simcoe, the colony's first Lieutenant Governor, who himself had been a member of the British House of Commons. In 1800 they secured copies of Hatsell's Precedents, Petyt's Lex Parliamentaria and Blackstone's Commentaries on the Laws of England for their library. They could also follow British practice from the lengthy extracts of parliamentary debates printed in the Upper Canada Gazette, first published in 1793.

Lower Canadian members were somewhat more disadvantaged than their Upper Canadian counterparts because it was the first time French Canada experienced representative institutions and because most texts on procedure were in the English language. In 1801, the Assembly agreed to provide for the use of the House Blackstone's Commentaries, Petyt's Lex Parliamentaria, DeLolme's Constitution sur l'Angleterre and the Commons and Lords Journals to the latest date.³⁰ The first attempt to 'Canadianize' a procedural textbook came in 1803 when the Lower Canadian House agreed that Petyt's Lex Parliamentaria be translated into French.³¹ Two years later, the Assembly resolved that the Speaker "do cause to be translated into French the four volumes of Precedents of proceedings in the House of Commons by John Hatsell, for the use of the Members of the House, provided that the expense of translating and printing the same do not exceed the sum of 700 [pounds]".³² The project, however, was never completed. In 1814, the Speaker reported to the House that he had not as yet found a translator or printer who would perform the work for the sum fixed by the resolution.³³

The first 'Canadianization' attempt in Upper Canada was A Manual of Parliamentary Practice by H.C. Thomson, a journalist and a member of the Assembly from Frontenac from 1824 to 1834. The book appeared in 1828. It was a lengthy piece of 92 pages, which included as an appendix the rules of both the Legislative Council and the House of Assembly. It was divided into 47 sections, covered nearly all aspects of parliamentary procedure and quoted such authorities as Scobell, Blackstone, Hakewell and Elsyng. The Manual, however, was not an original work. It was a plagiarized copy of Thomas Jefferson's Manual of Parliamentary Practice, with Jefferson's name omitted, as well as his preface and references to U.S. law, history and legislative procedure.³⁴ Despite the plagiarism, Thomson's Manual was important, for it helped educate Canadian legislators and the public about important procedural principles in an era when such books were difficult to obtain. It also revealed that American procedure had a certain influence in Upper Canada during the old colonial period. Thomson's, or really Jefferson's, Manual was widely distributed. In 1828, the House directed the Clerk to procure 100 copies for the use of members and in 1837 the House ordered that each member who did not already possess one be furnished with a copy of the Manual, referred to as "the small edition of Hatsell". Thomson's Manual was also used as an authority from time to time during the period of the United Province.³⁵

The first systematic study of parliamentary procedure by a Canadian was Alpheus Todd's The Practice and Privileges of the Two Houses of Parliament,³⁶ published in Toronto in 1840. It was printed by order of the House of Assembly and, as the author states, was written

for the use of the colonial legislature. The book was dedicated to its Speaker, Sir Allan MacNab.

Todd's work is not usually thought of as a 'Canadian' treatise on the subject as it is basically a study of Westminster procedure. Yet Todd included many references to Upper Canadian and Lower Canadian practice. For example, he noted that colonial legislatures did not have the same powers as the Imperial parliament and therefore could not claim the same privileges. He cited the Lower Canadian incident of the Governor refusing to approve Joseph Louis Papineau as Speaker in 1827. He described the differences between Upper Canadian and British procedure with respect to divisions and how committees were appointed.³⁷ By showing the uniqueness of certain Canadian proceedings, Todd introduced an important theme in Canadian parliamentary procedure: the divergence of Canadian legislative practice from the British model.

Todd differed from Hatsell in that his study was descriptive and analytical as opposed to giving precedent and commentary. The book covered most aspects of procedure and was carefully researched, citing at least 55 other authorities and reference books. Todd's work was important since it was the first Canadian book to describe the essential features of customary British practice and was influential in exposing colonial politicians to the way the British parliament operated. It is also important as a representative work on the procedure of pre-responsible government parliaments. There was no discussion of the vote of confidence and no recognition of the role of the ministry in conducting the business of the House.

In 1847, Alpheus Todd wrote another important work on procedure regarding private bills. On June 9, 1846, the Legislative Assembly of the United Province of Canada authorized Speaker MacNab to cause an inquiry into the system pursued in the British House of Commons in respect to private bills "and a report to be made embracing such Resolutions and Provisions, as may appear adapted to the circumstances of this Province". MacNab "deputed" Alpheus Todd to write the report which was tabled in the next session, on June 14, 1847. Entitled Report on the Management of Private Business, it was never published as a book, although 200 copies of the report were printed. This work of Todd's will be reviewed in more detail in a subsequent chapter but suffice it to say that it represented the first critical analysis of Canadian practice. From a constitutional point of view, Todd saw the need to distinguish procedurally between public and private bills. He began his report by stating: "The principles of private Legislation differ so materially from those which govern the proceedings of Parliament upon Bills of a public nature, that it is reasonable to suppose that the machinery by which one is effected, should also be of a different character from that made use of in framing and perfecting the other". Todd was very critical of the fact that hitherto in central Canada no attempt had been made to introduce "a definite system with regard to Private Bills". He observed:

... Private Bills have been frequently introduced and proceeded upon, in our Provincial Legislature, without even the restraint and protection afforded to the public by the scanty Orders that exist to regulate their mode of enactment. Such laxity of procedure opens an extensive field for the commission of much injustice, by affording an opportunity to designing individuals, to obtain the sanction of the Legislature to measures which, if fully examined and understood, would be at once rejected. 38

It took a few years before Todd's criticisms and proposals for reform were accepted, but as will be noted, private bill procedure was amended and Todd played an important role in influencing the changes effected.

The next important procedural book to appear was Alfred Patrick's Digest of "Precedents or Decisions" By Select Committees Appointed to try the merits of Upper Canada Contested Elections from 1824 to 1849, published in 1849.³⁹ Patrick, who later became Clerk of the House of Commons of Canada, had served as a clerk to the election committees in Upper Canada. Dedicated to the Honourable Robert Baldwin, Attorney General for Canada West, the work marked the first case law text of Canadian procedure. The confusion and inconsistency of decisions arising from the lack of written precedents was one reason Patrick wrote the book.

Two books on Canadian procedure appeared in 1862: Alfred Todd's A Treatise on the Proceedings to be Adopted In Conducting or Opposing Private Bills in the Parliament of Canada and George J.P. Benjamin's Short Lessons for Members of Parliament.⁴⁰ Todd, Chief Clerk of Committees and Private Bills in the Legislative Assembly and brother of Alpheus Todd, briefly traced the development of the rules relating to private bill legislation in the United Province. He did not discuss pre-1840 private bill procedure in Upper or Lower Canada. He noted the uniqueness of Canadian practice and touched upon another theme of Canadian procedure: the 'liberality' of legislative practice and a desire for rapid decision-making. He wrote:

The proceedings observed in the Imperial Parliament in the passage of private bills, are necessarily somewhat complicated in their character, in consequence of the numerous checks imposed for the protection of the many interests which they may affect or involve; and the expense attending these proceedings is considerable: but the different circumstances of this country, as one but newly settled, allowing a freer scope for enterprise, with comparatively little risk of infringing upon existing rights or privileges, admit (for a time at least) of a much simpler and more inexpensive system of private bill legislation. ⁴¹

Short Lessons was published anonymously. Benjamin, who was first elected to the provincial parliament in 1856, described himself as "a Canadian M.P. of experience in Legislative Routine". He may have wished to keep his anonymity because he was the Chairman of the Assembly's Printing Committee, which undoubtedly made it easier to have the book published.

Short Lessons is essentially descriptive and provides definitions and personal comments of 26 parliamentary terms which the author has arranged alphabetically. In his introduction, Benjamin claims that the information provided:

... is not of a party nature.... It is not compiled with a view to profit, but simply with a desire to see every Member au fait in the routine of the House, and thereby to avoid confusion. The Rules which govern the Assembly apply to the practice herein laid down, and it is utterly impossible for any member to avail himself of the one, without having an intimate knowledge of the other. With this Pamphlet, and the Rules and Orders of the House, any member can, in a short time, make himself completely at home in the routine and practice of Parliament.

Although Benjamin admits that his work is compiled from English and other publications, he does not cite any authorities in his definitions. Short Lessons is important for a number of reasons. Excluding Thomson's Manual, it is the first procedural book by a Canadian parliamentarian. Secondly, it is written in both English and French, which indicated Canada's approach to parliamentary government. Thirdly, the terms chosen by the author reflect the stage at which Canadian procedure had evolved. Thomson's Manual had included such terms as "Call of the House", and "Impeachment". Short Lessons spends no time on these more antiquated procedures. New terms not covered by Thomson were now included, such as the "Budget", "Cabinet" and "Parliamentary Agents", and revealed the emergence of a different type of parliamentary procedure.

In 1872, the first text on the Canadian Speakership appeared. It was Augustin Laperrière's Decisions of the Speakers of the Legislative Assembly and House of Commons of Canada.⁴² It stemmed from the author's work in the Library of Parliament where he arranged in folio volumes the parliamentary debates, as reported by the principal newspapers. The book is an excellent précis of Speakers' rulings between 1841 and 1872. It is important not only for the recording of Canadian procedural case law, but also for revealing the evolution of the role of the Speaker. The first Speaker, Austin Cuvillier (1841-1844), had one decision recorded. The second Speaker, Sir Allan MacNab (1844-1848), had three. The third Speaker, A.N. Morin (1848-1851), had eight. However, the sixth Speaker, Henry Smith (1858-1861), had 56, and the last Speaker, Lewis Wallbridge (1863-1867), had 28.

In 1882, Edward P. Hartney published a Manual Showing the Private Bill Practice of the Parliament of Canada.⁴³ Hartney was with the Private Bill Department of the House of Commons. In his preface he noted that the "absence of any publication shewing the Private Bill Practice of the Parliament of Canada, as it now is, has long been felt, not only by persons promoting and opposing private bills but many of the Members of the Legislature themselves". Alfred Todd's 1868 work had been rendered somewhat outdated by rule changes. Hartney's purpose, therefore, was to update Todd's book by basing his remarks "on the Rules of both Houses and in conformity therewith to show the present practice, illustrating the same with the latest precedents from the Journals". His manual was essentially descriptive and un-analytical.

In 1884, John George Bourinot's Parliamentary Procedure and Practice was published. It is still referred to as "the basic treatise on parliamentary government in Canada".⁴⁴ A comprehensive historical and analytical study, the book covered the procedure of both Houses of the Canadian parliament and made reference to many provincial practices. Apart from the changes brought about by federalism, the procedure Bourinot examines is essentially that of pre-Confederation Canada since very little legislative reform had occurred between 1867 and the date of publication of the first edition of the book.

Bourinot, who was the Clerk of the House of Commons from 1880 to 1902, examined procedure from a constitutional point of view. The first chapter was devoted to a description of the stages of constitutional

development in Canada since the French Regime. In the second edition, published in 1892, he included a chapter entitled "General Observations on the Practical Operation of Parliamentary Government in Canada" in which he endeavored to explain "the nature of the conventions and understandings which govern what is generally known as responsible or parliamentary government". Like May, he believed that procedure was essentially the method by which the House's constitutional responsibilities were discharged. Bourinot felt that while the government could "well agree to submit to special parliamentary committees the investigation of certain questions of administration on which it may desire to elicit a full expression of opinion and all the facts possible, it was not their role to lay down public policy". Concerning the role of government in conducting the business of the House, he wrote: "In the evolution of parliamentary government ministers have become responsible not only for the legislation which they themselves initiate, but for the control and supervision of all the legislation which is introduced by private members in either House". ⁴⁵ Bourinot's constitutional interpretation influenced generations of Canadian parliamentarians. In recent years, however, this view has been questioned. ⁴⁶

Bourinot recognized, as did Todd, that Canada had diverged somewhat from the Westminster model. He wrote: "But whilst Canadian parliamentary practice is generally based on that of England, certain diversities have grown up in the course of years; and in some particulars the practice of the two Houses is not only simpler and better adapted to the circumstances of the country, but also calculated to promote the

rapid progress of public business".⁴⁷ He described the federal legislature as a "very liberal parliamentary system".⁴⁸ He was impressed that "the parliamentary procedure of Canada is sufficient to ensure that calm deliberation and caution which are absolutely essential for the conduct of public business. It says much for the Canadian legislatures that they have not yet been forced to adopt such rules of closure as the English Commons have been obliged to adopt Neither have they ever discussed the expediency of introducing those special rules of procedure which in the American congress stand in the way of effective legislation." ⁴⁹

Bourinot addressed two new themes regarding Canadian practice: (i) French-English relations; and (ii) the tension between private members and the government. With regard to the language issue, Bourinot traced the struggle of French Canadian deputies in Lower Canada and in the United Province to ensure the legitimacy of French as a language of debate and of record.⁵⁰ His treatment of the issue is sympathetic and he obviously saw that the procedural entente between the language groups was important to the unity of the country. With regard to the role of private members, Bourinot believed that under responsible government private members had a limited role. While private members "can materially assist the government by their suggestions for the amendment of the law,"⁵¹ all legislation, private and public, was to be controlled by the government. He believed, however, that essential parliamentary principles included the right of every member to express his opinions within limits necessary to preserve decorum and prevent an

unnecessary waste of time and that there must be abundant opportunity for consideration by every member. 52

In 1889, J.A. Gemmill published The Practice of the Parliament of Canada upon Bills of Divorce. Like Laperrière, the author felt there was a need to have more published texts on Canadian procedural case law and gave summaries of all the bills of divorce presented to parliament from 1867 to 1888. He briefly traced the development of divorce legislation in central Canada since 1792. He writes that until 1833-34, no mention of divorce occurs in the annals of Canadian legislation. In that session a bill was presented to the Legislative Assembly of Upper Canada "to enable married people to obtain divorce in certain cases. What grounds were entitled to this relief, the records do not show. The measure was dropped before it reached a second reading." 53 Gemmill also comments on the 'looseness' of procedures regarding divorce in Canada and notes that it was only in the 1888 session "that procedure was systematized and reduced to something like precision". 54 Since no specific grounds of relief had been fixed by statutory authority, his book did throw some light on the principles, established by Canadian precedent, which members were to consider when divorce matters were before them.

In 1922, the first edition of the procedural text which Canadian parliamentarians are most familiar with was published, Arthur Beauchesne's Parliamentary Rules and Forms. 55 Beauchesne was Clerk of the House of Commons from 1925 to 1949. His work was different from any which preceded it and was styled somewhat after Cushing's Lex Parliamentaria Americana. It was, as Beauchesne described, "essentially

a compendium for rapid reference" prepared for the use of members. In his approach to procedure, Beauchesne did not attempt to place Canadian practice in either a constitutional or theoretical perspective. According to one commentator, it "is primarily a technical handbook, a convenient quiver in which to rummage for points-of-order arrows". 56

Unlike Bourinot, Beauchesne described the procedure of modern Canada. Pre-Confederation practice, though not entirely dispensed with, had undergone significant reform by the time of his first edition. In the fourth edition of the book written in 1958 and coming in the wake of the 1956 famous Pipeline debate, he wrote: "Definite rules are necessary if Parliament wants to solve its two main problems: first, how to find time for disposing of the growing mass of Government business, and secondly, how to reconcile the Government's demands with the rights of the minority. The House cannot now carry on with wholly customary law, it had to regulate its course by Standing Orders ...". 57 Beauchesne was not in agreement with the rule changes which continually placed more time restrictions on parliamentary debate. He wrote: "The Committees appointed to revise the rules in 1913, 1927, 1953 and 1955 have substantially curtailed debate in an endeavour to shorten the sessions, but they have failed in their purpose because lengthy sessions are not entirely due to debate. They are caused by the constantly increasing volume of legislation and the apparent impossibility for the Government and Opposition to come to any understanding as to the time and opportunity of introducing controversial measures." 58 The problem of

how Canadian procedure could better conform to the needs of the modern industrial state would be often discussed in the coming years.

Since Beauchesne's fourth edition, there have been a number of books and articles about Canadian procedure, many of them touching upon the need for parliamentary reform. 59 Four which have reviewed important aspects of the procedural tradition were W.F. Dawson, Procedure in the Canadian House of Commons (1962), Philip Laundy, The Office of the Speaker (1964), Henri Brun, La formation des institutions parlementaires québécoises, 1791-1838 (1970) and Joseph Maingot, Parliamentary Privilege in Canada (1982).

Dawson's book is one of the first academic treatments of Canadian parliamentary procedure. Tracing the development of the practice of the House of Commons since 1867, he examines certain variables which have affected its development such as the inheritance of the British tradition, the existence of minor parties, bilingualism and federalism. He concludes that continental France had no influence, while American influence was "slight". "The United States", he writes, "... has had only a slight influence which may be seen in the provision of desks for members, page boys to run errands, and roll-call votes. These are relatively insignificant borrowings." 60 He feels that procedural evolution in Canada has reflected two basic themes: (i) the "clash between the extremes of unrestricted debate on the one hand, and unquestioned subservience to the Government on the other"; and (ii) the desire of the opposition to have ample information at its disposal. With regard to the first theme, he writes there have been three periods of development:

The old procedure, based almost entirely on custom with few written rules, was admirably adapted to the use of the private member. What was not forbidden was in order and ample opportunity was given for debate and obstruction. The second period, during which the Canadian House adopted its first set of rules, was little different, but with every rule that was written the Government tightened its hold over the House. The third period, which extends to the present day, is marked by the wide adoption of more and increasingly complicated rules, which limit the private member by outlining more efficient methods of Government control. 61

For Dawson then, the basic stimulus in procedural evolution has been the tension between private members and the government. He also characterizes the periods of 1792 and 1867 as being "little different".

Philip Laundy's The Office of the Speaker, also written from an academic standpoint, devotes a chapter to Canada. Laundy noted that while Canadian parliamentary institutions bore a close affiliation to the British parliament, this "has not precluded the development of distinctive local traditions also", especially with regard to the Speakership. He observed that the Canadian Speaker is elected pursuant to Section 44 of the British North America Act, 1867, and not at the command of the Crown. He wears a tricorne hat instead of a wig, his rulings are appealable and he has no role in accepting or rejecting closure motions. Regarding the practice of not following the principle of continuity, Laundy quotes Mr. Diefenbaker's remarks in 1957:

The opinion has been expressed that we should have a permanent Speaker, but up to the present time the practice of Canada has not been to do so. Our practice, as constituted, is governed by the character and historic basis of our country. Under it, with few exceptions the Speaker in one Parliament is of French origin, followed in the next Parliament by one of English origin.

Whatever our personal views may be as to having a permanent Speaker, only Parliament can make that decision and then only when there is generous unanimity in that regard. 62

Henri Brun's La formation des institutions parlementaires québécoises is an historical-analytical treatment of the subject. The author, following John Stuart Mill, rejects the Blackstonian equilibrium interpretation of British parliamentary government. He writes: "Le parlementarisme historique n'a rien d'un régime d'équilibre; en pratique, il y a toujours un organe législatif qui détient une nette prédominance". 63 Brun identifies static and dynamic elements within the Lower Canadian constitution. For example, the Governor and his advisers constituted an "aspect statique" while majority-minority relations were an "aspect dynamique". He concludes that between 1791 and 1838 parliamentary government performed within the political system the function of assuring "le remplacement pacifique de la souveraineté personnelle du gouvernement métropolitain par la souveraineté collective de la population coloniale". 64

Brun devotes a section of his book to the parliamentary procedure of the period. He characterizes the practice of the Assembly, especially during its formative years, as being primitive:

Tout ce qui était formule stéréotypée fut emprunté à Westminster; tout un vocabulaire fut intégralement importé et littéralement traduit en français. Bref, la procédure d'assemblée ne formait pas la partie la plus originale de notre droit institutionnel. Ce

qui n'est pas pour ajouter à un intérêt déjà mis en doute par son caractère primitif. ⁶⁵

Joseph Maingot, in his Parliamentary Privilege in Canada, writes that there was a need for a Canadian text on privilege since in contrast to Great Britain "there are marked differences in Canada with respect to the law and the practice and Canada has its own jurisprudence and precedents". ⁶⁶ Maingot surveys the historical and constitutional basis of parliamentary privilege in Canada and gives a fairly detailed account of privilege in the pre-Confederation period. He concludes that the inability to commit for contempt when transpiring outside or inside the assembly is the "distinguishing feature of the privileges enjoyed by the Houses of Parliament of Canada and its members since 1867, as opposed to the parliamentary privileges enjoyed by the legislature of Nova Scotia in 1758 and by the legislatures of Upper Canada and of Lower Canada and its members from 1792, the legislature of the Province of Canada from 1841 and, for that matter, the privileges enjoyed by all the provinces prior to joining Confederation". ⁶⁷ He does cite pre-Confederation precedents, however, whereby the Assemblies did commit offenders to jail, but based on decisions of the Judicial Committee of the Privy Council in 1842 (Kielley v. Carson) and 1866 (Doyle v. Falconer), it appears that the legislatures acted extra judicially. Maingot's analysis of privilege is made from a legal viewpoint. He does not attempt to place privilege within the political and social environment of pre-Confederation Canada.

It is seen from the foregoing that the following themes have characterized discussions of Canadian parliamentary procedure: the primitive nature of early pre-Confederation practice, the following of the Westminster model but with certain variations, the liberality of the parliamentary system and rapidity of decision-making, the English-French entente regarding the rules, and the tension between the government and private members as a key factor in procedural evolution. It is one of the objectives of this dissertation to examine if these basic themes indeed characterized pre-1867 procedure and if others should be developed.

3. Methodology

Parliamentary procedure, like so many forms of political life, appears to be multi-purposed. These purposes are derived from the sources upon which legislative practice is based. This dissertation makes the assumption that the interpretations made by May, Bentham and Redlich reveal procedure's three basic sources: (i) constitutional and legal precepts, including statutory provisions and constitutional conventions; (ii) the goals established by members for their parliamentary rules; and (iii) the political and social context. In what follows, all three sources will be analyzed with respect to the pre-Confederation legislatures of central Canada and will be treated as modes of explanation with regard to the content of parliamentary practice. The study will provide an opportunity to test the applicability of the three interpretations to a specific historical setting. This dissertation will not, therefore, be merely descriptive. It will discuss not just what the rules and practices were but also how they were used. It will attempt to place legislative practice within its

social and historical environment and to analyse the various factors which influenced its evolution.

With respect to the content of parliamentary procedure, Erskine May gives the best description. It is defined as:

... the forms of proceeding used in either House, the machinery of direction and delegation established by each, and the rules which govern the working of the forms and machinery. Examples of forms of proceeding are: the procedure on bills with its various stages; the process of debate by motion, question and decision; and in the House of Commons, a whole range of proceedings for the control of administration, such as proceedings in supply, questions to Ministers, and motions for the adjournment of the House. "Machinery" covers both the presiding and the permanent officers of each House and the subordinate bodies or committees of various kinds to which portions of business are delegated; possibly also the officers or "Whips" of the various parties, without whom the functioning of the modern House of Commons is inconceivable, should be included. The rules of procedure, in their proper sense, are the directions which govern the working of the forms of proceeding and the machinery of each House.... Reference must also be made to certain parliamentary conventions which exist to supplement the rules of procedure, mainly for the purpose of securing fair play between the majority and the minority, and due consideration of the rights of individual Members. Whether these are strictly part of procedure may be doubted, since they are not enforced by the Chair, as the rules are, but by the public opinion of the House. 68

May's definition of the content of procedure will be used and the following aspects of procedure specifically analysed: under 'Forms of Proceeding', the legislative process of bills and proceedings for the control of the administration; under 'Machinery', the presiding and permanent officers of the House and the committee structure; under 'Rules', the specific standing and sessional orders. The concept of parliamentary privilege does not fit into May's three-fold schema. Since privilege itself is not a procedure of parliament but legal rights belonging to members sanctioned either by royal consent or by statute,

it will be analyzed as a separate category. Certain parliamentary conventions will also be analysed, in particular the vote of confidence and the alternation of Speakers from one parliament to another.

One may question whether such conventions properly fall under the subject of parliamentary procedure. Authorities taking a constitutional approach, notably May's Parliamentary Practice, do not cover the confidence convention, presumably because the decision of whether a government is to resign lies with the administration and not the House. However, authors using a social context approach, such as Redlich, do refer to the vote of confidence. Gilbert Campion, who was the author of the 1946 edition of Erskine May, admitted that conventions between the King and the Commons could fall under the definition 'parliamentary procedure'. In describing the subject-matter of the fourteenth edition, Campion wrote:

With regard to the powers of Parliament and of its three component parts ... the treatment is restricted to the existing legal powers as exercised in Parliament itself, and does not extend either to the historical development of those powers or to the conventions and practices by which parliamentary government generally, or the relations between the House of Commons and the electors, are regulated. Such matters are no doubt closely related to parliamentary procedure, and indeed a good case could be made for treating them as the product, historically, of the procedure, especially, of the House of Commons. 69

Although such practices as the vote of confidence and alternation of Speakers are more 'informal' as opposed to 'formal' procedures, they were important in the evolution of pre-Confederation procedure and will be analysed in this dissertation.

Notwithstanding the importance of the procedures of the Legislative Councils of Upper and Lower Canada and of the United Province, especially since they formed the procedural foundation of the Senate of Canada, this study will focus on the legislative practice of the elected lower houses. Chapter Two will deal with the procedure of Upper Canada (1792-1840), since with its basic English-speaking population, it would seem to be a 'standard' model of British colonial procedure. Chapter Three will focus on the Lower Canadian Assembly (1792-1837). With the majority of its population being French-speaking, one could assume that it would represent a somewhat 'divergent' model of development. Chapter Four will deal with the development of procedure from the opening of the United Province in 1841 until June 4, 1853, the date on which the Legislative Assembly adopted the first full-scale revision of its rules during the Union period. Primary attention will be paid to the impact of responsible government on the Assembly's legislative practice. Chapter Five will trace the evolution of procedure from the balance of the 1852-53 session until the end of the Fifth Session of the Eighth Provincial Parliament on August 15, 1866, the last sitting before Confederation. Chapter Six will discuss the general significance of parliamentary procedure, the relationship between

legislative practice and the nature of Canadian society and the legacy of pre-Confederation procedure to modern parliamentary government in Canada.

Attached as appendices to many of the chapters are tables which provide much statistical information, such as voting divisions, petitions presented, bills introduced, etc. Most of this information was obtained from the relevant Journals of the Assemblies. The exact accuracy of these figures can be challenged although it is felt they are reasonably correct. Some of the classification of material was decided arbitrarily, such as whether or not a bill was a public or private one, or under which heading a certain parliamentary rule should be placed.

Endnotes

1. On November 15, 1867, a special committee of seven members was appointed to assist the Speaker in framing rules for the new House of Commons. Referred to the committee were the rules and standing orders of the Imperial House of Commons, those of the Legislative Assembly of the Province of Canada, and of the Houses of Assembly of the Provinces of Nova Scotia and New Brunswick. The report of the committee, which was subsequently agreed to by the House on December 20, 1867, contained nearly all the rules of the United Province. See House of Commons Journals, 1867, pp. 115-125. See also W.F. Dawson, Procedure in the Canadian House of Commons (Toronto: University of Toronto Press, 1965), p. 21. It is not claimed that other Canadian legislatures had no effect on the evolution of Canadian procedure. Nova Scotia has had representative institutions as far back as 1758. Many provincial assemblies have developed their own traditions and there has been constant interaction among the members and staff of the federal and provincial houses with respect to procedural matters.
2. For a detailed bibliography, see Josef Redlich, The Procedure of the House of Commons: A Study of Its History and Present Form, Vol. 2 (New York: AMS Press, 1969), pp. 10-20.
3. John Hatseil, Precedents of Proceedings in the House of Commons (4 vols.; various editions; South Hackensack: Rothman Reprints Inc., 1971); Erskine May, A Treatise Upon the Law, Privileges, Proceedings and Usage of Parliament (1st ed.; South Hackensack: Rothman Reprints Inc., 1971).
4. Jeremy Bentham, Essay on Political Tactics, in The Works of Jeremy Bentham, ed. by John Bowring (Edinburgh: Simpkin, Marshall, 1843).
5. Josef Redlich, op.cit., 3 vols.

6. Erskine May, Parliamentary Practice (20th ed.; London: Butterworths, 1983), p. 207. May defines parliamentary law as regulating "the constitution, powers and privileges of Parliament as a whole and of its constituent parts and also of the relations with each other of these constituent parts, namely, the Sovereign, the House of Lords and the House of Commons", p. 207.
7. May, op.cit., 1st ed., p. vi. Hatsell, though much chattier and polemical than May, also uses this methodology, although his reasoning is deductive rather than inductive. He presents first the precedents and then his observations. He points out, however, that "whenever he has presumed to form any conclusions, of what appeared to him to be the Law of Parliament, he has, at the same time, stated at length the particular Cases and Precedents, from whence those conclusions have been drawn." op.cit., Vol. 4, p. v.
8. Hatsell, op.cit., Vol. 2, p. v.
9. Many of sixteenth and seventeenth century manuals on parliamentary procedure could also be described as representing a constitutional approach. They would include John Hooker's, The Order and Usage How to Keep a Parliament in England in these Daies (1575), William Hakewell's The Order and Course of Passing Bills in Parliament (1641), Henry Scobell's Memorials of the Method and Manner of Proceedings in Passing Bills (1656) and George Petyt's Lex Parliamentaria (1690). For a review of these early manuals, see Catherine Strateman, The Liverpool Tractate: An Eighteenth Century Manual on the Procedure of the House of Commons (New York: Columbia University Press, 1937).
10. Hatsell, op.cit. Volume One, Privilege of Parliament, had four editions: 1776, 1785, 1796 and 1818. Volume Two, Members, Speaker, etc., appeared in 1781. Volume Three, Lords and Supply, was published in 1785 and Volume Four, Conference and Impeachment, in 1796.

11. N. Wilding and P. Laundy, An Encyclopedia of Parliament (Revised 4th ed.; London: Cassell, 1972), p. 468. The year of publication and editors of May's Parliamentary Practice are as follows: 1844 (May), 1851 (May), 1855 (May), 1859 (May), 1863 (May), 1867 (May), 1873 (May), 1879 (May), 1883 (May), 1893 (Reginald Pelgrave), 1906 (Lonsdale Webster), 1916 (Lonsdale Webster), 1924 (Lonsdale Webster), 1946 (Gilbert Campion), 1950 (Gilbert Campion), 1957 (Edward Fellowes), 1964 (Barnett Cocks), 1971 (Barnett Cocks), 1976 (David Lidderdale), 1983 (Charles Gordon).
12. Jeremy Bentham, A Fragment on Government, ed. by Wilfred Harrison (New York: Macmillan, 1948); and An Introduction to the Principles of Morals and Legislation (New York: Hafner Press, 1948).
13. Bentham, Essay on Political Tactics, p 301.
14. The ten inconveniences were inaction, useless decision, indecision, delays, surprise or precipitation, fluctuation in measures, quarrels, falsehoods, decisions vicious on account of form and decisions vicious in respect of their foundation, ibid., p. 302.
15. Ibid., pp. 304-5.
16. Ibid., p. 301.
17. Ibid., p. 360.
18. Josef Redlich and Francis W. Hirst, Local Government in England (London: Macmillan, 1903). For a brief biography of Redlich, see Bryan Keith-Lucas' introduction to Josef Redlich and Francis W. Hirst, The History of Local Government in England (2nd ed.; London: Macmillan, 1970), pp. ix - xvii.
19. Rudolf Gneist, The English Parliament in Its Transformations Through a Thousand Years (London: H. Grevel and Co., 1886), p. xxviii. See also Gneist's The History of the English Constitution (London: William Clowes, 1886).

20. Redlich, op.cit., Vol. 1, p. xxv, and Vol. 2, p. 129. Redlich was writing about the ten editions of May's Treatise published before 1905. It is doubtful if he would have shared the same view of Gilbert Campion's fourteenth edition published in 1946. Campion altered the arrangement and approach of the book. He acknowledged Redlich's work and included in his introductory chapter sections on the judicial and legislative functions of parliament, the personnel of parliament, the political importance of parliament, the administrative and social importance of the Commons and the appearance of Estates.
21. Ibid., Vol. 3, p. 189. Referring to Bentham's theory, Redlich also wrote: "The psychological elements in parliamentary government may, having regard to the small variation in the psychic factors of human nature over long periods of history, be looked upon as tolerably stable. Of course differences in the stage of civilization produce large variations, as also do national peculiarities, upon which the efficiency of parliamentary government is largely dependent". Ibid., p. 189.
22. Ibid., Vol. 3, p. 192.
23. Ibid., Vol. 1, pp. xxv-xxvi.
24. Ibid., Vol. 1, p. 125.
25. Ibid., Vol. 2. See Part V, "The Relation of Procedure to the Political and Social Structure of the House of Commons", pp. 103-130.
26. Ibid., Vol. 3, pp. 197-199.
27. Ibid., Vol. 3, p. 199.
28. C.C. James, "The First Legislators of Upper Canada", Transactions of the Royal Society of Canada (Series 3) 8 (1902), p. 105.

29. See C.W. Robinson, Life of Sir John Beverly Robinson (Toronto: Morang and Company, 1904), p. 3; Jon Kukla, Speakers and Clerks of the Virginia House of Burgesses, 1643-1776 (Richmond: Virginia State Library, 1981), pp. 123-128.
30. Assembly Journals, 1801 (Lower Canada), pp. 404-6.
31. Ibid., p. 298, April 9, 1803. Lex Parliamentaria was translated into French by Joseph F. Perrault who was a member of the Lower Canadian House. The edition was printed at Quebec in 1803 by P.E. Desbarats.
32. Assembly Journals, 1805 (Lower Canada), p. 470.
33. Ibid., 1814, p. 428. In 1812-13, the sum allotted by the House for the translation was increased to 1,500 pounds. See Assembly Journals, p. 264.
34. See Margaret A. Banks, "An Undetected Case of Plagiarism", Parliamentary Journal, 20 (1979), pp. 1-11.
35. See Chapter Four of this dissertation, p. 263.
36. Alpheus Todd, The Practice and Privileges of the Two Houses of Parliament (Toronto: Rogers and Thompson, 1840).
37. Ibid., pp. 15, 54, 130, 274. Alpheus Todd was also the author of On Parliamentary Government in England (2 vols.; London: Longmans, Grace, 1867) and Parliamentary Government in the British Colonies (Boston: Little Brown, 1880). Both books were well received in the United Kingdom and Todd gained considerable notoriety as a parliamentary expert, not an insignificant achievement for a colonial librarian. Todd was born in England in 1821 and came to York (Toronto) in 1833 with his parents. He was self-educated. He obtained an appointment to the House of Assembly Library in 1835. In 1841, he became the Assistant Librarian of the Legislative Assembly of the United Province and in 1856 was appointed the Chief Librarian. He died in Ottawa in 1884. See Dictionary of Canadian Biography, Vol. 11 (Toronto: University of Toronto Press, 1982), pp. 883-884.

38. Assembly Journals, 1847 (United Province), Appendix (B).
39. Alfred Patrick, Digest of "Precedents or Decisions" By Select Committees Appointed to try the merits of Upper Canada Contested Elections from 1824 to 1849 (Montreal: Lovell and Gibson, 1849)
40. Alfred Todd, A Treatise on the Proceedings to be adopted In Conducting or Opposing Private Bills in the Parliament of Canada, (Ottawa: Hunter Rose and Company, 1862). [G.P. Benjamin], Short Lessons for Members of Parliament (Quebec: Hunter, Rose and Company, 1862). For a biographical note on Alfred Todd, see W. Stewart Wallace, ed., The Macmillan Dictionary of Canada Biography (4th ed.; Toronto: Macmillan, 1978), p. 834.
41. Alfred Todd, op.cit., p. 11.
42. Augustin Laperrière, Decisions of the Speakers of the Legislative Assembly and House of Commons of Canada (Ottawa: Times Printing and Publishing Co., 1872).
43. Edward P. Hartney, Manual Showing the Private Bill Practice of the Parliament of Canada (Ottawa: MacLean, Roger, 1882).
44. John George Bourinot, Parliamentary Procedure and Practice in the Dominion of Canada (Montreal: Dawson Brothers, 1884). The book had four editions: in 1884, 1892, 1903 and 1916, the last two edited by Thomas Bernard Flint, Clerk of the House of Commons. See the introduction by C.B. Koester to the Rothman reprint of the first edition (South Hackensack: Rothman Reprints Inc., 1971), p. 10.
45. Bourinot, op.cit. (2nd ed.), p. 802.
46. For example, see Report of the Special Committee on Reform of the House of Commons (Ottawa: Queen's Printer, June 1985).
47. Bourinot, op.cit. (2nd ed.), p. 258.
48. Ibid., p. vii.

49. Ibid. (2nd ed.), p. 814.
50. Ibid. (2nd ed.), pp. 265-268.
51. Ibid. (2nd ed.), p. 805.
52. Ibid. (2nd ed.), pp. 258-259.
53. J.A. Gemmill, The Practice of the Parliament of Canada upon Bills of Divorce (Toronto: Carswell, 1889), p. 17.
54. Ibid., p. vii.
55. Arthur Beauchesne, Rules and Forms of the House of Commons of Canada (Toronto: Canada Law Book Company, 1922). Beauchesne edited four editions in 1922, 1927, 1943 and 1958. A Fifth edition was published in 1978 and was edited by Alistair Fraser, G.A. Birch and W.F. Dawson (Toronto: Carswell, 1978).
56. John B. Stewart, The Canadian House of Commons: Procedure and Reform (Montreal and London: McGill-Queen's University Press, 1977), p. 327.
57. Beauchesne, op.cit. (4th ed.), pp. vii-viii.
58. Ibid., p. v.
59. Some of the more recent books on Canadian procedure include: Stewart, op.cit.; W. Neilson and J. Macpherson, eds., The Legislative Process in Canada: the Need for Reform (Montreal: Institute for Research on Public Policy, 1978); Thomas d'Acquino,

et al., Parliamentary Democracy in Canada: Issues for Reform (Toronto: Methuen, 1982); Gary Levy, Speakers of the House of Commons (Ottawa: Library of Parliament, 1984 and 1988); John C. Courtney, ed., The Canadian House of Commons: Essays in Honour of Norman Ward (Calgary: University of Calgary Press, 1985); C.E.S. Franks, The Parliament of Canada (Toronto: University of Toronto Press, 1987). The House of Commons, under Dr. C.B. Koester and Robert Marleau, has brought out important books and articles on procedure. They include: Selected Decisions of Speaker James Jerome, 1974-1979 (Ottawa: House of Commons, 1983); Selected Decisions of Speaker Lucien Lamoureux, 1966-1974 (Ottawa: House of Commons, 1985); Précis of Procedure (Ottawa: House of Commons, 1985 and 1987); Committees of the House of Commons of Canada: A Practical Guide (Ottawa: House of Commons, 1985); and procedural papers on such subjects as the previous question and the casting vote of the Chair.

60. Dawson, op.cit., p. 14.
61. Ibid., pp. 4-5.
62. Philip Laundy, The Office of the Speaker (London: Cassell, 1964), p. 368. A revised edition of the book was published in 1984 entitled The Office of the Speaker in the Parliaments of the Commonwealth (London: Quiller Press, 1984).
63. Henri Brun, La formation des institutions parlementaires québécoises, 1791-1838 (Québec: Les Presses de l'Université Laval, 1970), p. 258.

- 64. Ibid., p. 257.
- 65. Ibid., pp. 134-35.
- 66. Joseph Maingot, Parliamentary Privilege in Canada (Toronto: Butterworths, 1982), pp. ix-x.
- 67. Ibid., p. 17.
- 68. May, op.cit. (19th ed.), pp. 205-206.
- 69. May, op.cit. (14th ed.), p. xlvii. See Redlich, op. cit., Vol. 1, pp. 119, 120, 125.

**Chapter Two - Procedure in the Old Colonial System:
Upper Canada, 1792 - 1840**

As a British colony settled in its formative years by loyal subjects fleeing the rebellious thirteen American colonies, Upper Canada appeared to be an ideal setting for English parliamentary practice. In the first Speech from the Throne ever delivered in the colony, on September 17, 1792, Lieutenant Governor John Graves Simcoe declared to the members of the provincial parliament assembled before him "I have summoned you together under the authority of an Act of Parliament of Great Britain passed in the last year, which has established the British Constitution and all the forms which secure and maintain it in this distant country".¹ Contrary to this declaration, however, parliamentary procedure in Upper Canada was never at any point an exact replica of that practiced in Great Britain. While basic British parliamentary principles were adhered to, the specifics of its rules and practices showed certain variations. Many factors shaped its evolution including the constitutional nature of the old colonial system, the material change of the colony from a pioneer society to an agricultural-commercial one, the desire for rapid economic development, the various societal cleavages which made for intense partisan politics, and the appearance in the 1820s of the Tory-Reform party system. Among the most important of these factors was that the colonial status of the province provided for a different law of parliament which excluded Upper Canada from practising the same conventions of parliamentary government as found in Great Britain.

1. **The Sources of Parliamentary Procedure**

The sources of parliamentary procedure in Upper Canada consisted of constitutional and other legal instruments, the rules and standing orders of the Houses of the provincial parliament, certain parliamentary authorities and various factors emanating from the political and social environment.

A. **The Legal Sources**

(i) **The Constitutional Act, 1791**

The Constitutional Act provided for a bi-cameral provincial legislature. Subject to assent being given by His Majesty and if not repugnant to the Act, the legislature had the power to make laws "for the Peace, Welfare, and good Government" of the colony (Section 2). The upper house, the Legislative Council, was appointed and originally consisted of not less than seven members (Section 3). It varied in size and in 1829 was composed of 18 councillors. Seats could be held for life. At the discretion of His Majesty, hereditary titles could be bestowed which enabled a son to inherit his father's writ of summons (Sections 5 and 6). No seats were, however, occupied on the basis of an hereditary title.

The lower house, the House of Assembly, was elected and was to consist of not less than 16 members (Section 17). Since there was no provision in the act to the contrary, adjustment in representation was made by the provincial legislature. Over the years, the size of the House increased from 16 members in 1792, to 19 in 1801, to 20 in 1805, to 25 in 1809, to 26 in 1817, to 40 in 1821, to 44 in 1825, to 69 in 1836. Such changes reflected an attempt to bring representation in line with population increase and the spread of settlement. ²

The right to vote was defined in Section 20 of the act and was extended in the Districts and Counties to "such Persons as shall severally be possessed, for their own Use and Benefit, of Lands or Tenements ... being of the yearly Value of forty Shillings Sterling, or upwards, over and above all Rents and Charges payable out of or in respect of the same" and in the towns and townships to "such Persons as either shall severally be possessed, for their own Use and Benefit, of a Dwelling House and Lot of Ground ... being of a yearly Value of five Pounds Sterling, or upwards, or, as having been resident ... for the Space of twelve Calendar Months next before the Date of the Writ of Summons for the Election, shall bona fide have paid one Year's Rent ... at the Rate of ten Pounds Sterling per annum, or upwards". Whereas the Assembly could on its own alter representation in the House, it could not change the franchise provisions. That could only be done by the British parliament amending Section 20.

Qualifications of members were also defined in the act. No person could be elected to serve who was a member of the Legislative Council or "a Minister of the Church of England, or a Minister, Priest, Ecclesiastic, or Teacher, either according to the Rites of the Church of Rome, or under any other Form or Profession of religious Faith or Worship" (Section 21). No member could serve if he was not "the full Age of twenty-one Years, and a natural-born Subject of his Majesty, or a Subject of his Majesty naturalized by Act of the British Parliament, or a Subject of his Majesty, having become such by the Conquest and Cession of the Province of Canada" (Section 22). Members taking their seats had to subscribe an oath stating that they bore true allegiance to the King and "that I will defend him to the utmost of my Power against all traitorous Conspiracies and Attempts whatever which shall be made against his Person, Crown and Dignity; and that I will do my utmost Endeavour to disclose and make known to his Majesty, his Heirs or Successors, all Treasons, and traitorous Conspiracies and Attempts which I shall know to be against him, or any of them ...". (Section 29).

The Lieutenant Governor was authorized to summon, prorogue or dissolve the provincial legislature by proclamation (Section 26). One parliament had to be called at least once in every twelve calendar months and every Assembly could continue for four years (Section 27). Questions in the House were to be decided by a majority of voices of such members who were present with the Speaker having a casting voice in case of a tie (Section 28).

A bill passed by the Council and the Assembly was to be presented to the Lieutenant Governor. He could give his assent, withhold it or reserve the bill for His Majesty's pleasure (Section 30). No reserved bill would be in force until His Majesty's assent had been given. Disallowance could be declared within two years. (Section 32).

Not all the forms of British parliamentary practice were prescribed in the Constitutional Act. There was, for example, no mention of parliamentary privilege. There was no limitation in the act on the power of the Legislative Council to initiate money bills, despite the fact that by the late 1600s it was generally accepted that such a power belonged exclusively to the House of Commons. Although there was an obvious attempt made to separate church and state by disqualifying the clergy from being members of the Assembly, there was no written constitutional protection of the independence of the provincial parliament from the Crown. Important conventions, such as that the executive should have no income which is not granted by Parliament and should make no expenditure without the approval of Parliament, which by the end of the eighteenth century had been established at Westminster, were not recognized in the old colonial system.

Some of the constitutional prescriptions, transplanted from Britain to the pioneer conditions of Upper Canada, had an unsettling effect. The appointed Legislative Council whose legislative powers were coordinate with those of the elected House of Assembly came to be resented by those who wished a more democratic political system for the province. In the early years of the colony, when the population was small and the territory large, the constitutional provisions barred needed members from office. In the First Parliament of Upper Canada, one member was unable to take his seat since as a Quaker he could not

subscribe to the oath stipulated in Section 29. ³ By 1810, the election of three members had been challenged on the grounds that they were Methodist preachers. ⁴

Section 22 of the Constitutional Act and the regulations regarding the naturalization of American-born residents were at the centre of great controversy in the colony in the aftermath of the War of 1812. The 'alien question', set off by the challenge to Barnabas Bidwell's election in 1820 and the return of his son, Marshall Spring Bidwell, in 1823, ⁵ marked a turning point in Upper Canadian politics. John Garner writes that under the impact of the alien controversy in 1821 there occurred "the development of definite party lines". ⁶ Aileen Dunham writes that by the mid-1820s:

The whole American population raised their voices in wrath at the insinuation that they were foreigners who required an act of grace to be confirmed in the possession of their property and privileges, which they had not only enjoyed for years without provocation, but had defended in a war. The loyalists, who felt secure in their position, took occasion to make bitter remarks about republicans, and society was divided into two hostile camps, on lines the same as those of the American Revolution. ⁷

The alien question contributed to the polarization of politics and led to the formation of party groupings within the legislative assembly. The effect on the rules of the House of this new political arrangement will be discussed later in the chapter.

The franchise provisions which were copied from those in effect in England in the 1790s created a wider manhood suffrage in all the British North American colonies than in the mother country. As Randall White has noted, a government settlement policy that gave away 200-acre farms to pioneers on the Anglo-American frontier also gave away votes.⁸ How wide the franchise was has been a matter of controversy. Adjustments to the franchise took place in Upper Canada through disqualifications based on tenure and residence, and the mode of election of having only one place of polling contributed to only a small percentage of citizens voting. Elwood Jones estimates that in 1820 only around 10% of the population voted and that this figure decreased to approximately 5.5% in 1836.⁹

Although Upper Canada inherited many of the forms of the British parliament, the constitutional reality was that it was a colony. As Dunham has described, the province's:

... local executive was but an outlying branch of a bureaucracy which had its headquarters in the Colonial Office in London Her trade was regulated by acts of the imperial parliament and by acts of the parliament of Lower Canada imposing duties, so that the local acts regulating inland navigation were relatively insignificant. Her postal service was an integral part of the imperial postal service for British North America, and was subject to the postmaster-general at Quebec. Her military affairs, excluding those of the militia, were directed from England by the War Office From 1815 to 1828 the Indians within her borders were under the commander-in-chief.¹⁰

The tenure of public offices was very different than in the mother country. Officials, such as Attorney General, Solicitor General and Treasurer, held their positions indefinitely. Writing in 1839 to the Governor General, the Colonial Secretary, Lord Russell stated: "... the Commissions of all other Public Officers are very rarely indeed recalled, except for positive misconduct. I cannot learn that during the present, or the two last Reigns, a single instance has occurred of a change in the subordinate Colonial Offices, except in the cases of death or resignation, incapacity or misconduct." ¹¹ Responsible government was quite foreign to the old colonial regime.

The Assembly had a very limited constitutional role in the financing of the administration of government. Revenue was derived from four distinct sources: (i) customs and duties imposed by the Legislature of Lower Canada, the sharing of which was negotiated by commissioners; (ii) casual and territorial revenue, such as the revenue from Crown lands which, after 1826, included the payments to the government by the Canada Company; (iii) imperial expenditures, derived mostly from the Military Chest; and (iv) taxation under acts of the provincial legislature, which encompassed licences, militia fines and import duties on goods transported overland from the United States. ¹² Given such limited financial powers, the Assembly could not be expected to play the same role as the British House of Commons. Since its constitutional functions were different, parliamentary procedure could not be the same.

(ii) Royal Instructions

Royal instructions were another source of parliamentary procedure. The overall importance of such instructions within the old colonial system has been questioned. Phillip A. Buckner, in The Transition to Responsible Government, writes:

Recent Imperial historiography has tended to emphasize the freedom of the man-on-the-spot to formulate and implement his own policies, regardless of the wishes of his superiors in London. Undeniably, until the 1820s, the Colonial Office had neither the expertise, the knowledge, nor the desire to supervise effectively the work of distant governors A governor was not usually sent to his post equipped with detailed instructions on what policies to pursue, but with a Royal Commission that defined his legal powers and a set of Instructions — copies of the original Instructions given to the colony's first governor with slight amendments at best — that provided only general directions on how to use those powers. ¹³

With respect to the procedures to be followed by the provincial legislatures of Upper and Lower Canada, specific and quite important instructions were issued. These dealt with the form for drafting bills and the categories of bills upon which royal assent was to be reserved or disallowed. The following instructions were issued to the Lieutenant Governors of both colonies:

It is Our Will and Pleasure that you do carefully observe the following Rules, Directions and Instructions, viz:

That the style of enacting all the said Laws, Statutes, and Ordinances be by Us, Our Heirs and Successors, by and with the

advice of the Legislative Council and Assembly, of Our Province of Upper Canada, constituted and assembled by virtue and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual Provisions for the Government of the Province of Quebec, in North America,' and to make further provisions for the Government of the said Province," and that no bill in any other form shall be assented to by you in Our name. That each different matter be provided for by a different Law, without including in one and the same Act such things as have no proper relation to each other.

That no clause be inserted in any Act or Ordinance which shall be foreign to what the title of it imports and that no perpetual clause be part of any temporary Law.

That no Law or Ordinance whatever be suspended, altered, continued, reviewed, or repealed in general words, but that the title and date of such Law or Ordinance shall be particularly mentioned in the enacting part.

That in case any Law or Ordinance respecting private property shall be passed without a saving of the right of Us, Our Heirs and Successors, and of all Persons or Bodies politic or corporate except such as are mentioned in the said Law or Ordinance, you shall declare that you withhold Our Assent from the same and if any such Law or Ordinance shall be passed without such saving you shall in every such case declare that you reserve the same for the signification of Our Royal Pleasure thereon.

That in all Laws or Ordinances for levying Money or imposing Fines, Forfeitures and Penalties, express mention be made that the same is granted or reserved for Us, Our Heirs and Successors, for the public uses of the said Province and the support of the Government thereof, as by the said Law shall be directed and that a clause be inserted declaring that the due application of such Money pursuant to the directions of such Law shall be accounted for unto Us, through Our Commissioner of Our Treasury for the time being in such manner and form as we shall direct.

It was also instructed that the Governor transmit to the Colonial Office "in the fullest manner" a report on the reasons and occasion for new laws passed by the provincial parliament "together with fair copies of the Journals and Minutes of the Proceedings of the said Legislative Council and Assembly, which you are to require from the Clerks or other proper Officers in that behalf, of the said Legislative Council and Assembly".

There were also instructions with respect to the categories upon which royal assent was to be reserved or disallowed. These included bills regarding (i) "the Property Credit, or Dealings of Such of Our Subjects as are not usually resident within Our said Province, or whereby Duties shall be laid upon British or Irish Shipping, or upon the Produce or Manufactures of Great Britain or Ireland"; (ii) the naturalization of aliens, the divorce of persons joined in holy marriage, and the establishing of a title or any person to lands, tenements or real estate originally granted or purchased by aliens antecedent to naturalization; and (iii) the issuing or creating of paper bills or bills of credit as legal tender in payment in the province. 14

Important directives regarding legislative procedure were also given to Governors in the course of their less formal correspondence. In a 1794 letter, the Colonial Secretary, Henry Dundas, informed Simcoe: "... I take this opportunity of observing to you that in transmitting them each Act should be respectively signed by the Speakers of the two Houses, at the time of the passing, and by you when you give your assent, and should be under the seal of the Province, either separately or connected with those which accompany it". 15

(iii) Provincial Acts

Parliamentary procedure was also regulated by provincial acts which defined procedures affecting parliament as a whole or in part. Such procedures could not properly be regulated by the adoption of specific standing rules since one element of parliament could not bind another.

Some of these provincial acts were designed to bring Upper Canadian procedure into general conformity with changes to British practice made after 1792. For example, in 1793, Westminster passed the Acts of Parliament (Commencement) Act which provided that acts were to commence from the date of endorsement by the Clerk of the Parliaments, who was also the Lords Clerk, when no other date was enacted. Previous to 1793, all acts of parliament of which the date of commencement was not mentioned took effect from the first day of the session in which the act was passed. Until 1801, Upper Canada had retained the pre-1793 British procedure. However in that year, the provincial parliament passed An Act

to prevent the Acts of the Legislature from taking effect from a time prior to the passing thereof. ¹⁶ The act stated that the procedure of commencing acts before they were passed "is liable to produce great and manifest injustice". The act provided that the Secretary of the Province, and not the Clerk of the Legislative Council, "shall endorse on every Act of the Legislature of this Province, which shall pass during the present and every future Session thereof, immediately after the title of such Act, the day, month and year, when the same shall have passed and received the royal assent; and such endorsement shall be taken to be a part of such Act, and to be the date of its commencement, where no other commencement shall be therein provided".

Some provincial acts specified exceptions to British practice. Until 1867, British parliaments were dissolved by the demise of the Crown. The parliaments of Upper Canada were twice so dissolved. Due to the state of communications of the time, however, the news of the deaths of the two sovereigns reached the colony sometime after their demise. George III died on January 29, 1820, but the provincial parliament was not dissolved until May 3, 1820. George IV died on June 26, 1830, but dissolution did not take place until September 8, 1830. Such dissolutions served little purpose and interrupted proceedings. In 1837, the legislature passed An Act to prevent the dissolution of the Parliament in the event of a demise of the Crown. ¹⁷ The preamble of the act stated: "... [It] is expedient to provide against the great inconvenience which might ensue from the inevitable dissolution of the Provincial Parliament upon a demise of the Crown on any future occasion". It stated that "notwithstanding such death or demise the Parliament of this Province shall continue, and if sitting, shall proceed to act until dissolved or prorogued in the usual manner, or until the legal expiration of the term of such Parliament".

Another important act touching upon parliamentary practice passed in 1837 was An Act to supply by a general law certain forms of enactment in common use, which may render it unnecessary to repeat the same in Acts to be hereafter passed. ¹⁸ One of the deficiencies in Upper Canada's legislative procedure was the poor drafting quality of the bills and amendments proposed in the House of Assembly. The position of Law Clerk to help members draft bills and scrutinize proposed statutes as to form was never established. Upper Canadian acts were generally short and lacking in administrative detail. Such drafting was at variance with the form of British acts. Redlich notes the following with respect to the technical detail of English legislation:

The aim in drawing up such a document is to take the matter which has to be dealt with and to analyse it as much as possible into its elements: hence the text of an act of parliament at times carries detailed arrangement to the point of casuistry: by so doing it is hoped to restrict in advance, as far as possible, all discretionary exercise of the portion of public authority regulated by the new statute. ¹⁹

As a means of reducing to some extent discretionary interpretation and to provide some regularity to provincial statutes, the legislature passed the above-mentioned statute. It provided legal signification to the words "Governor" and "Lieutenant Governor" and the word "person". It also defined the way in which sums of money granted by acts of parliament were to be paid. Henceforth all monies granted out of public revenues were to be paid by the Receiver General upon warrant of the Governor. The act was a small step towards the establishment of a general Interpretation Act.

It should also be noted that the 1837 act went beyond the general subject of forms of legislative enactment. It also dealt with general provisions as to issuing debentures for raising money. More importantly from a procedural point of view, it bestowed upon the provincial parliament the power to amend private acts, specifically acts of incorporation. The last section of the act stated: "That notwithstanding the privileges that may be conferred by any Act hereafter to be passed, upon any corporation to be created ... the Legislature may, at any time thereafter, in their discretion, make such additions to the Act creating such corporations, or such alteration of any of its provisions, as they may think proper, for affording just protection to the public ...".

With the exception of an act passed in 1799 declaring that any member accepting the office of Register of any county or riding must vacate his seat, there was no legal provision in Upper Canada ordering members to vacate their seats if they held an office of profit from the Crown. The English practice in this regard was clearly defined by the Act of Settlement of 1701, which declared that no person who had an office or place of profit under the Crown, or received a pension from the Crown, would be capable of serving as a member of the House of Commons. With the passage of An Act better to secure the independence of the Commons House of Assembly of this Province and for other purposes therein mentioned, ²⁰ the seats of members accepting certain offices in Upper Canada were declared vacant. The list of offices included judges, the Receiver General, Surveyor General, Inspector General, members of the Executive Council, collectors of the Customs, the Attorney General, Solicitor General or Sheriffs. When such vacancies occurred, the act stated that "it shall be lawful for the Speaker to issue his warrant in

the usual form for the election of a new Member...". However, their appointment to these offices was to be "no bar or obstruction to the re-election into the House of Assembly of the person so accepting or holding the same". Judges were declared ineligible to be elected to the Assembly and any member removing himself permanently from the province was to have his seat declared vacant. Writs for new elections in these cases were not to be issued immediately. Section 3 of the act stated that "no writ shall issue for a new election to fill any vacancy so occurring, until the House of Assembly shall be satisfied of its necessity, either by petition of the Freeholders of the county, town or place, to which it relates, praying that a writ may issue, or by the Member about to vacate his seat ...". As the act did not affect the members who were already office holders, the two members of the Assembly who held executive positions in 1838, Attorney General C.A. Hagerman, and Solicitor General W.H. Draper, were not required to vacate their seats.

The bill was introduced by Allan MacNab on November 10, 1836. MacNab's intentions appeared to have been a genuine attempt to reduce executive influence within the House of Assembly as opposed to merely ensuring that Upper Canadian practice conformed to that of Great Britain. Speaking in Committee of the Whole on the bill, MacNab stated:

That the independence of the House of Assembly should be their first concern, and as no man could serve two masters, if a member of that House accepted office after he was elected, the people should have an opportunity to say whether they would still trust him with their interest It had been said again and again,

far and near, that the House was filled with the officers of the Government; and he thought there were too many in it. He thought no Sheriff should be allowed to represent the county for which he was Sheriff, on account of the power his office gave him over the fortunes of many people, besides the undue influence it obtained for him and the great temptation to abuse it to secure his own election; for it must be confessed that a judgement against a man's goods or estate was a most powerful argument for his vote. He did indeed hope there was no Sheriff in Upper Canada who would abuse his power in this way, but what was to prevent him doing so if he pleased?

The Solicitor General, W.H. Draper, took exception to MacNab's portrayal of executive influence. He asked the sponsor of the bill, "Did the people desire it? Was there any member in the House who owed his seat to the office he held under Government? Not one. Nay, he did not believe any member had obtained ten votes which he would not have got had he not held office. Where then was the necessity for the bill? Again he would say, legislate for the real and not the imaginary wants of the country." 21

The bill did not proceed easily through the House as many amendments were proposed and recorded divisions held. It was also referred to a select committee which undertook an extensive review of British statutes disabling office holders from sitting as members. The bill was reserved after passage by both Houses on March 4, 1837, and not proclaimed until April 20, 1838.

The procedure followed to try election petitions was also regulated by provincial statute. The first such act was passed in 1805. Previous to that time, election petitions were tried by the House without the adoption of definite rules. In 1801, the House agreed to go into a Committee of the Whole to consider a "rule proper to be adopted with respect to contested elections". After some deliberation, it reported two rules which were accepted by the House: first, that all petitions complaining of undue elections be referred to a Committee of the Whole and second, that the House appoint the time for hearing petitions and that the Speaker give notice of the time to the parties.²² However, it was soon discovered that further regulation of such proceedings was necessary, particularly with respect to whether witnesses ought to be sworn and whether the testimony of persons petitioning against the return of sitting members was competent. In 1805, the legislature passed An Act to regulate the Trial of Controverted Elections, or Returns of Members to Serve in the House of Assembly.²³ The preamble of the act stated that "the present mode of decision in the Province upon Petition complaining of undue Elections, or Returns of Members to serve in the Parliament thereof, is defective, for want of those sanctions and solemnities which are established by law in other trials, and is attended with many inconveniences". The act provided for election trials to be held in the House. It also declared that a fixed time for considering complaints was to be established and prescribed the manner of taking the petition into consideration and the method of examining witnesses. No member was entitled to vote who did not attend the whole trial and persons swearing falsely were to incur the penalties of perjury.

The 1805 act was repealed by another act regulating the trials of controverted elections passed in 1824.²⁴ The preamble of this new act stated that "the present mode of decision upon petitions complaining of undue elections ... frequently obstructs public business, occasions much expense, trouble and delay to the parties, and is attended with many other inconveniences". The act fundamentally altered the former practice by instituting the procedure used in Great Britain, known as the 'Grenville system', which consisted primarily of the selection by lot of members to small select committees to try election petitions. The act defined the practice the House was to follow with respect to the selection of the election committees, which were to consist of 23 members taken by ballot. Members absent from the committee without leave were to be reported to the House. Section 21 of the act stated that, at the following sitting, the delinquent member was to "be ordered to be taken into the custody of the Sergeant-at-Arms attending the House, for such neglect of his duty, and otherwise punished or censured at the discretion of the House, unless it shall appear to the House, by facts specially stated and verified upon oath, that such member was by sudden accident, or by necessity, prevented from attending the said select Committee". The committee was given the power to send for papers and persons with the proviso added that "if any person summoned by the said select Committee ... shall prevaricate, or shall otherwise misbehave, in giving or refusing to give evidence, the Chairman of the said select Committee, by their discretion, may at any time during the course of their proceedings report the same to the House, for the interposition of their authority or censure, as the case shall require".

B. The Rules and Parliamentary Authorities

The written rules of the House of Assembly represented another important source of procedure. The content of these formal regulations will be analyzed later in this chapter. On its second sitting day after hearing Lieutenant Governor Simcoe's Speech from the Throne on September 18, 1792, the Assembly established seven rules of parliamentary procedure. It carried out major revisions to its rules on June 22, 1802, and January 31, 1825, and incremental revisions throughout the 1830s. As Table 2.1 indicates, the number of rules increased to 27 in 1802, to 47 in 1825 and to 64 by 1840.

With respect to parliamentary authorities, in 1800 a Committee of the Whole considering the books to be procured for the House recommended that it obtain John Hatsell's Precedents of Proceedings in the House of Commons, William Blackstone's Commentaries on the Laws of England, Burns' Justice and George Petyt's Lex Parliamentaria. The House amended the committee's report in consequence of Hatsell's and Petyt's books "being otherwise obtained". 25

Of these authorities, Hatsell's Precedents was probably the most useful. It covered many aspects of procedure including privilege, conferences, impeachment, relations with the Lords and supply. It described various parliamentary proceedings and the duties of the Speaker and the Clerk. It was used as an authority, for example, by the 1828 select committee appointed to enquire where the right lies to appoint the officers and servants of the House. 26

As noted in Chapter One, H.C. Thomson, a member of the Assembly from Frontenac and a journalist and printer, compiled A Manual of Parliamentary Practice in 1828 which was in fact a plagiarized copy of Thomas Jefferson's Manual of Parliamentary Practice. In 1828, Peter Perry moved, seconded by Marshall Spring Bidwell, who was soon to become Speaker of the House, that the Clerk purchase for the use of the Assembly 100 copies of the Manual.²⁷ Thomson's Manual was important since it provided a great deal of information on traditional British practice. It dealt with such matters as procedure in Committee of the Whole, examination of witnesses, order in debate and the legislative process of bills. Some proceedings described in the Manual were not applicable to the Upper Canadian House. For example, with regard to the arrangement of business, the Manual stated that "[t]he Speaker is not precisely bound to any rules as to what bill or other matter shall be first taken up, but is left to his own discretion, unless the house on a question decide to take up a particular subject". There is no evidence the Upper Canadian Speaker ever assumed this power.²⁸

The Manual referred to many American congressional practices. It stated that if a bill was referred to a special committee after second reading, the Speaker would proceed to name the committee. This was at variance with a specific rule of the Upper Canadian House defining the mode of appointment of special committees. The Manual also dealt with such subjects as the rules of priority of privileged motions, co-existing and equivalent questions and ordering matters "to lie on the Table".

Although such American procedures crept into the proceedings from time to time, they never became regular practices of the Assembly.

One of the important differences between Thomson's or Jefferson's Manual was its de-emphasis of the independent nature of the three elements of parliament. The British authors, especially Petyt, Hatsell and Blackstone, stressed the importance and wisdom of the balanced constitution. The sovereignty of the British constitution, according to William Blackstone, was entrusted to three powers: "first, the crown; secondly, the lords spiritual and temporal, which is an aristocratic assembly of persons selected for their piety, their birth, their wisdom, their valor, or their property; and thirdly, the House of Commons, freely chosen by the people from amongst themselves, which makes it a kind of democracy". Each branch was to form a mutual check upon the other. The independence of each branch was crucial to the proper functioning of the constitution. As Blackstone wrote: "For if ever it should happen that the independence of any one of the three should be lost, or that it should become subservient to the views of the other two, there would soon be an end of our constitution". 29

Thomson's Manual made no such references to the balanced constitution. It did refer to the independence of the houses of parliament with respect to their power to adjourn, the passage of bills and impeachment proceedings, but did not specifically discuss the procedure of parliament in the context of eighteenth century British constitutional theory.

As will be seen, the idea of the balanced constitution was very much adhered to by certain members of the ruling elite of Upper Canada, commonly referred to as the Family Compact. More democratic interpretations of the British constitution were put forward by the Reformers. The use of such divergent authorities as Blackstone and Jefferson signified to a certain extent the ideological differences within the Assembly with respect to the conduct of parliamentary government in the colony.

C. Goal Orientation and Environmental Factors

The rapid population growth experienced by the province influenced the procedural development of the Assembly. In 1778, the population was 10,000; in 1814, 95,000; in 1825, 157,923; in 1831, 236,702 and in 1840, 432,159. ³⁰ As previously mentioned, the size of the House grew to accommodate the population increase. With a larger constituency, the business of the legislature inevitably increased. Tables 2.3 and 2.5 historically trace the number of petitions and bills before the House. Such changes encouraged the House to re-examine its legislative practices.

Another factor was the nature of Upper Canadian society itself. Professor J.K. Johnson observes that Upper Canadian historiography has emphasized two identifiable themes: (i) the various kinds of divisions within Upper Canadian society; and (ii) economic growth. With regard to the societal cleavages, Johnson writes: "Upper Canadians have been found to have been divided on religious and educational questions, between the interests of urban business and rural agriculture, between competing

British and North American political and social traditions, between prevailing Conservatism and emerging Reform, in short in just about every possible way ...". 31

The political culture of English Canada, and particularly Upper Canada, has been variously interpreted. Seymour Martin Lipset, Arthur Lower and S.F. Wise saw it as conservative. Others, such as David Bell and Lorne Tepperman, Gad Horowitz and Kenneth D. McRae, have described it as essentially bourgeois and liberal, albeit with 'tory touches'. David Earl best describes the contradictory values historically found in the province: "The issue throughout is between the conservative concepts held by the founders of Upper Canada, and the frontier realities which seemed entirely to favour organizing the life of the colony along liberal lines". 32

Donald R. Beer, in his biography of Sir Allan MacNab, describes Upper Canadian Toryism and its origins as follows:

Loyalty ... meant more than support for the British connection: it implied belief in a 'British' type of society, in a graded social order, an established church, a mixed constitution, and a special role for an aristocracy of wealth, education and breeding. Perched precariously between the apparently threatening communities of the United States and French Canada, the original Upper Canadians also developed an exaggerated sense of crisis. Local circumstances and even British policy might militate against the full realization of their ideals, but upon that realization all depended. 33

In contrast to Tory ideology was Reformism. Upper Canadian Reformism has been interpreted as being greatly influenced by the American example. Norman Penner saw the goals of the Reformers as being not unlike those sought for by the people of the U.S. Northwest Territory:

The reformers wanted small and cheap government, universal suffrage, abolition of non-elected ruling bodies, control over finances by the elected representatives, disestablishment of the Church, public education, elimination of land monopolies and absentee landholding, free trade, local government, good roads and an end to hereditary titles and ranks. ³⁴

These societal cleavages set the background for the sittings of the House of Assembly which were often boisterous, divisive and unruly. Tories and Reformers displayed disdainful attitudes towards each other. Peter Russell, the Administrator of the Province between 1796 and 1799, complained that members of the Assembly were "in general ignorant of Parliamentary Forms and Business, and some of them wild young Men who frequently require some Person of Respectability and experience to keep them in order". John Beverly Robinson wrote in 1809 that the House was "nearly equally divided between Blackguards and Gentlemen". William Lyon Mackenzie spared no words when insulting his enemies. After losing his seat in the 1831 election, Mackenzie referred to the Assembly as "a sycophantic office for registering the decrees of as mean and mercenary an Executive as ever was given as punishment for the sins of any part of North America in the nineteenth century". ³⁵ Debates of the Assembly were lively, to say the least. In 1828, for example, a motion was made that "it be resolved that upon the vote or passage of any bill or

measure, to express approbation or satisfaction by standing on the floor of the House and in a tumultuous manner giving loud huzzas, is a breach of Parliamentary decorum and unbecoming the dignity of a deliberative Assembly". An amendment was moved and carried to expunge the whole motion and substitute the following words: "That this House understands that in the House of Commons in Great Britain it is not unusual to carry a great and interesting question with acclamations". The matter was not terminated however. The doors were closed and after a while re-opened. The Attorney General, John Beverly Robinson, then proposed "that it is not the opinion of this House that this Parliamentary usage warrants the huzzaing in a tumultuous manner by members standing up in their places and waving their hats, and that this House will hereafter consider as irregular and disorderly such a mode of expressing their opinions or feelings". A motion was made to adjourn the debate and carried 18 to 14, and the matter was dropped.³⁶ Table 2.4 lists the number of recorded voting divisions which took place in the Assembly each session. Between 1820 and 1840, the House of Assembly averaged three recorded divisions each sitting day.

The second theme of Upper Canadian historiography, economic growth, also influenced legislative procedure. The late eighteenth century economy of Upper Canada was based largely on the fur trade. With its decline, and the increasing number of immigrants arriving in the province, the new staples of square timber and wheat came to dominate in the post-1814 era. However, Upper Canada, like many countries of the

modern era, experienced uneven and combined development. While large regions remained backwoods, others jumped quickly into commercial development. Major canal building projects were undertaken. Local banking and financial institutions, like the Bank of Upper Canada, were established. In 1836, 19 railway bills were presented in the House of Assembly. Although the role of the state in economic affairs of the province was not non-interventionist -- the Welland and Rideau Canals, and the large holding by the Crown of clergy reserves were examples of the economic presence of the state -- the government played a limited role in the activities of the commercial and agricultural sectors of the economy.

Given the richness of natural resources in Upper Canada and the province's proximity to the rapidly growing United States, it was not surprising that Upper Canadians would be oriented towards quick economic development. Such a goal orientation encouraged the adoption of a simple decision-making mechanism, stripped of complicated regulations and ceremony. Procedures favoring rapid decision-making were not found at Westminster. J.S. Watson claims that the question which guided English parliamentarians in the eighteenth century was "is a change necessary if the public interest, supposedly perfectly served hitherto by the existing law, is to be safeguarded from a danger caused by altered conditions".³⁷ Elaborate forms were correspondingly developed. Josef Redlich describes pre-Reform British procedure as follows:

Excessive development and complication of parliamentary procedure appeared in nearly every department of the rules. It showed itself in the application of the form of the committee of the whole House in the discussion of all bills ...; in the elaborate decisions upon amendments, the mode of putting the question and

the ceremonial of divisions But the most flagrant instance of the multiplicity of forms was the most important case of all, namely, the laborious observance of the stages in the discussion of a bill. It was pointed out to the committee of investigation in 1848 that no less than eighteen different questions, each with its corresponding division, were required for the passage of a bill through the House, without reckoning those of the committee stage. And it must be remembered that this was merely the normal skeleton of the discussion of a bill, irrespective of all the conceivable variations of subsidiary motions, instructions and motions for adjournment. ³⁸

Such elaboration was not established in Upper Canada. There are few recorded rulings by the Chair with respect to procedural points of order. No restrictions were placed on bills appropriating public funds. Private bills were treated in almost the same way as public bills. The goal of members was to complete as much business as possible in as short a time as possible. In the early years of the province, much of the business dealt with establishing basic administrative structures and communication links, such as roads and bridges. The legislation passed in the First Parliament centered around creating courts of justice, building jails, making highways and registering deeds. ³⁹ The goal orientation of the Upper Canadian Assembly pointed to development, not delay.

2. The Content of Parliamentary Procedure in Upper Canada

Four aspects of the Assembly's practice will be scrutinized: (a) the rules and standing orders; (b) the forms of proceeding upon bills and the control of the administration; (c) the operative machinery of the House, including the Speaker and the committee system; and (d) privilege. As mentioned in the introductory chapter of this dissertation, these subjects are cited by Erskine May's Parliamentary Practice as defining the general content of parliamentary procedure. It is believed that an analysis of all four topics will provide a fairly complete description of Upper Canadian procedure.

A. The Rules and Standing Orders of the House of Assembly

The 1792 rules were comprised of the following: (i) a rule that the quorum of the House was to be nine members; (ii) two rules regarding bills: a) that every bill was to be read three times before it is sent to the Legislative Council for concurrence; and b) a private bill was to be presented by a petition, and a public bill by a motion; (iii) two rules regarding motions and questions: a) any question was to have one day's previous notice; and b) the House was to be cleared when the Speaker puts the question; (iv) a rule that when the House went into a Committee of the Whole, the Speaker was to leave the Chair; and (v) a rule that petitions, after presentation, were to lie on the Table two days before any further action was to be taken on them. 40

The pioneer nature of this backwoods parliament cannot be over-emphasized. W.C. Crofton describes its first sitting as being held "under a tree, a large stone serving for the Clerk's Table".⁴¹ The rules adopted in the opening session were appropriate to a small house of sixteen members which met for only about four weeks in the year. They represented the very basic elements of British parliamentary procedure. Their significance perhaps lies more in what kinds of rules were missing than what was agreed to. There were no real rules of debate. Aside from putting the question, the procedural duties and authority of the Speaker were undefined. No special procedure was adopted with respect to supply. The legislative process for bills was not very detailed. There were no rules with regard to how bills from the Legislative Council were to be dealt with. Most important, there was no general provision for the procedure to be followed in cases unprovided for in the rules. Undoubtedly, it was assumed that the Assembly would look to the House of Commons since, as Simcoe stated in his 1792 Throne Speech, the Constitutional Act had "established the British Constitution and all the forms which secure and maintain it in this distant country" but this was not stated.

Outside of the Assembly's Journals, there are few records of the debates of that opening session. However, certain descriptions of the proceedings are found in the diary of John White, the member for Kingston, who became the colony's first Attorney General. The following are excerpts from the diary:

Monday, September 17: This day our House of Assembly met. At

twelve I went to the House - everything passed off very well.

Monday, October 1: During this interval very little has happened out of the unusual way, but what has passed in the House of Assembly, where indeed there has been unusual ignorance and stupidity Debated the money bill, but stood with Mr. Smith singly. ⁴²

Some of the Journals of the 1790s are missing so it is unclear what additional rules were adopted previous to the 1802 reform. On June 16, 1800, a Committee of the Whole was ordered to consider the standing rules of the House and reported "they had erased out of the extracted schedule all those considered as superfluous or unnecessary and were of the opinion that the same should be discharged ...". ⁴³ One of those dispensed with was a 1793 order which stated that all acts of the province were to be translated into French "for the benefit of the inhabitants of the Western District of this Province and other French settlers who may come to reside within this Province...". ⁴⁴

By 1802, certain procedural problems had occurred. Although the Assembly had not grown appreciably in size, it had become more obstreperous, as witnessed by an increase in the number of recorded divisions. There was a need for more defined rules of debate. Attendance of members had become a problem. In 1798, the House adopted a rather strict rule that after the Speaker took the Chair, no member was to leave the House without the Speaker's permission. ⁴⁵ There were also problems with regard to how the House should proceed in undefined cases.

The 1802 rules provided for definite rules of debate, a more authoritative role for the Speaker in procedural questions, the recording of divisions, procedure in unprovided cases and a means for dispensing with the rules. With regard to members and rules of debate, no member was to speak more than once to one question the same day except in committee, members were to rise and address themselves to the Speaker, members could ask that the question in discussion be read, a member could speak only once to a question except in explanation of a material part of his speech in which he was misconceived, and when a member was speaking, all other members were to be seated. With regard to the Speaker, he was to preserve order and decorum, and decide all questions of order subject to an appeal to the House. It was also ordered that strangers were not to be permitted within the Bar of the House unless by permission or request of the Speaker. With respect to divisions, a rule was established whereby a recorded division could be requested by any one member. For procedure in unprovided cases, the Assembly agreed that "resort shall be had to the rules, usages and forms of the Parliament of Great Britain, which shall be followed until this House shall think fit to make a rule applicable to such unprovided case or cases". With respect to dispensing with the rules, it was agreed that "no rule adopted by this House shall be dispensed with unless by the concurrent consent of at least nine of the Members then in the House".⁴⁶ These changes provided for more order to the proceedings of the House, which suggests that the pressure to amend the rules originated internally from the members themselves and not from external sources. There was little alteration in the procedure regarding bills and no rules were adopted regarding relations with the Legislative Council. Procedure remained uncomplicated and continued to reflect the realities of a frontier province.

Significant procedural reform did not commence until the 1820s. In 1821 certain rule changes were made with respect to the quorum of the House, dispensing with the rules, membership on committees and the tabling, reading and printing of petitions.⁴⁷ With respect to committees, it was agreed that every member who introduced a bill, petition or motion which was referred to a committee was to be a member of that committee. With respect to petitions, it was agreed that they were to be brought into the House after the minutes were read and were to lie on the Table for two days before being read. It was also agreed that unless otherwise ordered, petitions were to be filed by the Clerk instead of being printed in the Journals.

In the 1825 session, a complete revision of the rules of the Assembly took place. A committee of five was appointed on January 13 to examine the rules and it reported to the House on January 17. The rule changes were concurred in on January 27.⁴⁸

The 1825 rules increased the quorum of the House to 23 members. Five more rules of debate were added, including the provisions that no member was to speak "beside the question in debate" and that "members when called to order were to sit down". The 1802 rule which allowed strangers within the Bar with the permission of the Speaker was deleted and the following added: "That any member may at any time desire the house to be cleared of strangers, and the Speaker shall immediately give directions to the Sergeant at Arms to do so, without debate".

The number of rules regarding committee procedure increased from one to seven. It was agreed that the rules in a Committee of the Whole were to be the same as in the Assembly "so far as they may be applicable, except the rule limiting the number of times of speaking". Committees of more than five were to be created as follows:

That the mode of appointing a special committee, consisting of more than five members shall be, first, to determine the number of which it shall consist, then, each member shall write on a slip of paper the names of as many members as are to form such committee, and deliver the same to the clerk, who shall thereupon examine the said lists, and report to the Speaker for the information of the house, who have the most voices in their favour; and if any difficulty should arise by two or more having an equal number of voices, the sense of the house shall be taken as to the preference.

The legislative process of bills was altered. The manner by which a public bill was to be introduced was defined for the first time. Rule 40 stated: "That every public bill shall be introduced by a motion for leave, specifying the object of the bill; or by a motion to appoint a committee to prepare and bring it in; or by an order of the house on the report of the committee...".

The House also agreed on division that when any bill is brought into the House, at least three days shall elapse between the first and second readings and at least two days between the final report of the committee and the third reading, unless the operation of the rule was suspended by the consent of at least 23 members. In the following session, however, this rule was rescinded and replaced by the regulation that "no bill brought into this House shall have more than one reading on the same day". 49

The 1792 rule dealing with private bills was expanded. It was now specified that every private bill "shall be founded on a petition, notice of the intention of the petitioners having been inserted in the Upper Canada Gazette for the period of six months previous to the meeting of the Legislature". A new procedure for money bills was established. Any motion for public aid or duty was to be adjourned after it was presented "till such further day as the house shall think fit to appoint, and shall be referred to a committee of the whole house, and their opinion reported before any resolution or vote of the house do pass thereupon". For the first time a definite procedure was arrived at with respect to bills from the Legislative Council. By a vote of 20 to 17, the House agreed that "when any bill shall be brought down to this house from the legislative council, or when any bill sent up from this house to the legislative council shall be returned with amendments, such bill so brought down, or the amendments, shall undergo the same readings and formal consideration, and the same shall be committed and be subjected to the same order, form and stages, as are observed upon bills originating in this house".

Two other important changes were made in the 1825 rules: one dealing with the Speakership and the other relating to messages between the two houses. The role of the Speaker continued to be better defined. He was not to take part in debate, or vote, unless there was a tie and then he would have a casting vote and was to give his reasons for so voting. When called upon to decide a point of order or practice, he was to state the rule applicable. The new procedure for messages from the Legislative Council was for the Master-in-Chancery to be received at the

Clerk's Table where he was to deliver his message. It altered the previous practice which was that when the Master-in-Chancery appeared with a message, the Speaker and all the members would rise. The Master would then deliver his message directly to the Speaker within the Bar of the House. The new rule was adopted without the knowledge or consent of the Upper House. Feeling insulted, the Council passed a series of resolutions in protest against the way the new rule was implemented and stated that:

...the mode of communication ever since the commencement of the constitution, now more than thirty years ago, having been refused by the house of Assembly, without any previous intimation of its intention to this house, the Legislative Council may not so far forget what is due to the place which it occupies in the constitution as to expose itself again, after transmitting the above resolutions to the house of Assembly, to the discourtesy it has experienced. 50

After charges and counter-charges of breaches of privilege and the establishment and report of a conference committee, the issue was laid to rest and the rule remained. The House resolved that "the said rule was not adopted by this House, from any disrespectful motives towards the Honourable the Legislative Council" and that the House trusted "to an undisturbed continuance, between the two branches of the Legislature, of that harmonious intercourse which has happily subsisted for a long period". 51

The Assembly debate on the 1825 rule changes, according to the Colonial Advocate, centered around the proposed rules for private bills and the new procedure for bills and amendments sent down from the Legislative Council. One of the members, James Gordon, did not approve of giving the Upper Canada Gazette "an exclusive monopoly of the notices" for private bills and another member, William Morris, thought "there was no necessity of their giving public notice of the passing of private bills". Many members objected to the recommendation of the committee that all petitions for private bills shall be presented within 30 days after the meeting of the legislature. John Rolph felt that petitions should be received at all periods of the session and John Clark claimed he "would support with pleasure the expunging of that rule, as without doing so, we could not consider ourselves the constitutional representatives of the people". Marshall Spring Bidwell considered "that the rule in question to have borne hard on some individuals; (and) should therefore not press its continuance". The notice requirement for private bills remained but the proposed rule regarding a time limit for presenting private petitions was deleted.

Much controversy surrounded the proposed change that Council bills and amendments would have to pass through the same stages as Assembly bills, the effect of which would create a much lengthier legislative process. One member, David Jones, "was of the opinion that to say that for some trifling alteration in the phraseology of the bill the house should be detained nine days was bad policy. It might suit those who wished to stay here till June, and then saddle their constituents with

the expense 'and Lord knows they pay enough already' but it struck him that for others, five days were enough. After the house had come to a conclusion respecting the nature of a bill, they should soon determine on any amendment that might be proposed by the other house." Another deputy, George Hamilton, replied that members "had often talked of the trifling amendments that had been sent down from the Upper House. There was the seditions repeal bill which we had been endeavouring to repeal ever since it was enacted: our bills for that purpose had always been lost in the other branch of the legislature. We ought to give due deliberation to any amendment that may be made by the other house. 'I had rather stay six months, aye six years and let what was done, be done well, than hurry through questions of importance without giving them due consideration'." John Rolph, a Reformer who was both a lawyer and a medical doctor, admitted "that no individual could open the statute book without feeling ashamed of the careless manner in which many of our statutes are drawn up". 52

The 1825 changes were important since the House for the first time adopted regularized parliamentary practice with respect to most areas of procedure. There were now rules regarding relations with Legislative Council, a better defined process for dealing with legislation and more rules regarding committee proceedings. Many reasons may be suggested as to why these changes took place.

The social environment had altered greatly since 1802. Between 1806 and 1825 the population of the province doubled from 70,000 to 157,923. The size of the House had increased from 19 members in 1802 to 44 members in 1825. Economic growth was proceeding as the province shed some of its backwood features. Gerald A. Craig writes: "In the 1820's ... Upper Canada began to acquire some of the lineaments of a more complex economy as it grappled with the problem of building canals and roads and establishing banks". 53

An important change had also taken place in the political environment. As has been noted, the 1820s saw the rise of party groupings which came to alternate in their majority control of the House. Professor Wise writes:

In the five elections from 1824 to 1836, there were two reform and two conservative victories, while another resulted in a virtual stalemate. The house elected in 1824 was very evenly divided, although on some issues the government could still find a majority. The mishandling of the alien question by the provincial executive had much to do with the reform sweep of 1828, yet in 1830 the conservatives were back in the saddle again, though by a relatively narrow margin. The 1834 Assembly was reform, but there was a substantial conservative opposition. The Thirteenth Assembly elected in 1836 was decisively conservative in composition. 54

These party groupings did not approach the structural organization of a modern Canadian political party. There appears to be no evidence of the existence of the position of party 'Whip'. Yet these party groupings were the forerunners of party government and did alter the way the Assembly functioned. To a greater extent than ever before, the rules of the House of Assembly began to resemble those of the British House of Commons, which had been molded by the Whig--Tory party system.⁵⁵ The 1825 rules also brought the procedures of the Upper Canadian House closer to those of the Lower Canadian Assembly. As will be discussed in Chapter Three, a party system based on racial lines had existed in Lower Canada since the opening of its parliament in 1792. Previous to the development of the party system there was little need for regularized procedure since points of order involved only actions of individual members. With more party activity, the nature of procedural problems changed as political power could be affected. Party groupings called for a more definite modus operandi about the rules of the game.

As noted in the debates in the Assembly on the 1825 rule changes, members began realizing that if they were to have an impact as legislators, more complex procedures were needed. Members were tiring of having their wishes blocked by the non-elected Legislative Council and Governor over whom they had little control. Dunham notes that it was in the upper chamber that "the executive influence was felt to such an extent that no measure disapproved of by the executive was allowed to pass the council".⁵⁶ The 1825 procedural reforms permitted the House to debate political problems more intelligently and to become a more effective voice in the decision-making process of the colony.

Between 1825 and 1840, 17 new rules and standing orders of procedures were added.⁵⁷ They dealt largely with the form and distribution of the Minutes and Journals of the House and petitions relating to controverted elections. Two additional rules were made with respect to the Speaker in 1835. It was agreed that "the Clerk shall take down the Yeas and Nays on all nominations for the election of the Speaker", that he would be entrusted with ensuring the safety of the records of the House and that all the Clerks and Officers of the House would be under his direction.⁵⁸ Three more rules were added with respect to the business of the House. In 1829 it was agreed that Orders of the Day not proceeded with when called were to be placed at the foot of the list,⁵⁹ and in 1835 the Assembly agreed that the time for receiving and disposing of the reports of select committees would follow the giving of notices.⁶⁰

Some rules were altered or deleted. One of these was the rule that "any member may at any time desire the house to be cleared of strangers, and the Speaker shall immediately give direction to the Sergeant at Arms to do so, without debate". This was an ancient rule of the British House of Commons and was in effect in the United Kingdom until as late as 1875. In the 1829 session, however, at the insistence of Captain John Matthews, the rule was amended to read that "a Member may, at any time, move that the House be cleared of strangers and the Speaker shall immediately put the question without debate".⁶¹ The rule obviously was more in keeping with the values of the Reform Party, which held a majority in the 1829 session.⁶²

Another rule change which reflected Reform values was the rescinding of the rule requiring the Chaplain to read the prayers every day at the opening of the House. Since the commencement of the legislature in 1792, there had always been a Chaplain of the House who had been an Anglican clergyman appointed by the executive. The rule which provided for the daily prayer was formally established in 1802 and had been renewed in 1825. Early in the 1831-32 Session, William Lyon Mackenzie moved the following motion:

...that the Executive Government of this Province, has not been entrusted with the power to control, regulate or prescribe to this House, the religious exercises and ceremonies of its Members, nor to appoint a Chaplain to this House; that this House doth not admit that the Church of England is the established religion of the Province; that for these and ... other reasons ... the House will henceforth dispense with the services of a Chaplain; and that the fourth rule of this House be ... repealed. ⁶³

An amendment was proposed to delete all the words of the motion and to state only that the rule of the House regarding prayers be rescinded. The vote ended in a tie and the Speaker, Archibald McLean, giving the casting vote of the Chair, decided in favour of the amendment. The rule was therefore rescinded.

The dominant position of the Church of England within Upper Canadian society had always been a point of contention, especially since Anglicans were in a definite minority. Religious controversy had waged for years between Protestant denominations, like the Methodists, and Church of England supporters. The role of the Church of England, the problem of the clergy reserves and the relationship between education and religion perplexed Upper Canadian society. The office of Chaplain of the British House of Commons had been instituted in 1659. The Church of England being the established church, the Chaplain was an Anglican minister. In 1792, Lieutenant Governor Simcoe appointed the Reverend Robert Addison, an Anglican Clergyman, as Chaplain of the House to conduct the Assembly's daily prayers. The rescinding of the daily prayers was a symbolic victory for the Reformers. 64

A final point to be emphasized about the post-1825 rules rule was the rejection of more regulations concerning private bills. Bills to incorporate companies, for example, would fall under the category of private legislation. By the 1830s such bills had increased enormously. In the 1814 session, for example, no private bill to incorporate a company was introduced. In 1826-27, 5 such bills were presented; in 1832-33, 16; 1833-34, 35; 1835, 27; 1836, 53; 1836-37, 46; 1837, 7; 1837-38, 26; 1839, 17; 1839-40, 23.

As early as 1799, the question of charging fees to cover the costs of these bills had arisen in the Assembly. Such fees were regularly charged in the British parliament. A committee of three was appointed to consider "the fees which shall be taken by the Clerk of this House in all

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private bills". The committee only reported, however, that the matter be postponed until the next session. ⁶⁵ No further action was taken. The matter was again addressed in 1837 when Hiram Norton gave notice of a bill "to compel persons applying for Charters, or other bills for their own private advantage, to deposit a sum of money with the Clerk of the House, to defray the expenses attending to the passage of said bills". ⁶⁶ He did not proceed, however, with the bill's introduction. Later in the same session, the Legislative Council adopted more stringent rules regarding private bills and requested that the Assembly take similar action. These rules included: (i) that no petition for a private bill would be entertained unless it was accompanied by detailed documentation such as plans or maps; and (ii) that the time for receiving petitions for private bills be extended. ⁶⁷ The House, however, did not respond to the request. In the next session, George S. Jarvis introduced a bill "to regulate the manner of introducing private bills and to guard against the expenses incurred by the printing thereof". The bill was read the first time but on the motion as to when the bill would be read a second time, a six-month hoist was moved and carried on a division of 23 to 4. ⁶⁸ The bill was essentially killed and no similar bill was introduced in the succeeding sessions. The rejection of such restrictions was an indicator of the importance of the business community within Upper Canadian society and its influence upon the procedural rules of the Assembly.

B. The Forms of Proceeding

(1) Legislative Process of Bills

The volume of legislation substantially increased in the latter part of the period. In the 1820s, the average number of bills introduced per session was 74; in the 1830s, the average number was 169. Despite the large volume, the House adopted very few rules relating to the legislative process.

The only rules adopted in 1792 regarding bills were that they were to be read three times before being sent to the Legislative Council for concurrence and that upon going into Committee of the Whole the Speaker was to leave the Chair. The most significant additions were that bills were to be read twice before being committed (1802), that bills or amendments from the Legislative Council were to be subjected to the same order, form and stages as House bills (1825), that bills could be brought in by motion or by a committee (1825), that motions for public aid or charge were to be considered first in a Committee of the Whole (1825) and that no bill should have more than one reading on the same day (1826-27). There was no rule preventing the introduction of imperfect or blank bills and no specific rule as to the stage at which a bill was to be printed. As has been mentioned, the only regulations pertaining to private bills were that they were to be founded on a petition and that petitioners were to give notice in the Upper Canada Gazette six months previous to the meeting of the legislature. No rules existed with respect to fixing fees, giving advance notice of committee meetings on private bills, or establishing time limits as to when petitions or bills were to be presented during a session.

The legislative process, adhered to more by custom than written rules, consisted of the following. Leave was needed to bring in a bill and members could either bring in their own bills or a committee could be appointed to bring them in. The following questions seemed to be:

that the bill be read a first time; that the bill be read a second time on a named date; that the bill be read a second time; that the House resolve itself into a Committee of the Whole to consider the bill; that the House receive the committee's report; that the bill be engrossed and be read a third time on a named date; that the bill be read a third time as engrossed; that the bill do pass and that the Speaker sign the same accordingly; that a committee be appointed to carry up the bill to the Legislative Council and to request their concurrence therein. Substantial amendments could be proposed during the committee stage, report stage, and the third reading stage and even after the third reading motion was agreed to. Riders were sometimes attached to bills and moved after a third reading or after the bill had been signed by the Speaker.

There were no real guidelines for the procedural acceptability of amendments. Very few amendments were challenged on procedural grounds and they were either accepted or defeated according to majority opinion within the Assembly. There was no recognition of the British procedure that a petition for any sum of money could only be received when recommended by the Crown. In explaining why this fundamental principle had not been adhered to in the colony, John Beverly Robinson, in Canada and the Canada Bill, stated that "there is never any certainty that any of the principal officers of Government will be members of the Assembly. The consequence is that the business of the house is not conducted by anyone as representing the Government." ⁶⁹ It should be noted, however, that one or both of the law officers of the Crown, that is the Attorney General or the Solicitor General, sat in every Upper Canadian parliament except the Fifth (1809-1811) and the Seventh (1817-1820).

There was no fixed method by which the House could select for debate the politically more important bills. The House did, on occasion,

pass 'special orders' to select items of business. For example, in the 1832-33 session, the Attorney General moved that "the several bills founded upon resolutions reported by the Committee of Supply do stand first on the order of the day", ⁷⁰ but such special orders were rare. The normal sequence for Orders of the Day was their chronological seniority of appointment on the Order Paper. After 1810, orders unproceeded with when the House adjourned stood over to the next day "as the first part of the Order". ⁷¹

The lack of more formalized procedures regarding the legislative process can be explained not only by the members' desire for rapid decision-making but also by the constitutional nature of the Assembly. It was essentially a non-sovereign legislature. Though comparatively few of the bills passed had royal assent refused, a large number were reserved by the Lieutenant Governor. Between 1835 and 1837, 42 bills were reserved, many of which related to banking institutions. The Legislative Council also played an active role in blocking or amending bills passed by the Assembly. Conference committees, designed to work out a compromise if there was a deadlock between the two houses, were often established. Over 60 such conferences were held between 1792 and 1820. Important bills were sometimes defeated or not proceeded with by the Council. In the 1835 session, for example, both the Road and Bridge Appropriation Bill and the bill dealing with trade with the United States were not passed by the Council. Members were understandably angry. The Road Bill represented important patronage legislation while the Trade Bill specified which industries in the colony would receive tariff protection. So disturbed was the House that it agreed in 1835 to the motion by William Lyon Mackenzie that the "Clerk prepare lists of the titles of all bills, which having originated in the House during the last or present sessions were rejected or declined to be acted upon by the Legislative Council; or ... were altered by the Legislative Council so as to cause their subsequent rejection by the House ...". ⁷²

It does not appear that the bills introduced were unreflective of Upper Canadian opinion. Although many bills originated with the member himself, a large number flowed from public petitions tabled in the Assembly. In an era of sparse communications, the petition represented an important proceeding linking the work of the Assembly to the political and social environment. The House usually examined petitions closely. Most were referred either to special committees or to Committees of the Whole. The subject-matter of these petitions was quite varied. An analysis of the petitions in the 1823-24 session shows that they dealt with the following matters: that money be raised for the repair of jails; that roads be surveyed; that bridges be built; that separate districts be established; that certain public bills be passed; and that pensions and remuneration for grievances be paid. The number of such petitions increased greatly over the years. The average number of petitions per session from 1792 to 1820 was 23; between 1821 and 1829, it was 105; between 1830 and 1840, it was 335.

(ii) Controlling the Administration

The financial powers of the House of Assembly were such that much of the expenditure by the government was beyond its reach. As Dunham notes, the only control the House exerted over the executive was by means of a grant of the annual expenses to cover the contingencies of the executive departments and of the law courts.⁷³ Despite the lack of effective financial control, the seeds of certain accountability mechanisms used by modern parliaments were implanted within the

procedures of the Assembly. These procedures were a fixed supply procedure and the vote of confidence.

In the First Session in 1792, a supply bill was passed but its purpose was to raise money for the discharge of the public debts which were contracted by the House itself. It was not until the postwar period that the executive asked the Assembly for a grant of money. In 1817, the Lieutenant Governor sent a message to the House saying that "the charges of its administration have far exceeded the annual Parliamentary grant for that purpose". It went on to say that:

... His Majesty's Government has hitherto provided for that excess from a tender regard for the wants and inability of a young colony.

But the growing wealth and prosperity of the Province indicates the propriety of relieving the Parent State from this burden, and of calling upon the inhabitants to defray in future the current charge of the administration, not otherwise provided by the Imperial Parliament. And His Majesty's Government has accordingly withheld the usual means of meeting it. ⁷⁴

A few days later the estimates "of the charges of defraying the expenses of the Administration of Justice and the Civil Government of Upper Canada for the year 1817, not provided for by the Imperial Parliament of Great Britain" were delivered at the Bar by order of the Lieutenant Governor. The Assembly lost no time in referring the estimates to a select committee on the civil list for examination and report.

Another important step in the evolution of the accountability process took place the following year with the presentation of the report of the Select Committee on the Detailed Accounts of the Civil Government of 1816 and 1817. The committee strongly criticized the administration for providing pensions and other sums to Chief Justices Scott and Powell without being authorized by an act of the legislature "as the admission of a contrary principle as a precedent would give the power to the person administering the Government to burden the people with enormous expenses in a manner obnoxious to constitutional proceeding". The committee noted that many of the items in the account were not within the meaning of the service intended to be provided for. The report further stated:

The attention of Your Honourable House should be drawn to prevent a recurrence of similar circumstances, by hereafter, in your Votes of Supplies on Estimates granting only an amount sufficient to defray all specifically declared items, leaving the Contingent Accounts of each Department subject to be audited by a Select Committee of Your Honourable House before payment. And Your Committee further recommend to your consideration the propriety of appointing a permanent Committee for this duty, as such only can be adequate to do justice to so critical and intricate an inquiry. 75

The establishment of a permanent committee on finance was an important step in the evolution of Canadian parliamentary procedure. It created an important popularly-controlled access point in the decision-making process with respect to the public expenditures under the Assembly's jurisdiction. Both the public accounts and the supply estimate came to be referred to the committee. It grew in size from five

to seven to nine members and was appointed by ballot. In 1836, William Lyon Mackenzie wanted to make it a standing committee with a permanent order of reference to "enquire into receipts and expenditures of all public revenues, Canals, Harbours and Incorporated Companies", but this proposal was rejected.⁷⁶ The Chairman of the Finance Committee was usually an important member in the Assembly, if not an unrecognized 'House Leader'. The committee was chaired by such members as Robert Nichol, William Morris and Dr. Charles Duncombe.

By 1839-40 a supply procedure had been established whereby the estimates when delivered at the Bar of the House via a message from the Lieutenant Governor would be referred to the Select Committee on Finance. The committee would submit a report, which would be referred to a Committee of the Whole of the House, called the Committee of Supply. It would report to the House a series of resolutions. In 1839-40, 35 such resolutions were reported appropriating money to various items and voted on separately. Once the resolutions were adopted, a motion would be made to refer them to a special committee of two members "to draft and report bills pursuant thereto". A number of bills would then be presented.

Rarely was supply not granted. Even during the dissatisfaction of the pre-Rebellion period, there was a reluctance on the part of the Reformers to withhold supplies. In its address to the King in 1835, the House stated: "It is true that we might withhold the annual grant for the support of the government as a mark of our dissatisfaction with this

state of things ... and being reluctant to resort to a measure which we are aware must greatly embarrass the government, until all other constitutional means of seeking redress have been tried and proved unavailing, we have preferred thus to appeal to Your Majesty for Your Majesty's gracious and effectual interference on our behalf". 77

Supply was withheld, however, in 1818, 1825 and 1836 but few consequences were felt. At times the Crown seemed quite indifferent towards the sums received from the House. In 1829, for example, in his Prorogation Speech, Colborne addressed the Assembly saying: "I thank you for your offer of making a provision for the support of civil government, which I should have gladly accepted ... had not the Revenue arising from the Statute of 14th Geo. III, c. 88, for the appropriation of which, for the public service, is under the control of the Crown, appeared quite sufficient to defray the expenses of the current year". 78 Still the House took the supply process seriously. In 1825 and 1829 it voted resolutions that to misapply sums appropriated by parliament was "a high crime", and in 1825-26, it insisted that the House had a role in scrutinizing all public expenditures, resolving: "It is the undoubted right of the House of Assembly, as expressing the voice of the people to interfere in the expenditure of the Civil List Revenues, and of every other branch of the Public Revenue, whenever it shall appear expedient to the wisdom of the House to do so". 79

In addition to establishing a fixed supply procedure, another form of proceeding appeared by which the Assembly attempted to control the administration of government: the confidence motion. It is clear by the

publication of the 1829 anonymous letter in the Upper Canada Herald ⁸⁰ that the doctrine of responsible government had received a degree of maturity in the province by that date. Yet it was not until the Twelfth Parliament (1834-36) in which the Reformers held a majority of seats that the drive for responsible government was reflected in the procedures of the House.

In 1836, the new Lieutenant Governor, Sir Francis Bond Head, invited some of the Reformers, including Robert Baldwin, into his Executive Council. Baldwin and the Solicitor General, however, soon resigned over disagreement regarding the operation of the Council. The House quickly established a special committee on the Executive Council which issued a report on the tenure on which the Executive Council held their offices and the composition of the Legislative Council. On a division of 26 to 15, it passed an address to the King in which it stated that the government of Upper Canada "should be conducted by the advice of those who should be actually and practically responsible for their proceedings". ⁸¹ In 1836, in its Address in Reply to the Speech from the Throne, the House stated:

We are thankful that our several Addresses to the King have been laid before His Majesty. The subjects to which they chiefly relate - a modification of the Legislative Council; a responsible Executive Council, alike possessing the confidence of the King and the people; the control of all the sources of public wealth by the Provincial Parliament, and non-interference in our domestic affairs by the Colonial Minister, so remote from the scene of Government, and unacquainted with the country and its inhabitants are indeed the subjects of the highest importance to the

inhabitants, not of this Colony, but of all the British Colonies in North America. 82

The House proceeded to censure the administration by stating that it "deeply regrets that His Excellency has been advised to animadvert upon the affairs of the Sister Province". The address was followed by another in which the House desired to know why some of the Executive Councillors resigned on March 12, 1836. Bond Head replied on March 16 charging that the Assembly was wanting the control over the appointments of the Executive Council transferred from him to it. The Lieutenant Governor refused to recognize basic concepts of constitutional monarchy. He defiantly told the House: "I am equally determined to maintain the rights and prerogatives of the Crown, one of the most prominent of which is ... of naming those councillors in whom I conscientiously believe I can confide". 83

Although the concept that an administration must have the confidence of the elected house in order to govern was never recognized in the Upper Canadian legislature, the House proceeded to vote confidence motions anyway. In 1839-40, the House voted and transmitted to His Excellency, Sir George Arthur, a resolution expressing confidence in his administration. 84 A procedural basis for confidence motions, although tenuous, had therefore been established in the pre-1840 period.

C. The Machinery of Direction and Delegation in the Assembly

(1) Presiding and Permanent Officers

The Upper Canadian Speakership differed from that of the British House of Commons, a development which was not surprising given the differences in the procedural and political environments of the two legislatures. There was no tradition of a 'permanent' Speaker as there was in the United Kingdom. Twelve different members occupied the position of Speaker between 1792 to 1840. Four of these Speakers served in two parliaments (David William Smith - 1797-1800, 1801-2; Allan McLean - 1812-1820; Marshall Spring Bidwell - 1829-30, 1835-36; Archibald McLean - 1831-34, 1836-37) and six served in one parliament (John Macdonell - 1792-96; Alexander Macdonell - 1805-07; Samuel Street - 1809-1811; Levius P. Sherwood - 1821-24; John Wilson - 1825-28; and Allan MacNab - 1837-41). ⁸⁵ Richard Beasley was elected in 1803 to complete the term of David William Smith, who was absent from the colony, and Henry Ruttan served in 1838 as Speaker pro tempore in place of MacNab.

The position of Speaker was highly sought, not only because of the obvious prestige it brought to the occupant, but because it paid and represented one of the few public office positions which was not appointed by the executive. Of the sixteen times a Speaker was elected, a division took place on at least eight occasions. In 1825 and 1829, two candidates were proposed and in 1803 and 1821 four candidates were nominated. ⁸⁶ In 1793, the House resolved that "the Speaker shall be allowed as the principal Officer of the House a salary proportionate to his situation, to commence and date from his first departure from home to attend the first Session of the present General Assembly". The salary

was fixed at 200 pounds per year, the same as was paid to the Speaker of the Legislative Council. The salary never substantially increased and in 1840 was 250 pounds per year. ⁸⁷

The growth of the party system had an influence upon the Speakership. In the years before 1820, it appears that politics played little part in the selection process. The Assembly's first Speaker, John Macdonell, was a justice of the Court of Common Pleas from 1790 to 1794. His social status, as well as the fact that he could speak French, undoubtedly helped his unanimous election of the Chair. The Speaker of the Third Parliament, Alexander McDonell, served as Sheriff of the Home District between 1792 to 1805 and was elected Speaker unanimously. The Speaker who had the longest record of service in the Upper Canadian House - Allan McLean (1812-1820) - was given a unanimous vote of thanks in 1816 for his "firm and dignified conduct" as Speaker during the parliament, "a period of unprecedented difficulty" and "for the able, impartial and honorable manner in which he has discharged the several important duties of that high station". ⁸⁸

In the 1821 parliament, when party groupings were being formed within the Assembly, McLean stood again for the Speakership. This time, however, he was defeated. The nomination of Robert Nichol, a severe critic of the administration, was also negatived. In the end Levius P. Sherwood, a well-known supporter and member of the so-called 'Family Compact', was elected Speaker. Since that parliament and until 1840, the Speaker was either a Tory or a Reformer. When the Reformers won a majority in 1829 and in 1835, Marshall Spring Bidwell was elected Speaker. In 1831 and 1836, when the Tories controlled the House,

Archibald McLean was chosen Speaker. In 1837, Allan MacNab was elected Speaker but shortly thereafter had to absent himself "in defence of the Province" to head the militia in putting down Mackenzie's rebels in the ill-fated 1837 rebellion. When he returned to the House a bill was introduced "to give Speaker MacNab a suitable sword as a token of the regard in which his services are held for the promptitude, zeal and duty displayed by him when called upon by the Representative of the Sovereign to quell and put down the late wicked and unnatural rebellion in this Province". A motion was also presented to "procure a portrait of the Honourable the Speaker of the House to be put up within the same, as a small testimonial of his gallant and patriotic conduct during the late insurrection".⁸⁹ The role of the Upper Canadian Speaker in the affairs of 1837 interestingly contrasts with that of the Lower Canadian Speaker, Louis Joseph Papineau, and signifies the great divergence in the political values of the two legislative assemblies.

The rules provided that the Upper Canadian Speaker "when called upon" was to decide points of order stating the rule applicable. After 1825, he was not permitted to take part in debate or vote, unless to break a tie. Unlike his counterpart in the lower province, he was not given the duty of deciding on his own initiative if a motion was contrary to the rules and privileges of the House before questions were put. Very few decisions of the Upper Canadian Speaker are recorded in the Journals of the Assembly with respect to points of order. The House seemed to keep the Speaker out of procedural questions and resolved problems itself, often on the basis of majority rule, instead of calling upon him to make a decision. His main duties consisted of communicating matters to the House, giving casting votes on tied questions, presenting bills of

supply to His Excellency for royal assent in the chamber of the Legislative Council, appointing members to carry messages to the Legislative Council and the Lieutenant Governor and reprimanding persons at the Bar of the House declared guilty of a breach of privilege. ⁹⁰

An attempt was made in 1837 to give the Speaker more power with respect to the appointment of committees. A motion by Charles Richardson would have allowed the Speaker to appoint members to various standing committees of the House at the commencement of each session and would have made the role of Upper Canadian Speaker similar to that of the Speaker of the American House of Representatives. The motion, however, was negatived by a margin of 7 to 28. ⁹¹ The partiality of the Speaker was often revealed in the casting vote of the Chair. The 1825 rules provided that when a tie vote occurred, the Speaker could break the tie, and give his reasons for so voting. Despite the fact that in the United Kingdom a tradition was being established whereby the Speaker would not be partisan when giving his casting vote, the Upper Canadian Speaker voted as he wished. One of the more partisan votes was Speaker Bidwell's decision in 1829 when he voted against releasing Allan MacNab from the York jail after his alleged breach of parliamentary privilege. ⁹²

The Upper Canadian Speakership was therefore a hybrid, resembling certain aspects of the British and American legislative systems. His formal powers established by the rules resembled those of the British Speaker. However, his performance in the House was more akin to that of the American Speaker. The Upper Canadian Speaker did not play a judicial role with respect to the proceedings but a political one. He exhibited partiality while in the Chair, especially with respect to the casting vote, and owed his position to the political make-up of the Assembly. He also gave political direction to the House. Both Bidwell and MacNab were above all politicians and looked upon as leaders of their respective groups.

The permanent officers of the Assembly were the Clerk of the House, the Clerks Assistant, the Chaplain (until 1834), the Sergeant-at-Arms and the Doorkeeper. Although attempts were made to have one appointed in 1832-33 and in 1836-37, the position of Law Clerk did not exist. ⁹³

Throughout Upper Canada's history, there were only four Clerks of the House appointed. They were Angus Macdonell (1797-1801), Donald McLean (1801-1812), Grant Powell (1813-1827) and James Fitzgibbon (1827-1841). The fact that the average length of service of the Upper Canadian Clerk was 12 years counterbalanced the frequent changes in the Speakership and added a degree of professionalism and experience to the proceedings of the Assembly. The Clerk was paid a fixed salary which by the 1830s was 200 pounds a year, plus amounts for "extra service". Unlike the Clerk of the British House of Commons, the Canadian Clerks did not derive any income from fees for private bills since a fee schedule along the lines of the British House was never established in the pre-Confederation period. ⁹⁴

The main duties of the Clerk were primarily administrative and technical involving supervising staff, taking minutes of the sittings, safeguarding records and ensuring that the publications of the House, such as its Journals and Order Paper, were correctly printed. Of the four Clerks, it appears that only Macdonell was a lawyer. None of the Assembly Clerks wrote on the general subject of parliamentary procedure, with the exception of Alfred Patrick, who was Clerk of Committees on controverted elections in Upper Canada and later became Clerk of the Canadian House of Commons between 1873 and 1881. Patrick's Digest of Precedents or Decisions was published in 1849.

There is evidence to suggest a relationship existed between the permanent officers of the Assembly and the oligarchial ruling elite of the province, known as the 'Family Compact'. The first Clerk, Angus Macdonell, was the cousin of the Assembly's first Speaker, John Macdonell. Well-known members of the Family Compact served in the House in their early years. John Beverly Robinson was appointed Clerk Assistant in 1812 by Sir Isaac Brock. Allan MacNab was the Sergeant-at-Arms from 1815 to 1828. He was succeeded by his son, David A. MacNab, who served in the position to 1841. Grant Powell was the son of William Dummer Powell, Chief Justice of the province from 1816 to 1825. The Doorkeeper of the House in 1828, Thomas Ridout Johnson, was a relative of Thomas Ridout, a Legislative Councillor.

In keeping with the British tradition, the Clerk of the House claimed the right of appointing and dismissing all staff under his direction, with the exception of the Clerk Assistant. According to Hatsell's Precedents, the Clerk could appoint "all the other clerks without doors, and their deputies, not by any written or formal appointment, but by his nominations only". In the late 1820s, when the Reform Party held a majority in the House, this right was challenged. In 1829, the Committee on Privileges charged the former Clerk, Grant Powell, for dismissing a staff member for political reasons. The employee in question, James Lumsden, was examined by the committee and gave the following testimony:

Was any reason assigned for your removal? - Doctor Powell told my father he did not want me any longer, but that I had behaved to his satisfaction, and to the satisfaction of the House. My father had voted for the opposition candidate and against the Attorney General during the previous summer and his reasonable belief is that the vote was the only real cause of my losing the situation: I presume, however, he does not know this as a fact: Mr. William Gamble told my mother that that vote was the reason of my dismissal. ⁹⁵

The committee reported to the House that "[i]t appears that Dr. Powell ... exercised his arbitrary right of dismissal in the case of James Lumsden ... who ... was displaced without any reason being assigned, after his father had given his suffrage as an elector of the town of York against the crown officer". Based on the committee report, the House agreed in 1829 by a majority of 27 to 5 that "the Clerk of this House, with the approbation of the Speaker ... shall appoint all of its subordinate officers and servants (the Sergeant at Arms excepted) and that no officer or servant of this House shall be removed or dismissed from his office or serve without its knowledge or consent ...". ⁹⁶ By stripping the Clerk of his arbitrary control over staff appointments, the Reformers were obviously striking a blow at what it perceived to be a Tory stranglehold on the government bureaucracy in the province.

(11) Committees

The system of committees used by the House of Assembly differed from that of the United Kingdom. Redlich notes that in Great Britain "[f]rom about 1700 onwards the form of committee of the whole House almost completely took the place of that of real committees in respect of bills and financial proposals. From that date real committees have been only applied to investigation and preliminary work, and as organs in the direct legislative process have been smitten with atrophy." ⁹⁷ Such was not the case in Upper Canada. Numerous instances may be found where bills were referred to select committees as part of the legislative process. ⁹⁸ Many committees brought in bills themselves. In 1814, for example, a special committee was ordered to consider the militia laws of the province "and to report a bill should they think proper". ⁹⁹

The use of the system of committees of the House of Assembly was influenced by the social and political environment. In the pre-1812 period, select committees were not extensively used. Much changed in the post-war era. In 1816, five select committees consisting of between three and five members were appointed to examine such issues as petitions from citizens regarding military services, existing regulations between the province and the United States, militia laws and the education of youth. In 1817 no fewer than six select committees were appointed.

The growth of the select committees paralleled the development of the province and was encouraged by political events. The social environment altered greatly after the war. As Tables 2.3 and 2.5 show, more and more petitions were being presented to the Assembly and more

bills were being passed. Professor Craig writes: "The first, primitive stages of pioneer settlement had been left behind, and everyone looked forward to a period of more rapid growth, to an expansion of settlement and the beginning of major works of public improvement. The first regular stage-coach lines between Kingston and York began to run in 1817, and in that same year the first steamboat appeared on Lake Ontario. Banking schemes were projected ...". 100

The post-war era also was one of depression as wartime prosperity came to an end. Grievances about the poor state of the roads, land policies which impeded development and the dismal system of education were on the minds of settlers. Such concerns formed the basis of the township meetings of 1818 organized largely by Robert Gourlay, who encouraged citizens to elect delegates to a provincial convention whose purpose would be to "dispatch commissioners to England with the petitions and hold correspondence with them, as well as with the supreme government". 101 Such a convention would effectively by-pass the provincial parliament. The House of Assembly was obviously threatened by the actions of the Delegates in Convention. It resolved that the House of Assembly was the only constitutional representative of the people and unanimously condemned Gourlay's letter to the people of Upper Canada as "the most gross, flagrant, infamous matter of a libellous character exciting the people to open acts of violence". 102

Yet while the House attempted to destroy Gourlay, it was not prepared to let the grievances go without investigation. The number of committees of inquiry increased. Their appointment became a popular procedure since members often summoned witnesses and studied problems in

a somewhat quieter setting, away from the often acrimonious debates of the chamber. The increased committee activity and the subsequent need to regulate committee procedures influenced the decision in 1825 to augment the number of rules regarding committees to seven. The new rules dealt with committee quorums, the order in which motions were to be dealt with, how the Chairman of the Committee of the Whole was to be appointed and the mode of appointing special committees. In the following session, the number of select committees continued to increase. In 1831-32, 22 select committees were established, excluding select committees examining petitions. In 1835, this number had increased to 58.

The most significant change in the committee system took place just prior the outbreak of the 1837 Rebellion. Early in the last session of the Twelfth Parliament (1836), one that was dominated by a Reform majority, the House agreed to appoint by one motion 11 select standing committees. Up until that time committees had been appointed on an ad hoc basis. The standing committees were: (i) Roads and Bridges (10 members); (ii) the Claims of the Militia and other Pensioners (5 members); (iii) Education (6 members); (iv) Canals and Internal Improvements (6 members); (v) Petitions of Aliens (5 members); (vi) the Penitentiary of the Province (4 members); (vii) Expiring Laws (5 members); (viii) Agriculture and the Improvement of the Breeds of Animals and Seeds of Grains and upon Trade and Manufacturers (11 members); (ix) the Incorporation of Towns and Villages (5 members); (x) the Incorporation and Alteration of the Charters of Banking and Insurance Companies (4 members); (xi) the Division of Districts of the Province (17 members). A twelfth standing committee was added a few days later consisting of six members on common schools and school lands. 103

The movement towards a permanent system of committees was an important variation from the British procedural model. The new arrangement somewhat resembled the system of committees used in the seventeenth century parliaments of Great Britain. Redlich writes that in the Long Parliament of 1641 to 1649, England was governed by select committees of the House of Commons:

The House was no longer a body united against the Crown, but was torn assunder by internal dissensions; committees of the whole House were therefore highly inconvenient to the ruling party, the Puritans, inasmuch as they afforded their opponents equal rights with themselves in the detailed discussion in committee. Besides, the mainly executive, governing activity of the revolutionary House of Commons called for the formation of small committees capable of administrative business. Hence in place of committees of the whole House, a series of special committees were appointed from the members of the majority, and these committees carried on the government of the country without check till Cromwell's assumption of personal rule. 104

The new committee structure also resembled the system of committees used in many of the American colonial legislatures and the active committee system in existence in the American Congress. By moving to a permanent system of committees in 1836, the Upper Canadian House was not only moving towards the American model, but was also imitating the kind of committee system used in its sister province. As will be noted in the following chapter, Lower Canada had established a series of standing committees in 1831.

It would be an exaggeration to describe the standing committees of Upper Canada as revolutionary, determined to carry on the government of the colony. Many of the committees appointed in 1836 had been appointed on an ad hoc basis in the previous sessions. The committees with the larger memberships, such as those on roads and bridges, agriculture and the division of the districts, reflected the day-to-day concerns of the majority of people and were not attempting to challenge constitutional power. The Upper Canadian committees were not made up of only members of the majority party, as they were in both the English Long Parliament and Lower Canada. In 1825, the Assembly had rejected the recommendation that "no member who declares himself or divides against the substance of the bill, motion or matter to be committed, upon any of the readings thereof, can be nominated to be of a committee upon such bill, motion or matter". 105

There is no doubt, however, that the movement towards a standing committee system did reflect the desire of the Assembly to involve itself to a greater extent in governing the colony. In the late 1820s and throughout the 1830s, the demand for more democratic control and for responsible government was increasingly pressed for by Reformers but without much success. Standing committees gave members a better tool by which they could move closer to centres of decision-making. Their appointment may also have been the consequence of previous failures to win more control over the Lieutenant Governor and the Executive Council.

It is not surprising that in the following parliaments, in which the Reform element was greatly reduced and which were controlled by

forces more sympathetic to the executive, the Assembly did not return to a permanent committee system. Such a system had obviously been interpreted as a threat to the old colonial system. The House returned to its former practice of appointing ad hoc committees.

D. Parliamentary Privilege in Upper Canada

Privilege may be defined as the peculiar rights enjoyed by a legislature collectively and by members individually "without which they could not discharge their functions and which exceed those possessed by other bodies or individuals".¹⁰⁶ As Joseph Maingot has stated in Parliamentary Privilege in Canada, the rights enjoyed by assemblies in pre-Confederation period were legally quite limited. Power to punish for contempts was not considered to be an Assembly privilege.

The legal opinions given the Colonial Secretary clearly stated that colonial and British Commons privileges were not co-equal. In 1815, the British law officers stated: "The House of Assembly of Upper Canada has not existed long enough to have established privileges by usage: the Act of Parliament has not delineated any, and we therefore conceive the outline to comprize and to be confined to such only as are directly [and] indispensably necessary to enable them to perform the functions with which they are invested and therefore may be fairly said to be incidental to their constitution". On December 3, 1838, the Crown lawyers rendered a similar opinion:

We think it impossible to contend that the Crown can, by constituting or calling together a general Assembly in a Colony with power to assist in making laws for the Colony, not repugnant to the laws of the Mother Country, thereby give impliedly to that body the undefined and extensive privileges possessed by the House of Commons as a branch of the High Court of Parliament. ¹⁰⁷

The Constitutional Act was silent with respect to the privileges of the legislatures in both Upper and Lower Canada. Simcoe's 1792 declaration that the act "has established the British Constitution and all the forms which secure and maintain it in this distant country" obviously led many in the province to assume that the Assembly possessed privileges akin to those of the House of Commons. The form of the Speaker's petition to the Crown quickly evolved into one whereby the same privileges as the Commons were claimed. In 1792, the Speaker only asked His Excellency "to promise that Members of this House shall enjoy freedom of debate, access to the person of His Excellency and be privileged from arrest". By 1801, the Speaker was claiming, "by the name of the Assembly, the freedom of speech and generally all the like privileges and liberties as are enjoyed by the Commons of Great Britain our Mother Country".

In spite of the fact that it was often acting beyond the scope of its legal powers, the Assembly proceeded to fight for and assert many of the same privileges claimed by the British House. With respect to individual kinds of privilege, the Assembly claimed freedom from arrest while it was sitting (1793) and freedom from jury duty (1811). ¹⁰⁸ With respect to corporate examples of privilege, affecting

the House as a whole, it claimed it had the power to send for and question witnesses and to punish any individual, no matter who they were or for whom they worked, who refused to appear or submit to questioning. In 1803, the House insisted on calling the Master-in-Chancery, an official of the Legislative Council, before the Bar. In 1828, it insisted on calling the Adjutant General, who was responsible for the local militia, and an official of the Indian Department. In both instances, the House used its power to commit to jail anyone who refused to obey its orders. In 1829, the House even committed Alan MacNab, the future Speaker of the Assembly, and Henry John Boulton, the Solicitor General, for refusing to testify before one of its committees.

The claim to these privileges did not go unchallenged. In 1803, when the House sent its Sergeant-at-Arms to the Legislative Council to bring the Master-in-Chancery before it, the Council Speaker asked the Sergeant "if he had the affrontery to come there" and refused his writ. ¹⁰⁹ After a bitter fight with the Council, the official was brought before the House and questioned. In 1828, the Adjutant General and the departmental official told the Sergeant-at-Arms when he came to arrest them that "they would not be arrested unless the House was broken open and they were forcibly taken, and if they were so arrested, they would prosecute the Speaker and the Sergeant at Arms". ¹¹⁰ Both MacNab and Boulton challenged the legality of the House calling upon them to testify and claimed that their constitutional rights as British subjects were violated. ¹¹¹ Despite the resistance and the legal opinions of the Crown, the Assembly was successful in enforcing their privileges, which though not recognized de jure, were at least recognized de facto.

The House was acutely sensitive to what it considered libellous and slanderous remarks and misrepresentations of its debates by newspapers in the province. ¹¹² The most celebrated case of the House exerting its powers to punish for slander was the expulsion of William Lyon Mackenzie for his article in the Colonial Advocate on November 24, 1831. The Assembly declared the article "gross, scandalous and malicious libels - intended and calculated to bring this House and the Government of this Province into contempt, and to excite groundless suspicion and distrust in the minds of the inhabitants of this Province, as to the proceedings and motives of their Representatives...". ¹¹³ Mackenzie was expelled. He was, however, re-elected and was expelled again by the House which declared him "unworthy to take his seat as a Member during the present parliament". In total he was expelled and re-elected five times.

Another kind of corporate privilege fought for by the House was the right to initiate money bills. Like the power to call witnesses and punish for contempts, this right was not freely granted but had to be fought for. At the time of the passing of the Constitutional Act the British government had discussed whether money bills should originate in the lower house. Dundas told Dorchester that while this principle was consistent with the spirit of the British constitution, "it could be prudent, if possible, to avoid any unnecessary discussion of its application in minute cases and above all, it should not be so extended by overstrained refinements as to produce embarrassment and perplexity in the progress of public business". ¹¹⁴ It was not until 1816 that the House began to insist on its privilege. In that year, when the

Legislative Council sent down a bill for regulating trade with the United States imposing duties on the province, the House unanimously passed a motion that "no grants of money to his Majesty ... can constitutionally originate in any other place than the Commons House of Assembly". In 1818, the Assembly was again forced to challenge the Legislative Council over the financial initiative when the Council amended another trade bill. The Council claimed that the Assembly, "adopting as its type the Commons House of Parliament, and claiming all the powers, immunities and privileges thereof, is not justified by the words or spirit of the constitution more than the Legislative Council would be justified to assume for itself and its members the powers, immunities and privileges of the Upper House." It insisted that "the origin of the supplies in either House ... must be indifferent so long as either House retains the power of rejection ...". ¹¹⁵ Such a position, however, was unacceptable to the Assembly.

The clash over the Trade Bill in 1818, though not resolved, since the session was prorogued shortly thereafter, did establish the Assembly's right to initiate money bills. After that date, there was no serious attempt by the Council to interfere with its financial power.

Privilege never evolved, however, into as radical a claim as found in colonial America, ¹¹⁶ or in Lower Canada. That it did not indicates that the Assembly felt relatively satisfied with its role within the legislative process. It was not prepared to disrupt in any major way constitutional government within the province on the grounds of parliamentary privilege. The House in general believed it could adequately discharge its functions with the privileges it had. Members

were prepared to fight hard to ensure that their privileges were recognized but were also prepared to compromise. Unlike in royal America or in Lower Canada, they believed their rights as parliamentarians were adequately protected within the existing system of government.

3. Summary

Despite Lieutenant Governor Simcoe's declaration that the Constitutional Act had established "the British Constitution and all the forms which secure and maintain it in this distant country", the constitutional sources of procedure were very different in Upper Canada than at Westminster. The 1791 act did not provide for the same law of parliament. As opposed to unchallenged sovereignty, the local legislature had quite limited power. There were no elaborate procedures developed for the passage of bills since the House did not occupy a key position in the decision-making process. The role of the Speaker was fairly elementary and little case law was compiled. Accountability mechanisms were weak since the House had a restricted constitutional role in the financing of the administration of government. Having no elective function whereby the Assembly could make and unmake Executive Councils, it could only develop in a very elementary manner such procedures as the vote of confidence.

If a prime goal of parliamentary procedure could be identified, it was that that decision-making process should be rapid. This objective evolved primarily for economic reasons. In the opening session of 1792, only seven rules of procedure were adopted. Very few restrictions were

placed on bills asking for exclusive privileges. Throughout the history of Upper Canada to 1840, the Assembly never adopted more than five rules relating to the legislative process. Such procedural simplicity did not encourage effective legislation.

The frontier conditions of the province helped to shape the legislative practices used. Elaborate procedures and multiplicity of questions were not found very appealing to a House often dominated by farmers and shopkeepers who wished to return home as quickly as possible to attend to their own affairs.¹¹⁷ The liberal values of pioneer society, such as detachment from custom and tradition and a laissez-faire attitude regarding the role of government, were reflected in the Assembly's simplistic approach to procedure. Bills and petitions calling for the appropriation of public money did not have to be accompanied by a recommendation from the Crown. There was much change in the Speakership with no fewer than 12 different members occupying the position. Little case law was developed allowing procedure a great deal of freedom from precedent. In the best U.E.L. tradition, Tory members tried to cling to British forms, but were not always successful. Jefferson's Manual, disguised as Thomson's Manual, became the Assembly's chief procedural textbook in 1828. The Speaker was not wigged, as in Britain: instead he wore a cocked hat.¹¹⁸ In a manifestation of the liberal value of freedom of religion, the Assembly did away in 1832 with the reading of prayers by the Crown-appointed Anglican clergyman.

The Upper Canadian period marked the formative years of the parliamentary procedural tradition of Canada. Considerable development took place as the province moved from a pioneer society to a rapidly

expanding agricultural-commercial one, but was restricted while the old colonial system remained. With the outbreak of rebellions in both Upper Canada and Lower Canada, another constitutional arrangement was contemplated and subsequently implemented for the Canadas. As will be discussed in future chapters, the new system of parliamentary government would markedly change the way business would be conducted.

**Table 2.1 - Evolution of Rules and Standing Orders of the
House of Assembly Upper Canada ***

(Number per category)

	<u>1792</u>	<u>1802</u>	<u>1825</u>	<u>1840</u>
1. Quorum	1	1	1	1
2. Members & Rules of Debate	-	5	9	9
3. Committees	1	1	7	8
4. Motions	2	5	4	4
5. Public Bills	1.5	2.5	4.5	4.5
6. Private Bills	.5	.5	.5	.5
7. Petitions	1	1	1	4
8. Minutes and Journals	-	1	2	6
9. Meetings & Adjournments	-	2	3	3
10. Speaker	-	3	4	6
11. Divisions	-	1	1	1
12. Rules and Unprovided Cases	-	2	2	1
13. Prayers	-	1	1	-
14. Strangers	-	1	-	-
15. Legislative Council	-	-	2	2
16. Aids and Supplies	-	-	1	1
17. Orders of the Day and Business of the House	-	-	1	4
18. Appointment of Messengers	-	-	1	1
19. Miscellaneous	-	-	2	8
Totals	<u>7</u>	<u>27</u>	<u>47</u>	<u>64</u>

* Excludes rules regarding trials of controverted election petitions

Table 2.2 - Sittings of the Legislative Assembly, Upper Canada, 1792-1840

* indicates Journals missing

Parliament	Year	Number and Dates of Sittings	Parliament	Year	Number and Dates of Sittings
First	1792	22 (Sept.17-Oct.15)	Eighth	1819	30 (June 1-July 12)
	1793	29 (May 31-July 9)		1820	14 (Feb.21-Mar.7)
	*1794	- (June 2-July 9)		1821	55 (Jan.31-Apr.14)
	*1795	- (July 6-Aug.10)		1821-2	47 (Nov.21-Jan.17)
	*1796	- (May 16-June 3)		1823	49 (Jan.15-Mar.19)
Second	*1797	- (June 1-July 3)	Ninth	1823-4	54 (Nov.11-Jan.19)
	1798	28 (June 5-July 5)		1825	69 (Jan.11-Apr.13)
	1799	18 (June 12-June 29)		1825-6	64 (Nov.7-Jan.30)
	1800	27 (June 2-July 4)		1826-7	56 (Dec.5-Feb.17)
Third	1801	34 (May 28-July 9)	Tenth	1828	56 (Jan.15-Mar.25)
	1802	36 (May 25-July 7)		1829	49 (Jan.8-Mar.20)
	1803	31 (Jan.24-Mar.5)		1830	48 (Jan.8-Mar.6)
	1804	33 (Feb.1-Mar.9)		1831	56 (Jan.7-Mar.16)
Fourth	1805	26 (Feb.1-Mar.2)	Eleventh	1831-2	58 (Nov.17-Jan.28)
	1806	24 (Feb.4-Mar.3)		1832-3	79 (Oct.31-Feb.13)
	1807	30 (Feb.2-Mar.10)		1833-4	88 (Nov.19-Mar.6)
	1808	49 (Jan.20-Mar.16)		1835	77 (Jan.15-Apr.16)
Fifth	*1809	- (Feb.2-Mar.9)	Twelfth	1836	74 (Jan.14-Apr.20)
	1810	33 (Feb.1-Mar.12)		1836-7	83 (Nov.8-Mar.4)
	1811	35 (Feb.1-Mar.13)		1837	19 (June 19-July 11)
	1812	29 (Feb.3-Mar.6)		1837-8	56 (Dec.28-Mar.6)
Sixth	*1812	- (July 27-Aug.5)	Thirteenth	1839	59 (Feb.27-May 11)
	*1813	- (Feb.25-Mar.13)		1839-40	55 (Dec.3-Feb.11)
	1814	25 (Feb.15-Mar.14)			
	*1815	- (Feb.1-Mar.14)			
	1816	45 (Feb.6-Apr.1)			
Seventh	1817	40 (Feb.4-Apr.7)			
	1818	45 (Feb.15-Apr.1)			
	1818	41 (Oct.12-Nov.27)			

**Table 2.3 - Petitions Presented to the
Legislative Assembly of Upper Canada, 1792-1840**

Year	Number presented	Year	Number presented
1792	1	1821	55
1793	0	1821-2	43
1794	0	1823	57
1798	3	1823-4	61
1799	9	1825	96
1800	6	1825-6	71
1801	4	1826-7	164
1802	10	1828	197
1803	5	1829	198
1804	8	1830	152
1805	7	1831	197
1806	7	1831-2	269
1807	10	1832-3	246
1808	11	1833-4	260
1810	19	1835	508
1811	19	1836	596
1812	25	1836-7	685
1814	4	1837-8	164
1816	13	1839	372
1817	28	1839-40	240
1818	27		
1818	18		
1819	31		
1820	13		

**Table 2.4 - Recorded Divisions Taking Place in the
Legislative Assembly of Upper Canada, 1792-1840**

Year	Number Taking Place	Year	Number Taking Place
1792	0	1821	62
1793	0	1821-2	37
1794	0	1823	74
1795	2	1823-4	102
1799	1	1825	109
1800	6	1825-6	166
1801	20	1826-7	148
1802	22	1828	154
1803	59	1829	123
1804	24	1830	142
1805	8	1831	160
1806	7	1831-2	225
1807	14	1832-3	231
1808	10	1833-4	321
1810	27	1835	257
1811	19	1836	224
1812	27	1836-7	459
1814	13	1837	75
1816	29	1837-8	232
1817	55	1839	231
1818	35	1839-40	167
1818	13		
1819	22		
1820	14		

**Table 2.5 - Bills dealt with by House of Assembly -
Upper Canada, 1821-1840**

	Number presented by Members	Number receiving Royal Assent
1821	68	31
1821-2	40	27
1823	63	37
1825	46	6
1825-6	88	31
1826-27	84	25
1828	98	22
1829	106	21
1830	136	34
1831	122	24
1831-2	130	31
1832-3	158	59
1833-4	203	56
1835	207	44
1836	208	35
1836-7	264	112
1837	19	4
1837-8	152	62
1839	175	72
1839-40	172	70

Endnotes

1. Assembly Journals, 1792, p. 1. Gerald M. Craig writes that the Constitutional Act did not divide the province of Quebec into two separate provinces. " ... [T]he Act noted that division would be accomplished by executive action. The latter course was adopted in order to avoid public discussion of the exact boundaries of the two Provinces, a subject which could be embarrassing as long as Great Britain retained the posts on the American side of the Great Lakes". Upper Canada: The Formative Years, 1784-1841 (Toronto: McClelland and Stewart, 1963). Section 2 of the Constitutional Act, 1791 stated: "And whereas his Majesty has been pleased to signify, by his Message to both Houses of Parliament, his royal Intention to divide his Province of Quebec into two separate Provinces ...". United Kingdom Statutes, 31 Geo. III, c. 31.
2. John Garner, The Franchise and Politics in British North America (Toronto: University of Toronto Press, 1969), pp. 88-90; Aileen Dunham, Political Unrest in Upper Canada, 1815-1836 (Toronto: McClelland and Stewart, Carleton Library, 1963), p. 33; F.H. Armstrong, Handbook of Upper Canadian Chronology and Territorial Legislation (London: University of Western Ontario, 1967), pp. 58-78.
3. See Assembly Journals, 1792, p. 4. The member was Philip Dorland.
4. The members were Benejah Mallory (1805), John Roblin (1810) and James Wilson (1810). Both Roblin and Wilson were unseated. See Assembly Journals, 1805, p. 84; 1810, pp. 293, 351.
5. See Assembly Journals, 1821-22, pp. 124-153 and 1823, p. 315.
6. Garner, op.cit., p. 198.
7. Dunham, op.cit., p. 77.
8. Randall White, Ontario 1610-1935: A Political and Economic History (Toronto: Dundurn Press, 1985), p. 71. See also Garner, op.cit., p. 4.
9. Elwood Jones, "The Franchise in Upper Canada, 1792-1867" (paper presented at the Annual Meeting of the Canadian Historical Association, Winnipeg, Man., June 7, 1986), p. 14.

10. Dunham, op.cit., p. 30.
11. Assembly Journals, 1841 (United Province of Canada), Appendix B.B.
12. Dunham, op.cit., pp. 35-39.
13. Phillip A. Buckner, The Transition to Responsible Government: British Policy in British North America, 1815-1850 (Westport, Conn.: Greenwood Press, 1985). See also J.C. Beaglehole, "The Royal Instructions to Colonial Governors, 1783-1854: A Study in British Colonial Policy" (unpublished Ph.D. dissertation, University of London, 1929).
14. Quoted in Assembly Journals, 1836, Appendix 106, Report on the Executive Council, pp. 46-54. These were the instructions issued to the Duke of Richmond in 1818 but, as Buckner has implied, they probably had been issued to Simcoe in 1792.
15. E.A. Cruikshank, ed., The Correspondence of Lieutenant Governor John Graves Simcoe, Vol. 2 (Toronto: Ontario Historical Society, 1923-31), p. 184.
16. U.C. Statutes, 41 Geo. III, c. 11.
17. U.C. Statutes, 7 William IV, c. 17.
18. U.C. Statutes, 7 William IV, c. 14.
19. Redlich, op.cit., Vol. 2, p. 255.
20. U.C. Statutes, 7 William IV, c. 114. For the 1799 act, see U.C. Statutes, 39 Geo. III, c. 4.
21. Quoted in The Constitution, November 23, 1836. For an historical summary of parliamentary reporting in Upper Canada, Lower Canada

and the United Province, see Elizabeth Gibbs, ed., Debates of the Legislative Assembly of United Canada (Montreal: Centre d'Etude du Québec, 1970) for the year 1841, Chapter 3 of the introduction, pp. xxviii - liv.

22. Assembly Journals, 1801, p. 186.
23. U.C. Statutes, 45 Geo. III, c. 3.
24. U.C. Statutes, 4 Geo. IV, c. 4.
25. Assembly Journals, 1800, p. 158.
26. Assembly Journals, 1828, Appendix O.
27. Assembly Journals, 1828, p. 90.
28. Thomson, op.cit., p. 18. For a description of the various experiments which were tried with respect to the arrangement of the Orders of the Day in Upper Canada, see page 271 of this dissertation.
29. William Blackstone, Commentaries on the Laws of England (4th ed.; London: J. Murray, 1876), p. 32. Blackstone's Commentaries was originally published in 1778.
30. Adam Shortt and A.G. Doughty, eds., Canada and Its Provinces, Vol. 23 (Toronto: Glasgow, Brook, 1917), p. 364.

31. J.K. Johnson, ed., Historical Essays on Upper Canada (Toronto: McClelland and Stewart, Carleton Library, 1975), p. ix.

32. See S.M. Lipset, "Revolution and Counter-Revolution: The United States and Canada", in O. Kruhlak, et al., The Canadian Political Process (1st ed.; Toronto: Holt, Rinehart and Winston, 1970), pp. 13-38; A.R.M. Lower, Colony to Nation (Toronto: McClelland and Stewart, 1977); S.F. Wise, "Ontario's Political Culture", in Donald C. MacDonald, ed., The Government and Politics of Ontario (3rd ed.; Scarborough: Nelson Canada, 1985), pp. 159-173; D. Bell and L. Tepperman, The Roots of Disunity (Toronto: McClelland and Stewart, 1979); G. Horowitz, "Conservatism, Liberalism and Socialism in Canada: An Interpretation", in Kruhlak, op.cit., pp. 47-74; Kenneth D. McRae, "The Structure of Canadian History", in Louis Hartz, et al., The Founding of New Societies (Toronto: Longman, 1964), pp. 219-274; David Earl, ed., The Family Compact: Aristocracy or Oligarchy? (Toronto: Copp Clark, 1967), p. 5. For a re-examination of his earlier views, see Lipset's "Radicalism in North America: A Comparative View of the Party Systems in Canada and the United States", Transactions of the Royal Society of Canada (Series 4) 14 (1976), pp. 19-55.

33. Donald R. Beer, Sir Allan Napier MacNab (Hamilton: Dictionary of Hamilton Biography Inc., 1984), p. 6.

34. Norman Penner, The Canadian Left: A Critical Analysis (Scarborough: Prentice-Hall, 1977), p. 10.

35. See Craig, op.cit., pp. 57, 64 and 212.

36. Assembly Journals, 1828, p. 89.

37. J.S. Watson, "Parliamentary Procedure as a Key to the Understanding of Eighteenth Century Politics", Burke Newsletter, 3 (1962), pp. 108-128.

38. Redlich, op.cit., Vol. 1, pp. 64-65.

39. William Houston, "The Legislative Work of the First Parliament of Upper Canada (1792-95)", Transactions of the Canadian Institute, 1 (1889-90), pp. 77-85.

40. See Assembly Journals, 1792, p. 3.

41. W.C. Crofton, Sketches of the Thirteenth Parliament of Upper Canada (Toronto: Rogers and Thompson, 1840), p. 3. Henry Scadding, a personal acquaintance of Mrs. Simcoe, the wife of the Lieutenant Governor, wrote: "We picture to ourselves the group of seven crown-appointed Councillors and five representatives of the Commons assembled there in Newark (afterwards Niagara) with the first Speaker, McDonell of Glengarry; all plain, unassuming prosaic men, listening at their first session to the opening speech of their frank and honoured Governor. We see them adjourning to the open air from their straightened chamber at Navy Hall, and conducting the business of the young province under the shade of a spreading tree ... while a boulder of the drift, lifting itself up through the natural turf, serves as a desk for the recording clerk." Quoted in James Skelton, Niagara Days, (Ilfracombe: Arthur H. Stockwell, 1962). For a description of the opening of the 1795 Session, see Duke de la Rochefoucault Liancourt, Travels Through the United States of North America, the Country of the Iroquois and Upper Canada (London: R. Phillips, 1800), p. 455.

Duncan Campbell Scott writes in Transactions of the Royal Society of Canada (Series 3) 7 (1913), pp. 175-191, that later the First Session was held in Freemason's Hall described as having "an upper and lower chamber, the former was the Masonic Hall and the latter was used for public gatherings". The legislature was later moved to Buttler's Barracks, one of the Old Navy Hall buildings. In 1797 the capital was moved to York, now Toronto, for defence reasons. It was located on Parliament Street. Scadding describes the buildings as two separate halls "intended at some future time to be united by a larger central structure of which they would form the wings: but this larger structure was never erected: in the meantime, a sort of covered way of colonnade passed from one to the other". The Legislative Council Chamber was used for meetings of the Executive Council. After the buildings were burned in 1813, parliament moved to various locations. It was housed in the "ball room" of Jordan's York Hotel, a residence later occupied by Chief Justice Draper known as the "Lawn", and finally in 1820 in a building described by Talbot as "a long and commodious building, built with brick and much simplicity", located at King and Berkeley Streets. It was destroyed by fire in 1824. Parliament was housed in the General Hospital on Richmond Street from 1825 to 1828 and therein the Court House near King and

Church. It found a more permanent home in 1832 with the erection of the Parliament Buildings on Front Street. See Frank Yeigh, Ontario's Parliament Buildings (Toronto: Williamson Book Co., 1893).

42. John White, Diary (unpublished, Toronto Metro Central Library Collection), p. 14.
43. Assembly Journals, 1800, p. 141.
44. Assembly Journals, 1793, p. 23.
45. Assembly Journals, 1798, p. 59.
46. Assembly Journals, 1802, pp. 285-286.
47. Assembly Journals, 1821, pp. 8, 18, 50, 130.
48. Assembly Journals, 1825, pp. 27-29.
49. Assembly Journals, 1826-27, p. 78.
50. Assembly Journals, 1825, p. 60.
51. Assembly Journals, 1825, p. 62.
52. See the Colonial Advocate, February 3, 1825.
53. Craig, op.cit., p. 164.
54. S.F. Wise, "Upper Canada and the Conservative Tradition", in Profiles of a Province: Studies in the History of Ontario (Toronto: Ontario Historical Society, 1967), p. 22.

55. See Redlich, op.cit., Vol. 1, Chapter 4, "The Order of Business and the Development of Party Government (1688-1832)", pp. 52-72.
56. Dunham, op.cit., p. 32.
57. For a listing of all the rules as per the last session of the House of Assembly, see Assembly Journals, 1839-40, pp. v-x.
58. Assembly Journals, 1835, pp. 24, 380.
59. Assembly Journals, 1829, p. 529 (M.S.)
60. Assembly Journals, 1835, p. 302.
61. Assembly Journals, 1829, p. 8.
62. Matthews himself had been a victim of autocratic decisions. For sarcastically calling for the playing of "Yankee Doodle" at a 1825 New Year's Eve performance, he had his military pension suspended. See Craig, op.cit., p. 120.
63. Assembly Journals, 1831-32, p. 9.
64. See May, Parliamentary Practice (19th ed.), p. 240. Another link between church and state established by the Assembly was setting aside a pew for its members in a Protestant church in York. In 1821-22, the House agreed "that the Pew appropriated in the Protestant Episcopal Church for the accommodation of the Members of the House of Assembly ought to be lined, and furnished with cushions, and that the Speaker of this House do order the Sergeant at Arms to cause the same to be done with as little delay as possible, and to charge the expense thereof in the contingent account of the present Session". Assembly Journals, 1821-22, p. 87.

65. Assembly Journals, 1799, pp. 114, 121.
66. Assembly Journals, 1836-37, p. 341.
67. Assembly Journals, 1836-37, Message of April 30.
68. Assembly Journals, 1837-8, p. 74.
69. John Beverly Robinson, Canada and the Canada Bill (Toronto: S.R. Publishers Limited, Johnson Reprint Corporation, 1967), p. 191. Robinson noted that the rule concerning the financial initiative of the Crown was appropriate in the British House where ministers usually had majority support. In Upper Canada, he wrote: "Measures of public utility are taken up by any of the members indifferently; and if a member, moving for public aid to a work in which the inhabitants took a warm interest, and knowing that a majority of the Assembly were willing and desirous to make the grant, were to be disabled from even bringing the subject under discussion, because the Lieutenant-Governor would send down no message recommending it, it would at once be felt that a direct control was exercised by the Crown over the deliberations and acts of the Legislature in a manner that could not, and does not occur in England". Ibid., pp. 191-192.
70. Assembly Journals, 1832-3, p. 119.
71. Assembly Journals, 1810, p. 329.
72. Assembly Journals, 1835, p. 381.
73. Dunham, op.cit., p. 37.
74. Assembly Journals, 1817, p. 350.

75. Assembly Journals, 1818, p. 559.
76. Assembly Journals, 1836, p. 23.
77. Assembly Journals, 1835, pp. 393-395.
78. Assembly Journals, 1829, p. 76.
79. See Assembly Journals, 1825, p. 72; 1825-26, p. 97; 1829, pp. 67-68.
80. See K.D. McRae, "An Upper Canadian Letter of 1829 on Responsible Government", Canadian Historical Review, 31 (1950), pp. 288-96.
81. Assembly Journals, 1836, pp. 393-395.
82. Assembly Journals, 1836, pp. 40-42.
83. Assembly Journals, 1836, p. 296.
84. Assembly Journals, 1839-40, p. 84.
85. In 1800 Samuel Street replaced David William Smith who was absent from the province. Allan MacNab was elected Speaker in the Second Session of the Thirteenth Parliament.
86. With respect to the procedure followed when more than one member was nominated, divisions took place on the first nomination then on subsequent nominations until a Speaker was chosen. See Assembly Journals, 1803, pp. 323-5; 1821, p. 267; 1825, p. 3.
87. Assembly Journals, 1793, p. 41. In 1840, An Act to enable Her Majesty to remunerate the services of Sir Allan Napier MacNab, Knight, Speaker of the Commons House of Assembly was passed granting MacNab 600 pounds in addition to his present salary. The preamble of the act stated that MacNab had discharged his duties "during a period of great public difficulty, to the entire satisfaction of that House, at a personal inconvenience and expense, for which the salary attached to that office does not provide an adequate remuneration". U.C. Statutes, 3 Vic., c. 60.

88. See Reverend Brother Alfred, Catholic Pioneers in Upper Canada (Toronto: MacMillan, 1947), pp. 56-72; Assembly Journals, 1816, p. 302.
89. Assembly Journals, 1836-37, p. 180. Assembly Journals, 1837-38, p. 213.
90. See General Index to the Journals of the House of Assembly of Upper Canada, 1825-40, pp. 515-521.
91. Assembly Journals, 1837, p. 15.
92. See Assembly Journals, 1829, p. 43. Redlich writes: "From the time of Speaker Addington two principles have guided Speakers in their decisions upon casting votes ... In the first place a Speaker should give his vote, if possible, so as to avoid a final settlement of the question before the House ... In the second place, when he gives a vote upon the merits, he does so freely according to his own convictions and the dictates of his conscience, first stating the grounds upon which he acts, which are recorded in the Journal of the House". op.cit., Vol. 2, p. 135. Speaker Addington left the Chair in 1801.
93. See Assembly Journals, 1832-33, p. 7; 1836-37, p. 69. For a list of parliamentary officials, see F.H. Armstrong, op.cit., pp. 104-105.
94. William Lyon Mackenzie wanted to limit the Clerk's salary and fees for extra services to 300 pounds per annum, but this proposal was defeated. See Assembly Journals, 1835, p. 411. Regarding the British Clerk, Edward Fellowes, in his preface to the Rothman reprint of Hatsell's Precedents of Proceedings, writes: "It was from the fees levied on such bills that a substantial part of the Clerk's income derived. Before Hatsell died the Clerk's emoluments were between 11,000 [pounds] and 15,000 [pounds] net per annum. This was more than the Speaker received, and Hatsell was under pressure to pay the fees into a Fee Fund and receive instead a salary fixed by the House. He refused." op.cit., Vol. 1, p. v.

95. Quoted in Assembly Journals, 1829, Appendix, Report of the Committee on Privileges.
96. Assembly Journals, 1829, p. 46.
97. Redlich, op.cit., Vol. 2, pp. 210-211.
98. Assembly Journals, 1821-22, p. 38; 1823, p. 286; 1831, pp. 22-23.
99. Assembly Journals, 1814, p. 115.
100. Craig, op.cit., p. 86.
101. Ibid., p. 96.
102. Assembly Journals, 1819, pp. 170-173.
103. Assembly Journals, 1836, pp. 50-52, 60.
104. Redlich, op.cit., Vol. 2, p. 210.
105. Assembly Journals, 1825, pp. 11, 28.
106. Fraser, Alistair, et al., Beauchesne's Rules and Forms of the House of Commons (5th ed.; Toronto: Carswell, 1978), p. 11.
107. A.G. Doughty and D.A. McArthur, eds., Documents relating to the Constitutional History of Canada, 1791-1818 (Ottawa: C.H. Parmelee, 1914), p. 481; Alpheus Todd, The Practice and Privileges of the Two Houses of Parliament, p. 15.
108. Assembly Journals, 1793, p. 31; 1811, pp. 466-7.
109. Assembly Journals, 1803, pp. 337-8.
110. Assembly Journals, 1828, p. 118.

111. Assembly Journals, 1829, pp. 26-37.
112. See Assembly Journals, 1821, p. 189; 1821-2, pp. 193-4; 1823, pp. 219, 268, 290.
113. Assembly Journals, 1831-2, pp. 32-3.
114. Shortt and Doughty, op.cit., p. 693.
115. See Assembly Journals, 1818, pp. 542-55. See also Assembly Journals, 1816, p. 193.
116. Mary Peterson Clarke, Parliamentary Privilege in the American Colonies (New Haven: Yale University Press, 1943).
117. Members were not paid a salary but beginning in 1793 were given a ten shilling per diem allowance if present. See Houston, op.cit., p. 84.
118. W.A. Langton, ed., Early Days in Upper Canada: Letters of John Langton (Toronto: Macmillan, 1926), p.78.

Chapter Three - Warring In The Bosom of a Single State:

Parliamentary Procedure in Lower Canada, 1792-1837

In the fifth of the Ninety-two Resolutions passed in 1834, the House of Assembly of Lower Canada stated that it had "wisely endeavored so to regulate its proceedings, as to render them as closely as the circumstances of this Colony permit, analogous to the practice of the House of Commons of the United Kingdom".¹ Parliamentary procedure in Lower Canada represented not so much a divergent model of British practice but one which was more radically political and more ancient, reminiscent of the seventeenth century House of Commons. The Assembly adhered to many practices which had been largely superseded in Britain, such as impeachments, refusal to pass supply bills until grievances were redressed and the maintenance of a strictly interpreted 'Independent' relationship between the houses of parliament and the Crown. Immersed within a parliamentary setting of great tension and party groupings based primarily on race, language and religious differences, procedure came to play a different role than it did in her sister province of Upper Canada. As opposed to a means of creating law, it was to a much greater extent a tool of political combat and one of opposition to the executive. In contradiction to the Bentham hypothesis that procedure is a product of reason and a means of encouraging the liberty and intelligence of deputies, it became a method of 'warring in the bosom of a single state', to use the famous expression of Lord Durham, and was a contributing factor to the breakdown of constitutional government in the colony in 1837.

Yet not all of the procedure of the House of Assembly was of a negative character. Most of the parliamentary rules adopted by the United Province of Canada in 1841 were those from Lower Canada and not Upper Canada. Despite an environment of great stress and prejudice, its regulations laid the foundation for the conduct of British parliamentary procedure on a bilingual basis where both languages were recognized on a fairly equal basis within the proceedings of the House. Lower Canada therefore became an early model for modern bilingual parliaments.

1. The Sources of Parliamentary Procedure

Although the specifics varied significantly, the evolution of parliamentary practice in Lower Canada was influenced by the same general sources of procedure as those in Upper Canada. These will be briefly examined.

A. The Legal Sources

(1) The Constitutional Act, 1791

The Constitutional Act provided for an appointed Legislative Council which was to be not fewer than 15 members (Section 3). Originally, it was larger than that of Upper Canada. The Council never grew in size and remained at 15 until the suspension of the constitution. Councillors could hold their seats for life (Section 5), hereditary titles could be bestowed and these writs of summons could be inherited by descendents (Section 6). As in her sister province, no such

inheritance of Council seats occurred. Pursuant to Section 30, all bills to become law had to be passed by both the Assembly and the Council and assented to by the Crown. The Council was therefore co-equal with the lower house within the legislative process.

With respect to the House of Assembly, the Constitutional Act provided for a larger chamber than that of Upper Canada, with the minimum number of representatives being 50 (Section 17). The greater size reflected the difference in population of the two colonies. Upper Canada's population in 1790 was only approximately 10,000, whereas Lower Canada's was 161,311.² Although the Upper Canadian House grew in size as population increased, for many years Lower Canada's did not. In 1814, the population of the colony was 335,000; in 1825, it was 479,288 and in 1841, it was 625,000. However, only in 1829 was the number of representatives increased from 50 to 84. It remained at that number until 1837.

The main aspects of Assembly procedure contained in the Constitutional Act were as follows: (i) the Governor was authorized to summon, prorogue or dissolve the provincial parliament by proclamation (Section 26); (ii) one parliament had to be called at least once in every 12 calendar months and every Assembly was to continue for four years from the day of the return of the writs, subject to prorogation or dissolution (Section 27); (iii) decisions of the House were to be made on a majority basis with the Speaker having a casting voice in case of a tie (Section 28); and (iv) with regard to bills passed by both Houses, the Governor could give his assent, withhold it or reserve it. Reserved

bills could be disallowed within two years and no reserved bill was to have any force or authority until assent was given (Sections 30, 31 and 32). Section 33 of the act stated that all laws, statutes and ordinances which were in effect before 1791 were to continue "as if this Act had not been made". Lower Canada, which already had a well-defined legal system in existence in 1791, was thus in a quite different position from that of Upper Canada. The pressure for rapid decision-making was not as great among Lower Canadian deputies.

Many of the provisions of the Constitutional Act, which was beyond the power of the Assembly to amend, were unpopular. None was more disliked than the selection process of legislative councillors. The appointment system came to be seriously criticized. In the Ninety-two Resolutions, the Assembly condemned the system as "the most serious defect in the Constitutional Act, -- its radical fault, -- the most active principle of evil and discontent in this Province, -- the most powerful and most frequent cause of abuses of power, -- of the infractions of the laws, -- of the waste of the public revenue and property, accompanied by impunity to the governing party, and the oppression and consequent resentment of the governed ...". Selection by appointment was disliked on racial grounds as it led to an over-representation of the English minority. As R.A. MacKay has written: "... Great Britain was almost continuously at war with France, and there was considerable friction with the United States, which eventually resulted in war. The loyalty of the French Canadians had not been proved too well during the American Revolution and was still open to suspicion. In order to control the assembly, therefore, governor after governor proceeded to 'pack' the legislative council with tried

supporters of the executive government In Lower Canada, the legislative council was the bulwark of a racial minority...." 3

The executive's right to appoint councillors was also disputed on theoretical grounds. Based on traditional theory that each branch of parliament should be independent, the Assembly felt this constitutional point was being subverted by councillors being selected at will by the Crown and being invited to sit at the same time in the Executive Council. The tenth of the Ninety-two Resolutions stated:

Resolved, ... that with the possession of a power so unlimited, the abuse of it is inseparably connected, and that it has always been so exercised in the selection of the Members of the Legislative Council of this Province, as to favor the spirit of monopoly and despotism in the Executive, Judicial and Administrative Departments of Government, and never in favor of the public interest.

In the later years of its history, the Assembly demanded that the Legislative Council be radically altered. In a lengthy address to the King in 1833, the House represented that the appointed Council was an evil and that it was responsible for the lack of harmony in the province. It claimed that the House of Lords was not a relevant model for Lower Canada to follow. It stated that "the habits, the climate, the newness of the country; the changeability of fortunes, the division of estates, and the Laws which facilitate it, are obstacles to the existence of a permanent aristocracy, so that an hereditary Legislative Body, with

the powers of the House of Lords, would be simply an impossibility in Canada".⁴ It called for an elected Legislative Council the duration of which was to be limited to six years and not subject to dissolution. One sixth of its members were to retire every year and the total number of councillors was to be nearly half of the members of the House of Assembly.

The government of Great Britain studied the Assembly's proposal but rejected it on grounds that an elected second chamber was incompatible with the British system of parliamentary government. In his answer to the address, the Secretary of State stated that His Majesty could never be advised to assent to the request "as deeming it inconsistent with the very existence of Monarchical Institutions".⁵ The matter of an elected Council and its compatibility with the Westminster model would be important questions a generation later in the United Province of Canada. With the establishment of responsible government, the response of the Imperial government would be different. As will be seen, there was no evidence that a parliamentary system based on British procedure could not be continued with an elected second House.

With respect to provisions relating to the House of Assembly, pursuant to Section 20 of the Constitutional Act, the franchise qualifications for Lower Canada and Upper Canada were made identical. As noted earlier, these regulations were modelled after the electoral system of the United Kingdom. Given the economic structure of the lower province, a fairly wide franchise was created. As Fernand Ouellet writes: "English franchise qualifications as applied in Lower Canada,

where income and access to landed property was differently structured, led to an exceptional extension of the suffrage; at least one out of every eight inhabitants was qualified to vote".⁶

Professor Ouellet notes that "in Lower Canada the doors of the legislative assembly were open to all social and religious classes, in contrast with England, where financial qualifications and religious discrimination restricted the choice of representatives to a narrow range of the social spectrum".⁷ In Great Britain, Roman Catholic emancipation was not realized until 1829, when the Test Act was repealed. As early as 1765, however, the Law Officers of the Crown had provided a legal opinion "that His Majesty's Roman Catholic subjects residing in the countries, ceded to His Majesty in America, by the definitive Treaty of Paris, are not subject in those colonies, to the incapacities, disabilities, and penalties, to which Roman Catholics in this Kingdom are subject by the Laws thereof".⁸ Full citizenship was granted to the Catholics of Lower Canada by the Quebec Act, 1774. John Garner writes:

The Quebec Act paved the way for the full concession of political rights to Roman Catholics within the British Empire. By this act the British Parliament acquiesced in the extension of political toleration; its endorsement had not been given to the political rights granted Roman Catholics in Grenada when the concession had been by Royal Instruction. The Protestant population of Quebec accepted this concession, and in all petitions that emanated from Quebec for an assembly between 1774 and 1791, none desired Roman Catholics excluded from full political partnership.⁹

The oath which members of the provincial parliament were take was prescribed by Section 29 of the Constitutional Act and was the same for both colonies. The act stated it could be taken in both English or French. It followed very closely the wording of the oath of allegiance prescribed in Section 7 of the Quebec Act administered to legislative councillors. The members' oath was markedly different from the anti-papal oath taken by members of the British House.¹⁰ Section 7 of the Quebec Act explicitly stated that "no Person professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof". If representative institutions were to be established in the colony, a different oath would be necessary given the fact that in the 1790s the French-Catholic population outnumbered the English-Protestant population by 146,000 to 10,000.¹¹

Although the members' oath did not cause problems for the Roman Catholics of Lower Canada, it did for the colony's Jews. In 1808, Ezekiel Hart was returned as the member for Three Rivers. Ostensibly because Hart had taken the oath on the Book of Moses as opposed to the New Testament, the Assembly voted on March 4, 1808 that being of the Jewish religion, he could not take a seat in the House. Hart was re-elected and returned the following session. His eligibility was once again questioned. After resolving that members inform the House how Hart took the oath, two members rose and said "that the head of the said Ezekiel Hart, was uncovered, and his hand on the book. That when the said book was presented to Mr. Blackwood, one of the Members who was sworn with the said Ezekiel Hart, he, Mr. Blackwood, asked the Commissioners appointed to administer the Oaths to the Members, what book

it was? that the said Commissioners answered; 'It is the New Testament:' that Mr. Blackwood said, it is very well; kissed the book, and presented it to Mr. Hart; who kissed it also." A member then moved that Hart "as he did at the opening of the present Session, take an Oath on the Holy Evangelists, which could not bind him, and he did thereby profane the Religious institution thereof, cannot take a seat, nor sit, nor vote in this House". Another motion to rescind the proceeding and to propose that Hart had a legal and constitutional right to sit or vote in the House was negatived 6 to 16. The amendment carried and Hart was expelled. ¹² Garner writes:

The Hart case settled the political fate of the Jews in Lower Canada for two decades. It denied them the right to take the oath for admission to the Assembly on the Old Testament and declared that an oath taken by them on the New Testament was invalid The issue was not revived until 1831 when two petitions from Jewish citizens requesting full civil and political rights were presented to the Assembly The Jewish question was then resolved by legislation. Neilson introduced, and the Assembly passed without a division, a bill to grant to Jews who were natural-born British subjects all the rights and privileges of His Majesty's other subjects without restraint as to office or trust. When in the following year His Majesty in Council approved the bill, it became possible for Jews to be elected and to take their seats in the Assembly of Lower Canada. ¹³

It should be noted that in the United Kingdom, Jews were excluded from taking the members' oath until 1858. ¹⁴ Although the Hart case has been interpreted by both Garner and Ouellet as an example where a minority group became a pawn in the struggles between the English and

French within the provincial parliament, it also reflected the racial and religious intolerance of the times.

Other groups were prevented from becoming representatives on constitutional grounds. In accordance with the doctrine that power within a state should be separated and the executive, legislative and judicial branches independent of each other, the House did not look favorably on judges becoming members. The Constitutional Act did not disqualify judges. In Upper Canada, until 1838, judges could run for election to the Lower House. The first Speaker of the Upper Canadian House, John Macdonell, was a justice of the Court of Common Pleas from 1790 to 1794. Robert Thorpe, often referred to as the first Leader of the Opposition in Upper Canada, was appointed a Puisne Justice of the Court of King's Bench in 1805 and was elected to the House of Assembly in 1806.¹⁵ In Lower Canada, however, judges were not welcome in the Assembly. With the election of Justice de Bonne in 1809, a motion was proposed early in that session "that Judges in this Province, agreeable to the laws and customs of Parliament, cannot take a seat, nor sit, nor vote, in this House". Following the moving of an amendment "that people can choose who they think the most fit to represent them" provided they were not disqualified by the Constitutional Act, the question was referred to a Committee of the Whole. Some days later a special committee was established "to inquire what inconveniences have arisen from elections where the Judges of this Province offered themselves as Candidates". After hearing complaints that people could not vote freely when a judge was a candidate, the committee reported that (i) the liberty of the electors was constrained, (ii) the dignity of a judge is exposed, and (iii) the confidence of the administration of justice is diminished

when a judge presents himself. ¹⁶ Two sessions later, An Act for declaring Judges to be disabled and disqualifying them, from being elected, or from Sitting and Voting in the House of Assembly was passed by the provincial legislature and given royal assent on March 21, 1811. ¹⁷

Other restrictions were placed on members by the House in consequence of its belief in the independence of the branches of parliament. In 1825, the Assembly resolved "that if any person being chosen a Member of the House of Assembly shall accept any Office of profit from the Crown, or accept as a Commissioner or otherwise any appointment from the Crown, whereby he shall become accountable for any Public money during such time as he shall continue as Member, his Election shall be void, and a new Writ shall issue for a new Election ... ". ¹⁸ As will be noted, this provision was enacted in statute form in 1834. Also in 1834, the Assembly agreed that the ministerial officers of the Executive Council should not sit or vote in the Legislative Council and that the ministerial officers of the Legislative Council or the House of Assembly should not sit or vote as members of His Majesty's Executive Council. ¹⁹ Such a position reflected the rigid constitutional concept that there be complete severance between the House of Commons and the government. As Redlich has noted, this doctrine of attempting to exclude ministers from the House in Great Britain had found fewer and fewer adherents by the 1780s due to the exigencies of cabinet government. ²⁰

The exclusion of ministers made it very difficult to conduct the business of the Crown in the Assembly. Communication with the executive had to take place through formal addresses forwarded through the Speaker as opposed to executive councillors being in the Assembly answering for the Crown and conducting the Governor's business on the floor of the House. Inefficiency and delay were therefore built into the procedures of the House and confrontation and stand-off were encouraged. Although the Attorney General sat in the Executive Council and in the early period had held a seat as a member of the Assembly, in the latter period no executive councillor was in the House.

(ii) Royal Instructions

A second legal source of procedure was certain royal instructions issued by the Colonial Office to the governors. Probably, the most important of these were the instructions given to Lieutenant Governor Alured Clarke in the First Session of the First Parliament.²¹ The instructions were the same as those issued to the Lieutenant Governors of Upper Canada and have been quoted in Chapter Two. The instructions dealt with the wording of the enacting clause of bills and directives that (i) each different matter be provided for by a different law, (ii) clauses in acts must be relevant to their title, (iii) no perpetual clause could be part of a temporary act, (iv) laws could not be "suspended, altered, continued, revived or repeated" by general words and that such laws must be specifically referred in bills by title and date of passage, (v) bills respecting private property had to include "a saving of the right" of the Crown, (vi) in order to prevent by-passing the provision that the Crown

had up to two years to disallow a bill, royal assent would not be given "to any law that shall be enacted for less time than two years, except in cases of eminent necessity or immediate temporary expediency", and (vii) all bills for levying money, or imposing fines, forfeitures or penalties must state that the same is granted "for the public uses of the said province and the support of the Government thereof".

No bill could be assented to if these regulations were not followed. The royal instructions of 1792 show that the executive very much influenced House procedures and that the Assembly was far from being master of its own proceedings. Since the Lieutenant Governors of both Lower and Upper Canada were bound by the same instructions, a basic similarity of legislative practice was established in the provincial parliaments.

One area where instructions were requested by a Lieutenant Governor but not received was whether or not the bills passed by the legislature had to be in the English language. In a letter to the Minister of the Interior, Henry Dundas, dated July 3, 1793, Alured Clarke made the following comments and request:

During the present session no bill has been passed other than in the English text; and if an original bill had been sent from the House of Assembly to the Legislative Council in the French language, I firmly believe that the latter would refuse its consent, for only that reason. If, however, it happened that a bill of this nature had been adopted by the two houses, I would not believe myself justified to do more than reserve it for His Majesty's pleasure, it being in fact of an extraordinary and

unusual character. And it is not perhaps beyond the question to submit for your consideration the opportunity of some instructions on this point which probably, should and must such a case arrive if the bill is of an immediate necessity, would put in considerable embarrassment the governor called to sanction an act passed in a foreign language. 22

(iii) Provincial Acts

The third source of procedure was the various provincial acts dealing with legislative practice. The following were the most important.

Lower Canada conformed its practice to that of the British parliament as to when acts were to commence with the passage on January 30, 1796 of An Act to declare and ascertain the Period when the Acts of the Provincial Parliament of this Province shall take effect. 23 The act declared that "all such Acts as have passed since the first Session of the present Legislature, shall take effect from the day on which the same have been passed respectively, unless otherwise specially provided in any of the said Acts, any law or usage to the contrary notwithstanding". It differed from the 1801 Upper Canadian statute in that the Clerk of the Legislative Council, not the Secretary of the Province, was to endorse on every act the time it receives the Governor's assent.

An Act to grant a Salary to the Speaker of the House of Assembly of Lower Canada, to enable him to support the dignity of his office, during the present Provincial Parliament was given royal assent in 1817. ²⁴ It declared that for the duration of the Eighth Provincial Parliament, the Speaker was to receive an annual salary of 1,000 pounds, a salary which equalled that of the Speaker of the Legislative Council. More importantly from a procedural point of view, the act disabled the Speaker from holding or enjoying "any office, or place of profit under the Crown, during pleasure". The Lower Canadian House therefore ensured greater independence of its Speaker from the executive than did the Upper Canadian House of Assembly. As noted earlier, Upper Canadian Speakers held various Crown positions, such as a judge in the case of John Macdonell, and county registrar in the case of Alan MacNab.

Pursuant to the act assented to on March 22, 1825, To consolidate Laws relating to the Election of Members to serve in the Assembly of this Province, ²⁵ any person convicted of having employed illegal means to obtain votes was declared unqualified to sit and vote in the Assembly. The act also provided for the procedure to be followed in the event that a vacancy occurred in the House. In such instances, it was the duty of the Speaker "on information thereof being given to him by any Member rising in his place, if the said vacancy shall happen during any Session of the Assembly, or in writing, under the hands and seals of any two Members of the Assembly, if the said vacancy shall happen during any recess of the Assembly, by prorogation or adjournment, to give notice thereof by a Warrant under his hand and seal, directed to the Clerk of the Crown in Chancery, that a new Writ may issue for the Election of a

Member of the Assembly to fill up such vacancy". Such procedures were in keeping with British practice.

In 1831, the provincial parliament passed An Act to allow Members of the House of Assembly to vacate their Seats in certain cases and for other purposes. ²⁶ According to British parliamentary law, members could not relinquish their seats after being elected. They could evade this restriction by accepting an office under the Crown, such as the Chiltern Hundreds. Since this honorary office did not exist in the colony, a procedure at variance with the British tradition was created. The act declared it legal for a member "who shall wish to abstain from the performance of the duties imposed on him by his election" to vacate his seat. Lower Canadian deputies were therefore not dependent on the Crown when they desired to resign from the Assembly. Such members were to give notice in their place of their intention to vacate. The act prescribed the manner by which members were to resign in the interval between two sessions of the provincial parliament. It also stated that no member could vacate his seat in the first session of any parliament before the expiration of the first 15 days and no member whose election was contested could vacate until the challenge had been decided.

As has been noted, the Constitutional Act 1791 offered no protection to the House of Assembly against the influence of the Crown. In Great Britain, the independence of parliament was made statutory. Pursuant to Section 26 of the Act of Settlement, if any member accepted an office of profit from the Crown, his election was declared void and a new writ issued. Such a member, however, could be capable of being re-elected. It was not until 1834 that such a statutory provision was

established in Lower Canada. In 1834, An Act for vacating the Seats of Members of the Assembly in certain cases therein-mentioned ²⁷ was passed by both Houses but royal assent was reserved and not signified until January 7, 1835. The act declared that if a representative "shall accept of any office of profit from the Crown, or accept as a Commissioner or otherwise, any appointment from the Crown, whereby he shall become accountable for any public money, his Election shall be void ...". As in England, such members could be re-elected. The act, however, did not extend to members who were military or militia officers not receiving permanent salaries.

The various acts to regulate the trial of controverted elections were other examples of statutory procedure. Such acts were passed in 1808, 1818 and 1834. ²⁸ In the session of 1792-93, the House of Assembly adopted 18 rules on the manner of proceeding in contested elections. ²⁹ They specified that petitioners had within 14 days to question returns and that such questions would be heard by the House or by a committee of the House. The Assembly itself, however, would determine whether any petition complaining of an undue election contained matters sufficient for the House to proceed upon. The Speaker was to issue his warrant for the production of the necessary papers and attendance of witnesses, and any persons refusing to obey the warrant could be considered guilty of contempt and taken into custody. Election petitions were presented pursuant to these rules until 1808 but none was investigated. As John Garner notes, "[t]he tradition that members returned at an election retained their seats, regardless of the means they employed to secure their return, was established early ...". ³⁰

Based on the controversy surrounding the dismissal of election petitions in 1805, it was agreed it would be better to regulate controverted elections by means of legislation. The 1808 act described the manner in which petitioners and the House were to proceed and how witnesses were to be examined. It empowered the Assembly to appoint commissioners when it appeared the expenses of bringing witnesses to the Bar of the House would be considerable. Unlike the Upper Canadian legislation, the act also provided that before a petition could be brought up, a recognizance had to be entered into before the Speaker or a judge of the Court of King's Bench or a provincial judge.

John Garner writes the following with respect to controverted elections in Lower Canada between 1808 and 1834:

The institution of commissions to gather evidence was not an unqualified success. It was difficult to find suitable men willing to serve as commissioners. As the Assembly made a point of drawing at least one member of each commission from the Bar, the work of investigation was often stalled by the enforced absence of a commissioner during the terms of court A three-session wrangle over a Bonaventure election case, which ended only in the petition's dismissal, and a two-session wrangle over a Montreal East election, which was only brought to an end by the dissolution of the House, convinced the members that the use of the full House in the resolution of disputed elections should be abandoned. The result was the statutory adoption of a version of the Grenville system of select committees which, modified by Papineau's refusal to render the findings of the select committee final, did not preclude the Assembly from opening a full hearing

of any disputed election either before or after its reference to a select committee. 31

The 1834 act had many similarities with the 1824 Contested Elections Act passed in Upper Canada. The procedure for selecting nine members to the special committee to try the petition was almost identical. In Lower Canada, 25 members would be chosen by ballot, whereas in Upper Canada 23 were chosen. Section 17 stated that these names would be submitted "to the Petitioners and the sitting Members or their Agents or Counsel, and the Chairman and Members so named shall then withdraw with the Petitioners, the sitting Member and their Agents or Counsel, and the names shall be reduced to nine, including the two nominees of the Petitioner and of the sitting Member, by their striking out by themselves or their Agents or Counsel one name alternately ...". Both acts authorized the committees to sit after the prorogation of parliament and to report the ensuing session. Unlike in Upper Canada, however, it was made explicit by Section 20 that the House of Assembly shall "finally determine" the contestations. It should also be noted that given the fact there was only one provincial election following the passage of the 1834 act, the Lower Canadian Assembly had limited experience with the Grenville system of trying election petitions.

8. The Rules and Parliamentary Authorities

In the opening session of the First Provincial Parliament, the House of Assembly spent a great deal of time formulating standing rules and regulations. As Table 3.1 reveals, the rules adopted in 1792-93

remained basically intact until 1837. Although important rule changes were made in later years with respect to private bills and the Speakership, there was no major reform of the rules following the opening session. A detailed analysis of these regulations will follow.

As noted in Chapter One, the two English procedural textbooks ordered by the Assembly to be translated into French were George Petyt's Lex Parliamentaria, and John Hatsell's Precedents of Proceedings in the House of Commons. While a French version of Petyt's work did appear, no translation was made of Hatsell's Precedents. The most striking characteristic of these texts is their focus on procedures which by the 1790s were becoming antiquated in Great Britain. Lex Parliamentaria was first published in 1690. As Catherine Strateman has observed, the book did not contain much original material but was a collection of citations from even more ancient authorities such as Smith, Elsynge and Scobell.³² Such authors dwelled on the precedents established during Elizabethan times and the reigns of James I and Charles I. The first volume of Hatsell's Precedents was a citation of privilege cases from the earliest records of parliament to 1628. These pedagogical texts captured a picture of British parliamentary procedure which was passing. Many aspects of English practice had been reformed because such procedure had proved unworkable as medieval England moved into the more modern era of industry and trade. These procedural textbooks, however, were not irrelevant to Lower Canada. They focused on precedents established when parliamentary government was unstable and when much animosity was held by the Commons towards the Crown. Such a situation existed in the French-speaking colony. Moreover, medievalism had not entirely disappeared from Lower Canadian society. Many aspects of the ancien

régime of the old Province of Quebec had been carried over into the new era of parliamentary government. The Constitutional Act 1791 had given legal recognition to the seigneuries, the Coutume de Paris, and church privileges, including tithing. Although Lower Canadian society was evolving into a more bourgeois pattern, aspects of the feudal regime were still present.

C. Goal Orientation and Environmental Factors

Certain environmental factors which influenced parliamentary procedure were race, language and religion. Whereas J.K. Johnson claims that the two recognizable themes of Upper Canadian historiography have been societal divisions and economic growth, Ramsay Cook writes that the question which has been central to the entire history of French Canada has been la survivance, or national survival.³³ Although in 1792 French Canadians composed 94 per cent of the population, they were a conquered people and were subject to the sovereignty of a foreign power which spoke a different language and was of a different religion. The House of Assembly of Lower Canada therefore took on a different function from the Upper Canadian House, a function more inspired from the social context than constitutional prescription. Outside of the Church, it was the only institution which the Francophone majority was assured of controlling. Since all other social groupings came to be dominated by Anglophones — the courts, business, institutions, the bureaucracy, both the Executive and Legislative Councils — it was understandable that the Assembly looked upon itself as a spokesman for Francophone interests and

an institution pas comme les autres. It would not be content to accept the normal legislative role assigned to a colonial House of Assembly. It is not surprising therefore that the Assembly found attractive the seventeenth century function of the British House of Commons of being "the grand inquest of the nation". Parliamentary procedure was important to the Assembly. It defined the rules of the game between the English and the French and, as the Assembly quickly learned, provided a technique by which government could be disrupted to allow grievances to be aired. Unlike in Upper Canada, procedure became a means to protect la survivance of a nation.

Political groupings also affected procedural development. Henri Brun, in La formation des institutions parlementaires québécoises, has noted that in the First Session of 1792, "les députés canadiens, nullement rompus aux pratiques parlementaires, n'eurent aucun mal à faire la preuve de leur aptitude à former un parti. Un "parti canadien" ou "parti français" s'organisa rapidement en face du "parti anglais" ou "parti du gouverneur". E. Fabre Surveyer describes the cleavage within the Assembly as between "what we may call the French nationalists on the one side and the English and their French associates on the other". He estimates that during the first 12 parliaments (1792-1828) the English representation averaged 13 members and the French representation averaged 17. ³⁴ The existence of such groupings required that a formal definition be made of the rules of parliamentary practice and largely explains why Lower Canada had a more elaborate system of written regulations than Upper Canada in 1792. Although the latter came to have loose political

'parties' in the 1820s, the party structure in the two colonies was fundamentally different. In Upper Canada the parties alternated in their control of the House. As noted, the Speakership often changed. In Lower Canada, the House was controlled on a permanent majority basis. Lower Canada really had only two Speakers throughout its history. This permanent majority structure made for less toleration of minority views. As will be noted, one of the Assembly rules stated that "no Member who declares himself or divides against the body or substance of the Bill, motion or matter to be committed, upon any of the Readings thereof, can be nominated to be of a Committee, upon such Bill, motion or matter". There was also no notice requirement for the introduction of motions or bills in the Assembly, which facilitated the majority party's control of the House at all times.

Three other influences should also be noted: the social structure of the House, the national pride of French Canadian members and the civil law tradition of New France. As described in Table 3.2, professionals, most of whom were lawyers, historically comprised a large portion of the House membership. Many aristocrats from the seigneurial class also sat in the House. Such a social structure differed from that of the Assembly in the upper province, which in the early years was dominated by farmers and shopkeepers. Given their occupational backgrounds, one can presume that parliamentary procedure would be of greater interest as a topic in itself among Lower Canadian members than Upper Canadian members.

Lawrence Smith and Henri Brun have observed how quickly French Canadian members learned parliamentary procedure in light of the fact that representative government was established for the first time in the

colony only in 1791. Smith writes: "It would seem that these Canadian lawyers came to understand, adopt and put in motion the constitutional machinery with amazing speed". Brun attributes their precocity au facteur nationaliste. This mastering of procedure was perhaps a response to the superior attitude of many English observers which was typically expressed in Lord Liverpool's 1810 letter to Sir James Craig: "I can assure you that we are all fully convinced of the Evils which have arisen from the Act of 1791, and of the absurdity of attempting to give what is falsely called the British Constitution to a People whose Education, Habits [and] Prejudices, render them incapable of receiving it". 35

Another influence of the social environment was the civil law tradition which Lower Canada retained under British rule. M. H. Ogilvie describes Quebec law under the ancien régime as "French civil law which was a combination of French feudal and customary Law and Roman law, particularly that as applied in Paris or the Coutume de Paris". 36 With its emphasis on written as opposed to unwritten law, the civil law tradition encouraged the House of Assembly to establish a written code of parliamentary rules as opposed to an unwritten code. As will be discussed, the Lower Canadian House adopted many more formal rules of procedure in 1793 than did the British House of Commons at the time, particularly with respect to public business. May's Parliamentary Practice notes that with respect to Westminster "all but a very few of the Commons' standing orders have been passed since 1832". 37

The salient points of the constitutional and environmental setting of Lower Canadian procedure may be summarized as follows. First, the constitutional powers of the Assembly were limited. Like Upper Canada, the province was a colony which meant that many governmental services were administered by the Colonial Office in London. In addition, the Assembly controlled only in part the revenue needed for the financing of government. ³⁸ Parliamentary law was not the same in the colony as it was in the mother country.

A second point is that the Constitutional Act provided for a sharing of power on equal terms between the appointed Legislative Council and the elected House of Assembly. Given the fact that Anglophone nominees would presumably dominate in the upper house and Francophone deputies would control the lower, such a constitutional structure was bound to produce tension and instability. Such power-sharing was particularly resented by the Assembly which wished to pursue the nationalistic function of being the grand inquest of the province and the sole spokesman for its wishes.

A third point to recognize is that the House of Assembly believed the procedures of parliament should proceed from the assumption that legislation was the product of three distinct branches and that each branch was independent from the other. The Lower Canadian parliament did not therefore function as a unit. Such an institutional arrangement encouraged ineffective parliamentary government in the colony.

Finally, it should be observed that the province inherited an existing legal structure which had been in place for over 100 years. There was not therefore the same pressure on the Assembly to pass bills quickly during the short periods the provincial parliament was in session as there was in Upper Canada. The objectives set for parliamentary practice therefore were different in the two provinces.

2. The Content of Parliamentary Procedure in Lower Canada

A. The Standing Rules and Regulations of the House of Assembly

The legislature of Lower Canada first met on December 17, 1792. ³⁹ After a Speaker had been chosen and the Speech from the Throne heard and reported, the Assembly received a message from the Lieutenant Governor, on December 20, recommending that the House "establish a quorum and other standing orders, whether the quorum should be by law or fixed upon a Standing Order of the House". On December 22, the Assembly appointed a committee of 10 members to consider His Excellency's message. Chaired by James McGill, the committee returned to the House on January 9 saying that the English version of its report was ready but that the French version was only half finished "not having sufficient time to compile it". The House refused to accept the report. It re-established the committee and referred the report back to it.

The committee presented its report in both languages on January 11. The report was taken into consideration immediately. In all the Assembly took six sitting days to discuss it with each rule being debated

separately. In all, 71 rules of procedure were adopted in the First Session, ⁴⁰ excluding the ones dealing with the trial of controverted elections.

Although many of the rules were accepted unanimously, some were not. Fourteen divisions took place on the adoption of the first set of rules. Most of the controversy centered around fixing the quorum and the use of English and French within the legislature. The English members of the Assembly insisted on following the British model, where bills were enacted only in English, while the French members were adamant that French should enjoy an equal status with English.

This English-French cleavage was well illustrated in John Richardson's February 16, 1793 letter to Alexander Ellice. Richardson was a member of the House and an active participant in the early rules debate. His observations, undoubtedly representative of Anglophone opinion in the Assembly, and the tone of his remarks, set the historical stage for parliamentary procedure in Lower Canada.

Everything is settled out of the House, they come down with matters the most absurd, cut and dry; and all the purpose the English Representation has as yet answered, is exposing the evil tendency of such conduct, but to no effect; as we may argue and reason until grey headed, without producing a convert amongst those who are predetermined agt. conviction. Our time has hitherto been principally occupied in framing Rules of Proceeding, and getting into some system of organization [One] object was the establishment of a quorum to do business. They proposed 34 - we demonstrated the impossibility of proceeding with so large a number, and that 26 should be the utmost extent, yet all was fruitless. 34 was carried, and has been persisted in, against common

sense; altho' we have daily and hourly experience of its impeding business, as we can hardly ever keep together so large a number. No cause can be assigned for such obstinacy, but that being suspicious of their own patriotism and assiduity: they are afraid if the number should be 26, the English would be more punctual in attendance than them, and thereby obtain a majority. The next question of Magnitude; which was indeed a preliminary one to the proceeding on real business, was that of Language; that is to say, whether English or French should be the Legal Text of the Laws to be enacted.

We all agreed that the Laws should be promulgated in both, but that the English being the Language of the Empire, should of course be the Text in the last resort, in case of difference of opinion arising in the Construction of Acts. In vain did we prove, that this had been the immemorial Practise in the British and indeed every other Empire, that it had uniformly been so here since the Cession - that it was necessary to the sovereignty and unity of the Nation, and of real utility to this Province, as a stimulus to acquire the Language of the Mother Country, and have a gradual operation in assimilating us to her, by banishing these unhappy distinctions, which the English part of the community wished buried in oblivion, but the Leaders of the Canadians seemed determined to keep up and even augment. It was like talking to the Waves of the Sea - after two days debate upon this question brought on under a variety of shapes, we were foiled in each, and it is now determined (as far as this illegal and usurped Power of the House of Assembly can do it) that all Laws relative to Property and Civil Rights may be introduced in either Language, and to be translated into the other before they can have a formal first Reading, but the French in either case to be considered the Legal Text - The English to be the Text of Acts relative to the Criminal Law, or Protestant Clergy - objects of no importance, as the Act of Parliament has happily left little in our Power on these heads.

The consequence of so extraordinary a decision will be, that the Council will probably reject the French Text, and if that is not the case, the Gov't certainly must, as an English Sovereign has no authority to sanction Laws in a Foreign Language. The functions of Gov't will therefore probably be stopt - a prorogation or dissolution must ensue - and a new act take place. The division of the Province, is now, if possible more manifestly injurious than before. I fear there are two Parties amongst the French - one obnoxious to the New Constitution, as they opposed our procuring it - the other more dangerous as being infected with the detestable principles now prevalent in France. These being my fears, my hopes of course are slender - still, as questions will arise on which they will split, it will give the English (who have no wish but the happiness of this country as a British Colony) a preponderance.⁴¹

With respect to meetings and adjournments, it was originally agreed that the House would meet at 2:00 p.m. The time for meeting was often changed in the early years of the Assembly and different experiments tried. From 1801 on, the time of meeting remained at 3:00 p.m. The frequent changing of the time at which the House would sit was partly due to the fact that it was always difficult to maintain a quorum in the House. Sixteen per cent of the sittings of the Assembly between 1792 and 1836 were lost or adjourned due to the lack of a quorum, a very high number. Since members were not paid, a large turnover of deputies from session to session and poor attendance continually characterized the legislature. The 1792 rules originally established the quorum at 34, which, as Richardson noted, was somewhat impractical. It was changed

to 26 later in the session. On March 12, 1794 it was reduced to 18 and later on to 15. On December 21, 1821, the quorum was increased from 15 to 26. Even when the membership of the House increased during the 1830s, the quorum remained at that number.

The Speaker was to preserve order and decorum and decide questions of order, subject to appeal. He was not to vote unless to break a tie, and when called upon to explain a point of order or practice, he was to state the rule applicable to the case. On March 12, 1817, it was agreed that the Speaker be permitted to dispose with the printing before second reading of certain short bills "not introducing any important innovation", a power which had not been given to the Upper Canadian Speaker. In 1821 it was ordered that the Speaker advise the House immediately if a motion was contrary to the rules. 42

Fourteen rules were made with respect to members and rules of debate. No member was to speak disrespectfully of the King or any of the royal family, or person administering the government of the province. Members called to order were to sit down unless permitted to explain and no member was to speak more than once to a question. Certain rules were obviously aimed at combatting absenteeism. Rule XI under "Members" stated "[t]hat it be recommended to every Member wishing to go out during the sittings to inform the Sergeant-at-Arms of the place where he may be found, if wanted". Rule XII stated "[t]hat no Member during the Session shall absent himself for more than one sitting at a time, without an express leave of absence from the House". In 1794 an additional rule stipulated "[t]hat this House will not grant leave of

absence to any Member, (unless that there are thirty Members present in town,) but on the most urgent and accidental business, specifically stated to this House". After the size of the House had increased to 84 members in 1831, the rule was amended to read "unless there be fifty Members present in Town". 43

Four rules were adopted by the Assembly concerning the Legislative Council. They dealt with receiving messages and extending to legislative councillors the traditional courtesy of providing them with seats without the Bar if they wished to listen to the Assembly's debates. It must be observed that despite the fact that Papineau characterized the Legislative Council a "putrid cadaver" 44 in the early years of the Assembly there were few open clashes between the two Houses. Unlike in Upper Canada, the Council never seriously challenged the Assembly over the right to introduce and amend money bills. Between 1801 and 1836, less than 10 per cent of the legislation introduced into the Assembly emanated from the Legislative Council. There were, however, very serious clashes in the period which followed the War of 1812 which will be discussed below. Nevertheless, such clashes did not result in formal rule changes.

Despite the fact that many of the 1793 rules followed basic British practice, the Assembly was reluctant to embrace the Westminster model with respect to the procedure to be followed in unprovided cases. The first set of rules adopted stated that "in all unprovided cases resort shall be had to the rules and usages of Parliament, for the information of this House, who shall decide whether it will conform to

them or not, as the case may require".⁴⁵ The Francophone majority had yet to be convinced that the British model would be to their interests. An incident took place in the following session which helped to change their minds. John Young, a member of the House, was arrested upon a Writ of Corpus. The House resolved that a committee of nine be struck "to search the Journals of the Commons of Great Britain, for cases as similar as possible to the present question of arrest, and to report their opinion on the complaint".⁴⁶ A few days later, the committee reported it had searched the Journals and had found relevant precedents. The opinion of the committee therefore was that Young was arrested in direct violation of the privileges of the House. After those responsible had either apologized or were taken into custody, the Assembly agreed to amend its rules and adopt the following: "That in all unprovided cases, resort shall be had to the Rules, Usages and Forms of Parliament; which shall be followed, until this House shall think fit to make a Rule or Rules, applicable to such unprovided cases". The motion was agreed on division, 17 to 11.⁴⁷

Nine rules were adopted with respect to motions and questions. Most were in conformity with English practice. Preambles to motions were disallowed. When a question was under debate, no motion would be received unless to amend it, to postpone it to a certain day, or for the previous question, or for adjournment. No notice was required for the moving of substantive or new motions. On this basic and fundamental point of parliamentary procedure, the Assembly varied from the practice of both Upper Canada and the United Kingdom. Attempts were made in the early period of the Assembly to implement a standing rule requiring advance notice but they were rejected by the House. In 1801, Mr. de

Bonne moved that "it be a standing rule of this House that no motion proposing any new matter be presented or proposed unless notice thereof shall have been previously given to the House two days at least before the said motion be presented or proposed". The motion was dropped after the previous question was moved and carried. In 1807, John Richardson moved that "it be a standing rule of this House that no motion introducing of new matter be received or debated, unless notice thereof be given (by a Member in his place) at least one day before". The motion was negatived on division, 14 to 18. 48

No stated reason exists as to why the Assembly rejected a notice requirement. Jeremy Bentham's Essay on Political Tactics had stressed the importance of advance notice for motions which contained new propositions in order for legislators to prepare themselves for intelligent debate and as a protection against tyrannical tactics by some members packing the House, taking it by surprise and adopting controversial questions. The Upper Canadian House made as one of its 1792 rules that any question was to have one day's previous notice. Josef Redlich notes that in England in the last quarter of the eighteenth century "we find giving notice of important questions to have become a fixed custom, though the length of notice required was left quite indefinite. About the turn of the century Speaker Abbot declared notice of motion to be an obligatory procedure." 49

Three reasons can be offered as to why no notice was required. It may be since no formal rule existed in Great Britain on the subject, the Lower Canadian House did not include it in its rules of 1793. The reluctance to change the procedure was characteristic of the House's

general tendency to reform few of its practices. Another reason may be that if it was crucial that members be made aware that an important proposition would be laid before the House on a certain day, other procedural devices could be used, such as a call of the House. A call of the House would proceed as follows. A motion would be made and agreed to that the House would be called over, or attendance taken, on a specified date. Such a motion was often accompanied by an Order that "all Members of this House that were found absent, who shall not give reasons and proofs of excuse ... or who shall not be then excused by the House shall be sent for in custody of the Sergeant at Arms". However, rarely would members be punished for non-attendance, but the threat was there. After attendance was formally registered, members would then proceed to deal with an important matter. A call of the House was made for example, on February 14, 1816, when the House dealt with the message from the Prince Regent saying he had dismissed the impeachment proceedings against Chief Justices Sewell and Monk. The House was also called over on February 12, 1836 following which the report of the Grievances Committee was debated.

As noted earlier in this chapter, the practice of not requiring notice may have stemmed from the nature of the party structure in the House. Given the fact that the parties did not rotate in their control of the Assembly, the 'ins' never became the 'outs' and were therefore not overly concerned for the protection of minority interests. The majority may have felt that by not having a notice rule, it would be better able to control the proceedings. Motions which may have been adopted due to poor attendance or without much thought, could be easily rescinded, or motions considered urgent could be pushed through. One such example

whereby a decision was reversed is the following. On February 28, 1801, the Assembly agreed on division of 12 to 9 to a motion by Mr. Young that all the proceedings on a bill pertaining to the establishment of public schools "are irregular and that to prevent them from being drawn into dangerous precedents they be expunged from the Journals of this House". On March 2, Pierre Bédard moved that Mr. Young's motion "was highly irregular, without foundation and tending to introduce dangerous precedents in this House, and as such, the said motion and all proceedings had upon it, be expunged from the Journals of this House". The motion was agreed on division, 17 to 14.

By far the most controversial rules of the Assembly, and those which diverged quite substantially from both Upper Canada and the United Kingdom, were those dealing with the use of French and English within the legislature. Francophone members insisted, even before formal rules were adopted in the opening session, on the equality of the two languages. The first Speaker of the Assembly, Jean-Antoine Panet, who was unilingually French, presented his petition for privileges in French to the Lieutenant Governor. He informed the Lieutenant Governor: "I humbly pray your Excellency to consider that I cannot express myself but in the primitive language of my native country, and to accept the translation in English of what I have the honour to say". ⁵⁰ The first Speech from the Throne was delivered in English but was accompanied by a French translation, read by one of the Commissioners appointed to administer the oath to members. French-speaking members insisted that first bill be introduced in both languages. It was agreed that the Journals be bilingual and that "the Reports from the Special Committees, or from a

Committee of the Whole House, Addresses, Messages and all other transactions or deliberations of the House, shall be put in both languages, and thus entered in the Registers". 51 A unique procedure agreed upon was that bills relative to the criminal laws of England in force in the province and to the rights of the Protestant clergy would be introduced in English and that bills relative to the "Laws, Customs, Usages and Civil Rights of this Province" would be introduced in the French language in order to preserve the unity of the texts. However, it was also agreed that "such Bills as are presented shall be put into both languages ... by the Clerk of the House or his assistants, according to the directions they may receive, before they be read the first time - and when so put shall also be read each time in both languages ... it is well understood that each Member has a right to bring in any Bill in his own language, but that after the same shall be translated, the text shall be considered, to be that of the language of the law to which the said Bill hath reference...". 52

Aside from the language provisions, the rules adopted in 1792-93 with respect to the legislative process of public bills adhered to basic British practice. The Assembly claimed the right of introducing bills of aids and supplies which were not to be altered by the Council. Every bill was to receive three readings on different days and no bill was to be committed or amended until it had been read twice. In all, 10 rules were adopted in the first session regarding public bills. Two rules were added in 1817. A special committee was established with respect to the cost of printing bills. It reported favorably on the idea of having bills printed before second reading, stating "that such printing will

have the effect of introducing much greater correctness into the final passing of the Acts, by facilitating the making of corrections: That much greater order will be established in the Offices of this House, and the passing of the Acts be accelerated and will likewise have the effect of giving to the Members a thorough knowledge of the Bills before passing them; and will reduce the contingent Expenses of this House". It was made part of the rules for the Law Clerk to revise all public bills after first reading and that all bills be printed before second reading "for the use of the Members of the Legislature". However, the Speaker could order that the printing be dispensed with if the bill did not introduce "any important innovation". 53

Six rules were adopted in the 1792-93 session with respect to private bills. Although more comprehensive than those of Upper Canada, the number of rules fell far short of the 100 or so standing orders in place in the United Kingdom at the time. The rules specified that such bills were to be introduced upon petition, that the petitions were to be examined in committee after one week's notice, and that when any bill shall be brought into the House for confirming letters patent, a true copy of such letters must be annexed to the bill. No fees were fixed for private bills nor time limits established with regard to when private petitions were to be introduced.

Private bill legislation began much earlier in Lower Canada than in the upper province, an understandable development since Montreal and Quebec City remained the important commercial centres of the central British provinces throughout the nineteenth century. As shown in Chapter Two, private bills were not presented to any significant degree in Upper Canada until the 1830s. By 1819, private bills represented 54 per cent of the number of bills introduced. The rules regarding private legislation increased from six in 1793 to 13 by 1837. In 1810 the House required that notices for applications for private bills be published in certain newspapers and "affixed on the Church-doors of the Parishes that such application may affect".⁵⁴ In 1817, a committee of five was appointed "to search for precedents relative to private bills and petitions and to report what rules it would be expedient to adopt in that respect". The committee recommended that the House not receive private petitions after the first 15 days of each session, nor accept private bills except within the first 24 days, nor reports of committees regarding such bills except within the first 40 days. The recommendations were accepted by the House.

Further restrictions were placed on private legislation in 1819, 1821, and 1823.⁵⁵ The most important was the rule adopted in 1821 stating that "all the expenses and costs attending on private Bills and the relative proceedings in this House thereon, ought not to fall upon the Public, and that it is just and reasonable that part of such expenses and costs should be supported by those who apply for the said Bills". The rule did not establish a specific sum but a fee of 25 pounds was set for bills requesting that an exclusive right be extended. In 1825, a

special committee recommended that it be increased to 100 pounds, but this was never approved by the House.⁵⁶ Lower Canada therefore differed from her sister province in this respect since no such charges for private bills were ever required in the Upper Canadian House.

In comparison with the existing rules in the United Kingdom, Lower Canada's procedures regarding private bills were very elementary. The definition of what constituted a private bill was not precise. The rule adopted in 1810 defined private bills as those "for the making of any Turnpike Road, or for granting to any individual or individuals any exclusive rights or privileges whatsoever". Many bills, which were in fact of a private nature, inevitably passed for public bills. There was no committee established to see whether the various rules of the House on private bills had been complied with, particularly with respect to the publishing or posting of notices before the bill was brought in.

Another important rule adopted in 1792-93 was that the Assembly "will receive no petition for any sum of money relating to public service but what is recommended by His Majesty's Governor, Lieutenant-Governor or person administering the Government at the time". In inscribing this principle into its rules that a royal recommendation accompany requests for the appropriation of public money, the Lower Canadian Assembly followed the British model more closely than did the Upper Canada legislature. Up until 1834, the rule was enforced. For example, in 1819, Speaker Papineau declined receiving two motions to bring up petitions since the recommendation of the Governor General did not accompany the petition. Such a rule, however, was resented since it restricted the sovereignty of the Assembly and its right to act as an independent legislature. In 1834, the same year that the Ninety-two

Resolutions were adopted, the Assembly voted to rescind the rule. ⁵⁷ Lower Canada therefore conformed to the same procedure as her sister colony but for a very different reason. In Upper Canada, the principle of the royal recommendation was not observed for economic and institutional reasons. In Lower Canada, the reasons were political.

With respect to the committees of the House, three rules were adopted in 1792-93. The method of appointing members to select committees was as follows:

That the mode of appointing a special committee shall be, first to determine the number it shall consist of, then each Member naming one, which shall be written down by the Clerk. Those who have the most voices shall be taken successively, until that number is completed; and if any difficulty should arise by two or more having an equal number of voices, the sense of the House shall be taken as to the preference; but it shall be always understood that no Member who declares himself or divides against the body or substance of the Bill, motion or matter to be committed, upon any of the readings thereof, can be nominated to be of a committee, upon such Bill, motion or matter. ⁵⁸

There was no formal balloting for committees the membership of which was larger than five, and members not in favour of the measure could not be part of the committee. This latter provision was keeping with the procedure laid down in the British parliament of 1601 that any member who had spoken against the bill as a whole could not be a member of the committee. ⁵⁹ As stated in Grey's Debates, "the child is not to be put to the nurse that cares not for it". ⁶⁰ The procedural rationale for such a rule was that once the House had agreed to commit a bill for further investigation, it would be contradictory to permit those who opposed the original decision to carry out the investigation. This basic principle in appointing members to committees would be retained by the Legislative Assembly of the United Province of Canada and endured into the post-Confederation period.

Only one other rule was adopted relating to committees: that of 1805 which dealt with quorums of special committees. ⁶¹ Although the practice of appointing standing committees began in the 1830s, it was never formalized in the rules.

B. The Forms of Proceeding

(i) Legislative Process of Bills

The legislative process was better defined in Lower Canada than it was in Upper Canada. Although the basic process of three readings was common in both assemblies, the Lower Canadian practice included a specific rule that "all amendments shall be reported to the House by the Chairman standing in his place. After report, the Bill shall be subject to debate and amendment in the House, before the question to engross it shall be taken". While there was no rule preventing the introduction of imperfect bills, there was a regulation adopted in 1817 that the Law Clerk was to revise all public bills after first reading in order "to introduce a greater degree of correctness and system in the method of reading and engrossing Bills than heretofore observed". There was also a regulation that bills were to be printed before second reading.

Thirteen rules were established to regulate private bills. Petitions for bills imposing tolls or levies were to be referred to a committee and examined before any bill was brought in. Petitioners opposing private bills were not to be heard until the committee studying the petition had reported to the House. Committees on private bills could not sit without giving a week's notice. Applications for private bills were to be advertised in the English and French newspapers of the district and on the church doors of the parish. Notices for erecting a toll bridge had to be quite specific and to indicate the rates, the height of the arches and whether a draw-bridge was to be erected. There was also

a rule that all costs of private bills were to be paid by the petitioners. The Clerk was ordered to publish in the newspapers the time limits established by the rules for receiving private bill petitions.

The Assembly followed basic British practice with the exception that (a) bills were to be dealt with and enacted in both languages, and (b) the official legal text for purposes of interpretation would be the English version for bills dealing with the Criminal Laws of England and the rights of the Protestant clergy and the French version for bills relative to the customs and civil rights of Quebec. The rule which provided that all bills be in both languages before they were read for the first time meant that there could be and often was a separation of a few days between the motion for leave to introduce and the motion for first reading.

Committees were regularly used to formulate and bring in public bills under orders of the House. Many bills were proposed by the Governor, who sent messages to the Assembly suggesting legislation be initiated in a certain area or discussed such matters in the Speech from the Throne. A committee would then be struck to review the executive's proposal and a bill brought in. Most public bills, however, were introduced by the members themselves.

Far fewer bills were introduced than in the Upper Canadian House, as a comparison of Tables 2.5 and 3.4 will show. Although the sessions were quite long, only a small number of bills were dealt with. Due to the fact there was always the same majority controlling the Assembly, no great legislative drama was ever played out with respect to the passage of a particular bill. Tension did mount, however, when bills important to the interests of the majority were amended or blocked by the

Legislative Council or refused by the Governor. The bill to provide a salary to the Speaker of the House of Assembly and the bill to provide for an agent resident in the United Kingdom are such examples. This latter bill was rejected by the Legislative Council on the grounds that being a money bill, it had not been recommended to the Legislature by His Excellency.⁶² The Assembly continued to re-pass the bill session after session, but it was never agreed to by the Council. Determined that an agent be appointed, in 1831 the House ordered Benjamin Viger to proceed to England as its agent without delay and that the Clerk pay his fees from the contingent funds allotted to the Assembly. The thirty-second of the Ninety-two Resolutions stated that in 1833, of the 64 bills sent up to the Council by the House, "twenty-eight were rejected by it, or amended in a manner contrary to their spirit and essence". Conferences were established to try to arrive at compromises but were generally not effective since the legitimacy of the Council was never really accepted by the House.

(ii) Controlling the Administration

With respect to the proceedings for the control of the administration, no funds were requested by the government and therefore no estimates were tabled previous to 1818. Two basic procedures were used during this period to try to hold the executive in check. One was the review of the public accounts of provincial revenue, which were tabled every session commencing in 1793-94. In the early years of the Assembly, the accounts were printed in their entirety in the Journals. At first, they were examined in a Committee of the Whole, but beginning

in 1812-13, they were referred to a special committee of five. The committee would then report its observations. After 1818, the estimates were referred to the same committee studying the accounts. In the later years, their reports were very critical of the administration particularly when it was discovered that money was appropriated without the House's consent. In 1821-22, after studying the committee's report, the House resolved that the application of any money levied without an express provision of law "is a breach of the privileges of this House, and subversive of the Government of this Province, as established by Law". It warned that it would hold the Receiver General responsible for all monies levied.⁶³ In 1831, the House established a standing committee on public accounts composed of 11 members. In its 1832-33 report, the committee concluded that:

...although they have no reason to doubt the accuracy of the Amount of Public Monies in the hands of the Receiver General at the time the Return was made, yet it is notorious, from the Accounts annually laid before Your Honourable House, that this sum falls considerably short of what should have been in the Chest. The deficiency arises from large sums drawn from the Public Chest under a former Administration for the Expenses of Government, without an Act of Appropriation. This deficiency, as well as that occasioned by the failure of the late Receiver General, are subjects of deep interest to Your Honourable House, and afford just grounds of complaint to His Majesty's Government.⁶⁴

A second technique used in the early years to attempt to control the executive was the method of impeachment. Although between 1620 and 1688 about 40 cases of impeachment had occurred in the British

parliament, the procedure had been resorted to less and less frequently in the United Kingdom. The last cases were those of Warren Hastings in 1788 and Viscount Melville in 1806. ⁶⁵ In 1814, the Assembly agreed on a division of 17 to 6 that Jonathan Sewell, Chief Justice of the Province, and James Monk, Chief Justice of the Court of King's Bench, be impeached. The House charged that the Rules and Orders of Practice made by the Court of Appeals in 1809 had the effect of exercising legislative authority. The Assembly resolved that "the power and authority of the courts are purely judicial and that no alteration of the laws can be made by Judges without the most criminal breach of their duty". However, after preparing the Heads of Impeachment, the House refused to forward them to the Legislative Council, which, according to British practice, and as described by Hatsell, would judge them. Instead, the Assembly requested they be transmitted to the Prince Regent. The Governor replied that he would transmit their request. He refused, however, to suspend Sewell and Monk while the charges were pending "upon an Address from one branch of the Legislature alone, founded on articles of accusation, on which the Legislative Council have not been consulted and in which they have not concurred". The House immediately replied that it had a right "to exhibit accusations without consulting or asking the concurrence of the Legislative Council" and then accused the Governor in Chief of violating the constitutional rights and procedures of the House by his address. ⁶⁶

The impeachment proceedings were unsuccessful. In 1815, the Law Lords ruled that "neither the said Chief Justices, nor the Courts in which they preside have, in making such Rules, exceeded their authority,

nor have been guilty of any assumption of legislative power". The Prince Regent therefore dismissed the complaint.⁶⁷ In order to prevent the matter from being re-opened, the Administrator prorogued the legislature.

In the post-1818 sessions, the following procedures were also used as attempts to control the administration: (i) the rejection of a permanent civil list; (ii) the refusal of supply; (iii) the practice of 'tacking' onto appropriation bills clauses to appropriate revenue for which there was no existing statute, therefore compelling the executive and the Legislative Council to choose between the loss of supply and the enactments; and (iv) the refusal to deal with all legislation until its basic grievances were met. As well, the Assembly continued its previous practices of appealing directly to the British parliament for redress. Although partial victories were achieved -- for example, the willingness by the United Kingdom to transfer in 1831 the control of all monies raised in the province to the colonial legislature in return for a permanent civil list -- the Assembly leaders obviously felt the legislative procedures were ineffective.

The first Civil List Act was passed in the United Kingdom in 1679. Such acts provided for a certain sum of money to the King during his life for the support of the civil list, and included the expenditures for the royal household, diplomatic services, and the salaries and pensions of certain officials, from the Lord Chancellor to clerks in the Treasury Department.⁶⁸ In his Speech from the Throne to open the 1821-22 session of the Lower Canadian legislature, the Governor requested

that the same principle of approving a civil list be observed in the colony. The Assembly rejected the request noting the differences between Great Britain and Lower Canada. It stated that the trade and expenses of the province were variable and liable to changes made by the Imperial parliament. It felt "the division of the Legislative, Executive and Judicial Powers, the independence of the Judges and the accountableness of the Offices of the Government are essential attributes of the English Constitution, have thereto been and still are wanting in this Province and in these respects there is no party between the Mother Country and this Province". While it was willing to consider the annual appropriation of money, the Assembly resolved that to provide a civil list on a permanent basis "would, on the part of this House, be a formal abandonment of one of the most ancient and principal privileges of the Colonial Assemblies".⁶⁹ No permanent civil list was ever granted in Lower Canada.

Supply was granted in 1823 and the Crown indemnified for disbursements incurred in 1822. Supply bills were passed and given royal assent in 1825, 1828-29 and 1832-33. Another such bill was also passed by both Houses in 1831-32 but reserved by the Governor and not proclaimed until the following session. For the other years, supply was not approved. The administration applied the Territorial and Casual Revenues and other sources of funds controlled by the Crown as well as monies appropriated to the Military Chest to civil expenditures. These, however, were insufficient. In the minds of the Assembly leaders, their appropriation was illegal and unconstitutional. In his opening Speech in 1835, the Governor informed the Assembly of the following:

The failure of the Supply Bill in the Session before the last; the separation of the Legislature after the last Session without having passed any Bill of Supply; and inadequacy of the funds permanently appropriated and placed by Law at the disposal of the Crown, for defraying the Expenses of the Civil Government and the Administration of Justice ... could not fail to create the most serious embarrassments in carrying on the ordinary and indispensable operations of Government. Under these circumstances it was deemed expedient by His Majesty's Government to direct the issue from the Military Chest of a sum equal to Thirty one thousand pounds Sterling, for the purpose of mitigating those embarrassments 70

The Assembly, in its Address in Reply, "regretted" the government's action and charged it with "destroying the wholesome and constitutional influence which the People ought to have through their Representatives over every branch of the Executive Government". On March 7, 1835, it resolved that "this conduct on the part of the Head of the Executive, renders it impossible for this House to proceed with its Legislative and Constitutional business". Saying it expected no co-operation on the part of the other branches of the legislature, it agreed on a division of 63 to 8, that "until the People of this Province can be effectively protected by the labors of the Legislature thereof, this House persists in demanding the Impeachment of His Excellency the Governor in Chief ...".

In the last two sessions before the rebellion, there was total paralysis. In both sessions, the House ordered that "all petitions of a private nature ... do lie on the Table until otherwise ordered." Both sessions were prorogued in their infancy. In the 1836 prorogation speech, the Governor accused the Assembly of abandoning its duties confided to it by the constitution. In an effort to break the deadlock, the Colonial Secretary, Lord Russell, asked the British House of Commons to approve 10 resolutions regarding Lower Canada, one of which empowered the Governor to appropriate money from the provincial treasury without the sanction of the Lower Canadian legislature.⁷¹ The resolutions were adopted by the Commons on April 28, 1837. In response to the British government's action, the Assembly refused to proceed with future business. The 1837 session lasted only eight sittings. In his prorogation speech, the Governor acknowledged that the constitutional process had failed and charged "the voluntary and continued breakdown of your functions as one branch of the Legislature ... is at the same time a virtual annihilation of the Constitution under which the Legislature derives its existence".

The forms of proceeding for controlling the administration were inadequate for three basic reasons. One factor was the constitutional nature of the old colonial system, which dictated that the Imperial parliament would be supreme over whatever the local legislature would prefer. Secondly, the nationalistic demands of the Assembly were quite radical for their time and were not the kind Westminster was prepared to consent to. The Ninety-two Resolutions called for an elected Legislative Council as opposed to an appointed one, singled out certain

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features of the American system of government as worthy of emulation and made a vague threat that Lower Canada should seek independence from Great Britain. In leading off the debate on the resolutions, Papineau stated: "It is certain that before long all America is to be republican. Meanwhile, ought a change in our constitution, if necessary, be guided by this consideration; and is it criminal to raise the question?" 72

Lastly, the goal the Assembly set for itself, as stated in the eighty-first of the Ninety-two Resolutions, of being "the Grand Inquest of the Province" was far too encompassing for traditional colonial procedure. The Assembly challenged the courts, the Legislative Council, the Governor General, as well as other segments of society. As stated earlier, it was not very much concerned with legislation. It wished instead to exert its sovereignty over Lower Canadian society. It was bound to fail since the parliamentary technique the Assembly used were too limited to realize that goal. To establish sovereignty, another form of constitutional government, other than one based on the separation of powers, was needed. That form was responsible government. Its implementation depended on the alteration to parliamentary law and could only be effected with the consent of the British government.

C. The Machinery of Direction and Delegation in the Assembly

(i) Presiding and Permanent Officers

Unlike in Upper Canada where there was a constant change in

Speakers, the Assembly of Lower Canada had basically only two Speakers, Jean-Antoine Panet, who served from 1792 to 1793 and from 1797 to 1815, and Louis Joseph Papineau, who served from 1815 to 1823 and from 1825 to 1837. Two other members briefly occupied the Chair. Chartier de Lotbinière replaced Panet during the 1793-94 session after the latter had resigned the Speakership after accepting an appointment as Judge to the Court of Common Pleas. However, in the following parliament, Panet, who had declined a new appointment to the Court of King's Bench and had retired as a judge, was re-elected Speaker. In 1823, when Papineau was in England to support petitions from Lower Canada praying that no alteration be made to its constitution, the House elected Vallières de St. Réal as Speaker. Papineau was re-elected to the Chair in 1825.

It would be inaccurate to portray the Assembly as having accepted the concept of a permanent Speaker. Of the 17 times an election of the Speaker took place, on 9 occasions a division was held. Papineau, although elected unanimously five times, was opposed three times. On at least two occasions there were as many as four candidates competing for the position.⁷³ If Panet and Papineau had such longevity in the Chair, it is not so much that they had the confidence of both sides of the House as that the political divisions were such that they had an overwhelming majority backing them. Although in many of the divisions Francophone candidates opposed the incumbents and many Anglophone deputies voted for both Panet and Papineau, a basic division fell between the English and French members. In his February 16, 1793 letter to Alexander Ellice, John Richardson observed the following:

Unhappily the Session commenced with a determined spirit of Party amongst the French members, for they had a private

meeting, at which it was decided that an Englishman should on no account be elected Speaker.

We wished to conciliate and be moderate, and that the choice should fall on whoever might be best qualified to fill the Chair, from ability habits of public business, and knowledge in both Languages, without distinction of Country. For this purpose three Grant, McGill and Jordan, were proposed, of which they might select one of the most consonant to the general wish, but all was to no purpose, right or wrong, a Canadian must be the man, no matter however ill qualified; and the Election fell on a Mr. Panet, a Quebec Lawyer, whose ideas and talents were never calculated for anything beyond the quibble routine and formality of a Court of Common Pleas, such as this Country has hitherto experienced. 74

The Speakership of the Lower Canadian House of Assembly varied with that of Upper Canada in a number of respects. First, the Speaker remained in office much longer. Panet and Papineau served around 19 years each, while the average length of service in Upper Canada was four years. Second, he was paid more. In 1815, the House voted him an annual allowance of 1,000 pounds. The most an Upper Canadian Speaker earned was 250 pounds a year. Third, the Speaker played a more active role in procedural questions than did his counterpart in Upper Canada. A rule adopted on February 13, 1821, stated that it was the Speaker's duty "whenever he shall conceive that a motion which he has received and read, may be contrary to the Rules or Privileges of this House, to apprise the

House thereof immediately before the question on such motion is put, and to cite the Rule which is applicable to the case". The Upper Canadian rule adopted in 1825 simply read: "That when the Speaker is called upon to decide a point of order or practice, he shall state the rule applicable to the case". As Table 3.5 shows, many rulings by Speakers were made, particularly in the period after 1818. The rulings were not mere recitals of general practice but show the Speaker, particularly Papineau, using judgment and thought in his decisions. More case law was developed respecting parliamentary procedure in Lower Canada than in Upper Canada.

A fourth variation is that, although the Speaker of Upper Canada was not impartial and did not confine his parliamentary activities strictly to procedural and administrative duties, the Speaker of Lower Canada seems to have taken a higher-profile political role. Speaker Panet was a founder and a very active member of editorial board of Le Canadien,⁷⁵ the newspaper Governor Craig labelled 'seditious' and closed down in 1810. Speaker Papineau was without question the leader of the Patriote forces and their acknowledged leader in the Rebellion of 1837. The rules provided that the Speaker was not to take part in debates before the House. However, he could do so in a Committee of the Whole, and Papineau often took advantage of this. In Committee of the Whole, he introduced important motions, such as the Ninety-two Resolutions in 1834. He expressed his opinions openly on policy matters to the administration. In 1833, for example, the Governor informed the House that he had received a letter from the Speaker, with regard to a riot in Montreal, which contained certain suggestions regarding executive

action. The Governor General responded that "the writer of that Letter, although entitled from his situation as Speaker of the House of Assembly, to every attention which the rules of good breeding enjoin, was not invested with any Public or Official character of a nature to justify the Governor in Chief in engaging in a Correspondence with him upon a subject of such grave importance, involving the responsibility of the Governor in Chief in the exercise of the functions of his high Office ...".⁷⁶ Papineau also travelled to the United Kingdom to make political representation on behalf of Assembly before the British parliament.

It was for political reasons that the Governor General refused to accept Papineau as Speaker in 1827, an event which touched off a major constitutional crisis. Traditional British practice stated that the House, at the opening of a new parliament, would elect a Speaker who would then present himself before the Sovereign for approbation and to present the Speaker's petition regarding privileges. A British monarch had not refused the choice of the House for Speaker since 1680. In 1827, however, the Governor refused to accept Papineau as Speaker. Upon returning to its chamber, the Assembly immediately passed an address to His Excellency claiming it was its right to elect a Speaker and it was only by custom that the executive was asked to approve the choice. The Governor immediately prorogued the session and did not call another for another year. Upon reconvening for the 1828-29 session, the House refused to proceed with the election of the Speaker. Instead, it referred to Papineau as its Speaker-elect. Upon being summoned, the House went up to the Legislative Council, where the Governor commanded the Council Speaker to say that he did not see fit to declare the causes for summoning parliament until a Speaker had been elected and enquired

"whether you have proceeded to the election of a Speaker and if you have upon whom your choice has fallen". Papineau replied: "I am the person and respectfully pray that it may please Your Excellency to give your approbation to their choice". The Governor then confirmed Papineau's election. ⁷⁷

An important constitutional victory was achieved by the Assembly. The affair was reminiscent of seventeenth century Britain, where the Commons was pitted against the King and where constitutional monarchy did not exist. The theoretical concept that the Crown had the prerogative to refuse the Assembly's choice of Speaker had proven hollow. The event signified that the old colonial system was breaking down. The political and social environment demanded more democratic control over governmental institutions and the reluctant acceptance of Papineau as Speaker in 1828 was an important step in this struggle.

As there was little turnover in the Speakership of the House, likewise there was little turnover in the position of the Clerk. Only three men held the position: Samuel Phillips from 1792 to 1808, William Burns Lindsay from 1808 to 1829 and Lindsay's son, also named William Burns Lindsay, from 1829 to the suspension of the constitution in 1837. Lindsay Junior would go on to be the first Clerk of the United Province of Canada. All appointments were made by the Crown. The fact that Mr. Phillips was English was not appreciated by the Assembly, which requested the Governor in the opening 1793 session "to grant a commission to a Clerk capable of keeping one of its registers in French". ⁷⁸ At first the Lieutenant Governor refused but a Francophone Clerk Assistant was later appointed. The greater permanency in the position of the Clerk of

the Assembly undoubtedly encouraged procedural development within the legislature. The duties of the Clerk were similar to those of the Clerk in Upper Canada; that is, administering the staff and ensuring the correct production of House documents such as the Journals of the House. The Clerk was also responsible for ensuring that proper procedures were to be followed with respect to the Controverted Elections Act.

With regard to the other officers of the House, it should be noted that the Assembly did employ a Law Clerk, unlike Upper Canada. The position existed at least by 1817.⁷⁹ Although he was appointed by the Crown, the House effectively made the choice. In 1835, the House recommended that Hughes Henry no longer serve as the Law Clerk since he had been named a judge and "it is therefore fit that Judges should have no part in framing the laws they administer".⁸⁰ The following session a committee of five was appointed to select a proper person to fill the position and recommended Etienne Parent, whose nomination was concurred in by the Assembly.⁸¹ The position of Chaplain of the House was never created in Lower Canada, as it was in Upper Canada.

(11) Committees

Ever since the First Session of 1792-3, the House maintained an active system of committees. As in Upper Canada, committees performed three basic functions: the study of bills, the study of financial matters and the investigation of special subjects.

Although it was not a regular practice, bills were often referred

to special committees after second reading. Although there was no general reference in the rules to their powers, committees studying private bills were indirectly authorized to call witnesses. One of the rules adopted in 1793 stated that "all persons whose interest or property may be affected by any private bill shall appear before the Committee to give their consent ...". Special committees were often asked to draft and bring in bills before the House. Investigative committees were struck on various matters. For example, in 1792-93, a committee of nine was appointed regarding the administration of justice. In 1820-21, a special committee was named to investigate the repair of roads and bridges in the Town of Quebec. In 1823-24, a committee of seven was named to inquire into the state of education in the province, the causes which have impeded its progress and the most effectual means of promulgating the same.⁸² Petitions were also regularly referred to committee for investigation. Table 3.6 shows the number of petitions presented in the Assembly between 1792 and 1837.

The number of special committees which were appointed in the course of a session was astonishingly high. For example, in both 1820-21 and in 1830, approximately 100 special committees were established each session. Beginning in 1817, the House ordered that three 'Grand Committees' or Committees of the Whole in which all members participate, be appointed on a sessional basis on: (i) Grievances, to sit every Monday afternoon; (ii) Courts of Justice, to sit every Tuesday afternoon; and (iii) Agriculture and Commerce, to sit every Wednesday afternoon. A more significant development occurred in 1831, when the House created a system of 11 standing committees of 11 members on the following subjects: (i) Privileges and Elections; (ii) Grievances; (iii) Courts of Justice;

(iv) Accounts; (v) Education and Schools; (vi) Agriculture; (vii) Trade; (viii) Roads and Public Improvements; (ix) Expiring Laws; (x) Private Bills; and (xi) Bills to be engrossed.⁸³ The Assembly proceeded to appoint these committees at the commencement of every session. In 1835, it altered its standing committee system by adding committees on: (a) Lands and Seigniorial Rights; (b) Hospitals and Charitable Organizations; (c) Contingent Accounts; and (d) Jesuits Estates, and reduced the membership from 11 to 7.⁸⁴ Two committees retained their membership at 11: Roads and Public Improvements and Education and Schools.

The standing committees were not given permanent orders of reference. All studies had to be authorized by the House. Various matters were referred, such as petitions, bills, special subjects to be investigated, documents, reports and messages from the administration. The establishment of a system of standing committees indicated that the Assembly wished to assume a much more important role in governmental process. In the Long Parliament of 1641 to 1649 and in the assemblies of revolutionary France in the 1790s, government was carried on essentially by small standing committees. With respect to England, Pedlich writes: "We have already seen what took place at the moment when Parliament, during the Civil War, seized the whole power of the state, and particularly all its executive functions; with astonishing speed and great ability it made a change in its organisation, corresponding to the constitutional change that had taken place, splitting up into a number of small special committees to carry on the revolutionary government.

The Restoration, which fully and unreservedly replaced the Crown in its old constitutional position. brought the forms of the House of Commons back to their old shape." 85

As will be observed in the next chapter, the United Province did away with the system of standing committees used in Lower Canada just as the House of Assembly of Upper Canada discontinued its experiment in standing committees in the aftermath of the 1837 Rebellion. Although in neither Lower Canada nor Upper Canada did the committees perform the role of governing the state as they did in seventeenth century Britain or eighteenth century France, they were potential threats to executive authority. Their existence was an indicator of the constitutional crisis at hand in both colonies.

D. Parliamentary Privilege in Lower Canada

Both individual and corporate kinds of parliamentary privilege were asserted. Regarding individual privileges, the House claimed for its members and officials freedom from arrest and obligation to appear in court with respect to civil suits. Such claims were made in 1793-94, 1795, 1808, 1812, 1814 and 1835-36. 86

Members also claimed the right to be free from threats or bribes. In 1831, John Neilson informed the House that he had received a letter from a certain F.A. Evans asking him to present a petition and to move for a special committee to examine its merits. The letter stated that should Neilson do so, "I shall duly appreciate it, and be willing, if

thought right to do so, to pay or give whatever might be considered a fair fee or remuneration for the individual trouble that may be required, which I conceive in no way unparliamentary, as it is not purchasing a vote, only merely requesting an enquiry. I also enclose some ideas on the Judicature and Laws of Lower Canada, as on the Township Roads, which, if laid before the several committees on these subjects, will be duly appreciated, you being a Member on both these Committees". 87

The corporate examples of privilege were numerous. As in Upper Canada, the House was very sensitive to criticism and quite frequently charged newspapers and individuals with libel. In 1806, the Assembly resolved that an article in the Montreal Gazette contained "a false, scandalous and seditious libel and unjustly reflecting on His Majesty's Representatives in this Province, and on both Houses of His Provincial Parliament and tending to lessen the affections of His Majesty's subjects toward his Government in this Province". 88 Charges of libel were levelled against the Quebec Mercury in 1806, 1812-13, and 1832-33; against Le Canadien in 1819; and The Canadian Times and Weekly Literary and Political Recorder in 1823. 89

Despite legal opinions that such action was extra-judicial, the Assembly claimed the right to punish for contempt and often did so, no matter who was the offender. In 1793-94, after concluding that one of its members was arrested in direct violation of his rights and privileges, the Assembly resolved that the Speaker himself, J.A. Panet, was guilty of a breach of privilege since he had acted as advocate to the individual who had launched the proceedings. Panet apologized and the House took no further action. However, it was ordered that the person

launching the proceedings be taken into custody. Newspaper writers and editors also felt the wrath of the House. In 1806, a Member accused Thomas Corry, the editor of the Quebec Mercury, of "intermeddling with proceedings by his account" and the House ordered his arrest. Corry was taken into custody and brought before the Bar. However, because he petitioned the House and asked pardon for an "unintentional transgression", the Assembly agreed that he be discharged immediately without any expense. ⁹⁰

Thomas Corry was again ordered into custody and brought before the Bar in 1812-13. ⁹¹ A similar order was made with respect to the editors and publishers of the Canadian Times and Weekly Literary and Political Recorder in 1823. On both occasions, however, the offenders could not be located and therefore escaped punishment. In 1832-33, the House resolved that a letter in the Quebec Mercury was a malicious libel against the Speaker of the Assembly, and a breach of privilege. A member, Ralph Taylor of Missiskoui, rose and declared that he was the author of the letter. The House resolved on a division of 45 to 14 that Taylor be sent "to the Common Gaol for twenty-four hours". ⁹²

In 1812-13, the Clerk of the Legislative Council, William Smith, refused to attend before a Committee of the Whole of the House on the grounds that the Assembly had not previously requested his attendance to the Legislative Council. The Assembly resolved that the order for his attendance was constitutional and ought to have been obeyed, and that "it is essential to the maintenance of the Constitutional rights and privileges of the House of Assembly that obedience to the said order be enforced". The Council acquiesced in permitting Smith to appear on the

grounds that "the enemy are re-collecting on the Frontier and to remove every possible obstacle to the immediate discussion of the defense of the Province".⁹³ In 1815, the House ordered the arrest of a Council official, Herman Witsius Ryland, the Clerk of the Crown in the Chancery, for disobeying an order of the Assembly that he attend with certain documents. On this occasion the Council refused to comply. It resolved that by ordering Ryland into custody, the Assembly "hath committed a flagrant violation of the privilege of this House and hath arrogated to itself an authority unknown to the constitution and inconsistent with the dignity, subversive of the rights and destructive of the independence of this House". Furthermore, the Council stated "in consequence of this unconstitutional and alarming assumption of power, on the part of the Assembly, this House is no longer an entire branch of the Legislature, and cannot, until the evil be completely done away with, consistently with its just rights and privileges, proceed on the exercise of its legislative functions".⁹⁴ The Council in effect went on strike until the matter was resolved.

Civil servants were brought before the House and punished. In 1834, William Ritchie and André-Rémi Hamel were ordered into custody for following the opinion of the executive with respect to the Stanstead election. They were brought before the Bar, admonished by the Speaker and discharged.⁹⁵ In 1835, Henry Jessop, a customs collector, refused to furnish an order for return to the House regarding the vessels which entered the Port of Quebec with passengers during 1834, "unless authorized to do so by His Excellency". Such a refusal was not acceptable to the Assembly, which ordered that Jessop be taken into custody.⁹⁶ Court officials were also arrested. In 1817, the Speaker

issued his warrant for the arrest of Samuel Monk, a notary in the Court of King's Bench, for refusing to exhibit certain records which he was commanded to produce by a special committee of the House.⁹⁷ In 1835-36, a similar warrant was issued for Oliver Williams, a bailiff, for serving a writ of summons to the Clerk of the Assembly. When appearing before the Bar, Williams asked the House's pardon on the grounds that the relevant statute provided that the writ be served personally to the Clerk. He stated he had no intention of committing any breach of parliamentary law and asked that the members accept his apology. The House agreed that Williams be discharged after paying costs.⁹⁸

The Assembly was equally not afraid to assert its claims of privilege against the Crown. In 1820, it succeeded in blocking the conduct of business at the opening of the new parliament on the grounds that the day fixed by proclamation for the return of the writ for the delayed election for the riding of Gaspé had not yet arrived. The opening of parliament took place April 3 and yet the writ had set April 11 as the day for return. Although the returns of all other members had been regularly made and a quorum of the House was present, the Assembly resolved that as the representation of the province was not yet complete "this House is incompetent to proceed to the dispatch of business". The Administrator regretted the action of the House which he did not "admit to be in any respect well founded". The crisis was defused when on April 24, 1820, George III died and parliament was dissolved. The Crown was further affronted on grounds of privilege in 1835. In his speech proroguing the 1834 session, the Governor was very critical of the House for its refusal to pass a civil list and to properly ensure supply. Early in the ensuing session, the Assembly resolved that his

speech amounted to a censure by the executive of the proceedings of the House and an infringement of its privileges. The Assembly resolved 70 to 8 that the prorogation speech be expunged from its Journals. 99

Parliamentary procedure in Lower Canada must be viewed in its relation to the social environment. It was used as both a weapon of defence and attack against many institutions and groups which attempted to threaten its role of being "the grand inquest of the Province". Although parliamentary privilege did not become as radical in scope as in colonial America, it was more extreme than in her sister province. Claims of breach of privilege were often inspired by feelings of nationalism as well as genuine beliefs that the House and its members had been wronged. Privilege made the Assembly a force to be reckoned with in Lower Canadian society and the House was generally successful in exerting its claims.

3. Summary

The constitutional framework for parliamentary procedure in Lower Canada was similar to that of Upper Canada. The Constitutional Act of 1791 determined a law of parliament which made central Canadian procedure different from that at Westminster. As noted in Chapter Two, the local legislatures had very limited power. Bills could be reserved by the Crown for up to two years and the claim to parliamentary privilege was legally uncertain. Throughout much of the period, accountability

mechanisms were weak since the Assembly had a restricted constitutional role in the financing of the administration of Government. Previous to 1818, no funds were requested to the Lower Canadian House by the administration and no estimates were tabled. The Assembly, however, was determined to use what powers it had and in later years exerted significant influence on the executive by withholding supplies.

The Assembly of Lower Canada dealt with far fewer legislative proposals than its counterpart in Upper Canada. Whereas the average number of bills presented by members per session in Upper Canada between 1821 and 1837 was 120, the average number in Lower Canada during the same period was around 60. The Lower Canadian Assembly was not the same type of legislature.

One explanation for this difference was that the goal orientations of the two Houses were not the same. Lower Canada did not share the same desire as its sister province for rapid decision-making. If an important objective of Lower Canada's procedure may be identified, it was to ensure la survivance of the French Canadian race. This goal encouraged French-speaking members to demand a clear modus operandi and have the rules of the game better defined. Whereas in its first session Upper Canada adopted 7 rules of procedure, Lower Canada adopted 71. A certain tension was bestowed on legislative practice in the lower province as vigilance was constant and procedural authorities were often cited.

The practices of the Legislative Assembly were generally combative and resembled to a large extent those of the seventeenth century British

parliament where the Commons was pitted against the King. The constitutional structure of the undemocratic old colonial system and the social environment where an English-speaking Protestant minority clashed with a French-speaking Catholic majority encouraged the appearance of conflict-ridden proceedings.

The rules of the Assembly remained fairly constant throughout the province's history. In the 1830s the radicalization which was occurring in many facets of Lower Canadian society as the colony moved towards open rebellion was evidenced in the procedures of the Assembly. Commencing in 1831, the House established a system of standing committees to deal with such matters as courts of justice, education and schools, agriculture, and trade. These committees resembled in some degree those created in the revolutionary Long Parliament of the 1640s and the Assemblies of revolutionary France in the 1790s. While Lower Canada's committees did not have the same constitutional power as these revolutionary bodies, they represented potential threats to executive authority. Another example of the radicalization of legislative practice was the Assembly's demand for an elected Upper House.

As in Upper Canada, the political tensions of the colony erupted in the latter part of 1837 and took the form of extra-parliamentary action. Following the outbreak of the rebellion, the British parliament passed, on February 10, 1838, an act suspending the province's constitution and making temporary provision for the government of Lower Canada.¹⁰⁰ The Melbourne government called upon John George Lambton, the First Earl of Durham, to assume the position of Governor General of all the British North America Provinces and "High Commissioner for the

adjustment of certain important questions depending on the Provinces of Lower and Upper Canada, respecting the form and future Government of the said Provinces". With his Report on the Affairs of British North America in 1839, a new constitutional arrangement was outlined for the central Canadian provinces and the groundwork laid for a new form of parliamentary procedure. The Durham report, the Union of the Canadas, the blending of Upper Canadian parliamentary practice with that of Lower Canada, the movement towards responsible government and its impact on Canadian procedural development are the subjects of the following chapter.

Table 3.1 - Evolution of the Standing Rules and Regulations of the House of Assembly of Lower Canada, 1792-1837

(Number per category) *

	1793	1802	1825	1837
1. Meetings & Adjournments	3	3	3	3
2. Quorum	4	4	4	4
3. Minutes	1	1	1	1
4. Speaker	3	3	3	3
5. Members and Rules of Debate	14	14	14	14
6. Legislative Council	4	4	5	5
7. Strangers	1	1	1	1
8. Journals	3	4	5	5
9. Rules of the House	2	2	2	2
10. Division of the House	1	1	1	1
11. Motions	9	9	11	11
12. Aids & Supply	2	3	3	3
13. Public Bills	10	10	12	12
14. Private Bills	6	6	13	13
15. Petitions	2	2	3	2
16. Papers laid before House	1	1	1	1
17. Committees	3	3	4	4
18. Appointment of Messengers	-	1	1	1
19. Orders of the Day	1	1	2	2
20. Privileges	1	1	1	1
21. Miscellaneous (Library, Office Hours, etc.)	-	5	10	12
	71	79	100	101

* excludes rules regarding the trial of controverted election petitions

Table 3.2 - Membership by Social Class, House of Assembly, Lower Canada, 1792-1838

	1792-96	1796-1800	1801-05	1805-14	1815-24	1825-30	1830-38
	%	%	%	%	%	%	%
Merchants	59	49	37	31	37	33	32
Professionals	18	24	29	35	39	37	45
Farmers and Tradesmen	5	9	11	11	11	15	14
Aristocrats	18	4	6	12	6	9	4
Other		6	4		1	5	3
Unknown		8	13	11	6	1	2
Total	100	100	100	100	100	100	100

Source: Fernand Ouellet, Lower Canada 1792-1840: Social Change and Nationalism
(Toronto: McClelland and Stewart, 1980) p. 347

Table 3.3 - Sittings of House of Assembly of Lower Canada

<u>Provincial Parliament</u>	<u>Date of Session</u>	<u>No. of sittings</u>
First	1792-3 (Dec.17-May 9)	88
	1793-4 (Nov.11-May 31)	135
	1795 (Jan.5-May 7)	84
	1795-6 (Nov.20-May 7)	113
Second	1797 (Jan.24-May 2)	62
	1798 (Feb.20-May 11)	44
	1799 (Mar.28-June 3)	47
	1800 (Mar.5-May 29)	55
Third	1801 (Jan.8-Apr.8)	63
	1802 (Jan.11-Apr.5)	51
	1803 (Feb.8-Apr.18)	46
	1803 (Aug.2-Aug.11)	9
	1804 (Feb.10-May 2)	57
Fourth	1805 (Jan.9-Mar.25)	56
	1806 (Feb.20-Apr.19)	42
	1807 (Jan.21-Apr.16)	63
	1808 (Jan.29-Apr.14)	56
Fifth	1809 (Apr.10-May 15)	25
Sixth	1810 (Jan.29-Feb.26)	19
Seventh	1810-1 (Dec.12-Mar.21)	71
	1812 (July 16-Aug.1)	16
	1812-13 (Dec.29-Feb.15)	41
	1814 (Jan.13-Mar.17)	52
	1815 (Jan.21-Mar.25)	46
Eighth	1816 (Jan.26-Feb.26)	23
	1817 (Jan.15-Mar.22)	52
Ninth	1818 (Jan.7-Apr.1)	72
	1819 (Jan.12-Apr.24)	86
	1820 (Apr.11-24)	7
Tenth	1820-1 (Dec.14-Mar.17)	91
Eleventh	1821-22 (Dec.11-Feb.18)	53
	1823 (Jan.10-Mar.22)	57
	1823-4 (Nov.25-Mar.9)	90
	1825 (Jan.8-Mar.22)	68
Twelfth	1826 (Jan.21-Mar.29)	61
	1827 (Jan.23-Mar.7)	36
Thirteenth	1827 (Nov.20-27)	3
	1828-9 (Nov.21-Mar.14)	108
	1830 (Jan.22-Mar.26)	59
	1831 (Jan.24-Mar.31)	64
Fourteenth	1831-2 (Nov.15-Feb.25)	94
	1832-3 (Nov.15-Apr.3)	158
	1834 (Jan.7-Mar.18)	84
	1835 (Feb.21-Mar.18)	27
Fifteenth	1835-6 (Oct.27-Mar.21)	122
	1836 (Sept.22-Oct.4)	14
	1837 (Aug.18-Aug.26)	8

Table 3.5 - Selected Speaker's Rulings, Lower Canadian House of Assembly, 1792-1837

<u>Year</u>	<u>Speaker</u>	<u>Journals Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed</u>	<u>Upheld</u>
1792-3	Panet	pp.37-8	Motion	Inadmissible according to Rules of House	Yes	Yes
1818	Papineau	p. 33	Motion	Not receivable, since a question being once made in a session cannot be questioned again	Yes	Yes
1818	Papineau	pp.90-1	Motion	Not receivable, since a question being once made in a session cannot be questioned again	Yes	No
1819	Papineau	p. 26	Petition	Not receivable, since it was not accompanied by royal recommendation	Yes	Yes
1819	Papineau	p. 75	Petition	Not receivable, since it was not accompanied by the recommendation of Governor General	Yes	Yes
1820-1	Papineau	p. 140	Vote, Disallowing	Out of order to propose the rejection of a vote regularly taken	Yes	Yes
1823	Vallières de St.Réal	p. 36	Amendment	Not receivable, as it was in direct opposition to the resolutions already taken by the House and intended to annul them	Yes	Yes
1826	Papineau	pp.164-5	Petition	Cannot be received, since petition is of a private nature	Yes	Yes
1827	Papineau	p. 107	Petition	Could not be received, as the time for presenting such petitions had expired	Yes	Yes

1827	Papineau	p. 108	Division	Names not to be taken down, as it was contrary to parliamentary usage to take the names upon a mere question of order	Yes	Yes
1830	Papineau	p. 165	Petition	Not receivable, since it has a private nature and ought to have been introduced within 15 days	No	
1830	Papineau	p. 193	Bill	Not in order, as it proposed amending a private act which could not be amended without another petition being presented	Yes	Yes
1830	Papineau	p. 218	Petition	Not receivable, since being of a local nature, it should have been presented within 15 days of Session	No	
1830	Papineau	p. 292	Petition	Not receivable, as it was of a local nature and the time fixed by the rules for receiving such petitions had expired	No	
1831	Papineau	p. 355	Motion	Motion receivable	Yes	Yes
1831	Papineau	p. 413	Bill	Not in order, since the bill now offered had already been propounded and rejected by the House and could not again be brought	Yes	Yes
1831-2	Papineau	p. 178	Motion	Not receivable, since it was prefaced by a preamble, which is contrary to the rules of this House	No	

1831-2	Papineau	p. 187	Division	Names not to be taken down, as the proceedings have been conducted with closed doors	Yes	Yes
1835-6	Papineau	p. 585	Amendment	Not receivable because it was not offered in the shape of a motion proposing some subject for deliberation and decision, but in the shape of a protest tending to censure a decision of the Committee of the Whole; and further, because in matters of supply, when the decision of a Committee of the Whole has been in favour of a smaller sum or a shorter period of time, it is not afterwards allowable to make any motion in the House tending to grant a larger sum or to extend the period	Yes	Yes

**Table 3.6 - Petitions Presented in House of Assembly
of Lower Canada, 1792-1837**

Session	Number Presented
1792-3	22
1793-4	5
1795	8
1795-6	16
1797	3
1798	3
1799	7
1800	14
1801	7
1802	4
1803	6
1804	5
1805	9
1806	7
1807	12
1808	13
1809	12
1810	18
1810-1	12
1812	0
1812-3	3
1814	12
1815	23
1816	25
1817	51
1818	40
1819	52
1820	0
1820-1	44
1821-2	25
1823	21
1823-4	38
1825	49
1826	40
1827	27
1828-9	80
1830	81
1831	180
1831-2	233
1832-3	98
1834	201
1835	57
1835-6	319
1836	0
1837	0

**Table 3.7 - Recorded Divisions - Lower Canadian House of Assembly,
1792-1837**

<u>Session</u> 1792-3	<u>Number</u> 249	<u>Session</u> 1815	<u>Number</u> 87
1793-4	129	1816	40
1795	2	1817	113
1795-6	9	1818	118
1797	22	1819	138
1798	43	1820	0
1799	76	1820-1	115
1800	77	1821-2	58
1801	72	1823	46
1802	42	1823-4	74
1803	45	1825	91
1803	8	1826	79
1804	65	1827	57
1805	57	1827	10
1806	60	1828-9	154
1807	67	1830	98
1808	62	1831	91
1809	54	1831-2	175
1810	38	1832-3	149
1810-11	164	1834	66
1812	19	1835	46
1812-13	111	1835-6	100
1814	111	1837	0

Endnotes

1. Assembly Journals, 1834, p. 310.
2. Shortt and Doughty, Canada and Its Provinces, Vol. 23, p. 364.
3. Robert A. MacKay, The Unreformed Senate of Canada (Toronto: McClelland and Stewart, Carleton Library, 1963), pp. 21-23.
4. Assembly Journals, 1832-33, p. 573.
5. Assembly Journals, 1834, p. 36
6. Fernand Ouellet, Lower Canada, 1791-1840: Social Change and Nationalism (Toronto: McClelland and Stewart, 1980), pp. 25-26.
7. Ibid., p. 26.
8. Garner, op.cit., p. 133.
9. Ibid., p. 134.

10. Regarding the history of the British oath, Josef Redlich writes:
"The first oath imposed upon the members of the House of Commons was instituted in 1563 by Queen Elizabeth's Act of Supremacy The purport of the oath ... was that the member testified to his belief that the sovereign of England was the only supreme governor of the realm, both in ecclesiastical and in temporal matters. In 1610 two further oaths were added ... in consequence of the anti-Catholic legislation following upon the Gunpowder Plot. In these oaths the members swore that they repudiated the claim of the Pope to depose a king, and that they freely and heartily promised 'to abhor, detest and abjure as impious and heretical the damnable doctrine and position, the princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects or any other whosoever'". See op.cit., Vol. 2, pp. 62-63.
11. S.F. Wise, "The 1790s", in Colonists and Canadiens, 1760-1867, ed. by J.M.S. Careless (Toronto: Macmillan, 1971), p. 71.
12. Assembly Journals, 1809, pp. 242-252.
13. Garner, op.cit., pp. 149-150. See also Lower Canada Statutes, 1 William IV, c.57.
14. Redlich, op.cit., Vol. 2, p. 63.
15. William Renwick Riddell, "Mr. Justice Thorpe", Canadian Law Times 40 (1920), pp. 916-920.
16. Assembly Journals, 1809, Appendix.

17. L.C. Statutes, 51 Geo. III, c.4.
18. Assembly Journals, 1825, p. 365.
19. Assembly Journals, 1834, pp. 243-4.
20. Redlich, op.cit., Vol. 2, pp. 94-95.
21. See Assembly Journals, 1792-93, pp. 70-74, 250-2.
22. Quoted in Thomas Chapais, Cours d'histoire du Canada, Vol. 2 (Québec: Garneau, 1921), p. 307. English translation by author.
23. L.C. Statutes, 60 Geo. III, c. 1.
24. L.C. Statutes, 55 Geo. III c. 21.
25. L.C. Statutes, 5 Geo. IV, c. 33.
26. L.C. Statutes, 1 William IV, c. 42.
27. L.C. Statutes, 4 William IV, c. 32.
28. L.C. Statutes, 48 Geo. III, c.21; 58 Geo. III, c.5; 4 William IV, c.28.

29. Assembly Journals, 1792-93, pp. 74, 196-200.
30. Garner, op.cit., p. 194.
31. Ibid., pp. 195-196.
32. Strateman, op.cit., p. lvii.
33. Ramsay Cook, ed., French-Canadian Nationalism: An Anthology (Toronto: Macmillan, 1969), p. 14.
34. Brun, op.cit., p. 124; E. Fabre Surveyer, The First Parliamentary Elections in Lower Canada (Montreal: Mercury Press, 1927), p. 8.
35. Lawrence H. Smith, "Le Canadien and the British Constitution" in Constitutionalism and Nationalism in Lower Canada, ed. by Ramsay Cook (Toronto: University of Toronto Press, 1969), p. 25; Brun, op.cit., p. 132; Smith, op.cit., p. 17.
36. M.H. Ogilvie, Historical Introduction to Legal Studies (Toronto: Carswell, 1982), p. 358.

37. May, Parliamentary Practice (19th ed.), p. 210.
38. See Donald G. Creighton, "The Struggle for Financial Control in Lower Canada, 1818-1831", in Constitutionalism and Nationalism in Lower Canada, ed. by Ramsay Cook, pp. 35-36.
39. The provincial parliament met in a seventeenth century church known as La Chapelle du Palais épiscopal from 1792 to 1833, and from 1834 until 1837 in the newly-constructed, but not yet completed, Parliament Buildings. See Michel Desgagnés, Les Édifices parlementaires depuis 1792 (2^e édition; Québec; Assemblée nationale de Québec, 1979,).
40. The British House of Commons had very few written standing orders regarding public business at the time. The 1810-11 Journals of the British Commons lists only six standing orders relative to public business. Only one of these, that "this House will receive no petition for any sum of Money, relating to Public Service, but what is recommended from the Crown", was included in the 1793 Lower Canadian rules. See Commons Journals, 1810-11 (United Kingdom), p. 682.

Since the committee was seized of its order of reference to consider the Governor's message regarding rules for less than three weeks, it may be that a working document had already been prepared by the Assembly's Clerk, Samuel Phillips, before the committee began its deliberations. Although the standing orders generally reflected traditional English practice, it does not appear that they had been copied from any one source. The wording of the rules reported by the committee varied from the wording found in such authorities as Hatsell's Precedents, Jefferson's Manual and Petyt's Lex Parliamentaria.

41. Quoted in F.H. Soward, "The First Assembly in Lower Canada", Canadian Historical Review, 4 (1923), pp. 260-262.
42. Assembly Journals, 1821, p. 167.
43. Assembly Journals, 1831, p. 53.
44. See Ouellet, Lower Canada, 1791-1840, p. 216.
45. Assembly Journals, 1792-93, p. 124.
46. Assembly Journals, 1793-94, p. 40.
47. Assembly Journals, 1793-1794, p. 120.
48. Assembly Journals, 1801, p. 422; 1807, pp. 170-172.
49. Redlich, op.cit., Vol. 3, p. 41.
50. Assembly Journals, 1792-93, p. 20.
51. Assembly Journals, 1792-93, p. 174.
52. Assembly Journals, 1792-93, pp. 154, 166-8.

53. Assembly Journals, 1817, pp. 674, 790-2.
54. Assembly Journals, 1810, pp. 44-6.
55. Assembly Journals, 1819, p. 176; 1821, p. 88; 1823, p. 125.
56. Assembly Journals, 1825, p. 328.
57. Assembly Journals, 1834, p. 118.
58. Assembly Journals, 1792-93, p. 138.
59. Redlich, op.cit., Volume 2, p. 205.
60. Quoted in H.C. Thomson, A Manual of Parliamentary Practice, p. 29.
61. Assembly Journals, 1805, p. 122.
62. Assembly Journals, 1821-22, pp. 28-29.
63. Assembly Journals, 1821-22, pp. 84-85.

64. Assembly Journals, 1832-3, p. 282.
65. May, Parliamentary Practice (19th ed.), p. 66.
66. Assembly Journals, 1814, pp. 328-42, 388-90.
67. Assembly Journals, 1816, pp. 94-102.
68. Redlich, op.cit., Vol. 3, pp. 161-2. In Upper Canada, a bill to provide for the salaries of the principal officers of the government was passed in 1831. See Assembly Journals (Upper Canada), 1831, p. 105.
69. Assembly Journals, 1821-22, pp. 87-8.
70. Assembly Journals, 1835, p. 23-24.
71. The eighth resolution stated "That for defraying the arrears due on account of the established and customary charges of administration of justice, and of the civil government of the said province, it is expedient that after applying for that purpose such balance as shall, on the said 10th day of April 1837, be in the hands of the Receiver-General of the said province, arising from his Majesty's hereditary, territorial, and casual revenue, the Governor of the said province be empowered to issue from and out of any other part of his Majesty's revenues, in the hands of the Receiver-General of the said province, such further sums as shall be necessary to effect the payment of the before-mentioned sum of 142,160 pounds." After the Lords concurred in the resolutions, a motion was agreed to by the Commons on May 18 "that a Bill or Bills be brought in upon the said Resolutions: And that Lord John Russell, Mr. Chancellor of the Exchequer and Sir George Grey do prepare, and bring in the same". These bills were not brought in during the 1837 session. See Commons Journals, 1837 (United Kingdom), pp. 305-6, 385.
72. Mason Wade, The French Canadians, 1760-1967 (Toronto: Macmillan, 1968), pp. 143-144.

73. In 1792-93, Antoine Panet, William Grant, James McGill, and Jacob Jordon were nominated. In 1823, Louis Bourdages, Denis B. Viger, Jean Thomas Taschereau and Valières de St. Réal were the candidates. See Assembly Journals, 1792-93, pp. 1-14; 1823, p. 10.
74. Soward, op.cit., p. 260.
75. See Smith, op.cit., p. 18.
76. Assembly Journals, 1832-33, pp. 459-60.
77. Assembly Journals, 1827 (2), pp. 16-21; 1828-9, p. 9. See also Redlich, op.cit., Vol. 2, p. 163. Sir Edward Seymour was refused by Charles II. Redlich writes "since that time neither Charles II nor any other King has ventured to give the House of Commons express commands as to the election of a Speaker".
78. Assembly Journals, 1792-93, p. 222. For a description of the functions of the Clerk, see Marc-André Bédard, "Le greffier de l'Assemblée législative du Bas-Canada: origine de la fonction", Bibliothèque de l'Assemblée Nationale du Québec Bulletin, 12 (1982), pp. 35-58. For a biographical note on William Lindsay, the second Clerk of the Assembly, see Dictionary of Canadian Biography, Vol. 6 (Toronto: University of Toronto Press, 1987), pp. 400-402.
79. By a rule adopted on March 4, 1817, the Law Clerk was given the responsibility of revising all public bills after first reading and making a breviat of every public bill previous to second reading. Assembly Journals, 1817, p. 674.

80. Assembly Journals, 1835, pp. 32-35, 51.
81. Assembly Journals, 1835-36, pp. 16-17, 138.
82. Assembly Journals, 1820-21, p. 284; 1823-4, p. 17.
83. Assembly Journals, 1831, p. 28-29.
84. Assembly Journals, 1835, pp. 57-8.
85. Redlich, op.cit., Vol. 2, pp. 93 and 211.
86. Assembly Journals, 1793-94, pp. 66-68; 1795, p. 49; 1808, p. 264; 1812, p. 286; 1814, p. 216; 1835-36, p. 416.
87. Assembly Journals, 1831, pp. 129-130.
88. Assembly Journals, 1806, p. 64.
89. Assembly Journals, 1806, p. 88; 1812-13, p. 150; 1832-3, p. 500; 1819, p. 34; 1823, p. 64.
90. Assembly Journals, 1806, p. 94.

91. Assembly Journals, 1812-13, pp. 150, 154.
92. Assembly Journals, 1832-33, p. 500.
93. Assembly Journals, 1812-13, pp. 102, 106.
94. Assembly Journals, 1815, pp. 158-160.
95. Assembly Journals, 1834, p. 299.
96. Assembly Journals, 1835, p. 30.
97. Assembly Journals, 1817, p. 462.
98. Assembly Journals, 1835-36, pp. 428-9.
99. Assembly Journals, 1835, p. 25.
100. See United Kingdom Statutes, 1 and 2 Vict., c. 9; and 2 and 3 Vict., c. 53. See also Bourinot, Parliamentary Procedure and Practice (3rd ed.), p. 256.

Chapter Four - The Transition to Responsible Government: Parliamentary Procedure in the United Province of Canada, 1841-1853

On July 23, 1840, royal assent was given to An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada.¹ The passage of the Union Act by the British parliament was an important milestone in the evolution of parliamentary procedure in central Canada, for it set in motion the dissolution of the old colonial system and the eventual establishment of responsible government. No event changed the nature of pre-Confederation parliamentary procedure more. This chapter will examine legislative practice from 1841 to June 4, 1853. The latter date represents the adoption by the House of a major revision of the rules which had been in place since the opening of the new legislature and marks a turning point between the procedures of the old colonial system and those of the new system of responsible parliamentary government. Before beginning this examination, however, it is important to review the main features of Lord Durham's Report on the Affairs of British North America, communicated to the British Parliament on February 11, 1839.

1. The Durham Report

The development of responsible government has been a basic theme in Canadian history. As Kenneth Windsor has observed, many early Canadian academics were preoccupied with the subject of nation-building, and responsible government was seen as the cornerstone of its development. Chester Martin described the transition to responsible government

as the watershed of our constitutional development, an event more important than the passing of the British North America Act of 1867 itself. ²

In their analysis of the impact of responsible government on Canadian policies and institutions, historians and social scientists have focused on such subjects as the commercial relations between the colonies and Great Britain and changes in the structure of colonial government, ³ the impact on native peoples ⁴ and the relationship between the Governor General of the United Province and his ministers. ⁵ There has been little analysis of the impact of the development of responsible government on Canadian parliamentary procedure. ⁶ Nor has the Durham Report been specifically analyzed from a procedural perspective. This is unfortunate since Durham gave some insightful observations on legislative practice in central Canada during the old colonial system.

In his Report, Durham felt there were two basic conflicts which impeded the proper functioning of constitutional government in Upper Canada and Lower Canada: (i) the clash between an elected assembly and an unaccountable executive; and (ii) the racial animosity between English and French. With respect to the first factor, he noted that in both provinces:

Representative assemblies were established on the basis of a very wide, and, in some cases, almost universal suffrage; the annual meeting of these bodies was secured by positive enactment, and their apparent attributes were locally nearly as extensive as those of the English House of Commons. At the

same time the Crown almost entirely relied on its territorial resources, and on duties imposed by Imperial Acts, prior to the introduction of the representative system, for carrying on the government, without securing the assent of the representative body either to its policy or to the persons by whom that policy was to be administered. ⁷

In the United Kingdom, with the restoration of the monarchy in 1688, power was placed in the hands of the parliamentary majority. Since that time collisions between the Crown and the House of Commons had been "rare and transient". Because representative and irresponsible government could not be combined, an obvious solution would be to make the Crown, through its ministers, responsible to the elected members with regard to provincial matters.

With respect to the second factor, racial animosity, Durham felt that British policy had been far too lenient in allowing the continued existence of French-Canadian culture and law. He felt the accommodation had produced great confusion within the legislative system of Lower Canada:

The law itself is a mass of incoherent and conflicting laws, part French, part English, and with the line between each very confusedly drawn. Thus the criminal law is the criminal law of England as it was introduced in 1774, with such modifications as have since been made by the provincial legislature, it being now disputed, whether the provincial legislature had any power to make any change whatever in that law, and it not being at all clear what is the extent of the

phrase 'criminal law'. The civil law is the ancient civil law, also modified in some, but unfortunately very few, respects; and these modifications have been almost exclusively effected by Acts of the British Parliament and by ordinances of the Governor and Council constituted under the Quebec Act. The French law of evidence prevails in all civil matters, with a special exception of 'commercial' cases, in which it is provided that the English law is to be adopted; but no two lawyers agree in their definition of 'commercial'⁸

Lord Durham made six recommendations which had important consequences for the evolution of pre-Confederation parliamentary procedure. The first was that if parliamentary government was to be conducted harmoniously, it could only be done so through a form of responsible government. "The Crown must", Durham wrote, "... submit to the necessary consequences of representative institutions; and if it has to carry on the Government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence".⁹ Durham, however, was ambiguous as to whether the confidence in ministers was to be demonstrated individually or collectively. Second, parliamentary government should be conducted on an English basis: "...in any plan which may be adopted for the future management of Lower Canada, the first object ought to be that of making it an English province; and that, with this end in view, the ascendancy should never again be placed in any hands but those of an English population.... Lower Canada must be governed now, as it must be hereafter, by an English population ...".¹⁰

Third, parliamentary government in central Canada must return to more traditional English practices: in particular, the procedure that all proposals calling for the expenditure of public monies must be recommended by the Crown. Durham observed how different Canadian colonial procedure was from that of Great Britain with respect to money bills. He wrote:

It is necessary that I should also recommend what appears to me an essential limitation on the present powers of the representative bodies in these Colonies. I consider good government not to be attainable while the present unrestricted powers of voting public money, and of managing the local expenditure of the community, are lodged in the hands of an Assembly. As long as a revenue is raised, which leaves a large surplus after the payment of the necessary expenses of the civil Government, and as long as any member of the Assembly may, without restriction, propose a vote of public money, so long will the Assembly retain in its hands the powers which it every where abuses, of misapplying that money. The prerogative of the Crown which is constantly exercised in Great Britain for the real protection of the people, ought never to have been waived in the Colonies; and if the rule of the Imperial Parliament, that no money vote should be proposed without the previous consent of the Crown, were introduced into these Colonies, it might be wisely employed in protecting the public interests, now frequently sacrificed in that scramble for local appropriations, which chiefly serves to give an undue influence to particular individuals or parties. 11

A fourth recommendation was that Upper Canada and Lower Canada should be unified into one province. "I find in union the only means of remedying at once and completely the two prominent causes of their present unsatisfactory condition." ¹² In order to encourage English ascendancy, he advocated a form of representation by population. He was averse to any plan that would provide an equal number of members from the two provinces.

Fifth, Durham was highly critical of the old Legislative Councils. He felt that no analogy could be made between them and the House of Lords, and recommended that they be reformed.

The constitution of the House of Lords is consonant with the frame of English society; and as the creation of a precisely similar body in such a state of society as that of these Colonies is impossible, it has always appeared to me most unwise to attempt to supply its place by one which has no point of resemblance to it, except that of being a non-elective check on the elective branch of the legislature. The attempt to invest a few persons, distinguished from their fellow-colonists neither by birth nor hereditary property, and often only transiently connected with the country, with such a power seems only calculated to ensure jealousy and bad feelings in the first instance, and collision at last. ¹³

Durham, however, made no specific suggestions as to how the Legislative Council was to be revised and did not comment on whether or not it should be elected.

Lastly, Durham recommended the adoption of an "adequate" civil list in return for surrendering to the United Legislature all revenues of the Crown with exception of those derived from public lands. ¹⁴ The recommendation was designed to bring the Assembly's practices into line with those of Great Britain.

The goal of the Durham Report was to establish stable government in the Canadas. Durham believed that modern British parliamentary practice, if implemented in the legislature, could help achieve that goal. How accurate Durham's assumptions were and how appropriate were his recommendations to Canadian conditions have been matters of great controversy. Chester New has written the following:

... readers need to be warned that although the principles of the Report belong to the immortalities, its record of historical facts is frequently misleading. It must be remembered that Lord Durham was not an historian, that he was only five months in Canada, and that although he had access to most important documentary sources, the whole period from his appointment as High Commissioner to the presentation of his Report was one year and sixteen days, crowded with practical problems, complicated politics, drama, worry and illness. The result so far as historical accuracy is concerned is about what might be expected of a man of industry and analytical power, assisted by able lieutenants, but neither he nor they were gifted in the arts of research and criticism. When the facts - real and supposed - passed from the stage of investigation to that of expression and description, they were further transformed by that habit of exaggeration which was the concomitant of Lord Durham's remarkable imagination and temperament. From this point

of view, the worst part of the Report was the section on Upper Canada, in which province Lord Durham spent only ten days. ¹⁵

Durham's recommendation for a union of the Canadas was not entirely welcomed. John Beverly Robinson, Upper Canada's Chief Justice and representative of 'High Tory' opinion, strongly opposed the plan. In his 1840 book, Canada and the Canada Bill, he expressed fears that the French Canadians and the Upper Canadian "rebels" would join forces to obstruct the new legislature, that the French would resist all changes to their laws and that the reformers would not be interested in promoting trade and public works, two areas where Upper Canada required action. ¹⁶ The union proposal was looked upon by French Canadians, J.M.S. Careless writes, "not only as having been designed to undermine their national identity but as magnifying that wrong by decisively under-representing their own section of the country". ¹⁷

The proposition that the province should be governed by an English population underestimated the determination of French Canada to fight for its survival and to demand a role in government. In fact, if one of Durham's purposes was to restore harmony in parliamentary government, the recommendation was self-defeating. Durham can also be criticized for being contradictory with respect to the purpose of the legislative union. The option of a legislative union, he stated, "would imply a complete incorporation of the Provinces included in it under one legislature, exercising universal and sole authority over all of them, in exactly the same manner as the Parliament legislates alone for the whole of the British Isles". ¹⁸ Such a form of government should help realize the objective of making the colony a British province and correct the

legislative confusion existing in Lower Canada. Durham, however, retreated from this original goal. In his stated desire that the English-dominated legislature not be unjust or oppressive to French Canadians, he recommended that all of Lower Canada's present laws continue to exist until altered by the united legislature. He added that he did not "think that the subsequent history of British legislation need incline us to believe, that the nation which has a majority in a popular legislature is likely to use its power to tamper very hastily with the laws of the people to which it is united".¹⁹ Durham therefore appears to have sanctioned legislative dualism.

The suggestion of a permanent civil list found some resistance, an occurrence which was not surprising given the opposition to the proposal earlier in Lower Canada. Also, the recommendation that no money votes should be allowed to originate without the previous consent of the Crown did not find complete favour since legislators had grown accustomed to the quasi-congressional practice. The most important recommendation of the Report, that of establishing responsible government, was met with a great deal of skepticism. Although welcomed by the Reformers, such as Robert Baldwin who had advocated such a system in his 1836 letter to Lord Glenelg, there was much uncertainty as to its meaning. Even in the Mother of Parliaments, the confidence convention was not yet firmly established. With respect to Durham's view of responsible government, A.H. Dodd writes the following:

Lord Durham - 'Radical Jack' - was among the more forthright and uncompromising of the new whigs who had so recently saddled the constitution with a novel doctrine of

representation in the first reform bill; his views on the implications of representative government were not necessarily those even of contemporaries at home, still less of an earlier generation Lord John Russell as colonial secretary defined the whig doctrine of responsible government to Durham's successor in far more guarded and less explicit terms. Durham himself was under fifty when the Report was written, and his bland assumption of universal truth for a convention which hardly went back beyond his own political lifetime is yet another example of the extraordinary speed with which novelties, once accepted, can begin to wear what Archbishop Mathew calls 'that character of the inevitable which has always such a soothing influence on all those who possess a tranquil attachment to tradition'.... 20

However, the concept of responsible government was one whose time had come. Government by an irresponsible executive authority and input by a non-sovereign but representative assembly could be tolerated where pioneer conditions prevailed but was more difficult in a rapidly expanding and economically growing country. By the 1840s, the frontier was beginning to pass. Major canal construction such as the Welland and St. Lawrence canals were progressing as was railroad expansion. Canada had become a trading nation whose important staple products were lumber and wheat. Whereas the combined population of Upper and Lower Canada in 1806 was approximately 320,000, by 1841 it was 1,080,000. By 1851 the population had grown to 1,842,000. 21 Imperial policy towards its colonies was also undergoing change by encouraging more self-reliance and less protection from London. Britain was contemplating the idea of

free trade and would by 1846 repeal its Corn Laws, causing central Canada to lose its preferential treatment within the English domestic market.

2. The Sources of Parliamentary Procedure, 1841-1853

A. The Legal Sources

(i) The Union Act, 1840

Pursuant to Section 3 of the Union Act, the new legislature was "to make Laws for the Peace, Welfare and good Government of the Province of Canada", such laws not to be repugnant to any Imperial act of parliament. Clearly, the scope of legislative activity would be confined to domestic matters with the proviso that imperial law could still override provincial law. The Union Act did not explicitly transfer new powers to the provincial legislature. Edward Kylie has noted "it was quite inconsistent with the British colonial tradition to make a sudden or complete transfer of authority".²² As will be discussed later, new powers would accrue to the legislature under the union but on a gradual, area-by-area basis. Kylie writes: "Colonial interests were expanding, with the result that matters reserved for the imperial government had to be surrendered to the discretion of the colony. The line between imperial and local concerns was being constantly shifted, and always into the territory formerly set apart for imperial action."²³

With respect to the composition of the new legislature, the act endorsed Durham's recommendation for a legislative union. However, instead of representation by population, the statute called for an equal number of representatives from the two provinces, 42 from Upper Canada and 42 from Lower Canada. Section 26 specified that any bill which altered the system of representation had to be passed by at least two thirds of the members of the Legislative Council and of the Legislative Assembly on both second and third readings, a stipulation that made electoral reform very difficult. Despite attempts to increase the size of the House, the number of deputies remained the same during the period 1841-1853. 24

Contrary to Durham's suggestions, the act did not radically alter the Legislative Council. Though it abandoned such provisions of the 1791 Constitutional Act as inheriting memberships and summoning only "discreet and proper persons", the Union Act did not substantially reform the constitutional make-up of the upper house. The Council remained appointed, composed of not fewer than 20 members, and the Queen was to summon such persons "as Her Majesty shall think fit", who could hold their seats for life. Unlike the Legislative Assembly, there was no provision for providing an equality of membership from the former two provinces. However, in a significant break with the old colonial system, the act made clear the supremacy of the lower house over the upper chamber with respect to financial initiatives. This new provision removed the ambiguity which had precipitated the 1818 crisis in Upper Canada. Section 57 stipulated that "all Bills for appropriating any Part of the Surplus of the said Consolidated Revenue Fund, or for imposing any new Tax or Impost, shall originate in the Legislative Assembly of the said Province of Canada".

The Union Act did not modify the voting franchise. Section 27 stated that the present election laws of the two provinces were to apply until altered. The one significant change was Section 28, which stated that no person could be elected a member of the Assembly who did not own property within the province of the value of 500 pounds. Lower Canada had not established property qualifications, while in 1814 Upper Canada had required each candidate to possess an unencumbered freehold in land to the assessed value of 40 pounds and other ratable property of 160 pounds. The 500 pound qualification was in keeping with British practice.²⁵ The stiff qualification was a focus of complaint, particularly by the Reformers. Since it was included in the Union Act it was beyond the power of the legislature to amend and the qualification remained throughout the period.

Pursuant to Section 37, bills were to be passed by both Houses and presented for royal assent to the Governor who would declare "according to his Discretion, but subject nevertheless to the Provisions contained in this Act, and to such Instructions as may from Time to Time be given in that Behalf by Her Majesty ... that he assents to such Bill in Her Majesty's Name, or that he withholds Her Majesty's Assent, or that he reserves such Bill for the Signification of Her Majesty's Pleasure thereon". As in the Constitutional Act, disallowance could be made within two years after the bill was received by the Secretary of State and no reserved bill was to have any force or authority within that time (Section 39).

The British cabinet saw to it that the concept of the royal recommendation was made a statutory provision and not left to be only a standing order of the House. Section 57 stated: " ... that it shall not be lawful for the said Legislative Assembly to originate or pass any Vote, Resolution, or Bill for the Appropriation of any Part of the Surplus of the said Consolidated Revenue Fund, or of any other Tax or Impost, to any Purpose which shall not have been first recommended by a Message of the Governor to the said Legislative Assembly during the Session in which such Vote, Resolution or Bill shall be passed". Section 52 provided for a permanent civil list to pay the salaries and pensions of the Governor, Lieutenant Governor and certain judges. A second civil list was also provided for to pay the salaries of such officials as the civil and provincial Secretaries, the Receiver General and Inspector General for the life of Her Majesty and five years following her demise.

One of the more controversial provisions was Section 41. It took away from French Canadians what their representatives had fought for vigorously since 1792: the right to conduct parliamentary proceedings in their own language. Henceforth the language of the legislature's records would be English. Section 41 stated:

... all Journals, Entries and written or printed Proceedings, of what Nature soever, of the said Legislative Council and Legislative Assembly, and of each of them respectively, and all written or printed Proceedings and Reports of Committees of the said Legislative Council and Legislative Assembly respectively, shall be in the English Language only: Provided always, that this Enactment shall not be construed to prevent

translated Copies of any such Documents being made, but no such Copy shall be kept among the Records of the Legislative Council or Legislative Assembly, or be deemed in any Case to have the Force of an original Record.

The Union Act carried over the same provisions of the Constitutional Act regarding the duration of the provincial parliament (Section 31), how decisions would be made in the Assembly; i.e. the majority principle (Section 34), and the oath of allegiance (Section 35). Two new procedural matters were included: the election of the Speaker (Section 33) and what the quorum of the Assembly would be (Section 34).

Section 33 stated that at its first assembly the House should proceed to the election of a Speaker and that "the Speaker so elected shall preside at all Meetings of the said Legislative Assembly". In doing so, the statute removed the concept of royal approbation with regard to the Crown's traditional right to veto the House's choice of Speaker. The inclusion of the section indicated that the British government was willing to permit Canadians to have greater democratic control of their internal institutions and was obviously meant to ensure that a repetition of the events of 1827, when Speaker Papineau was not approved by the Governor, would be avoided.

Section 34 provided that the presence of at least 20 Members of the Legislative Assembly, including the Speaker, would be necessary to constitute a meeting. There was no mention of the House's quorum in the Constitutional Act. There had been great uncertainty in the Assemblies of Upper Canada and Lower Canada as to what an appropriate quorum should

be and the rules of both Houses were amended many times in this respect. By making it a statutory regulation, it was hoped that controversy over this subject would cease.

(ii) Royal Instructions

The new policy of responsible government was not contained in the Union Act but was announced in a royal instruction issued to Governor General Poulett Thomson, dated September 7, 1839. The Colonial Secretary, Lord John Russell, wrote the following:

The intelligence which has reached me from Upper Canada, makes it probable that you may be called upon for some explanation of the views of the Ministers of the Crown, on a question respecting which the Bill to which I have referred is necessarily silent. I allude to the nature and extent of the control which the popular Branch of the United Legislature will be admitted to exercise over the conduct of the Executive Government, and the continuance in the public service of its principal Officers. But it is evidently impossible to reduce into the form of a positive enactment, a constitutional principle of this nature. The importance of maintaining the utmost possible harmony between the policy of the Legislature and of the Executive Government admits of no question; and it will of course be your anxious endeavour to call to your Counsels, 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. 26

Two other despatches dealt with responsible government. One dated October 14, 1839, made it clear that the Colonial Office did not believe responsible government in the Province of Canada could be equivalent to that in Great Britain. Russell wrote: "It is obvious that the Executive Councillor of a Colony is in a situation totally different. The Governor under whom he serves receives his orders from the Crown of England. But can the Colonial Council be the Advisers of the Crown of England? Evidently not, for the Crown has other Advisers for the same functions, and with superior authority." ²⁷ Although the British cabinet had formulated a markedly changed policy from that announced by Sir Francis Bona Head when he told the Upper Canadian Assembly in 1837 he would only name those councillors in whom he could confide, it was not yet prepared to grant self government to the new province.

The second despatch, dated October 16, 1839, announced an important policy change regarding the tenure of Crown office. As noted earlier, commissions for public office in the colony had been rarely recalled. In these instructions, Russell announced new rules regarding such appointments. He directed the Governor to cause it to be made known that "the tenure of Colonial Offices held during Her Majesty's pleasure, will not be regarded as equivalent to a tenure during good behaviour, but

that not only such Officers will be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but that a change in the person of the Governor will be considered as sufficient reason for any alterations which his successor may deem it expedient to make in the list of Public Functionaries, subject, of course, to the future confirmation of the Sovereign". ²⁸ This new policy was not to apply to judicial offices but to the heads of departments, including the members of the Executive Council. The institutional groundwork was therefore laid for removing ministers from office according to political circumstances.

According to the 1839 despatches, responsible government was to be conducted on the basis of the harmony of interests, which implied a multi-party government and individual as opposed to collective responsibility. As will be noted below, it was not until 1847 that the British cabinet accepted the concept of collective responsibility as a system of parliamentary government for the United Province. The fundamental policy change again came by way of a royal instruction to the Governor General from the colonial office. In his 1847 instructions from Lord Grey, Lord Elgin was directed "to act generally upon the advice of his executive council, and to receive as members of that body those persons who might be pointed out to him as entitled to do so by their possessing the confidence of the assembly". ²⁹

(iii) Provincial Acts

An Act to enable Members of the Legislative Assembly for places within that part of the Province formerly constituting the Province of Upper Canada, to vacate their seats in certain cases and for other purposes ³⁰ was given royal assent on August 17, 1841. English parliamentary law did not recognize that a member had the power to vacate his seat. A seat could be vacated by a resolution of the House or by a member accepting a pro forma administrative office such as the Stewardship of the Chiltern Hundreds. ³¹ As noted in Chapter Three, Lower Canada had passed an act permitting members of the Assembly to vacate their seats in 1831. Upper Canada had no equivalent legislation.

The 1841 bill was exactly the same as that passed in Lower Canada 10 years earlier. It described the manner by which members were to proceed when they wished to resign during sittings of parliament and in the interval between sessions. An interesting debate ensued in Committee of the Whole on the bill. Robert Baldwin observed "that at present the power of vacating seats in that house rests entirely with the gentlemen occupying the treasury benches, by appointing a member whom they desire to remove from the floor of the house, to some office. But we who breathe the uncongenial atmosphere of the opposition side of the house, have no such power." John Neilson thought the bill was unconstitutional: "The sound English system was, to hold their seats up to the end of that term for which they had offered themselves - the close of the Parliament". Stewart Derbyshire also believed the bill was unconstitutional and dangerous for parliamentary government. The bill provided:

...that when any constituency required the resignation of the electoral trust into their hands, the Representative of that Constituency should act upon the suggestion and vacate his seat in the Assembly. If this was the object of the Bill, there was needless circumlocution in its provisions. The shorter plan would be to give at once to the constituencies themselves the power of vacating the seats of their Representatives, and of compelling at the same time the Crown to issue a new writ.... This would, indeed, be something like reversing the monarchical order of proceeding under a Representative system, for it places the power of calling a new Election in the Constituencies, and not in the Crown 32

An Act for continuing the Provincial Parliament in case of the demise of the Crown 33 was given royal assent on November 16, 1843. It was very similar to the legislation passed in Upper Canada in 1837. Lower Canada had no equivalent stature. The new act retained the Upper Canadian practice that the "Provincial Parliament shall continue, and may meet, convene and sit, proceed and act, notwithstanding such demise of the Crown, in the same manner as if such demise had not happened". As noted earlier, such procedure differed from that of Great Britain's.

One of the more important provincial statutes influencing the procedure of the United Province was the Act for better securing the Independence of the Legislative Assembly of this Province. 34 The bill was reserved and not given royal assent until January 7, 1845. It was a key legislative achievement of the short-lived Lafontaine-Baldwin ministry of 1843 and was designed to correct some of the alleged abuses of the old colonial system regarding Crown influence upon elected Assemblies.

The act was much more radical in its approach than either the 1834 Lower Canadian act for vacating the seats of members or the 1838 Upper Canadian act dealing with the independence of the House of Assembly. Both statutes generally provided that if a member accepted a Crown office his election would be void but he could stand for re-election. The 1843 act went much further. It specifically disqualified a long list of persons from ever being returned as members of the Assembly. This list included judicial functionaries, officers of court, registrars, officers of customs or excise, public offices, such as government contractors, postmasters, physicians attending jails or hospitals, even the translator of the laws. Exempted from this list were members of the Executive Council, who upon accepting from the Crown any office of profit were to resign but could be re-elected. If any disqualified person was elected, he was to forfeit the sum of 500 pounds currency for each day he sat.

The 1843 bill disqualified a number of persons from voting at Assembly elections. The list included judges, clergymen and priests, commissioners of bankruptcy, officers of customs and "all officers employed in the collection of any duties payable to Her Majesty in the nature of duties of Excise". The penalty for voting was also fixed at 500 pounds.

The bill was generally welcomed. Edward Gibbon Wakefield told the House: "The course taken by the Government was well worthy of observation. This was the first time that a liberal Administration conducted the affairs of the Province - the first time that persons of

French Canadian origin exercised any power in the Government, and instead of endeavouring to build it up, they seize upon the earliest opportunity to deprive themselves of the power they have." Some members noted the practice differed from that of the British parliament. John Neilson said: "In England there were many offices not subject to exclusion, and [I] would like the subject examined so that we might imitate them". Thomas Aylwin replied: "There was no close analogy between this Province and Great Britain, in consequence of the difference that exists in the number of representatives. When it is considered that here there are only 84 members, we see a necessity of excluding all office holders. This necessity would not exist to the same extent if the number of representatives were as large as in England or the United States." 35

The influence the Crown had retained over the pre-Union assemblies may have been more apparent than real. Given the permanent majority nature of the party system in Lower Canada, the governor's influence over that Assembly was practically nil. In Upper Canada, most of the controversy over who was eligible for an Assembly seat had centred on residency qualifications, not the relationship to the Crown. Some Lieutenant Governors complained they had little influence. In 1794 Simcoe wrote to William Pitt: "It cannot escape you, Sir, that such a Government as that of Upper Canada must be extremely weak in its infancy from the total deficiency of those means of forming an influence which interested motives or the collision of opinion necessarily create in large Communities. The fact is that Government in this Province can neither return a member of the House of Assembly, nor secure his support when he shall be entered therein: The means therefore of carrying on Public Business must solely depend on the self evidence of the measure

...". ³⁶ In 1827 Lieutenant Governor Maitland complained that he was entirely lacking in means to influence the assembly and could not even be certain that the policies of his administration would be adequately or accurately stated in that body. ³⁷ Regardless, the adoption of the 1843 Independence of Parliament Act was an important milestone in Canadian parliamentary history as it protected through statutory enactment the Assembly's proceedings from the independent action of the Crown. The statute was to undergo further revision in the 1850s.

The section that the clergy was to be disenfranchised was not well received. John Garner notes it was agreeable "to those Reformers, such as Baldwin, who believed in a separation of church and state: and it was agreeable to Lafontaine who felt the disenfranchisement of the Roman Catholic clergy and their Protestant counterparts would be politically advantageous in countering criticism of the Government's ban on the Orange Order". On this controversial point, the bill was reserved. Although the Colonial Secretary disapproved, Garner writes "he felt obliged to defer to the judgement of the Canadian Legislature and the bill was confirmed". Due to the unpopularity of the provision, however, this section of the act was repealed by the legislature on March 17, 1845. ³⁸

On April 25, 1849, the legislature enacted the Interpretation Act, ³⁹ the purpose of which was "to avoid by the establishment of some general rules for the interpretation of Acts of the Provincial Parliament, the continual repetition therein of words, phrases and clauses, which are rendered necessary solely by the want of such rules, and also to provide for the date and commencement of such Acts being

known with certainty". As noted in Chapter Two, Upper Canada did pass in 1837 a general law regarding forms of enactment. Bills in both colonies, however, were often poorly scrutinized as to form and a variety of styles were used. Upper Canada never did establish the position of Law Clerk. There was little guidance for judges as to how certain terms used in acts of parliament were to be interpreted. In the absence of general guidelines, judges were permitted wide discretion in interpreting provincial laws. The passing of the Interpretation Act was an important event not only for parliamentary procedure but also for Canada's judicial system.

The act, which originated as a Legislative Council bill, prescribed that the Clerk of the Legislative Council was to endorse on every act passed the day, month and year of the royal assent or of the royal reservation. He was also directed to record the date of the royal endorsement if a reserved bill was assented to. Section 3 provided that any provincial act passed in a session may be amended or repealed by an act of the same session, "any law, usage or custom to the contrary notwithstanding". This section signified an exception to British practice which adhered to the "same question rule". As early as 1610, the British Commons had passed a standing order "that no bill of the same substance be brought on the same session".⁴⁰ The rule was ostensibly designed to avoid the repetition of questions. The exigencies of the Canadian environment probably encouraged the provincial parliament to vary from imperial practice. Given the great distances members had to travel to get to the capital, emergency sessions would be hard to call off it was discovered that an act passed in a session had to be altered.

The Interpretation Act also provided definitions to such parliamentary and legal terms as "Crown", "Governor" and "Governor in Council". It allowed for preambles to form part of an act. Their purpose was "to assist in explaining the purport and object of the Act". It also gave legal recognition to two kinds of acts, a public act and a private act. It stated: "... every such Act which shall not, either by its nature or by express provision, be a Public Act, shall be deemed a Private Act, and shall be judicially noticed only when specially pleaded ...". No legal or procedural recognition was given to a third class of bills known as "hybrid bills" which, though of a public nature, affect private rights. ⁴¹

Public and private acts were also the subject of another bill passed by the legislature shortly after the enactment of the Interpretation Act. An Act to amend the Law relative to the printing and distribution of Provincial Statutes ⁴² was given royal assent on May 30, 1849. The general theme of the procedural distinction which took place between public and private bills will be discussed later, but it should be noted that the late 1840s and early 1850s marked a turning point with regard to this subject. The achievement of responsible government was accompanied by greater restrictions being placed on the right of private interests to have special legislation enacted for them. The Distribution of Provincial Statutes Amendment Act did just that. The act stated that henceforth none but public general statutes would be printed and distributed at the expense of the province. Local acts not being private or personal acts but affecting the inhabitants of any locality generally, would be printed at the expense of the province "but in such number only as shall be sufficient for their distribution to the

Judges and Public Departments ...". Private or personal acts "which although declared public are in their nature private or personal, as incorporating or granting privileges or advantages to any individual or number of individuals ... shall be printed by the Queen's Printer at the expense of the parties obtaining them ...".

Another measure of the Great Ministry which affected legislative procedure was the enactment on August 2, 1851 of a new Controverted Elections Act.⁴³ Until it was passed, controverted elections from Upper Canada were tried under the old law of Upper Canada and those from Lower Canada pursuant to Lower Canadian law. The purpose of the new act was to provide one general act for the trial of all parliamentary election petitions within the province. The act was modelled on the principles of the 1839 British statute. It was lengthy and technical, containing 162 sections and 9 schedules. It was aimed at providing a procedure whereby controverted elections would be judged on an impartial basis and at removing trials from the more political area of the floor of the Assembly into small select committees where decisions would be final.

The new act changed the role of the Speaker in controverted election trials. He was given the power of determining the validity of the recognizances of petitions and his decision was to be final. He was also given power to appoint a General Committee of Elections of six members to make up the select committees to try election petitions. The House could overturn the Speaker's choices, in which case the Speaker would lay before the House a new warrant for their appointments. This procedure would continue until the warrant was accepted. The General

Committee was then to select "four, six or eight Members whom they think duly qualified to serve as Chairmen of Election Committees". The General Committee also selected the members of each committee. Contending parties could contest these choices but once the select committees were appointed they were to proceed to hear evidence. Section 74 of the act stated that:

...if any Member of the said Select Committee do not attend in his place within one hour after four of the clock on the day appointed for swearing the Committee ... or if, after attending, any Member depart the House before the said Committee is sworn ... he shall be ordered to be taken into custody of the Sergeant at Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it appear to the House by facts specially stated and verified upon oath, that such Member was by a sudden accident or by necessity prevented from attending the House.

The proceedings of the select election committees were defined in great detail and dealt with such matters as time and place of meeting, adjournments, voting, swearing of witnesses and the form of reports. The act also provided for the appointment of commissioners to take evidence of witnesses beyond the parliamentary precincts. Circuit or county judges could be so appointed. Pursuant to Section 159, the House was authorized to punish by censure or imprisonment any person for the non-observance of the act.

As noted, the statute was modelled on British procedure. How applicable it was to Canadian conditions and politics was questionable. It gave important power to the Speaker of the House. While in England the Speaker was generally above politics and held the position on a permanent basis, such was not the case in Canada. It appears that Robert Baldwin, the sponsor of the bill, misjudged the strength of partisanship among the Canadian representatives. John Garner writes the following:

Undoubtedly Baldwin expected the British precedents would be followed and the Speaker would appoint members to the General Committee of Elections equally from the ministerial and opposition benches, and that these men working under the absolute majority rule would select able men to staff the chairman's panel. If Baldwin was hopeful that the new procedure would improve the handling of election cases, John A. Macdonald was sceptical. The instability of ministerial majorities and the chronic ministerial crises had permeated the Canadian political scene with intense partisanship. In consequence it was Macdonald's belief that no ministry would risk the loss of any seat regardless of how it was secured and that both honour and integrity would have to be sacrificed to political survival. Macdonald had most acutely gauged Canadian political realities, and his estimate was only rendered more accurate by the departure of Baldwin and Lafontaine from public life. The loss of their stabilizing influence not only intensified the internecine party strife but left the implementation of the new procedure to alien hands.

Following the next election the procedure appeared to work satisfactorily for Canada West. All cases were tried and to all appearances properly determined. But for Canada East the measure was a total failure, not one case being determined. In the Richelieu County case, for example, the Speaker, John Sandfield Macdonald, ruled the recognizance objectionable on a technical point and prevented an investigation of an election which on the face of its poll books was blatantly illegal.⁴⁴

Despite its shortcomings, the new procedure was retained with some modification throughout the Union period and was adopted by the Canadian House of Commons in 1867. It was not fundamentally altered until 1873 when the trial of election petitions was passed to judges.

(iv) The Rules and Parliamentary Authorities

The other formal sources of procedure included the rules and regulations of the Legislative Assembly and the parliamentary authorities. Given the variance of the procedures in Upper Canada and Lower Canada, a common set of rules had to be arrived at. The content of those rules will be analysed in the next section of this chapter. With respect to the authorities, in the Union period, there was less and less citation of the more ancient texts, such as Petyt's Lex Parliamentaria. Hatsell's volumes on old British precedents gave way to Erskine May's Parliamentary Practice, which first appeared in 1844. The Assembly lost no time in acquiring the new textbook. On January 8, 1845, it ordered

two copies for its library. With respect to procedural books by Canadians, Thomson's Manual of Parliamentary Practice had been eclipsed by Alpheus Todd's The Practice and Privileges of the Two Houses of Parliament, published in 1840. Members also learned about procedure through the Mirror of Parliament and other collections of debates of the House of Commons. Contacts between Westminster and the colonies became more frequent and members often cited precedents they had witnessed while sitting in the galleries at the House of Commons. Robert Baldwin's 1836 trip to England was important not just for strengthening the cause of responsible government. He also appears to have learned a great deal at first hand about Commons parliamentary practice, knowledge which he brought back with him to Canada. Throughout the 1840s, he was forever lecturing the House about proper British procedure. For example, late in the 1841 session, Baldwin rose in the House and stated "that he had invariably through the session raised his voice against any interference with the Executive with respect to grants of money, a recommendation which should emanate from that Branch; he could not, however, rise on every occasion and repeat his sentiments". 45

The greater democratization of parliamentary government both in England and in central Canada -- the former caused by the passage of the 1832 Reform Act and the latter through the development of responsible government -- called for changes in how parliament was to operate. The appearance of the new procedural authorities was an indicator of the developments in legislative practice.

With the aid of these more up-to-date authorities and the benefits gained from more personal experience, members demonstrated a greater

degree of sophistication in procedural discussions. There was, however, a great deal of confusion. Members had been used to dispensing with the rules in order to expedite business. Proceeding by unanimous consent was no longer as usual. Robert Baldwin made the point in the 1844-45 session that "if the rules were to be dispensed with, it was better to have no rules at all".⁴⁶ The House was eclectic with respect to the citation of procedural precedents. Members referred to the proceedings of Upper Canada, Lower Canada, and the United Kingdom, despite the variations in their forms of proceeding. There was also some controversy with regard to the importance of precedents. Thomas Aylwin, reflecting perhaps the civil law tradition of Lower Canada, which clashed directly with the common law tradition of British parliamentary procedure, argued against the authority of precedents as opposed to written rules. In 1844-45, he is reported to have said:

He would never submit to have his decision bound by an ignorant or corrupt precedent. He would refer the Hon. Gentlemen to the first principles of the law of Canada which was that - *Legibus non exemplis judicandum est* - we must decide everything according to law, not according to precedents. The Hon. Gentlemen had spoken of precedents knowingly and seemed to have an extraordinary idea that there must be a precedent to order to come at a decision. On the contrary he (Mr. Aylwin) if he understood anything of them, thought that there must be a decision before you form a precedent.⁴⁷

The meaning of what was a precedent also perplexed members. John A. Macdonald claimed "a precedent is not a precedent, unless there had been a discussion and opposition". 48

(v) Goal Orientation and Environmental Factors

With respect to the environmental factors influencing procedural development, none was more important than the influence of political parties. Central Canada was at the dawn of a new era. A new political union had been established and the drive to achieve a different constitutional arrangement between the Crown and its political advisers was underway. The fight for responsible government would have been meaningless without the existence of political parties. Paul Cornell in The Alignment of Political Groups in Canada, 1841-1867 claims that party loyalty was an important characteristic of the new provincial parliament. He writes: "With the disappearance of Sydenham from the scene, there was an increasing awareness of a sense of political polarity in the Legislative Assembly, and by 1844 one principal theme dominated the general election: support or opposition to 'the late executive

councillors'. From this time forward, members of the Legislative Assembly were broadly grouped as Ministerialists and Opposition, as those 'in' power or those 'out'." 49

However, the nature of the party structure was different than in the two former colonies. Unlike in Lower Canada, the parties would not be racially opposed to each other and would alternate in their control of the Assembly. Such a structure would help in moderating legislative practice and more sympathy would be shown for minority views. Upper Canadians would have to adjust to the demands of French Canadians of conducting business on a bilingual basis. Another major difference in the party structure was that the loose two-party system had become more factionalized. There were many alignments within the "ins" and the "outs". For example, Cornell writes that in 1850-51 the following groups existed: Conservatives (Canada West), Clear Grits and Ultra-Reformers (Canada West), Independents (Canada West), Tories (Canada East), Conservative Independents (Canada East), Liberal Independents (Canada East), Reformers (Canada West), Ministerialists (Canada East), Liberals (Canada East), Moderates (Canada East) and Moderate Independents (Canada West). 50 Such a multiplicity of political groups would affect the stability of administrations.

Regionalism was another environmental factor which would influence legislative practice. Traditions were established whereby certain house positions would alternate on the basis of region, in particular, the office of the Speaker. In 1849, following the riot during which the Parliament Buildings of Montreal were burned, the Assembly agreed to alternate the capital of the United Province between Toronto and Quebec City. This practice of changing the seat of government will be discussed more fully in the next chapter. Regionalism was also at the basis of the controversy over the form of the vote of confidence, a debate which threatened the stability of the United Province itself.

Another important factor was the changing nature of the sociological make-up of the Assembly. While farmers and shopkeepers had generally predominated in the House of Assembly of Upper Canada, and professionals and merchants in Lower Canada, businessmen became the House leaders in the Legislative Assembly of the United Province. Although men like William Lyon Mackenzie, Peter Perry, John Neilson and Joseph Louis Papineau were still active in the Union Assembly, their influence on the proceedings was much reduced. Many of the new leaders, like Francis Hincks, had important business connections. In later years, business issues would preoccupy members. The statement allegedly made by Allan MacNab that "Railways are my politics" symbolized the spirit at the time. J.A. Macdonald, G.E. Cartier, J. Cauchon, A.N. Morin and A.T. Galt

continued their business ventures at the same time they pursued political careers.

The link between business and politics in the Union period influenced procedural evolution. The connection between pecuniary advantage and voting and the influence of parliamentary agents became serious procedural problems and had to be dealt with. More importantly, a greater business discipline was be injected into the operation of the House. Establishing a fixed order of business and regularizing the proceedings to a greater extent stemmed not just from the exigencies of responsible government but from a common desire to deal with the orders of the day in a "business-like" manner.

3. The Content of Parliamentary Procedure to 1853

A. The Rules and Standing Orders of the Legislative Assembly

The Legislative Assembly adopted its first set of rules on June 19, 1841. Incremental changes were made throughout the 1840s. On August 3, 1850, a major reform of the rules regarding private legislation was agreed to. In the First Session of the Fourth Parliament, following the end of the Great Ministry and the withdrawal from politics of both Robert Baldwin and Louis Hippolyte Lafontaine, the House established a select committee on September 1, 1852 to revise its rules and "to consider and devise means calculated to expedite the performance of its duties". The committee presented an interim report on September 7 and a final report on March 23, 1853. The proposed rules were subjected to extensive review in Committee of the Whole and agreed to with alterations on June 4, 1853. 51

The 1853 rules consolidated and made certain revisions to the procedures adopted since the Union. These procedural changes had paralleled the gradual implementation of responsible government. Although the 1853 reform did not establish a radically new legislative practice, it symbolized an important stage in pre-Confederation procedural development and inscribed into the records of the House the initial impact responsible government had made on the way parliament functioned.

The First Parliament, which opened at Kingston on June 14, 1841, got off on a very bad footing. Instead of the customary practice of the House going down to the Legislative Council as the first proceeding in the opening of the session, the Assembly immediately proceeded to the election of a Speaker. Some members, particularly those who had familiarity with British procedure, were furious. Denis Benjamin Viger claimed that "the law for assembling the Parliament has been done away with" and that "if you introduce irregularities, what irregularities will you not pass over". Thomas Cushing Aylwin claimed that parliament had not yet met and all proceedings were null and void. He also maintained that a motion to adjourn could not even be entertained. Attorney General Draper defended the procedure of not first going down to the Legislative Council since "the statute for the union of these provinces has given us the power of electing the Speaker without the concurrence of the Executive". It was eventually agreed to adjourn to hear the Speech from the Throne. 52

Later that sitting day, a committee was appointed "to frame Rules and Regulations for the Government of the House". Referred to the

committee were the rules of the two former Houses of Assembly of Upper Canada and Lower Canada for "its guidance". The next day the Assembly met. A reporter who witnessed the proceedings wrote the following:

From the obstruction by which the regularity of the house was continually interrupted in the absence of rules for its guidance,- it was moved by Mr. Hincks that the house do adjourn.

This gave rise to some discussion.... The result was that pending the report of the committee upon the subject, the rules of Lower Canada should regulate the proceedings of the house. 53

The next day, the committee reported. The rules it recommended were nearly all those used in Lower Canada, with certain changes and deletions. It was not surprising that Lower Canadian procedure was adopted since its procedure was more developed than Upper Canadian practice and better suited to a larger assembly. Upper Canadian procedure was not as restrictive as Lower Canada's and members from the upper province had some adjustment to make with respect to the new legislative practice.

The following are examples of the procedural variations between the United Province and Upper Canada. The new Canadian rule stated that members wishing to go out during the sittings were to inform the Sergeant-at-Arms where they would be found. Members were not to absent themselves more than one sitting at a time without leave of the House and the House was not to grant any leave unless there were 43 members present in town. There were no such provisions in the Upper Canadian Assembly.

With respect to motions and questions, in Upper Canada there had been only four written rules; there were now eleven such rules. Such regulations as "when a question is under debate, no motion shall be received unless to amend it, or commit, or to postpone it to a certain day, or for the previous question or for adjournment", and that "no motion prefaced by a preamble, shall be admitted in the House" were new. The only rule regarding private bills in Upper Canada was that they were to be founded on a petition, "notice of the intention of the petitioners having been inserted in the Upper Canada Gazette for the period of six months previous to the meeting of the Legislature". The new Canadian regulations contained 13 rules on private bills.

The most controversial rule proposed for the new legislature was Rule 71 which stated:

That all the expenses and costs attending on private Bills, giving any exclusive privilege or advantage, and the relative proceedings in this House thereon, ought not to fall upon the Public, and that it is just and reasonable that part of such expenses and costs should be supported by those who apply for the said Bills; and that a sum not less than twenty [pounds] be deposited in the hands of the Clerk of this House by the Petitioners before the Petition be received.

This was the only proposed rule upon which the new Assembly divided. William Merritt, from the riding of Lincoln North in Upper Canada, moved that it be expunged "in as much as it imposes an unnecessary restriction, and may deter individuals from applying for an

incorporation for the improvement of the Country, by Canals, RailRoads, etc. and with-hold the introduction and concentration of capital for other public uses". 54 The amendment was negatived on division, 24 to 34. Of those voting for the amendment, 19 represented Upper Canadian ridings and 4 represented Lower Canadian ridings. Of those voting against, 10 were from Upper Canada and 22 from Lower Canada. 55

Upper and Lower Canadian members also had to adjust to the new constitutional requirement that petitions and bills calling for the expenditure of public money had to be recommended by the Crown. Lower Canadian members had to accept the new practice of giving notice, or advance warning, of their motions and bills. Although it was not made a formal rule, the notice requirement did become a recognized practice and was made part of the 1841 routine of business.

Table 4.2 depicts the evolution of the rules of the Assembly from 1841 to 1853. Important procedural reforms were carried out in four areas: i) the rules regarding debate; ii) the rules regarding private members' business; iii) the organization of time and business of the House; and iv) the use of French within the Assembly. Each of these subjects will be separately analysed.

(i) The Rules of Debate

There was a definite need for fixed rules of debate. The mood of the House appears to have been quite rowdy and divisive. Table 4.1 shows

the number of recorded votes within the Assembly during the period. Such divisions averaged almost two per sitting day. The newspaper accounts of the debates noted that there was much confusion and many personal attacks. In 1841, one reporter wrote "the cries of question and the confusion that here ensued, would have been gratifying to Yankee tastes".⁵⁶ In 1858, the editor of the Halifax Acadian Recorder witnessed a sitting of the central Canadian assembly and wrote the following:

As to the general character of the debates, they are certainly less prosy and soporific than those of our own Parliament [in Nova Scotia], but somewhat less dignified. We heard more violent personal attacks and insulting allusions there, in an unimportant debate of a couple of hours, than we have heard in the Nova Scotian House during a whole session. Calls to order are very frequent, and the Speaker obviously has his hands full and earns every shilling of his salary. Many of the 'learned members' are as refractory and as insubordinate, under the rather stringent rules of the House, as 'spirited' school boys. They do not infrequently find themselves in the custody of the Sergeant at Arms.⁵⁷

With respect to the rules of debate, one of the more significant developments was the adoption on July 16, 1851, of a temporary rule restricting the length of time a member could speak to a question. Up until that date, there had been no time limits. Members, however, were becoming quite irritated with the repetition of debate and the resulting inefficiency in dealing with House business. The catalyst for the

reform was clearly the long debates in 1849 surrounding the passage of the Rebellion Losses Bill. On one particular sitting, the debate in Committee of the Whole had lasted all night. A reporter had written: "The House presented a most singular appearance, hon. members slept soundly in every direction, in a variety of picturesque attitudes; the steps of the Speaker's Chair provided sleeping accommodations for several, the Chairman and Reporters dozed and the few who remained in the strangers' gallery stretched themselves on the benches, and slept for very weariness. But still the debate dragged on its slow and dismal length ...". ⁵⁸ A few days afterwards, on March 5, David Armstrong of Berthier moved that the House go into committee "to consider the propriety of adopting a Standing Rule forcing the time during which each Member may speak on any Question in the Debates of the House". He noted "there were always 150 orders of the day to be gone through with and although the house had been 46 days in session, only five measures had been passed". He recommended that each member be restricted to one hour of debate on each question. William Notman, who seconded the motion, is reported to have stated:

It was not long since he had heard a lecture on the Vegetable Kingdom, while the party ought to have been speaking on the law of libel. On another occasion while the rebellion losses was before the House; he had heard expressions as foreign to the subject as possibly could be. He had taken a few notes of such expressions, which he would read. (The hon. member here read extracts which contained a large medley of words, the last of which ended with "highcockolorum"[sic] which caused much laughter). It was carrying human endurance too far to

make them sit and listen to things of that kind. That hon. gentleman had spoken three and one half and four hours at once, and twenty-nine hours altogether in the debate on the rebellion losses. Such a course was unjust to the country and unfair to young members who were expected to say something on various questions, but could not do so when the time of the House had been occupied in the manner he had stated. In supporting the motion, he had no more wish to gag hon. members than he had to gag the press, but he conceived there was a dire necessity for a change such as was contemplated by the motion. ⁵⁹

The motion to limit speeches did not come directly from the government. Baldwin opposed Armstrong's motion saying there were other means which could be employed to retard the business of the House. "If an hon. member had spoken an hour he had only to move an amendment to speak another He thought the best remedy would be for members not to reiterate arguments which had been gone over" ⁶⁰ The motion to go into committee to consider the proposal carried on a division of 30 to 18. Later it was agreed that the question be postponed until another sitting day. Debate on the order, however, was never resumed that session. The question was raised again in the 1851 session. Armstrong, for a second time introduced the subject and proposed that "no member shall have leave to speak on any Question before the House for more than half an hour". After a long discussion, the motion passed, 38 to 22. As in 1849, it was opposed by the leading ministers, as both Attorney General Lafontaine and Solicitor General Drummond voted in the negative. ⁶¹ The rule lapsed and was not included in the 1853

revision. Its temporary adoption, however, foretold the disposition of Canadian parliamentarians to implement formal rules limiting length of speeches. Such rules did not exist in the British House of Commons and do not exist even today.

A second rule change regarding rules of debate dealt with the procedural device known as the previous question. This procedure represented a technique whereby debates could be brought to an end by moving that the Speaker should put the motion under debate to a vote. The rule of Lower Canada, adopted in 1793 and subsequently continued in 1841 by the United Province, stated: "That the Previous Question, until it is decided, shall preclude all amendment and debate of the main Question; and shall be in the following words: 'Shall the main Question be now put?'" There was no formal rule of debate regarding the use of the previous question in Upper Canada.

The rule was in contradiction to British practice. Erskine May's 1844 text on parliamentary procedure was clear that debate could continue after the previous question was proposed. May stated that "debate upon the Previous Question would be limited to the propriety of putting the question now, or at a future time; but practically, the main Question is discussed throughout". The point at issue, however, was whether the moving of the previous question would suppress debate. The Canadian rule was interpreted as doing so and it had thus become a very potent procedural device. Because the Canadian House was trying to reform its procedures in line with those of the British parliament, it was understandable that the rule would come under close scrutiny.

On July 16, 1851, the House agreed to refer to its committee on Privileges and Elections the expediency of rescinding the rule regarding the previous question. On July 24, the Attorney General, Robert Baldwin, presented the committee's report. The report noted the variation of Canadian and British practice and attempted to trace the origins of the provincial rule. The committee stated:

With reference to this difference between the practice of the House of Commons and that of Your Honourable House ... Your Committee have been unable to discover any reason whatever, either to justify or explain it Your Committee have discovered that a Manual, in use in the Congress of the United States, and commonly known as 'Jefferson's Manual' (from its having been digested and compiled by the late President Jefferson, professedly from Hatsell and other English authorities,) lays down the doctrine ... that the Previous Question is intended to suppress discussion, as well as to avoid a vote Jefferson's Manual being the first attempt to reduce the elaborate work of Hatsell to the compass of a single volume, has been extensively circulated, and made use of by later writers in the preparation of similar works. Thus, his mistake regarding the Previous Question has led others into error.

The first Parliamentary Manual prepared in Upper Canada, and known as Thompson's Manual, and also, that prepared by your present Deputy Librarian, Mr. Alpheus Todd, which latter has

been in general use in our Provincial Legislature since the Union, contain a repetition of the same error on the Previous Question, in consequence, as Your Committee suppose, of the compilers both adopting in this instance, the very words used by Mr. Jefferson in reference to this form of Question
.... 62

The committee favoured the retention of the previous question since it is "intended to facilitate the House in expressing its precise opinions with reference to any proposition that may be submitted for its consideration". It recommended, however, that the Canadian rule conform to British practice and that it be amended by deleting the words "and debate". The rule was accordingly amended.

(ii) The Management of Private Business

As has been noted earlier, the rules adopted regarding private bills were much less complicated than those in England. The Upper Canadian House treated private business on an almost equal basis with public business. As Table 4.3 indicates, the number of private bills increased substantially throughout the 1840s. In 1846, the House authorized the Speaker to report on the practice of the British House of Commons upon private bills with suggestions for the future regulation of private business in the Canadian Legislative Assembly. The Speaker, Sir Allan MacNab, commissioned Alpheus Todd, the Assembly's Assistant Librarian and the author of The Practice and Privileges of the Two Houses of Parliament, to write a report on the management of private business. Todd's report, tabled in the House on June 14, 1847, recommended important changes with respect to private bill procedure.

In his report, Todd made the following observation:

Hitherto no attempt has been made, either in the Legislatures of Lower or Upper Canada, prior to the Union, or in that of the United Province, to introduce a definite system with regard to Private Bills; one that should recognize the judicial character in which Parliament is called upon to decide between the conflicting interests of rival parties, and secure the public from an encroachment on their rights for the aggrandizement of individuals. So little, indeed, has this question been understood, that no attempt to define the distinction between a Private and a Public Bill ever yet been made by any Legislative authority in Canada; and Private Bills have been frequently introduced and proceeded upon, in our Provincial Legislature, without even the restraint and protection afforded to the public by the scanty Orders that exist to regulate their mode of enactment. Such laxity of procedure opens an extensive field for the commission of much injustice, by affording an opportunity to designing individuals, to obtain the sanction of the Legislature to measures, which, if fully examined and understood, would be at once rejected. 63

Todd saw the problem as being one of a lack of knowledge of how the British parliamentary system dealt with private bills. He therefore made a series of recommendations which, if adopted, would have

essentially put in place the Westminster practice. He proposed the establishment of three committees: one on petitions for private bills to examine if the petitions complied with the rules of the House; another on Standing Orders, which could consider if the rules could be dispensed in certain instances; and a third one on private bills, to which would be referred every private bill after second reading. Fees would be based on the British fee schedule, and would vary according to the length of the bill and the time occupied by the House and committee discussing it. To assure attendance at committee meetings, members were to sign a declaration saying that they would never vote on any question which may arise without having duly heard and attended to the evidence relating thereto. He also proposed that a Private Bill Office be created, open to the public in which would be kept all relevant documents relating to private bills. In all, Todd recommended the adoption of 50 standing orders to regulate the mode of proceeding on private bills.

The report was referred to a committee for consideration in 1847, but it never reported back to the House. It was not until August 3, 1850, that a major reform of private business was made,⁶⁴ but then it was in a more watered-down version than that contemplated by Todd. As seen in the 1841 division on the rule establishing a fee of 20 pounds for petitions for private bills, members had been reluctant to impose many restrictions on private business. In the minds of many members, it was legitimate for the legislature to deal equally with bills favouring

private interests and bills relating to public business. However, the 1850 reform was an indicator that such an attitude was beginning to change. With the coming of responsible government, it was constitutionally recognized that a ministry would be accountable for public business. Governments would stand or fall on its handling of public affairs, not private ones. From both a procedural and political view, public business became much different from private business. It was therefore logical that the rules of the House should better distinguish between the two types of business.

The 1850 reform was the most important alteration to the management of public business carried out during the pre-Confederation period. What a private bill was became more formally defined. The 1841 rule had referred to a private bill as one "for the erection of a Bridge or Bridges, for the regulation of a Common, for the making of any Turnpike Road, or for granting to any individual or individuals any exclusive rights or privileges whatsoever". The new 1850 rule referred to private and local bills as those dealing with:

... the erection of a Bridge, the making of a Railroad, Turnpike Road, or Telegraph Line, the construction or improvement of a Harbour, Canal, Lock, Dam, or Slide, or other like work, the construction of works for supplying Gas or Water, or for the incorporation of any particular Profession or Trade, or of any Banking or other Commercial Company, or Cemetery Company, the incorporation of a Town or City, the levying of any local Assessment, the Division of any County or Township, the regulation of a Common, the re-survey of any Township, Line or Concession, or for granting to any individual or individuals any exclusive rights

or privileges whatsoever; or for doing any matter or thing which in its operation would affect the rights or property of other parties 65

The 1850 rules encompassed Todd's proposal that a Private Bill Office be created. The committee proposing the reforms agreed that the costs associated with the printing of private bills should fall upon the petitioner and recommended that "no Private Bill be read a third time until the party interested shall have delivered to the Clerk a certificate from the Queen's Printer, that the costs of printing one hundred and fifty copies of the Act for the Government has been paid, or secured to him." However, the committee rejected the British fee schedule and instead proposed that the fee for bills for the erection of a bridge, the making of a railroad or road, etc., or incorporating any banking or other commercial company be reduced from 20 pounds to 15. It also rejected Todd's recommendation for creating a committee on petitions for private bills and his proposal that members serving on such committee sign declarations. While Todd had recommended the adoption of 50 rules regarding private business, the Assembly established 23.

A major alteration was made to the way a private bill was to be enacted. Special rules were put in place which did not apply to public bills. It was now ordered that private bills were to be referred to a standing committee after second reading. The 1841 rules had not made this stage obligatory. A new regulation was established that such committees could not meet until one week's notice had been given. Committees were to make a full report to the House on its study of the

bill. If they were not satisfied with the preamble or rationale of the bill, they were to tell the House the grounds upon which they had arrived at such a decision. The Chairman was to sign a House copy of the bill and initial all amendments. A new rule was also made that Legislative Council amendments to Assembly bills were to be referred to the committee which had first studied the bill, before those amendments were adopted.

The 1853 revision retained the changes agreed to in 1850, making only slight alterations. For example, it dropped the regulation that notices for private bills in Lower Canada had to be affixed to the church doors of every parish. An important addition was made that all private petitions would be considered automatically and without special reference by the Committee on Standing Orders before bills were brought in. The committee was now directed to report whether the notice provisions had been complied with. The 1841 rules did not specify that committees studying private petitions had to ensure that the notice requirements had been met.

There are numerous instances found in the Journals where it was questionable whether the rules regarding notices for private bills had been complied with and yet the committee examining those petitions recommended their being received. In 1847, with respect to one petition, the Committee on Standing Orders accepted the word of a member that he saw the notice affixed to the church doors and recommended it "as proof" that the rules were complied with.⁶⁶ In the same session, it reported:

With respect to the Petition of William Holdetch and others of Loughborough, they find that notice has been published in the

Canada Gazette only and in no district paper; but Mr. Smith, a member of your Committee, having informed them that, to his certain knowledge, there is but one person in the locality who is opposed to the Petition, and that he has been fully aware of the application, they would recommend that the notice in this case be deemed sufficient. ⁶⁷

In 1849, the committee reported that with respect to the petition from the City of Kingston: "Your Committee find that notice has not been given; but, inasmuch as the Petition has been signed by the Mayor and the Corporation of the City of Kingston, and the matter will affect that locality only, they beg leave to submit to Your Honourable House whether the notice may not in this case be dispensed with". ⁶⁸

With the adoption of the 1850 and 1853 rules, the Legislative Assembly began to approach the management of private business in a more judicial manner. A most important procedural distinction between private and public business was therefore established. While public bills would be dealt with politically, private bills would in theory be treated like actions before a civil court. As will be seen, central Canadian legislators had some difficulty in accepting this new judicial approach. The new arrangement was modelled to some extent on the British system. However, in Britain the volume of private legislation was divided in fair proportions between the Lords in the Commons. ⁶⁹ This was not the case in pre-Confederation Canada. The lower, democratic house introduced most of the private bills which came before parliament, an indication of the importance of such bills within the general political environment.

(iii) The Organization of Time and Business

One of the most important procedural steps taken during the period was to organize the parliamentary calendar more properly. Lower Canada had adopted only two rules regarding House business: (1) that the Orders of the Day could have preference to any motion before the House; and (11) that when an order was lost by want of a quorum, it would be taken up as the first item of business at the next sitting. There was no notice requirement for motions so there was no way of knowing what business would be dealt with at a given sitting. In 1825, the Upper Canadian Assembly adopted a rule that all orders unproceeded with would be postponed and would stand on the Orders of the Day after third reading of bills and addresses and reading petitions. On December 26, 1831, the House agreed "that the items now appearing on the order of the day be proceeded in as follows, that is to say - After referring petitions and the disposal of such matters as may have been placed first on the order of the day, by a resolution of the House, all motions for addresses be taken up and disposed of - secondly, the first reading of Bills - thirdly, all motions for Committee of Supply - and fourthly, second reading of Bills ...". An 1836 Assembly Order Paper listed the following as its order of business: bringing up petitions, third readings, reading petitions, referring petitions, notices, receiving reports from committees and orders of the day. ⁷⁰ An interesting experiment was tried in the 1836-37 session whereby it was agreed that "Mr. Speaker shall call upon each Member, in alphabetical order, who shall then have the right to call up any measure on the Orders of the Day, that he may think proper". The procedure was rescinded, however, before the session ended. ⁷¹ It appears that in both provinces during the old colonial system the proceedings were conducted on a fairly flexible, and confused, basis.

Early in the 1841 session, the former Speaker of the Upper Canadian Assembly, Sir Allan MacNab, proposed that the House adopt the following as its ordinary routine of daily business: reading the Minutes of the preceding day, bringing up petitions, third reading of bills and addresses, reading petitions, referring petitions, notices to be given, presenting reports by standing and special committees and orders of the day. MacNab's motion, agreed to by the Assembly, also directed the Clerk "to lay on the Speaker's table, every morning previous to the meeting of the House, the order of the proceedings for the day; and that a copy of the same be hung in the lobby, for the information of the members". 72

The Assembly adopted various rules regarding its Orders of the Day throughout the 1840s. These were consolidated in the 1853 revision to read: "That all measures standing on the Orders of the day be taken up according to the precedence they originally held when placed on the Order of the day Book; and such as are not taken up when called, shall remain in their relative position; and all such Orders as remain undisposed of at the adjournment of the House, shall be postponed till the next sitting day, without a special motion to that effect". With respect to the daily routine, the 1853 committee suggested dispensing with the reading of the Minutes by the Clerk. This practice, it stated, "is now rendered unnecessary by the Votes and Proceedings being printed day by day and placed in the hands of the Members". It also stated that "the present mode of presenting Petitions, by a Member rising in his place and addressing the Speaker appears to your Committee to take up much of the time of the House unnecessarily". Instead it recommended that petitions be simply laid on the Table before 5:00 p.m. with the name of the member presenting the petition endorsed on the back. It also viewed the practice of oral notices "as tending to delay the business of the House" and suggested that a rule be adopted requiring two-day written notices for bills and addresses. The daily routine of business was now to be as

follows: receiving and reading petitions, referring petitions, presenting reports from standing and select committees, motions and orders of the day.

With these changes, greater regularity was brought to the conduct of business and the time of the House made more efficient. There was, however, no rule giving precedence to the many items which composed the orders of the day.

With the advent of responsible government, parliamentary time and business started to be influenced by the wishes of the ministry. When the House sat was of important interest to the cabinet since it would desire times that were convenient to it. Although not prescribed by the 1841 rules, the House usually sat Monday to Friday. In the 1844-45 session it was proposed that the House sit on Saturdays. The motion was opposed by the ministry "on the ground that instead of forwarding the business of the country, it would be productive of delay, by taking from Ministers the only day which they now had to devote exclusively to their several departments".⁷³ The motion was subsequently withdrawn.

On January 31, 1849, a private member, George Sherwood of Brockville, moved that for the present session the sitting commence at 10:00 a.m. and that the hour of adjournment be fixed at 6:00 p.m., at which time the Speaker would adjourn the House until the next sitting day without the question being put. He also included in his motion that the House not sit on Wednesdays. Attorney General Baldwin said he "had no objection to the changes but he did not think it would be found advantageous. He was afraid it would scarcely leave the members of the

Government sufficient time to carry on Government Business, if they were obliged to attend the House during the day for four days a week." The motion, however, carried. A few days later Sherwood moved that when the House adjourned at 6:00 p.m. "the matter then under the consideration of the House shall be the first Order for the next sitting day; and all Orders undisposed of shall also stand postponed until the next sitting, without a Motion being required". Again Robert Baldwin did not oppose the change "provided that it did not interfere with government Orders of the Day". Sherwood is reported to have said that "that was of course understood". Later in the session, Baldwin requested that the House also sit on Wednesdays, "Saturday to be left open", unless required by the House and that the morning sittings be used for routine business after which the House would adjourn until 3:00 p.m. for the Orders of the Day.⁷⁴ The experiment of sitting at 10:00 a.m. did not last, however. The 1853 rules stated that the House was to meet at 3:00 p.m. Monday to Friday.

The business of the 1849 session was conducted by an informal arrangement which saw government business dealt with on at least three days a week, and private members business two days, with one day being a mixture of government and private members' bills. The arrangement was obviously subject to change and was not formally inscribed in the rules. There seemed to be an acceptance by members that government business should occupy more time of the legislature than private members' business. Because of the increasing legislative output by the ministry, it was forced to seek more time for its measures. Late in the 1849 session, Baldwin, when moving the Orders of the Day, said "he would have to request the House to allow the Government another day in the week, he

should propose Wednesday, for two or three weeks, at all events, until the heaviest part of the Government business was got through". ⁷⁵

A formal but sessional separation between private and public business took place in 1851. On June 24 it was agreed that "Wednesday in each week be set apart, after the Routine Business has been gone through with, to dispose of Private Bills appointed for a second reading ... the said Bills to be taken up in the order in which they stand on the list of the Orders of the Day". ⁷⁶ The separation of the different items of business on the parliamentary calendar had commenced and would undergo more permanent division in the coming years.

(iv) Use of French within the Assembly

The greatest difference in parliamentary procedure for the members from Lower Canada from that which they had been used to was that the new legislature of the United Province was officially unilingual. Section 41 of the Union Act stated that all proceedings of the Assembly and all its documents were to be in English only. The act did not forbid translations. Such documents, however, were not to have force of an official record.

The statutory provision did not have the effect desired by Lord Durham or the British colonial officials. French continued to be spoken as a language of debate. The official record of the legislature, the Journals, and its appendices were translated by the House beginning in 1841. Early in the 1841 session, the provincial parliament passed An Act

to provide for the translation into the French Language of the Laws of the Province, and for other purposes connected therewith, which stated that the French version of laws was to be printed and distributed under the same provisions as the English. ⁷⁷ The 1841 regulations retained the Lower Canadian rule that when a motion was seconded, it was to be read in both languages. Bilingualism was a factor in the selection of the Assembly's first Speaker, Austin Cuvillier. In 1844-45 the House agreed that all bills and documents submitted to the Assembly be printed in English and French in equal numbers. ⁷⁸ The 1850 rules regarding private business stipulated that petitioners had to prepare their bills in both languages and pay all the necessary costs themselves.

The official proceedings of the Assembly were, however, to be conducted in English, a provision which was very much resented. In the 1844-45 session, Speaker MacNab ruled he could not accept a motion to be put as a question if it was written only in French as such action was contrary to Section 41. The decision was appealed to the House and confirmed by a margin of 31 to 30. ⁷⁹ Later that session, the House adopted an address to Her Majesty the Queen calling for the repeal of Section 41. The address, which passed without a division, stated that French should not be regarded as a foreign language since it was used by many of Her Majesty's faithful people. It noted:

... in the very first Session of the Legislature ... it was indispensable to translate into French every public record and document. That the debates were not and could not, unless a portion of the Representatives of the People were silenced, be carried on without its use; that in the Courts and judicial proceedings it was found equally necessary as before the Union, and for every other practical purpose, it is as much used as it ever has been.

That the only distinction which exists then, is that French is not permitted to be the legal language of Parliamentary records; a distinction of little value perhaps in itself - one which cannot produce any beneficial result on the feelings or habits of the people using it; while it gives rise to a feeling among them injurious to the peace and tranquility of the Province, namely, that this limited proscription of their language conveys, however undesignedly, an imputation of unfavorable distinction toward themselves. ⁸⁰

The address was sent on to London. After some deliberation, the Imperial parliament passed in 1848 an act repealing Section 41. ⁸¹ While French was not made an official language of the legislature, its use as a language of debate and of the proceedings was not legally prohibited.

There appears to have been little opposition to the arrangement of conducting proceedings in the two languages. In 1849, a reporter wrote, regarding the transmission of messages from the Legislative Council to the Assembly: "A considerable degree of amusement was caused ... by the attempt of the very respectable gentleman, who has long brought down the messages from the Upper House in the English language, to render a message into the French, in accordance, with the new Law". ⁸² P.S. Hamilton, in his 1858 account of his visit to the Assembly found the use of both languages unique:

The extent to which the French language is employed in Parliament and the manner of doing it, sound very odd to a stranger. One gentleman makes a speech in English; he is replied to by another in French; another addresses the House for some time in English and finishes in French, or vice versa; then during an exciting speech, there rises from the

whole House a Babel-like sound of exclamations, approving and disapproving, in both languages and in something which is not quite like either of them. ⁸³

The readiness to accept linguistic duality by members of the House was a significant event in the evolution of parliamentary procedure in Canada. It emphasizes the importance the political elites of pre-Confederation society placed upon accommodating language differences in their effort to secure efficient parliamentary government. Such a disposition signified a change in attitude from that demonstrated under the old colonial system in both Lower Canada and Upper Canada when much enmity was displayed between the linguistic groups within the legislature.

(v) Miscellaneous Rules Changes

Certain other standing orders were adopted during the period and should be briefly mentioned. On June 25, 1841, it was agreed that the Clerk of the House be required to place "in some conspicuous place within this House", a list of all committees appointed from time to time. In a move to reform one of the more antiquated procedures used in the old colonial system which had been based on ancient British practice, the Assembly agreed on May 26, 1846, that "Members of this House be permitted to make Reports from Standing and Select Committees of which they may be Chairmen, standing in their places, and without proceeding to the Bar of the House". On September 2, 1852, the House agreed to alter the size and form of its printed Journals and appendices, which hitherto had been modelled on those of the British House. The Journals were now to be printed in Royal Octavo form "with new small pica type, without marginal

notes, and with but two blank lines between the page heading and reading matter. The Yeas and Nays in the Journals to be in long primer, in four columns."

B. The Forms of Proceeding

(i) Legislative Process of Bills

Although private legislation underwent considerable procedural reform, the rules regarding the legislative process of public bills did not. The 1853 revision left in place almost unchanged the same rules agreed to in 1841. Of the ten public bill rules adopted in 1841, all had been taken from the regulations of Lower Canada. Eight of these had been established in the first session of 1793 and two in 1817.

By 1853, the only alterations in public bill rules which had been made were: (i) that all bills be printed before second reading in English and French in equal proportions, with the exception of bills relating only to Upper Canada, which would be printed in English alone, unless required by any one member; (ii) that third readings of bills no longer form an item of the daily routine of business but be made Orders of the Day and that all orders for third reading have precedence; and (iii) that no bill be introduced into the House either in blank or only in part completed. 84

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While the formal process of passing public bills remained much the same, the informal practice was considerably altered. One of the more important changes was that the Assembly became the leading forum within the parliamentary system with respect to legislative action. In the former colonies, the tension between the two houses was acute as each struggled for supremacy over the other. In the period under review, although the non-elected Legislative Council was never entirely accepted by the elected members, it was politely tolerated. The Council continued to amend bills and asked for conferences on certain matters as before. Yet with the coming of responsible government and the constitutional prescription that the government had to have the confidence of the lower house if it wished to continue in office, the Council was less willing to stand in the way of the wishes of the Assembly. Notwithstanding the threats that the Council would block the passage of the Rebellion Losses Bill, by 1849 the roles had been so reversed that it was the Council's rights which needed defending. Towards the end of that session, the government wished to rush certain bills through parliament for royal assent that day. The opposition member, George Sherwood, asked in the Assembly "if he understood that the Upper House were to lay aside all their rules, and pass the Bill without either first or second reading. He understood the Upper Branch of the Legislature to be independent, and not a mere register of the acts of this House. He thought the Hon. gentleman [Mr. Hincks] was treating that Branch with some contempt." 85

Another important change involved the procedural priority of legislation. Under the old colonial system, all bills introduced within the Assembly had fairly much the same status. Although the Attorney

General and Solicitor General were usually members of the Assembly and introduced government measures, their bills were not treated any differently procedurally from those of other members. As the United Province moved towards responsible government, that practice changed. As mentioned earlier, only government members could now bring in bills which called for the expenditure of money or which proposed to implement a tax. Although private members had a right to introduce legislation on any matter, ministers began requesting that subjects upon which they claimed responsibility or about which their proposals were pending, be left exclusively to them.

Such requests were not always accepted by private members. In 1844-45, a private member introduced a bill with respect to the administration of justice in Gaspé. Another member complained "that all measures touching the administration of justice should be left to the Government; and he thought Ministers were wrong in allowing members to introduce such measures". Attorney General Smith replied "that all measures affecting the Judicature, certainly ought to emanate from the Government But with regard to distant parts as that remote district for which the present measure was intended, it was not to be expected that Ministers could be so well acquainted with the peculiar wants of its inhabitants as an individual who resided therein; therefore he was, and always should be happy to receive either suggestions or Bills from private members, and if the measures were good the Government would support them." ⁸⁶ On another occasion in the same session, a member asked for leave to introduce a bill "for the consolidation and amendment of the Laws relative to Jurors". The same point was raised that such bills should proceed from the government. The Attorney General again

replied that "he had no wish to shirk any proper responsibility, but it was quite evident that the Government could not prevent any member from introducing any measure he chose. He would take care however that after bills were printed and came up for second reading, that they should be carefully examined, and none allowed to be proceeded with which interfered with the province of the Administration." Such a reply greatly disturbed certain private members, such as James Johnston of Carleton, who claimed he "had never heard anything so absurd in his life! They might all as well return home at once and leave the business of the country to the Executive Council. Not introduce a bill upon any subject they chose! It is ridiculous! He would not withdraw any bill of his for all the Treasury Benches ever were heard of!" 87

By 1849, the government was even questioning the right of private members to have their bills printed if a government bill was anticipated on the same subject. In response to a member who wished to introduce a bill to regulate the establishment of a joint stock company for the construction of roads in Upper Canada, Attorney General Baldwin stated the government was preparing to introduce a similar bill. He added that "he supposed therefore the honourable gentlemen did not think it necessary to incur any further expense of printing until the Bill was before the House, in order to ascertain whether it would not meet his views". Baldwin pointed out in England, a member never persists in a similar situation and gives way to the wishes of ministers. After much objection, Baldwin gave way and consented to the printing of the bill, especially since the member felt his measure was different from that of the government. 88

Another variation in legislative procedure was the way public bills were introduced. Previously, a member would move that the House resolve into a Committee of the Whole to consider a certain matter and would ask that power be given to the Committee to bring in a bill if it saw fit. The procedure was used less and less frequently after 1843, with the exception of bills based on supply and ways and means. Henceforth, members brought in their bills indirectly and by-passed the committee stage. Such a change reveals that legislative ideas among members were becoming more structured and developed. They knew what they wished to see become law and were ready to proceed with their measures independently. The change however also reveals that political decisions within the chamber were narrowing into two camps: those who supported the government and those who did not. Members may have recognized that it would do little good politically to seek a consensus in a committee of the whole as to whether a bill should be drawn up on a particular matter.

Responsible government not only had the effect of structuring government forces in parliament, but also those of the opposition. The first great legislative measure of the United Province in which parliamentary procedure was used as a political weapon by both sides of the House was the Rebellion Losses Bill of 1849. It is worthwhile to review how it proceeded through the Assembly and the various procedural tactics used by the opposition to block its passage.

On January 29, Attorney General Lafontaine moved that on February 9 the House would go into a Committee of the Whole to consider the necessity of establishing the amount of losses incurred by certain

inhabitants of Lower Canada in 1837-38 and of providing for the payment thereof. When the Order of the Day was called by the Chair, an amendment was proposed that the order be postponed for ten days, and a point of order was raised with respect to the royal recommendation for the measure. In all, seven days were spent at the resolution stage. Frustrated with the slow progress the government tried to negotiate a reasonable time frame for the passage of the resolution. Baldwin stated "they had twice agreed to an adjournment ... he was not willing to adjourn the debate, unless there was an understanding between the Ministry and the members opposite, that they would allow the Resolutions to be adopted at the next sitting of the House, without offering any factious opposition to them ...". Sherwood declared "that the Opposition had constitutions as strong and wills as firm as their opponents and they would sit as long as they chose". Hincks retorted "that's a pretty spirit to legislate in". No adjournment was permitted and the House sat all night on February 27. At 7:30 a.m., a motion was made for the committee to rise and report progress but it was negatived on division. Finally that morning the committee agreed to report the resolutions which were concurred in separately on division and approval was given that a bill be brought in. The bill was introduced and ordered for a second reading on Friday next.

On March 2, when the motion for second reading was proposed, Sir Allan MacNab raised a point of order claiming the bill was irregularly introduced. When the Speaker ruled against him, MacNab moved a hoist to the bill. When opposition members began speaking on the second reading motion, government members walked out of the chamber. Debate at second

reading lasted only one day. MacNab's hoist was defeated and the bill referred to a Committee of the Whole.

In committee, MacNab proposed several amendments, as did the government. When the bill was reported with amendments on March 6, another point of order was raised requiring another Speaker's ruling. At report state, MacNab moved that the bill be recommitted, which was defeated. The bill was engrossed, or printed on special parchment paper, and ordered for a third reading. At third reading, the opposition moved to attach a rider to the bill, which was negatived. The bill passed on division on March 9 and was sent up to the Legislative Council for concurrence. On March 15, a message was received from the Council that it had passed the bill without amendment.

Royal assent was arranged for April 25. However, there was no special mention of the Rebellion Losses Bill in the communication to the Speaker from Government House regarding the royal assent ceremony. When opposition members complained, Baldwin stated that "whenever the Governor General came down to assent to any bill, he always consented to all bills, which were in a sufficient state of forwardness at the time". During the assent ceremony, which took place in the Legislative Council, a reporter wrote that after the title of the bill had been read out: "A number of persons well dressed and apparently respectable, left the galleries stamping with their feet and shouting on the stairs". The members returned to the House and resumed sitting. Shortly, "[S]ome cheering was heard outside and immediately a volley of stones were flung through the windows...". The House was set on fire. Before the riot was over, the building where the Assembly sat, its Library and Archives were

totally destroyed. Parliament met the next day in Bonsecours Market Hall and its first item of business was to reconstitute the Order Paper. 89

As shown by the passage of the Rebellion Losses Bill, with the achievement of responsible government, the legislative process of public bills was increasingly characterised by tension between those who supported the government and those who opposed it. Procedure had become to a greater extent than ever before an important tactical weapon within the parliamentary conflict. Unlike in Lower Canada, however, it was not used as a tool of protection. In keeping with the English model of parliamentary governments, it became a means of exercising and blocking partisan political power.

With regard to the proceedings for controlling the administration, the evolution of three important procedures should be highlighted: (i) the vote of confidence; (ii) the production of papers; and (iii) questions to ministers.

(ii) The Vote of Confidence

Although a somewhat tenuous procedural basis had been laid in both Upper Canada and Lower Canada for the vote of confidence, it had not been accepted as a recognized practice. Lord Durham's recommendation that the Crown "must consent to carry [Government] on by means of those in whom [the] representative body has confidence" was a key event in establishing the procedure. As mentioned earlier, however, Durham was

not clear as to whether confidence in ministers was to be demonstrated individually or collectively.

The issue was met head on by opposition members in the opening session of the new legislature. During the debate on the Speech from the Throne, they asked William Henry Draper, the Attorney General, if the ministry would recognize the principle of retaining office when it could not maintain a majority in the House of Assembly. Draper replied vaguely about responsibility being attached to the old procedures of impeachment and censure. However, when asked by Robert Baldwin if a vote of confidence went against the Executive Council, would its members resign, Draper agreed that if a government could not command a majority, it should resign.⁹⁰ On September 3, 1841, the House unanimously agreed to resolutions moved by Secretary Samuel Harrison which officially recognized the importance of confidence as a procedure of the provincial parliament. The resolutions read:

That the head of the Executive Government of the Province being, within the limits of his Government, the Representative of the Sovereign, is responsible to the Imperial authority alone; but that, nevertheless, the management of our local affairs can only be conducted by him, by and with the assistance, counsel, and information of subordinate Officers in the Province.

That in order to preserve between the different branches of the Provincial Parliament, that harmony which is essential to the peace, welfare, and good Government of the Province, the chief Advisers of the Representative of the Sovereign, constituting a Provincial Administration under him, ought to be men possessed of the confidence of the representatives of the people, thus affording a guarantee that the well understood wishes and interests of the people, which

our Gracious Sovereign has declared shall be the rule of the Provincial Government, will, on all occasions, be faithfully represented and advocated.

That the People of this Province have, moreover, a right to expect from such Provincial administration the exertion of their best endeavours that the Imperial authority, within its constitutional limits, shall be exercised in the manner most consistent with their well-understood wishes and interests.

The first "ministry" to resign in mid-session was the short-lived Lafontaine-Baldwin coalition in 1843. The decision to resign did not come, however, by means of a defeat in the House. It was due, instead, to a dispute about patronage.⁹¹ On November 27, 1843, Lafontaine and Baldwin announced their resignation to the House. A reporter wrote: "Immediately, the Government Treasury benches were evacuated by all except Mr. Daly".⁹² The House proceeded with the items on its Order Paper. After it was observed that in Britain, when a ministry resigned, it was customary for the House to adjourn, Baldwin pointed out that Dominick Daly still held office and therefore a government was still in place. On December 2, the House agreed to an address to His Excellency expressing "deep regret felt by the House at the retirement of certain Members of the Provincial Administration on the question of their right to be consulted on what this House unhesitatingly avows to be the prerogative of the Crown - appointment to office; and further to assure His Excellency that their advocacy of this principle, entitled them to the confidence of this House, being in accordance with the principle embraced in the resolutions adopted by this House on the 3rd of September, 1841".

Despite the support of the Assembly of the Lafontaine-Baldwin ministers, the Governor, Sir Charles Metcalfe, refused to acknowledge its wishes. Instead he informed the House that it was his desire that "those important measures now before the Parliament, which are calculated to promote the welfare of the Country, should be conducted to their proper completion or termination by the wisdom of Parliament without interruption, in order that the just wishes and expectations of the people may not be disappointed". Such a reply greatly angered the former ministers and their supporters. The Governor's message was a throwback to the kinds of constitutional arguments so often heard in the former assemblies. It was referred to a Committee on Privileges and Elections "to search and consider such precedents as do concern any Messages from the Sovereign; touching any measures hanging in Parliament...". On December 5, Baldwin presented the report of the committee which stated that the message was unprecedented and that "each of the three branches of the Legislature is thoroughly independent on the other, and that neither branch ought to notice any thing hanging before the other, but by their information or agreement". The message was especially regrettable since no administration had yet been formed "responsible to Your Honourable House, for the advice they may give to His Excellency". 93

The 1843 crisis revealed that responsible government had not yet been achieved and that the vote of confidence was still somewhat meaningless. The political sovereignty of the legislature regarding its internal affairs had not been established. Even though ministers would enjoy the confidence of the House, the constitutional convention that the Crown would follow the wishes of its advisers still did not exist.

The turning point in the evolution of the vote of confidence was the British parliament's repeal in 1846 of Sections 52 and 53 of the Union Act which had provided for a permanent civil list. The question of the civil list had been a serious problem for parliamentary government in Lower Canada. Durham had recommended the adoption of an adequate civil list for the new province and such a provision was included by colonial officials in the 1840 Act. Sections 52 and 53 had always been resented by the Reformers as they were seen as taking away the Assembly's right to determine supply. In 1846, the Assembly agreed on a division of 28 to 23 that the "appropriation of monies raised upon Her Majesty's subjects in this Province can only be constitutionally made by their representatives in Provincial Parliament and that however the peculiar circumstances of the Canadas as the period of passing the Act [to reunite Upper Canada and Lower Canada] may have rendered expedient the appropriation of the Civil list therein contained, this House solemnly protests against the acquiescence in that appropriation being drawn into a precedent for the future, for an appropriation of the Public Revenues of Canada, by any other authority than that of the Legislature of this Province".⁹⁴ A new Civil List Act was agreed to by the Assembly and the sections dealing with the civil list in the Union Act were repealed. The repeal showed that British officials were now willing to trust the legislature with the control of its own domestic affairs. The move represented a major step in the establishment of responsible government.⁹⁵

The first case of a central Canadian government resigning due to a loss of confidence in the lower house occurred in the Third Provincial Parliament. On March 3, 1848, the Sherwood government was defeated on an amendment moved by Robert Baldwin to the Address in Reply to the Speech from the Throne.

The amendment, which carried by a vote of 54 to 20, read:

...that we feel it, however, to be our humble duty to submit to His Excellency, that it is essential to the satisfactory result of our deliberations on the important subjects to which His Excellency has been graciously pleased to direct our attention, and on other matters of public concern, that Her Majesty's Provincial Administration should possess the confidence of this House and of the Country - and respectfully to represent to His Excellency that the confidence is not reposed in the present Advisers of His Excellency.

In his answer to the amended address, Lord Elgin replied: "Being anxious to listen to the advice of Parliament, I shall take measures without delay for forming a new Executive Council".⁹⁶ Following the resignation of the Sherwood government, the Great Ministry of Baldwin and Lafontaine took office. Professor Careless notes the significance of what transpired in March 1848:

...the events of March, 1848 demonstrated and confirmed the responsible government which had been accepted imperial policy since 1846. They did not, therefore, establish it; and it was still to be tested in the future. But in a real sense the entrance of the Lafontaine-Baldwin reformers to office was the culmination of a long and gradual process, through which internal self-government was worked out for Canada. Moreover, it did indisputably recognize party cabinet rule; it did substantiate the governor-general's own withdrawal from domestic politics. And so, while too often the accession of the "Great Reform Ministry" of 1848 is viewed in oversimplified or over-emphatic terms as a transforming

victory in the "fight" for responsible rule, it does remain a major bench-mark in the evolution of Canadian and British colonial self-government. 97

(iii) Production of Papers and Questions to Ministers

The previous practice in Upper Canada and Lower Canada for the production of papers was that if the House requested a document, an address to the Crown would be voted upon and a group of members, appointed by either the Speaker or by the House, would act as messengers to deliver the address and report back to the House the reply of His Excellency. Early in the session of 1841, Secretary Harrison informed the Assembly: "There would be no necessity on future occasions for messengers from the House to wait upon his Excellency in cases where information or papers were asked for. All that would be necessary would be that twenty-four hours notice be given of the intention of the House to apply for such information, or for the production of any particular document. Then when the address is passed the proper officer will be prepared in his place in the House to furnish the reply. This method he believed would greatly facilitate the business of the House." The new procedure was strongly criticized by one member, Denis Benjamin Viger, for treating the House with "very little consideration", but it was accepted. 98

Another new procedure was the posing of questions to ministers. The practice was not covered by written rules, but was permitted presumably under the guise of the rule which stated "that in all

unprovided cases, resort shall be had to the Rules, Usages and Forms of Parliament, which shall be followed, until this House shall think fit to make a Rule applicable to such unprovided case". In the First Session of the legislature, members began using the English practice of giving written notice of their questions and asking them two days later. Written questions were considered as notices of motions and given during routine proceedings. It appears they were answered by the ministry before the House proceeded to the Orders of the Day and supplementary questions were permitted.

C. The Machinery of Direction and Delegation in the Assembly

(i) Presiding and Permanent Officers

The Speakership in the United Province continued the tradition established in both Upper Canada and Lower Canada that the choice of the Speaker was that of the majority party in the House. Unlike in the United Kingdom, there was no recognition of the principle that once a Speaker was elected, he should continue to be re-elected in future parliaments, regardless of the political composition of the House. In the first three provincial parliaments, three different Speakers occupied the Chair: Austin Cuvillier (1841-1843), Sir Allan MacNab (1844-1847) and Augustin-Norbert Morin (1848-1851). The United Province commenced a new tradition, however, of alternating the Speakership on an Upper Canadian - Lower Canadian basis. This tradition was to continue throughout the Union period.

The partisan nature of the election of the Speaker was evident in Cuvillier's election in 1841. On the day the legislature opened, the Reform Party caucused on the issue of choosing the Speaker. At the meeting, it was proposed "to consider the means of making the question of the Speakership a question to test the strength of the administration".⁹⁹ Augustin Morin, who attended the meeting, moved in the House the nomination of Cuvillier. Francis Hincks declared to the Assembly that he would vote for him because Cuvillier supported responsible government. Although many members, such as J.S. Macdonald, were "not prepared to go so far as to approve of a want of confidence in the present executive" by voting for Cuvillier, his election was seen by many as a test of political preferences. The issue was not altogether clear, however, as Attorney General Draper also voted for Cuvillier.

The 1844 election of Sir Allan MacNab was another matter. His nomination was made by Attorney General James Smith, while John Prince nominated Augustin Morin, a loyal follower of Lafontaine. MacNab was elected on a division of 39 to 36. Despite the widespread use in the chamber of both English and French, many supporters of MacNab felt the ability of the Speaker to be familiar with both languages was not important. One Tory backbencher remarked: "I do not consider that in the Parliament of a British Province, the Speaker should be required to understand French". Other members such as John Prince felt that since MacNab did not understand French he was "not fit to fill the Chair". Others demanded that since the former Speaker Cuvillier had been from Lower Canada, it was now Upper Canada's turn for a Speaker.¹⁰⁰

The 1848 election also turned on political preferences. MacNab was again nominated by the Honourable William Cayley, a member of the Sherwood cabinet. The nomination of Augustin Morin was made by Baldwin, seconded by Lafontaine. MacNab's name went forward first, but was negatived 19 to 54. Morin's nomination was then voted on and carried unanimously. Although the strength of the Sherwood government was tested during the election of the Speaker and found wanting, there was no suggestion that the government resign over the issue. A defeat on the Speakership was considered only an 'informal' indication of a lack of confidence and was not connected to the confidence convention.

Despite the partisan nature of their selection, once elected, Speakers generally announced to the House their impartiality. Following his election in 1841, Cuvillier said "he had made use of no expression, that would lead him to a connection with any party whatever".¹⁰¹ After his 1844 election, MacNab told the House "he would know no party".¹⁰² In this, the role of the Speaker varied greatly from that in the two former provinces. The change could be attributed to the fact that, with the movement towards responsible government, members looked to emulate the British model in as many of its practices as possible. In the United Kingdom, Speakers had the reputation of being impartial when occupying the Chair and removing themselves from partisan positions. With responsible government, there had also been a change in the constitutional position of the Assembly within the parliamentary framework. Its supremacy was being acknowledged and there would be fewer and fewer confrontations and challenges between the House and outside bodies. Hence there was less a need for an officer to speak for the House when it was threatened. More importantly, under responsible government members

looked for political leadership not in the Speaker but in the first ministers of the Crown, who, with their powers of appointment and patronage, could exert considerable influence.

Table 4.4 provides examples of rulings made by Speakers during the period under review. These rulings reveal that form was becoming more important with respect to the politics of the legislature. The pioneer parliament of 1792 had receded. Procedural case law was advancing as more precedents were established. While such precedents were based from time to time on proceedings in both Upper Canada and Lower Canada, for the most part they were drawn from the British House of Commons.

The Speaker's salary in 1841 was set at 1,000 pounds per annum. In the 1851 session, pursuant to An Act to reduce the Salaries attached to Judicial Offices and to fix the Salaries of the Speakers of the Legislative Council and the Legislative Assembly,¹⁰³ it was raised to 2,000 pounds per annum. His salary was probably augmented due to the increased responsibilities given the Speaker under the Controverted Elections Act adopted that same year. In addition to his procedural and legal duties, he was also given important administrative functions. In the 1841 session, the House agreed that when it was not in session, "as well as when it is, the Speaker may give such directions as he may think necessary and proper for carrying into effect the orders of the House, and for ensuring the safety of its records; and all the Officers and Messengers of the House, shall be under the direction of the Speaker in all matters whatsoever connected with the performance of their official duty".¹⁰⁴ However, the real administrative officer was the Clerk of the

House, W.B. Lindsay, who occupied the position throughout the 1841-53 period.

Permanency in the position of the Clerk in central Canada counterbalanced the non-permanency of the Speakership. The office was important for it provided procedural continuity between parliaments. Lindsay's holding of the position was also significant for he had been Clerk of the Lower Canadian Assembly since 1830. He therefore represented a link between the old colonial system and the new parliamentary system of responsible government.

Controversy surrounded the appointment by Lindsay of his son in 1844 as a translator. Lindsay, who was intending to retire, claimed he had a right to make the appointment, as he himself had been appointed a copying clerk in 1808 by his father in the Legislative Assembly of Lower Canada. A special committee examined the matter and concluded that:

On his resignation, Mr. Lindsay believing himself to be authorized by virtue of his Commission and Letters Patent as Clerk, to nominate his Deputies, appointed his son, W.B. Lindsay, junior, Assistant French Translator; and although Mr. Lindsay claims the right of nominating all his Deputies himself, he has, nevertheless, declared he had only appointed his son, subject to the approval of your Honourable House.

Your Committee take the opportunity of expressing their conviction that this right, as claimed by the Clerk, cannot be acknowledged by your Honourable House, who in fact, in the last Parliament, repudiated any claim of this nature, by appointing Mr. Garneau, to this very office of Assistant

French translator, and by making several other appointments in this House. ¹⁰⁵

The committee therefore challenged the ancient rights claimed by British parliamentary clerks of appointing their deputies. Mr. Lindsay, it appears, decided not to retire. His salary was fixed in 1846 at 750 pounds per annum "to be taken as in lieu of all fees, allowances and percentage and to be continued only during the continuance in office of the present incumbent, in consideration of his long and faithful services and thereafter to be fixed at 600 [pounds] per annum". ¹⁰⁶ This challenge to the Clerk's right to appoint employees and of his right to fees from private bills shows the Assembly was attempting to modernize itself and break from ancient practices. Organizational reform of the House was beginning to parallel procedural reform.

(ii) Committees

The impact of responsible government was keenly felt in the system of committees appointed by the House. As has been noted, a standing committee system had been established in Lower Canada in 1831. It included committees on such topics as courts of justice, trade, agriculture and roads and public improvements. A similar system had been tried in Upper Canada in 1836. Early in the first session of the United Province in 1841, efforts were made to adopt the same structured committee system. A motion was passed to create a committee to prepare lists of members to compose standing committees on privileges, grievances, courts of justice, public accounts, education and schools,

trade, agriculture, roads and public improvements, public lands and seignorial rights, expiring laws, engrossed bills, private bills, hospitals, charitable institutions and contingent accounts. However, when the balloting for the nominating committee was to take place, the government ministers moved that the Order of the Day be discharged. The reconstructed debates of the 1841 session gives the following account of the proceeding:

The order of the day for the House to proceed to the Ballot of Members for a Committee to nominate the Standing Committees of this House, being read,

Mr. Attorney General Ogden moved, seconded by Mr. Simpson, that the said order of the day be discharged. Upon making this motion the hon. member ((Mr. Ogden)) observed that he looked upon the appointment of standing committees as an absolute departure from the practice of what that house chose to call responsible government. (Hear.) Committees of privileges, and contingencies, ministers did not object to, - but, if they were to carry out the principles of responsible government, he contended that the important objects of trade and commerce, should be submitted to them - Here Mr. Ogden enumerated the various objects for which it had been proposed that the committees should be appointed, and remarked that, with one or two exceptions, these were subjects for the especial (sic) consideration of the government, and ought to be submitted to that house by the ministers of the crown. Were it otherwise, the responsibility attached to power would be taken out of their hands, and placed in the hands of certain members to be named by the house itself. He would maintain that if they were to have the responsibility, the power must rest with them also; and, consequently, the power of deciding upon the nature and character of those measures of public utility which it was their peculiar duty to introduce to the house, and upon those measures the house would be entitled to pronounce judgement (sic), and upon that division would the standing of the advisers of His Excellency be determined. (Hear, hear.) Hard

indeed would be the case if they were to sit in that house as responsible servants of the crown, if the conducting the public business were to devolve on others than themselves. They were by no means desirous of taking from that house the privilege of attending all measures which came before them to that extent to which the ministers of the crown could coincide with them; and whenever they go beyond that, upon those measures of public utility which it would be the duty of ministers to introduce, then would there be a collision between that house and those ministers, and then it would become their duty to make room for others who might possess the confidence of the house. (Hear, hear.) As responsibility had been asked for according to the principles of the British constitution, the house should at least be willing to allow them the privileges enjoyed by the English ministry, of proposing those measures to which he had already referred. If the hon. member for Lincoln, was so desirous to have British practice, he (Mr. Ogden) should like to have it shown, that the House of Commons and not the ministers conducted the affairs of the country.

He felt satisfied that the house would accede to this proposition, and not fly in the face of the established practice in this respect. In a neighbouring country, where the government was not represented in the legislature by its officers, he was aware that the practice is different. There, however, the advisers of the Government are placed in office for the term of four years, but here the officers of government may not be in office four months. (Hear, hear.) They are liable to be removed by a breath from the majority of that house. Let us, therefore, have a fair trial. Let the new system be put in practice, and see how it will operate. (Hear, hear.) The sooner it is decided the better. As a humble servant of the majority he stood prepared to carry it out. (Hear, hear, hear.)

Mr. Thorburn said he perfectly concurred in what had fallen from the hon. gentleman - that, as the officers of the Government were fully determined to act in accordance with the

wishes of the house, and to become answerable to the crown and to the country, they should be permitted the privilege of originating those measures which, by the practice in England, ministers were entitled to introduce. The hon. gentlemen who occupied the treasury benches would not find him disposed to throw even a straw in their way.

Mr. Durand said from what had fallen from the hon. and learned gentlemen, the Attorney General, he would suppose that it is his intention to monopolise the whole business of the house. If this was going to be the case, he was convinced that the system of responsible government would not work well. ¹⁰⁷

The House agreed to discharge the order. Supporting the motion was Robert Baldwin. In 1842, Mr. Neilson, who in the 1830s had been an active supporter of the Lower Canadian committee system, proposed the adoption of 12 standing committees. The motion was again challenged by the government. Secretary Harrison told the House:

Under the System of Responsible Government now established in the country it became the duty of the members of the Executive to bring forward public measures and to bear the responsibility. He should be glad to be relieved from that responsibility, for no man liked responsibility, but it was not consistent with British practice or principles that that should be taken by others. Our Government is not like that where this method of Standing Committees is in use (the United States): ours is a Monarchical, connected with a popular, not to say Republican, principle. Where, then, committees existed, there was nothing easier than for the Council to throw the blame of all imperfection in the measures of the House upon them - but as he did not wish to shrink from the responsibility, he could not yield it to others. ¹⁰⁸

In 1843, Mr. Neilson again moved that a structured committee system be created. The Baldwin-Lafontaine government also opposed the idea. A reporter wrote:

Mr. Baldwin agreed with the Member for Quebec in the necessity of adopting a judicious plan for facilitating the despatch of public business, but saw in the Committees that were named, a great probability of embarrassment accruing to the Government, as they embraced almost everything connected with the administration of affairs. In Lower Canada, he was aware such a course had been adopted and approved of; but the people there were opposed to the Government, and consequently suspicious of its acts. Under "responsible government," however now established in the province, a different feeling existed, which precluded the necessity of following a similar plan. 109

As a compromise, Baldwin proposed the establishment of six standing committees: (i) Privileges and Elections; (ii) Expiring Laws; (iii) Private Bills; (iv) Standing Orders; (v) Printing; and (vi) Contingencies. The amendment was agreed to. This system continued throughout the period being reviewed. Two more standing committees were added in 1847: (i) Railroads and Telegraph Lines; and (ii) Roads and Bridges. The Roads and Bridges Committee was dropped, however, in the 1850 session. 110

The membership of the standing committees was fairly small. Originally, fixed at around seven members each, the size increased to nine members in 1849, with the exception of the Railroads and Telegraph

Lines, which was somewhat larger at eleven. Certain select committees on special subjects were also appointed and they were usually much larger. For example, the 1849 Select Committee on the Division of Cities in Upper Canada was composed of 35 members. ¹¹¹

D. Parliamentary Privilege in the United Province

Very few cases of parliamentary privilege can be found during the period under review. Such a situation contrasted sharply with that of the old colonial system, where in both Upper Canada and Lower Canada many questions of privilege were raised. The cases reported were all fairly minor. In 1844-45, the Clerk of the English Journals Branch of the House was censured for a joke he had played on his fellow workers by inserting the words "Tinkers, Bankers, Shavers, Southeolites, Shakers and Gypsies" in an amendment for inclusion in the Journals when they were sent to the printer. ¹¹² Also in that session, complaints were made that a Montreal newspaper had "cast reflections" on certain members, but these were not pursued by the House. ¹¹³ In 1850, a reporter was brought to the Bar and censured by the Speaker for addressing a member of the House "in a rude and offensive manner" ¹¹⁴ and in 1851 a member was forced to apologize to another member for kicking him. ¹¹⁵ Such cases were hardly of the same gravity as those recorded earlier.

The change in the nature of parliamentary privilege can be attributed to the change in the constitutional position of the House. With the coming of responsible government, the sovereignty of the

Assembly was acknowledged. The House no longer felt threatened by outside bodies. Being less threatened, the House became less sensitive to criticism. The scope of privilege was narrowing and members were not quite as upset when their rights were unintentionally interfered with. One such example involved Mr. Robert Christie, M.P.P.. During the 1849 Rebellion Losses riot, he had tried to enter the House but had been stopped by a soldier who refused to let him pass. Christie told the House "on stating that he was a Member of Parliament and ought to have free access to the House, the soldier had replied 'how the hell can I tell if you are a Member or not'. He thought the proceedings entirely annoying." 116 The incident was allowed to pass.

4. Summary

Implementing many of the recommendations set forth in the Durham Report, the Union Act set in motion the dissolution of the old colonial system and the eventual establishment of responsible government. The most significant changes from pre-1840 parliamentary practices were: (i) the establishment of Westminster procedure as the dominant development model; (ii) the reform of many antiquated practices; (iii) the differentiation between public and private business and between government and private members' business; and (iv) the development of new accountability procedures such as the vote of confidence, the production of papers and questions to ministers. Whereas in England it was the passage of the 1832 Reform Act which provided the impetus for modernizing parliamentary procedure, in central Canada it was the achievement of

responsible government.

With respect to the goal orientations of members set out for procedure, the objectives of the two major language groups initially differed. While economic development objectives dominated among English-speaking deputies, cultural survival was foremost in the minds of the French Canadians. As the constitutional and social environment evolved the goal of both groups became more similar. In 1848, French Canadians obtained legal guarantees for the use of French within the Assembly when section 41 of the Union Act was repealed. With the assumption of office under the leadership of Louis Hippolyte Lafontaine, briefly in 1843 and more fully in 1849, French Canadians occupied meaningful executive positions, an event which never took place during the old colonial system. With basic cultural objectives becoming more secure, there was less need for obstructionist tactics or radical procedural demands. French Canadian members began to embrace to a greater extent than they did in 1837 the use of parliamentary procedure as a tool of economic development. A greater procedural stability was therefore established.

English Canadian attitudes toward procedure also changed, particularly with respect to how private bills were viewed. Alpheus Todd's 1847 report on the management of private business marked an important point in procedural evolution in Canada. His critique that the Assembly's "laxity of procedure opens an extensive field for the commission of much injustice, by affording an opportunity to designing individuals, to obtain the sanction of the Legislature to measures, which, if fully examined and understood, would be at once rejected" led

to a re-examination of the rules on private bills. By 1853, 23 standing orders had been made regulating private legislation.

A relationship appears to exist between the change in private business and the achievement of responsible government. With the advent of responsible government, the role of the state was changing. The government of the day was charged with the conduct of public business and was judged by votes of confidence as to how it carried out public policy. Private bills could not therefore be treated in the same procedural way as those dealing with public matters. It has sometimes been portrayed that the most important theme in Canadian procedure has been the tension between government and private members' business. It would perhaps be more correct to view this tension as between public business and private business.

Overcoming the serious challenges of the 1840s, the United Province would have to face other grave challenges in the coming decade. A motion by the radical reformer Peter Perry in 1850, which ironically was ruled out of order by the Speaker since the member failed to provide adequate notice, outlined some of those challenges. Perry's motion demanded the following alterations to the constitution of the province:

... a repeal of the Union Act which requires a 2/3 vote to increase the Representation of the Province; the extension and equalization of the elective franchise; the doing away with the Property qualification of Members of Parliament, fixing the time for holding the General Elections and for the annual meeting of Parliament, and shortening its duration; making the Legislative Council elective and extending the elective

principle generally, even to the Head of Government; ...a Federal Union of all the British North American Provinces, with enlarged and independent powers of Government; and the power conceded to the People of this Province to alter, remodel and improve their Constitution as they may think needful and proper. 117

Such challenges to parliamentary government and their impact on its procedure will be the subject of the next chapter.

**Table 4.1 - Voting Divisions in Legislative Assembly
of Canada, 1841-1851**

Session	Number taking place	Average number per sitting day
1841	152	2.0
1842	24	0.8
1843	63	1.1
1844-5	118	1.6
1846	76	1.3
1847	47	1.2
1848	20	1.2
1849	150	1.7
1850	185	2.7
1851	303	3.9

**Table 4.2 - Evolution of the Rules and Regulations of the
Legislative Assembly of Canada, 1841 - 1853**

(Number per category)

	<u>1841</u>	<u>1853</u>
1. Meetings and adjournments	3	3
2. Quorum	2	2
3. Minutes	1	-
4. Speaker	3	3
5. Members and Rules of Debate	12	12
6. Legislative Council	5	5
7. Strangers	2	2
8. Journals	5	4
9. Rules of the House	2	2
10. Division of the House	1	1
11. Motions	11	12
12. Aid and Supply	3	3
13. Public Bills	10	11
14. Private Bills	13	23
15. Petitions	2	1
16. Papers laid before House	1	3
17. Committees	4	5
18. Appointment of Messengers	1	1
19. Orders of the Day	2	4
20. Privileges	1	1
21. Miscellaneous (Library, office hours, etc.)	8	19
	<hr/>	<hr/>
	92	117

**Table 4.3 - Bills introduced in the
Legislative Assembly of Canada, 1841-51**

<u>Session</u>	<u>Public Bills</u>	<u>Private Bills</u>	<u>Total</u>
1841	107	55	162
1842	39	13	52
1843	73	44	117
1844-5	129	66	195
1846	103	94	197
1847	56	105	161
1848	18	28	46
1849	113	133	246
1850	104	85	189
1851	141	78	219

**Table 4.4 - Selected Speaker's Rulings,
Legislative Assembly of Canada, 1841-1851**

(D) Debates; (J) Journals

<u>Session</u>	<u>Speaker</u>	<u>Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>
1841	Cuvillier	p. 216(D)	Member serving in a committee	As long as a petition was depending against a member, he was incom- petent to serve on a committee	No
1841	"	p. 285(D)	Petition	Want of signatures, not in order	No
1841	"	P. 123(D)	Debate	Member not in order	No
1841	"	p. 173(D)	Petition	Cannot be introduced if it asks for grant of money unless His Excellency consents	Appeal withdrawn
1841	"	p. 177(D)	Committee Report	Not in order as it was asking for a grant of money	No
1842	"	pp.294-5(D)	Motion not having notice for Speaker to issue a new writ for election of a member	Speaker at a loss how to proceed and asks opinion of House (House agrees motion could be put since there was no objection)	-
1842	"	p. 104(D)	Motion	Question had been previously brought up and negatived: says "if this was pressed, the House would be entertaining on one day what it rejected on another", Motion not in order	No
1843	"	p. 187(J)	Amdt.	Out of order, unparliamentary	Yes No
1843	"	p. 237(D)	Message from Governor General	In support of the dignity of the House, Minister should present it personally at the Bar of the House	No

**Table 4.4 - Selected Speaker's Rulings,
Legislative Assembly of Canada, 1841-1851**

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<u>Session</u>	<u>Speaker</u>	<u>Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>
1843	Cuvillier	p. 614(D)	Debate	Not parliamentary to allude to anything said in the other place	No
1843	"	pp.644-5(D)	Debate	No member to be interrupted while speaking	No
1843	"	p. 913(D)	Third reading of Bill, Motion to recommit for a certain reason	Reason irregular, not in order	No
1843	"	p.1043(D)	Mr. Baldwin explains to House why he resigned	Matter not debatable, an explanation having been given by one of the members of the late cabinet, which according to the usage of the British Parliament was deemed sufficient	No
1844-5	MacNab	p. 392(D)	Question to Ministry	Not in order, no motion before House	No
1844-5	"	p.1192(D)	Point of order that Bill to reduce salaries not in civil list was a tax bill and should have originated from a resolution of the Committee of the Whole	Bill in order, not one levying a tax	No
1844-5	"	p.1216(D)	Debate	Not in order to remark upon the decision of the House in a previous occasion unless Member intended to move a resolution thereon	No
1844-5	"	p.1316(D)	Debate	Not in order, to shake hand at Members opposite	No

**Table 4.4 - Selected Speaker's Rulings,
Legislative Assembly of Canada, 1841-1851**

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<u>Session</u>	<u>Speaker</u>	<u>Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>
1844-5	MacNab	pp.1558- 1561(D)	Motion in French only	Motions were part of the proceedings and in accordance with s.41 of Union Act, they must be made in English. A motion could not be put in the French language only	Yes Yes
1844-5	"	p.1721(D)	Debate	Member not in order to allude as he did to Governor General	No
1844-5	"	p.1373(D)	Government bill	Not in order since it involved the appropria- tion of monies and should have originated in a Committee of the Whole	No
1844-5	"	p.1533(D)	Debate	Not in order to attri- bute motives to another Member	No
1849	Morin	p. 57(D)	Whether cases of privilege did not precede all business of the House	Usual with House to take up questions of privilege before proceeding to other business but it was not imperative on the House to do so	No
1849	"	p. 195(D)	Debate	Words "Young Gentleman" were not according to parliamentary custom	No
1849	"	p. 611(D)	Petitions	Not in order, as they were without dates or signatures	No

**Table 4.4 - Selected Speaker's Rulings,
Legislative Assembly of Canada, 1841-1851**

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<u>Session</u>	<u>Speaker</u>	<u>Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>	
1849	"	p.1095(D)	Whether money bill can be advanced more than one stage in same day	While in the U.K. a money bill cannot be introduced the same day that the resolution is passed, the precedents of the Provincial Assembly formed such a procedure	No	
1849	"	p.1627(D)	Two bills the same	Competent for a member to introduce any bill, provided the principle had not been already negatived during the present session	No	
1850	Morin	p. 64(J)	Bill to fix the time and place for the meeting of Parliament	Not in order as it was repugnant to provisions of Union Act, s.30	Yes	Yes
1850	Morin	p. 242(J)	Motion	Not in order, not in accordance with the Notice given	Yes	Yes
1850	"	p. 281(J)	Motion	No notice given, not in order	Yes	Yes

**Table 4.5 - Sittings of Legislative Assembly
of Canada, 1841-1851**

Provincial Parliament		Date of session	Number of sittings
Seat of Government			
1841	First (Kingston)	(June 14 - September 18)	77
1842		(September 8 - October 12)	28
1843		(September 28 - December 9)	56
1844-5	Second (Montreal)	(November 28 - March 29)	75
1846		(March 20 - June 9)	58
1847		(June 2 - July 28)	40
1849		(January 18 - May 30)	90
1850	(Toronto)	(May 14 - August 10)	69
1851		(May 20 - August 30)	78

**Table 4.6 - Petitions Presented in the Legislative Assembly
of Canada, 1841-1851**

Session	Number presented
1841	441
1842	196
1843	384
1844-5	852
1846	842
1847	567
1848	337
1849	979
1850	744
1851	760

Endnotes

1. United Kingdom Statutes, 3 and 4 Vict., c. 35.
2. See Kenneth Windsor, "Historical Writing in Canada to 1920", in Literary History in Canada, Vol. 1, ed. by C.F. Klinck (Toronto: University of Toronto Press), pp. 222-264; Chester Martin "Responsible Government and Its Corollaries in the Canadian Constitution", Transactions of the Royal Society of Canada (Series 3) 17 (1923), pp. 41-56. For a biography of Lord Durham see Chester W. New, Lord Durham: A Biography of George Lambton, first Earl of Durham (Oxford: Clarendon Press, 1929) and the abridged edition, Lord Durham's Mission to Canada (Toronto: McClelland and Stewart, Carleton Library, 1963).
3. See D.C. Masters, The Reciprocity Treaty of 1854 (London: Longmans, 1937); Donald Creighton, The Commercial Empire of the St. Lawrence (Toronto: Ryerson Press, 1937). For a discussion of how academics have treated the theme of responsible government, see D.A. Muise, ed., A Reader's Guide to Canadian History, Vol. 1 (Toronto: University of Toronto Press, 1982), pp. 219-224. See also J.F. Hodgetts, Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867 (Toronto: University of Toronto Press, 1955).
4. See R.J. Surtees, "The Development of an Indian Reserve Policy in Canada", Ontario History, 61 (1969), pp. 87-98.
5. See J.M.S. Careless, The Union of the Canadas: The Growth of Canadian Institutions, 1841-1857 (Toronto: McClelland and Stewart, 1967) and J.M.S. Careless, ed., The Pre-Confederation Premiers: Ontario Government Leaders, 1841-1867 (Toronto: University of Toronto Press, 1980). See also P.A. Buckner, The Transition to Responsible Government (Westport, Conn.: Greenwood Press, 1985).
6. Two books which analyse the impact of Durham's recommendations on some aspects of procedure are Norman Ward, The Public Purse: A Study in Canadian Democracy (Toronto: University of Toronto Press, 1962) and Janet Ajzenstat, The Political Thought of Lord Durham (Montreal and London: McGill-Queens, 1988).
7. Gerald M. Craig, ed., Lord Durham's Report (Toronto: McClelland and Stewart, Carleton Library, 1963), p. 53.
8. Ibid., p. 69.
9. Ibid., p. 139.
10. Ibid., pp. 151-152.
11. Ibid., pp. 144-145.
12. Ibid., p. 157.

13. Ibid., p. 169.
14. Ibid., p. 170.
15. New, Lord Durham's Mission to Canada, pp. 168-169.
16. Robinson, op.cit., p. 106.
17. Careless, The Union of the Canadas, p. 5.
18. Craig, Lord Durham's Report, p. 157.
19. Ibid., p. 159.
20. A.H. Dodd, The Growth of Responsible Government: From James the First to Victoria (London: Routledge and Kegan Paul, 1956), p. x.
21. A. Shortt and A.G. Doughty, eds., Canada and Its Provinces, Vol. 23 (Toronto: Glasgow, Brook and Co., 1917), p. 364.
22. Edward Kylie, "Constitutional Development, 1840-1867" in ibid., Vol. 5., p. 135.
23. Ibid., p. 131.
24. Garner, op.cit., p. 95.
25. Ibid., pp. 87-93.
26. Assembly Journals, 1841, Appendix BB.
27. Ibid.
28. Ibid.
29. Quoted in John George Bourinot, Parliamentary Procedure and Practice (2nd ed.), p. 31.

30. Canada Statutes, 4 and 5 Vict., c.4.
31. Redlich, op.cit., Vol. 2, pp. 99-100.
32. See Debates of the Legislative Assembly of United Canada, 1841, pp. 370-71. Edited by Elizabeth Gibbs, these reconstructed Debates are published under the direction of the Centre d'Étude du Québec. They will hereafter be referred to as Assembly Debates.
33. Canada Statutes, 7 Vict., c. 3.
34. Canada Statutes, 7 Vict., c. 65.
35. Assembly Debates, 1843, pp. 304-305.
36. Quoted in Cruikshank, op.cit., Vol. 3, p. 153.
37. Craig, Upper Canada, p. 191.
38. Garner, op.cit., pp. 152-153. Canada Statutes, 8 Vict., c. 10.
39. Canada Statutes, 12 Vict., c. 10.
40. Redlich, op.cit., Vol. 3, p. 37.
41. The British parliament had begun distinguishing hybrid bills by the 1840s. See Bourinot, op.cit. (2nd ed.), pp. 690-1. Canadian procedure has never made special provision for this class of bills.
42. Canada Statutes, 12 Vict., c. 16.
43. Canada Statutes, 14 Vict., c. 1.
44. Garner, op.cit., pp. 207-208.
45. Assembly Debates, 1841, p. 679.
46. Assembly Debates, 1844-45, p. 1628.

47. Assembly Debates, 1844-45, p. 924.
48. Assembly Debates, 1844-45, p. 1068.
49. P.G. Cornell, The Alignment of Political Groups in Canada, 1841-1867 (Toronto: University of Toronto Press, 1962), p. 82.
50. Ibid., p. 102.
51. See Assembly Journals, 1852-53, pp. 112, 623-636, 975-985.
52. Assembly Debates, 1841, pp. 5-7.
53. Assembly Debates, 1841, p. 22.
54. Assembly Journals, 1841, p. 48.
55. The rule was later revised to the effect that the sum would be deposited with the Clerk before second reading as opposed to before the petition was received. See Assembly Journals, 1841, p. 288.
56. Assembly Debates, 1841, p. 133.
57. Quoted in Peter B. Waite, "A Nova Scotian in Toronto, 1858", Ontario History, 60 (1963), p. 157.
58. Assembly Debates, 1849, p. 910.
59. Assembly Debates, 1849, p. 1135.
60. Assembly Debates, 1849, pp. 1135-36.
61. Assembly Journals, 1851, p. 163.
62. Assembly Journals, 1851, pp. 190-191.
63. Assembly Journals, 1847, Appendix (B). As has been noted, a legal distinction was later made between public and private acts in the 1849 Interpretation Act (Section 27).

64. On July 8, 1850, a select committee of five was appointed "to take into consideration whether any and what improvements can be adopted in the management of the Private Business of this House". The committee reported on July 16. The rule changes regarding private business were adopted on August 3, 1850. See Assembly Journals, 1850, pp. 232-233. Certain changes had been agreed to in 1849 respecting the printing of private bills. See Assembly Journals, 1849, p. 333.
65. Assembly Journals, 1850, p. 150, rule 5 of the committee report.
66. Assembly Journals, 1847, p. 40.
67. Assembly Journals, 1847, p. 49.
68. Assembly Journals, 1849, p. 55.
69. Bourinot, Parliamentary Procedure and Practice (2nd ed.), p. 699.
70. See Order Paper of November 21, 1836 in Miscellaneous Records of the Legislative Assembly of Upper Canada, 1806-1839, National Archives of Canada.
71. Assembly Journals, 1836-37, (Upper Canada), pp. 304, 343, 498.
72. Assembly Journals, 1841, p. 96.
73. Assembly Debates, 1844-45, p. 2010.
74. Assembly Debates, 1849, pp. 396-7, 425, 1853-54.
75. Assembly Debates, 1849, p. 1377.
76. Assembly Journals, 1851, p. 108.
77. Canada Statutes, 4 and 5 Vict., c. 11.
78. See Assembly Journals, 1844-45, pp. 84, 375.
79. Assembly Debates, 1844-45, pp. 1558-61.

80. Assembly Journals, 1844-45, p. 289.
81. United Kingdom Statutes, 11 and 12 Vict., c. 56.
82. Assembly Debates, 1849, p. 361.
83. Quoted in Waite, op.cit., 1963, p. 157.
84. These changes were agreed to (i) on December 19, 1844 and March 29, 1849, (ii) June 4, 1850, and (iii) June 4, 1853.
85. Assembly Debates, 1849, p. 2046.
86. Assembly Debates, 1844-45, pp. 793-94.
87. Assembly Debates, 1844-45, pp. 235-36.
88. Assembly Debates, 1849, pp. 28-29.
89. See Assembly Debates, 1849, passim., pp. 656-2160.
90. Assembly Debates, 1841, pp. 60-69.
91. See Careless, The Union of the Canadas, pp. 82-83.
92. Assembly Debates, 1843, p. 1008.
93. See Assembly Journals, 1843, pp. 192-194.
94. Assembly Journals, 1846, p. 232.
95. See William G. Ormsby, "The Civil List Question in the Province of Canada", Canadian Historical Review, 35 (1954), pp. 93-118.
96. Assembly Journals, 1848, p. 22.
97. Careless, The Union of the Canadas, p. 120.
98. See Assembly Debates, 1841, p. 231.

99. See Letter from Baldwin to Morin, June 14, 1841, Assembly Debates, 1841, p. 100.
100. See Assembly Debates, 1844-45, pp. 1-8. MacNab served for the entire Second Parliament. He did vacate the Chair, however, on April 13, 1846, due to the state of health of Lady MacNab. August Morin was elected Speaker pro tem. MacNab returned to the Chair on May 19, 1846.
101. Assembly Debates, 1841, p. 96.
102. Assembly Debates, 1844-45, p. 8.
103. Canada Statutes, 14 and 15 Vict., c. 179.
104. Assembly Journals, 1841, p. 236.
105. Assembly Journals, 1844-45, p. 126. Since the report of the committee was not concurred in by the House, the theoretical right of Lindsay to make appointments remained.
106. Assembly Journals, 1846, p. 332. For a study of the Clerk and his staff, see Marc-André Bédard, "Le Greffier sous le régime de l'Union", Bibliothèque de l'Assemblée Nationale du Québec Bulletin, 14 (1984), pp. 47-60.
107. Assembly Debates, 1841, pp. 144-5.
108. Assembly Debates, 1842, pp. 93-94.
109. Assembly Debates, 1843, p. 154.
110. See Assembly Journals, 1847, pp. 30-31; Assembly Journals, 1850, pp. 4, 9, 30.
111. Assembly Journals, 1849, pp. 191-92.
112. See Assembly Journals, 1844-5, pp. 36-37, 51.
113. Assembly Journals, 1844-5, pp. 208-9.
114. Assembly Journals, 1850, p. 164.
115. Assembly Journals, 1851, pp. 192-193.

- 116. Assembly Debates, 1849, p. 2113.
- 117. Assembly Journals, 1850, p. 281.

**Chapter Five - Laying the Foundation of Modern Parliamentary Government:
Procedure in the United Province of Canada, 1853 - 1866**

1. The Crises and Challenges of the United Province

The years 1853 to 1866 have not been looked upon favourably with regard to the performance of parliamentary government in the Canadas. Such themes as "the failure of the Union", "legislative deadlock" and "frustrated visions of expansion" often appear in the literature about the period.¹ The negative aspects of the legislative system were clearly visible. There was great instability in the executive branch of government as nine different administrations held office.² The constitutional foundation of government was constantly being amended to such a point that by 1860 it was estimated that 30 of the 62 clauses of the Union Act 1840 had been changed.³ Religious, racial and regional conflicts emerged in such forms as the Clear Grit movement in Upper Canada and the Ultramontagne movement in Lower Canada. The expectations which stemmed from the achievement of responsible government seemed not to have been realized. Robert Baldwin had written in 1836 that a responsible executive "would necessarily feel a moral as well as a political responsibility for the success of their measures. Their permanent connection with the country as well as a sense of duty and natural desire to retain office would necessarily ensure their utmost exertions, not only to procure harmony but to produce good government."⁴ The theory and practice of responsible government appeared to be two different things. Expenditures were sometimes made without the prior consent of the Assembly. Instead of providing good government, deputies seemed to secure the passage of bills from which they accrued personal benefit. Commenting on the 1850s and 1860s, Gustavus Myers has written:

High government officials and members of parliament not only openly voted charters for themselves and associates, but in

prospectuses ... advertised their connection as a guarantee of the prominence and stability of these enterprises, and as the best assurance that could be given that the whole power of the state could be infallibly depended upon to pass whatever additional laws were necessary, and to give gratuities in loans, bonuses and land grants. ⁵

In retrospect, however, there were many positive achievements. With regard to parliamentary procedure, a clear modus operandi came into existence as the procedures of the old colonial system faded. The basic form of modern Canadian parliamentary procedure took shape, a procedure characterized by accountability through the vote of confidence and questions to the ministry and government business being given priority in the House. So solid was the procedural foundation of the legislative system that in 1867 the newly formed House of Commons of the Dominion of Canada adopted almost exactly the rules and regulations of the United Province. ⁶

The Legislative Assembly dealt with a remarkable amount of business during its parliamentary sessions. To characterize the period as being one of "legislative deadlock" is quite misleading. An average of 141 bills per session received royal assent. As Table 5.1 shows, this figure compares with only 42 bills per session in Upper Canada between 1820-1840 and 33 bills per session in Lower Canada between 1820-1836. The Assembly was hardly irrelevant to the community it served. Petitions flooded the House. While between 1841 and 1851 just over 600 petitions were tabled each session, between 1852 and 1866 the number increased to nearly 1100. In addition, the constitutional scope of legislative activity increased. With the introduction of responsible government,

the Assembly carved out for itself additional areas of legislation which previously had come under the jurisdiction of the Imperial parliament. As Edward Kylie has noted, such matters as disposing of the clergy reserves, control over trade policy, the post office, currency, banking and immigration were gradually transferred to the provincial parliament during the period. ⁷

In the face of the racial and religious cleavages which seemed to be growing within the political environment, the legislature helped to calm as opposed to add to tension. As mentioned in the previous chapter, the Assembly sought and achieved the deletion from the Union Act of restrictions placed on French as a language of record within the House. Practices such as alternating the choice of Speaker each parliament between candidates from Upper Canada and Lower Canada and establishing a bureaucracy which would provide services in both English and French undoubtedly helped to mediate the conflict. Despite the costs and inconveniences, it created the practice of changing the seat of government between Upper and Lower Canada between parliaments. In 1849, the House had adopted the following resolution:

... that after the present Session, His Excellency will be pleased to convene the Parliament alternately at Toronto and Quebec, during periods not exceeding four years at each place; the first sitting, under this arrangement, to be held at such of the two places mentioned as His Excellency, in his direction, may deem most advisable for the general good: That the plan here submitted is not without precedents in other countries, and that it can now more easily than at any antecedent period be carried out, inasmuch as all former records and proceedings in Parliament have been destroyed....

That each branch of the Legislature will now have to commence anew; and with a view to alternate sittings as herein recommended, their records and proceedings ought henceforward to be made out in duplicate, so that one copy may be deposited in the vaults of the Parliament House at Toronto, and the other within the walls of the Citadel of Quebec, where they will be secure from the ravages of fire, and from the attacks of external and internal foes:

That the Parliament Buildings at each of the Cities of Toronto and Quebec, are the property of the Province; that they are commodious and comfortable, and can be made ready for the reception of the Legislature at a comparatively small expense: That under this arrangement, the Members of the Legislature will have a better opportunity of ascertaining and understanding, by personal observation, the condition, the wants, and the wishes of the whole people, instead of being confined, as they now necessarily are, in their knowledge of public affairs, to the narrow limits of their respective sections of the Province. ⁸

The arrangement for four-year periods was varied. Toronto was the seat of government from 1850 to 1851 and then from 1856 to 1859. Quebec hosted the legislature from 1852 to 1855 and from 1860 to 1865. ⁹ The seat of government changed not just at the opening of new provincial parliaments but even during the parliaments. In 1854-55, the House voted not to interfere with the 1849 accord. ¹⁰ However, due to the many inconveniences associated with alternating capitals, the experiment did not last. In 1857 the Assembly agreed to establish a permanent seat of government. It passed on a division of 61 to 50 the following address to the Queen:

That the interests of Canada require that the Seat of the Provincial Government should be fixed at some certain place.

That we have resolved to appropriate the sums requisite for providing the necessary Buildings and accommodation for the Government and the Legislature, at such place as Your Majesty may see fit to select.

And we therefore humbly pray Your Majesty to be graciously pleased to exercise the Royal Prerogative by the selection of some one place as the permanent Seat of Government in Canada. ¹¹

Queen Victoria's choice of Ottawa located on the border between the two sections of the province brought down the Macdonald-Cartier government on July 28, 1858. Though the House requested Her Majesty reconsider the question, the decision stood.

One area where the legislature could be justly criticized was the too close link between pecuniary advantage and the way members voted. The question of corruption was not confined to the legislature but appeared in many areas of society. With a rapidly expanding population and economy, extravagance, corruption and patronage were not uncommon. Railroad construction in Canada was ripe with questionable practices. As Finlay and Sprague note:

At Sarnia, for instance, a certain acreage belonging to the British War Office was acquired for railway purposes for \$825. However, for some reason, the purchaser was not the Grand Trunk but the Canadian contractors, Gzowski, Macpherson and Co. and by the time the \$800 worth of land passed from them to the railway the price had risen to \$120,000 ... Appalled by written reports, one such disappointed investor from Britain came out to Canada to inspect the railway himself. On-the-spot inspection only convinced him of what he had feared earlier: "the Grand Trunk had

not begun to be managed as a commercial carrying company"
The railway was a political patronage machine. ¹²

Motions were often made calling the attention of the House to direct conflicts but on very few occasions were votes disallowed. The 1841 rule that "every Member who shall be present when a question is put, shall vote thereon ... unless he shall be personally interested in the question; provided such interest be resolvable into a personal pecuniary profit, or such as is peculiar to the Member and not in common with the interest of the subject at large, in which case he shall not vote" was loosely interpreted. On May 2, 1855, after the House had agreed to go into a Committee of the Whole to consider further aid to the Grand Trunk Railway, one member, Joseph Hartman, pointed out that the following members -- Crawford, Cartier, Galt, Lemieux, Hincks, Angus Morrison, Joseph Curran Morrison, Rhodes and Holton -- were shareholders in the Grand Trunk Railway Company and moved a series of motions that each of their votes be disallowed. After the members in question rose and told the House that while they were shareholders, they were neither personally nor pecuniarily interested in the question, Hartman's motions were negatived 25 to 45. Attorney General J.A. Macdonald came to the defence of the shareholder members. He told the House that in his opinion the rule "only applied to private measures, not public ones. Private measures were in the nature of a contract between individuals and the body politic, and, therefore a treating party to that contract could not vote in representing the public interest. But the terms of the rule especially excepted matters of public policy, which this undoubtedly was, and it would be monstrous to disenfranchise ten or eleven constituencies on a question whether nearly a million of the people's money was to be voted away." ¹³

Yet despite such blatant appearances of conflict, it would not be accurate to say that the Assembly turned a blind eye to the problem. Early in the 1860s the House at last took steps to protect itself against corrupt practices. It established rules whereby parliamentary agents or those soliciting on behalf of private interests had to receive the sanction of the Speaker before they could perform their duties and any agent who violated the rules and practices of parliament was liable to an absolute prohibition to practice. In 1860, the House adopted the following sessional orders which were formally adopted at the commencement of every session:

Resolved, - That if anything shall come in question touching the Return or Election of any Member, he is to withdraw during the time the matter is in debate; and all Members returned upon double Returns are to withdraw until their Returns are determined.

Resolved, - That if it shall appear that any person hath been elected or returned a Member of this House, or endeavored so to be, by bribery, or any other corrupt practices, this House will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices.

Resolved, - That the offer of any money or other advantage to any Member of the Legislative Assembly, for the promoting of any matter whatsoever depending or to be transacted in the Provincial Parliament is a high crime and misdemeanour, and tends to the subversion of the Constitution. ¹⁴

One of the major problems of the latter part of the Union period was the frequent changes in the executive branch of government. A number of factors contributed to this development. One was the difficulty in

applying the Westminster model of the vote of confidence to a province which, though in theory was a single legislative unit, was in practice a quasi-federal system. A dual legal system had been indirectly established by section 46 of the 1840 Act of Union, which stated that the existing laws of Upper and Lower Canada were to continue "as if the said two provinces had not been united". Separate bills were passed to amend the laws relating to Upper Canada and those relating to Lower Canada. Many bills were also passed which related to one section of the province only. A dual legal system demanded dual administrative heads. Within the Executive Council there were separate seats for the Attorney General West and Attorney General East, and the Solicitor General West and the Solicitor General East. There was, however, only one Minister of Finance, one Postmaster General and one Minister of Agriculture.

Robert Baldwin and the proponents of responsible government hoped that the vote of confidence would produce harmony and good government for the colony. Instead it became a procedure causing regional and racial strife. No provision had been made in the Union Act for concurrent majorities from Upper and Lower Canada when the confidence of a government was tested. Section 34 of the act only stated that "all Questions which shall arise in the said Assembly shall be decided by the Majority of Voices of such Members as shall be present". Although the simple majority constitutional convention could be accepted in the British House of Commons, its legitimacy was seriously questioned in the United Province.

The social and economic differences between Upper and Lower Canada had made the political union of the Canadas a potentially unstable constitutional arrangement from the beginning. The tensions between the two provinces -- one predominantly French-speaking, the other predominantly English-speaking -- went beyond questions of race. Demographically, Upper Canada was surpassing her sister province. Whereas in 1840 the population of Upper Canada was approximately 432,000 compared to 648,000 in Lower Canada, by 1851 it had grown to 952,000 while Lower Canada's population had increased to only 890,000. In 1861, Upper Canada's population was 1,396,000 compared to 1,112,000 in Lower Canada. While the two provinces were both largely rural -- in 1851, in both Upper and Lower Canada, 85 per cent of the people lived in rural areas -- the urbanization pattern differed. ¹⁵

In addition to the racial/demographic/economic cleavages, there were also religious and cultural differences. The "two ways of life" between English and French Canadians has been a major theme in Canadian historiography. It has been described by A.R.M. Lower as "the primary antithesis of Canadian history". ¹⁶ The division between Protestants and Catholics, especially with respect to their notions of the role of the state, was a major challenge facing the Union of the Canadas. Whereas conventional Catholic thought encouraged a close association between the two, Protestant opinion in general favored a separation between church and state. John Beverly Robinson, in his 1840 book Canada and the Canada Bill, called "the religious question, with regard to civil authority and support given to it by the state", the most "pressing problem" facing the Union. ¹⁷

Given such social cleavages, it was not surprising that the confidence convention based on a simple majority vote was strongly criticized. Its most noted critic was John Sandfield Macdonald. His views on the question were outlined in the motion he proposed in 1856 which read as follows:

That an humble Address be presented to His Excellency the Governor General representing, That by the gracious permission of Her Majesty, conveyed through Her Secretary of State for the Colonies, the system of Administration known as Responsible Government, was introduced into this Province at the time of the Union between Upper and Lower Canada, in 1841:

That the principle of Responsible Government was embodied in a Resolution passed in the Legislative Assembly on the 3rd of September, 1841, on motion of the Honorable Mr. Harrison, the Secretary of the Province, and which received the sanction of the House, and was to the following effect: "That in order to preserve between the different branches of the Provincial Parliament that harmony which is essential to the peace, welfare, and good government of the Province, the Chief Advisers of the Representatives of the Sovereign constituting a Provincial Administration under him, ought to be men possessed of the confidence of the Representatives of the People, thus affording a guarantee that the well understood wishes and interests of the People, which our Gracious Sovereign has declared shall be the rule of the Provincial Government, will on all occasions be faithfully represented and advocated:

That in order to ensure the due application of this important constitutional right to the Administration of Public Affairs in the Province, it is indispensable that the Members of the Administration selected to represent either Section of the Province, should possess the confidence of that Section to which such Members belong, and from which they have been chosen:

That so long as this Province does not possess a Representation based on Population, but is governed by a Legislature, the popular branch of which is chosen in fixed and equal proportions from

Upper and Lower Canada, it is the more imperative that each Section of the Cabinet should be able to command the confidence of the Representatives of the Section of the Province on whose behalf and for whose benefit they have been specially appointed:

That this just principle has been virtually recognized from the first establishment of Responsible Government until now, the only exception having been in the case of Lord Metcalfe's Administration, when the Government of the Province was conducted upon principles completely at variance with the well understood wishes of the People of Lower Canada, and in the face of a powerful majority of the Representatives from that Section of the Province; this proceeding, however, was promptly repudiated and condemned by the People of Canada at the then next General Election, and it has not since been attempted to be carried out:

That upon the occasion of the resignation of the Honorable Robert Baldwin, the Leader of the Upper Canada Section of the Cabinet, in 1851, upon an adverse vote of a majority of the Upper Canadian Representatives, relative to the abolition of the Court of Chancery, and again, in 1854, upon the resignation of the Hincks-Morin Administration, this constitutional principle was fully recognized, the Honorable Mr. Hincks stating to the House, in reference to his own retirement, that "I felt that I could not be justified in remaining in an Administration with my colleagues from Lower Canada, when I could not command the confidence of the Section of the Province to which I belong":

That it was in conformity with this principle that the recent resignation of His Excellency's Advisers took place, and any attempt to depart from it would, in the opinion of this House, tend effectually to destroy the legitimate influence hitherto exercised by the Legislature on the Government of this Country, and would enable Her Majesty's Representative to combine with a minority of this House to compel the adoption of a system of Legislation towards one Section of the Province utterly at variance with the wants, wishes, and interests of the People inhabiting the same:

That the Upper Canadian Representatives in this House having recently declared by a large majority, their extreme dissatisfaction with the recent changes in the Provincial Administration, this House would respectfully implore His Excellency to call to his Council such men from both Sections of the Province as may be able to form a strong, efficient, and united Administration, capable of carrying out a policy calculated to develop the resources and to cherish the best interests of this noble Province, and to set at rest the many questions which await the consideration of a wise and vigorous Government, possessed of the confidence of this House, and of the Country at large. ¹⁸

J.S. Macdonald's theory of "double-majority" was never endorsed by the House. In fact his 1856 motion was negatived 15 to 65. The precedents cited regarding Baldwin and Hincks were not recognized as constitutional conventions. However, the criticism that the kind of confidence convention used was unfair did not disappear. Motions similar to that of 1856 were moved in 1858 and in 1861. ¹⁹ In 1861 Macdonald proposed that "the continuance in office of His Excellency's Advisers from Upper Canada, notwithstanding the oft-repeated declarations of want of confidence by the majority of the Members from that section, has created intense feelings of dissatisfaction and great uneasiness in the minds of the people". The defeat this time, however, was on a division of 49 to 62. If seven members had changed their vote, it would have carried.

The basis of representation as laid down by the Union Act also undermined the legitimacy of the confidence convention. George Brown and the Clear Grits called for representation by population in the 1850s and demanded an increase in membership from Upper Canada, an idea strongly

opposed by the deputies from Lower Canada. Many Upper Canadian representatives felt that the will of Lower Canada was being undemocratically imposed upon them. Lower Canadian deputies believed that the Assembly was established not just to reflect majority opinion but to provide for equal partnership between two different provinces in government. The inability to create a procedure different from the simple vote of confidence used in the United Kingdom contributed to the instability of government and led to the demand for a new constitutional arrangement between the two sections of the province.

Another constitutional problem during the period involved the Legislative Council. The 1840 Union Act had provided for a replica of the appointed House of Lords despite the warning from Lord Durham that this model was not applicable to the more liberal social conditions of British North America. The act provided for life appointments and no limitation was set as to the maximum number of members. Such an institutional arrangement became almost as unpopular during the 1840s as it had been the days before the Union. The event which most spurred on the movement for reform was the threatened blockage by the Council of the 1849 Rebellion Losses Bill. As R.A. MacKay wrote, the Baldwin-Lafontaine government:

...found its policy opposed by a hostile majority of fifteen in the upper chamber. There were loud outcries from the old loyalist party that the measure was an attempt to compensate rebels. The opinion of the party was so strong against the proposal that it was certain to use its majority in the upper house to throw it out. The Government took advantage of the fact that permission had already been granted to increase the size of the council, and applied to the governor, Lord Elgin, to appoint twelve new

councillors. The governor acquiesced, and the council passed the Bill. For all practical purposes the Canadian parliament had now become a single chamber.

The council fell rapidly into disrepute. Upon it even its traditional supporters, the Tory element, heaped abuse. Shorn of power and receiving no salary, the councillors themselves ceased to take their duties seriously. In 1846, the average attendance had been only fifteen out of a total of thirty-four members, but after the passing of the Rebellion Losses Bill attendance fell to such a disgracefully low figure that it was difficult to carry on business. ²⁰

Efforts were made to reform the Legislative Council in 1853 when the Hincks-Morin government secured the passage of an address to the Crown asking the British parliament to amend the 1840 Union Act to make the Council elected. Its proposal followed the United States Senate model and called for the retirement of one third of its members every two years. However, unlike the American Senate, there would be a dissolution of the Council in cases of a deadlock between the two Houses. If a bill passed the Assembly in two successive sessions, and was not passed by the Council, the latter could be dissolved by the Governor and new elections held. There were to be 60 councillors with six-year terms. The United Kingdom, however, preferred that the province revise its constitutional framework itself and passed only an enabling act in 1854. ²¹ In 1855, the MacNab-Drummond administration introduced legislation to make the Council elected. As the minister introducing the bill, Joseph Cauchon, stated, the change involved "a radical alteration in the system of government. The necessity for this measure was fully proved by the expression of public opinion. He had himself been opposed to the

principle of election as applied to the Legislative Council. But the unmistakable expression of public opinion, the almost unanimous assent of the people of the country had convinced him that change was absolutely necessary." 22

An Act to change the Constitution of the Legislative Council by rendering the same Elective 23 was given royal assent on June 24, 1856. It differed from Morin's proposal by being more conservative. No provision was made for an unexpected dissolution if there was a deadlock between the two houses. Councillors would serve for eight years as opposed to six and there would be only 48 members, 24 from each section of Upper and Lower Canada. One fourth of the members would retire every two years. In Cauchon's view, the object of the second chamber was not to be "a mere reflex of the Lower Chamber". Its purpose instead was "to check hasty legislation and give the people time to reflect". But that could not be achieved, Cauchon said:

... by retaining the power of dissolution which would constantly subject the Upper House to the immediate influence of the Lower House through the ministry of the day. If the Upper House refused to pass any measure which the Ministry had introduced, a threat of dissolution would bring them into obedience. The Ministry too, if they found that either of the Houses were opposed to them they would at once dissolve it. We might as well have no Upper Chamber at all as to have one thus under the control of the administration.

The bill was strongly opposed by George Brown on the grounds that he wanted "no new checks on the force of public opinion". Brown's greatest concern was that a second elected body was incompatible with the British system of parliamentary government and threatened responsible government. As he stated in the debate on second reading:

The position which I take is simply this: either the two Houses would always be in harmony or they would not. If they were so, then what is to be gained by the change? If we were to divide ourself into two bodies - one half sitting here and the other over the way - what advantage would be gained? ... If the new branch is to echo our own opinions in what degree will they be better than the present? And if on the other hand the two Houses will not be of the same political complexion, if variance is to exist here as constantly occurs in the United States - Responsible Government cannot be maintained - there will be no check over the executive - misgovernment will ensure - public indignation will be excited - and further changes to the constitution will be demanded and obtained. ²⁴

Late in 1856, elections took place for 12 Council positions and the new councillors took their seats in the 1857 session. Professor MacKay has given the following interpretation of the impact of the elected Council on the parliamentary process:

The introduction of new blood into the council was a comparatively slow process, so slow indeed that by 1864 twenty-one life members remained. Even so, the council revived rapidly. In 1859 it was granted the right to elect its own Speaker. The same year it held up the Supply Bill on the pretext that it contained no provision for removing the government to Quebec, as custom required. The fact was that the council had been expecting this provision in the

bill and had intended to test its power to amend money bills by striking it out, and though the item in question was omitted it determined to assert its powers in any case, and opposed the bill in its entirety. Only after the Government had brought some absent life members from Quebec did the bill pass. In the debate on supply the following year a motion against a clause abolishing canal tolls was introduced. A conflict between the houses was saved by the Speaker's ruling that the bill was out of order. It was asserted in the debates on federation in 1865 that it had been "freely discussed in the corridors" that the council had full rights to initiate money bills. Nor was this statement challenged throughout the debate. The fact was that the elected members of the council in encroaching on the field of finance felt themselves the representatives of the people equally with the lower house, and just as responsible to the people for public expenditure and the whole administration of government. They were quickly becoming a second master of the Ministry. 25

MacKay's description appears to be somewhat exaggerated. Certainly there were tensions between the two chambers. In 1860, for example, the Assembly reminded the Council of the lower house's rights regarding money bills. On the motion for the third reading of a Council bill respecting the line of division between Upper and Lower Canada, the Assembly resolved "that while this House doth agree to proceed with this bill, it is nevertheless unwilling that the same shall be drawn into precedent, or that the constitutional right of this House to originate all bills or provisions affecting the Consolidated Revenue, or imposing any rate, duty or charge on the subject, shall be in any wise waived or otherwise impaired by reason of the agreement to this Bill". 26 Such tensions, however, existed with the non-elected Councils in the old colonial system. There is little evidence that the Council seriously challenged the supremacy of the Assembly. Pursuant to Section 57 of the

Union Act, the financial initiative for legislation constitutionally rested with the Legislative Assembly. As Tables 5.3 and 5.4 show, there was no increase in the number of bills sent down from the Council for concurrence by the Assembly in the post-1857 period nor were more conferences held to work out compromises on issues before parliament. With respect to the effect of the elected Council on responsible government, the overwhelming majority of executive councillors continued to sit in the Assembly. In the 11-member Hincks-Morin government, only René Caron sat in the upper house. In the 1865 12-member coalition ministry, only Sir Étienne Taché sat in the Council and he was a life member as opposed to an elected member. All the resignations of ministries during the period resulted from defeats or perceived losses of confidence in the Assembly and not in the Legislative Council.

The brief experience with an elected second chamber revealed that an elected upper house was not incompatible with the British constitutional process. It did not affect what little stability Union administrations possessed and its impact on the way the provincial parliament operated was marginal. The attempt also showed that the pre-Confederation legislators were willing to experiment with institutional reform to make parliamentary government more relevant to the people it served. That it was not retained following Confederation can be attributed more to the demands of federalism than to the failure of the experiment.

2. The Sources of Parliamentary Procedure, 1853-1866

Two statutes were passed during the period which encouraged the parliamentary process to become more firmly attached to its social environment: the 1853 Act to extend the Elective Franchise and better to define the qualifications of Voters in certain Electoral Divisions, by providing a system for the Registration of Voters and An Act to enlarge the Representation of the People of the Province, also passed in 1853. John Garner describes the new provisions prescribed by the Suffrage Bill ²⁷ as follows:

The new franchise extended the vote to all British males of twenty-one years, who were assessed on the last assessment role as owners, tenants, or occupants of real property in any county of 50 [pounds] currency value or 5 [pounds] currency yearly value. In the towns and cities entitled to representation those entered on the assessment role as owners, tenants, or occupants of real property of the year value of 7 [pounds]/10 currency were given the vote

The above franchise, by qualifying tenants and occupants of real property in the country districts, extended the suffrage to the purchasers of Crown lands who occupied their farms but until the last instalment was paid would not receive their title deeds, and to the tenant-immigrants who leased lands from the Crown, the Canada Company, or private landlords. ²⁸

The passage of the 1853 act was a significant step in the evolution of parliamentary government in central Canada. Elwood Jonas estimates that these new franchise regulations increased voter participation by about 50 per cent. ²⁹ Edward Kylie compared the

adoption of the Suffrage Bill to the great Reform Bill passed in Britain in 1832. ³⁰ The democratic stature of the Legislative Assembly as an institution was greatly enhanced. Although the transition towards a more modern form of procedure had commenced with the achievement of responsible government, the practical necessity of adopting more effective legislative techniques was made more urgent as the House became more representative of its environment. The changes Josef Redlich associated with the passage of the 1832 Reform Bill, although already begun, accelerated with the implementation of the Suffrage Bill. These changes Redlich identified as making more efficient the time of the House, cutting back on dilatory practices and giving precedence to government business. As will be noted, such developments marked the later years of the Union period.

Another important influence on procedural evolution was the great increase in population experienced by the Canadas during the time. In 1840, the estimated population was 1,080,000 but by 1851 it had grown to 1,842,265. ³¹ Pursuant to An Act to enlarge the Representation of the People of this Province, the size of the Assembly was altered from 84 members to 130. ³² With a greater membership and a more open political process, the business of the House increased. For example, whereas in 1841 around 440 petitions were presented in the Assembly, in 1852-53 nearly 1500 petitions were introduced. In 1841, 93 bills received royal assent. In 1852-53 this number increased to 266. As the parliamentary calendar grew and became more complicated, pressure was exerted on the deputies to further reform the rules.

In 1855, the Legislature enacted An Act to amend the Act for better securing the Independence of the Legislative Assembly of this Province. ³³ The purpose of the act was to clarify section 11 of the previous statute regarding the mode of proceeding in case of vacancies. It provided for the issuing of new writs after a general election and before parliament had met. As opposed to identifying the various government officials who were excluded from sitting in the House, the new act stated that "no person holding any office at the nomination of the Crown in this Province, to which an annual salary or any allowance, fees or emoluments in lieu of an annual salary are attached, shall be eligible as a Member" and any member who accepted such office was to vacate his seat. Executive councillors, however, were eligible to run. The act also made parliamentary life less disruptive for executive councillors who accepted another portfolio. It specified that if an executive councillor resigned his office and within one month after his resignation accepted another, he shall not thereby vacate his seat "any law, use or custom to the contrary notwithstanding". A little more stability was therefore provided to the shaky administrations of the United Province.

Two years later, the provincial parliament repealed both the 1845 and 1855 statutes and enacted An Act further to secure the Independence of Parliament. ³⁴ It was necessitated largely because the former acts protected the independence only of the Legislative Assembly. Now that the Council was elected, further protection was called for. The act extended the same provisions applying to the Assembly to the Council and combined in one act the various regulations pertaining to the independence of the provincial parliament.

The legislature continued its reform of the wording and form of bills. On May 30, 1855, it passed An Act to alter the mode of drawing up the Provincial Statutes. ³⁵ Based on the royal instructions issued in 1792, and referred to in Chapters Two and Three, the Lieutenant Governor was to grant royal assent only to bills which contained the following enacting clause: "Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled ... ", after which was inserted the long title of the Constitutional Act. Following the Union, a similar enacting clause was established with the long title of the Union Act substituted for that of the Constitutional Act. The 1855 statute declared in its preamble that "the form in which the Provincial Statutes are drawn up is needlessly prolix, rendering their publication too expensive, and tending to create confusion in the laws, in lieu of facilitating their comprehension". It abolished the old wording and replaced it by a more simplified form, namely "Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows ...". The removal of the reference to the British statute perhaps indicated a desire by Canadian legislators to do away with the colonial image of the province now that responsible government had been achieved. The 1855 act also declared that the various clauses of a statute "shall follow in a concise and enunciative form".

An Act to provide for the execution of the Office of Speaker of the Legislative Assembly, in certain cases ³⁶ was assented to on June 19, 1856. It followed by one year the enactment of the Deputy Speaker

Act in the United Kingdom. ³⁷ Until its passage, whenever the Canadian Speaker was absent, the Assembly had to adjourn or elect a Speaker pro tempore. In Lower Canada, there were at least four instances in which the House had to adjourn due to the Speaker's absence. In 1808, for example, due to the death of a near relative of Speaker Panet, the Assembly adjourned from Wednesday, February 24 to Saturday, February 27. ³⁸ In the United Province, Speaker MacNab's absence in 1846 due to the state of health of Lady MacNab caused some disruption to the proceedings. A Speaker pro tempore had to be elected to take the Chair and presented to His Excellency the following day. ³⁹ The 1856 statute made it legal for the Speaker to appoint any member to act for him when he found it necessary to be absent "during the remainder of such day". Every act passed and every order made while such member was presiding was to be as valid as if the Speaker himself was there. The act was also made necessary since certain powers had been conferred upon the Speaker by statute, notably the Controverted Elections Act, and these had to be legally transferred to the Acting Speaker. The Canadian act differed from the British one in that the latter specified that the Chairman of Committees would be appointed. In neither Upper Canada nor Lower Canada, nor in the United Province of Canada, was the position of Chairman of Committees ever officially established.

Finally, further revisions were made to the Election Petitions Act in 1857. ⁴⁰ Its purpose was to speed up the obtaining of evidence in cases of controverted elections. John Garner notes that, among other provisions, the act "required the judges to lay aside their other judicial duties on receipt of such an application, to conduct the enquiry, and to transmit the evidence adduced to the Clerk of the

Assembly where it would be laid before the controverted election committee when that body was subsequently appointed. It was intended that this preliminary investigation, while not ruling out the possibilities of a select committee issuing a warrant for its own commission of enquiry, would provide them at the commencement of their deliberations with sufficient tangible evidence to determine expeditiously the disputed return." ⁴¹ The goal of increasing the pace of decision-making was characteristic of the new procedural reform.

3. The Content of Parliamentary Procedure to 1866

A. The Rules and Standing Orders of the Legislative Assembly

The reforms undertaken during the 1840s and early 1850s were advanced much further and the basic manner by which parliamentary government in Canada would function for decades to come was put in place. While rule changes were adopted in an ad hoc manner during the 1850s, another complete revision to the rules and standing orders was made in 1860. ⁴² The two most important areas of procedural reform dealt with were the rules of debate and the organization of the time and business of the House.

(i) The Rules of Debate

A significant procedural change made in the 1860 revision was the restriction of debate regarding certain motions. Three new rules were adopted: (i) "when any Bill shall be presented by a Member ...the

Question 'That this Bill be now read a first time' shall be decided without amendment or debate"; (ii) " ... After Report, the Bill shall be open to debate and amendment, before it is ordered for a third reading. But when a Bill is reported without amendment, it is forthwith ordered to be read a Third time at such time as may be appointed by the House"; and (iii) " ... if the previous question be resolved in the affirmative, the original question is to be put forthwith without any amendment or debate".

During the old colonial system and the first part of the Union period, the general principle was that every motion when seconded would be received and read by the Speaker and debated, if it was not contrary to the rules and privileges of the House. The future direction of Canadian procedure was to reverse this principle. The trend would be to limit debate. This reversal flowed from two sources: (i) the desire to bring Canadian practice into conformity with that of the British House of Commons; and (ii) the change which had occurred in the structure of the Canadian Assembly. With respect to the second factor, up until the Union period, independent members had formed the basic element. They put forward the views primarily of themselves or their constituents as opposed to a group of members. As has been noted, political groupings did exist both in Upper Canada and Lower Canada but they were loosely organized and did not plan to much extent parliamentary debate. More and more in the United Province, the views of members were being expressed by parties. There was no longer a need for unrestricted debate since the opinions of the various groups and therefore of the House could be made known by fewer speakers. Although the 1860 changes were fairly modest, they did indicate the new trend had commenced, one which climaxed in 1913 with the adoption of a standing order that all motions were not

debatable, except for specific ones listed in the rules. ⁴³

Other rules were agreed to which also restricted debate and brought more regularity to the proceedings. No member was to reflect upon any vote of the House, except for the purpose of asking that it be rescinded. No second motion to adjourn was to be permitted until after some intermediate proceedings had occurred. ⁴⁴ When members had been called in preparatory to a division, no further debate was to be permitted.

An important change was also made regarding recorded divisions. It was now agreed that upon a vote or division "the Yeas and Nays shall not be taken down on any question, unless demanded by five Members". The great number of divisions taking place within a session had been characteristic of the parliaments of Upper Canada and Lower Canada and, until 1860, of the United Province. In Upper Canada between 1820 and 1840, the House had an average of three recorded divisions per day. In Lower Canada during the period 1820-1836, the Assembly had a daily average of 1.2 recorded votes. Between 1841 and 1859 in the United Province, the average number of divisions per sitting day was 2.4. The rules obviously contributed to the number of times the Assembly would formally divide. In Upper Canada, the yeas and nays would be taken and entered on the minutes at the request of any one member, while in Lower Canada, the rule was six members. The standing order adopted in 1841 for the United Province stated that recorded divisions would be held if two members required it. By increasing the number in 1860 to five members, the Assembly was attempting to cut down on the time taken for formal

votes and to do away with needless divisions. The rule change also indicated that the role of the individual private member was diminishing in importance. Permitting any two members to hold up the business of the House could be accepted in earlier years when the scope of the business of the House was not great. It could not be accepted in more recent years when the Order Paper had so many items which had to be dealt with. The rule did contribute to reducing the number of divisions. As Table 5.6 shows, from 1861 to 1866, the average number of divisions per sitting was 0.85.

(ii) **The Organization of Time and Business**

The 1860 revision of the rules specified that if at the hour of 6:00 p.m. business was not concluded, the Speaker would leave the chair until half-past seven. This formal recognition of a dinner adjournment indicated that the hours the house was sitting each day were increasing.

Changes to the Assembly's Order Book were made often during the period. On April 11, 1855 the House agreed that it would be "desirable to make a classification of the Orders of the Day and to set apart particular days for the consideration of each clause". Henceforth, the order of business was to be:

1. On Mondays - Public and general measures (not being in charge of Members of the Administration,) to stand first. Private and local measures afterwards.
2. On Tuesdays, Wednesdays, and Fridays - Measures in charge of Members of the Administration.

3. On Thursdays - Private and local measures to be taken up immediately after Routine Business. Afterwards, public and general measures. No Notices of Motions to be proceeded upon. ⁴⁵

This was the first formal recognition within the rules that there were three distinct types of business making up the parliamentary calendar: government business, private members' public business and private business. Due to the great volume within each of the categories, there was a need to separate these items and deal with them on different days.

The arrangement was altered on March 12, 1860 and more specifically defined. The new calendar was as follows:

1. That on Mondays and Wednesdays, Notices of Motions be entertained until the hour of six o'clock, P.M., after which Private Bills on the Paper for the day, then Public Business, that is to say, Bills and Orders of a public nature.
2. That Tuesdays and Fridays be set apart for Government Business; at the termination of which, the House shall be at liberty to proceed upon the Public Business on the paper for the previous day, remaining undisposed of.
3. That on Thursdays, Public Business be first taken up, then Private Business, after which Notices of Motions. ⁴⁶

This arrangement was further changed on May 17, 1861. Business was now fixed as follows. The ordinary daily routine of business would be (i) presenting petitions, (ii) reading and receiving petitions, (iii) presenting reports by standing and select committees, and (iv) motions.

Following routine proceedings, the order of business would be:

Monday - Private Bills, Questions Put by Members, Notices of Motions, Public Bills and Orders

Tuesday and Friday - Government Orders, Private Bills, Public Bills and Orders

Wednesday and Thursday - Questions put by Members, Notices of Motions (until 6 p.m.), Public Bills and Orders, Private Bills (from 7:30 p.m.) 47

Not only were the Orders of the Day to be called at different times, but priority was given to certain items. New rules were adopted in 1860 regarding the ranking of business. Bills reported from Committee of the Whole with amendments were to be placed after third reading bills, followed by those reported from standing or select committees and then amendments made by the Legislative Council to bills originating in the House. In a most significant move which recognized the predominance of government measures it was agreed that "all items standing on the Orders of the Day shall be taken up according to the precedence assigned to each on the Order Book; the right being reserved to the Administration of placing Government Orders at the Head of the List, in the rotation in which they are to be taken on the days on which Government Bills have precedence". It was also agreed that items not taken up when called were to be dropped to the bottom of the list of Orders of the Day.

Such a complex manner of arranging the parliamentary calendar reflected the increased seriousness with which the members approached legislation. Gone were simplified procedures of the early pioneer parliaments of Upper Canada and the incessant disruption of Lower

Canada. The House leaders realized there was a tremendous amount of legislation which had to be dealt with and therefore an organized calendar had to be created. The Order Paper arrangement was one of the more successful procedures established in the United Province.

(iii) Miscellaneous Rule Changes

One of the more interesting procedures adopted in 1860 with respect to private bills dealt with how decisions were to be made in a committee. The new rule stated that "all questions before Committees on Private Bills are decided by a majority of voices, including the voice of the Chairman; and whenever the voices are equal, the Chairman has a second or casting vote". The rule was based on British practice and it obviously facilitated the decision-making process regarding private legislation. Such power did not belong either to the Speaker of the House or to Chairmen of committees studying public matters.

The Assembly also adopted the Westminster practice regarding the regulation of parliamentary agents, or those acting as solicitors for the petitioners of private bills. ⁴⁸ Two rules were adopted:

73. Every Parliamentary Agent conducting proceedings before the Legislative Assembly shall be personally responsible to The House and to The Speaker for the observance of the Rules, Orders and practice of Parliament, and Rules prescribed by the Speaker, and also for the payment of all fees and charges; and he shall not act as Parliamentary Agent until he shall have received the express sanction and authority of The Speaker.

74. Any Agent who shall wilfully act in violation of the Rules and practice of Parliament, or any Rules to be prescribed by The Speaker, or who shall wilfully misconduct himself in prosecuting

any proceedings before Parliament, shall be liable to an absolute or temporary prohibition to practice as a Parliamentary Agent, at the pleasure of The Speaker; provided that upon the application of such Agent, The Speaker shall state in writing the ground for such prohibition.

Such rules reflected the growing concern of the Assembly for the undue influence the solicitors for private bills might have on the legislative process. There were different opinions expressed about such agents at the time. Alfred Todd, the Chief Clerk of the Private Bill Office in the Assembly, wrote that up until the 1860s such agents had "acted in a private and irresponsible capacity".⁴⁹ However, George Benjamin, the author of Short Lessons for Members of Parliament, stated in 1862 that parliamentary agents are parties generally well up in the practice of parliament:

... and who take off a great deal of the drudgery from Members. Parliamentary Agents are now employed in Canada, and they are a very useful class of men, being up to business, do not annoy the Members, nor neglect the interests they have in charge. As yet, there are but two or three engaged in the business, but when the Seat of Government becomes permanent, no doubt the numbers will increase.⁵⁰

Unlike in England, there was no specific resolution of the House that members of parliament could not engage in the management of private bills for pecuniary award. However, a sessional order was passed by the Assembly in 1860 that "the offer of any money or other advantage to any Member of the Legislative Assembly, for the promoting of any matter whatsoever depending or to be transacted in the Provincial Parliament is

a high crime and misdemeanor, and tends to the subversion of the Constitution". 51

In 1862, the Miscellaneous Private Bills Committee recommended further changes to the rules regarding private bills. The alterations, the committee stated, "while involving little or no change in the practice, will have the effect of laying down and defining the same more distinctly, and of providing, moreover, for the protection of parties whose interests may be affected by Private Bill Legislation". The committee also noted that if its recommendations were adopted, the practices of both Houses regarding private bills would be more closely assimilated. A change was recommended and agreed to regarding the powers of the Standing Orders Committee. Not only was the committee to report if the petitioners had given proper notice but if they did not, the committee was empowered to recommend to the House "the course to be taken in consequence of such insufficiency of notice". A new rule was also added. Henceforth "no important amendment shall be proposed to any third reading of the bill, unless one day's notice of the same shall have been given". 52 Amendments to private bills therefore differed from that of public bills, which required no previous notice.

In the last few years of the Union period, further changes were suggested to the rules on private bills but were not concurred in. In 1865 a committee appointed to assist the Speaker in making proper arrangements for the distribution and disposal of the business of the House recommended that private bills be referred to committee after their first reading as opposed to second reading. This course, it suggested

"would be of manifest advantage as regards the progress and thorough discussion of these Bills in the House, (and) it would also enable the Committees to enter upon their duties earlier in the Session and therefore to discharge them better than they can under the present system". The committee also recommended that more time be allotted to private bills. ⁵³ The recommendations were not implemented presumably because, as Christopher Dunkin later explained, there was pressure for other business since the Union legislature would soon be disbanded and a new system of government inaugurated. ⁵⁴

B. The Forms of Proceeding

(1) Legislative Process of Bills

With respect to the legislative process of public bills, the only significant rule changes were the ones making non-debatable the motion for first reading and the motion to concur in a committee report not recommending amendments. The House retained its practice of referring bills after second reading either to standing committees, special legislative committees, or to the Committee of the Whole. On occasion bills would by-pass the committee stage altogether and proceed to third reading. Procedural regularity seems to have been increasingly enforced with respect to the origin of money and trade bills, the financial initiative of the Crown and the acceptability of amendments.

Although bills were not numbered in the Journals but merely referred to by their long title, they were assigned a number in the Order Paper. Bills would be introduced during Routine Proceeding at the opening of the sitting under the heading "Motions", following the presentation of petitions and reports of Committees. Two days' notice was required before bills could be introduced. At the opening of a new session, before the Speech from the Throne was reported by the Speaker, a pro forma bill was usually introduced to provide for the administration of the oath of office to persons appointed to be Justices of the Peace. It was given first reading and proceeded no further. On occasion, however, the House would proceed with more urgent bills immediately. In 1866, two bills dealing with extraordinary measures to protect against the Fenian raids were brought in by the government and given all three readings before the Speech was reported. 55

There was also no great alteration to the management of private business. The fee for private bills giving exclusive privileges to be paid after second reading was fixed at \$60.00 in the 1860 revision. 56 This was a rather substantial amount at the time and perhaps was designed to discourage frivolous requests. It was also agreed that the fee was to be paid only in the House in which the bill originated while the cost of printing was to be paid in each House. After a bill was given second reading and sent to a committee, the rules now provided that all petitions for or against the bill would be automatically referred to the committee as well. As has been noted, Chairmen could have a second vote if a tie occurred.

Examples of such private and local bills were those which sought to incorporate organizations, companies, towns and villages and to amend acts of incorporation; to legalize by-laws made by Town Councils; to naturalize citizens; to divide townships and to consolidate the debts of certain municipalities. Not only did private bills have to abide by parliamentary rules, they also had to conform to the provisions of general acts passed by the House which stated the guidelines and minimum conditions with regard to certain kinds of private bills. For example, the General Railway Clauses Consolidation Act contained the terms upon which royal assent would be given to acts for chartering railway companies. The passage of such an act had been suggested by the Secretary of State for the Colonies and was based on similar legislation in effect in the United Kingdom. Bills were ruled out of order if they were inconsistent with the act. 57

As Table 5.1 shows, the latter part of the Union period was one of great legislative output. An average of 140 bills per session received royal assent. Over half the legislation passed was private or local bills. It would appear that the nature of parliamentary business may have contributed to the instability of the executive branch which so characterized the later years of the United Province. Given that a large part of the parliamentary business was not the responsibility of the government, a change in the administration did not radically alter the

business of the Assembly. Under such circumstances, members may not have been so reticent to bring down governments which they no longer favoured.

This is not to say that the cabinet remained aloof from private legislation. On the contrary, the ministry was often keenly interested and used its majority forces to block private bills which it disagreed with. Its involvement with private legislation was, however, more than behind the scenes. It became particularly involved after the passage in 1849 of the Guarantee Act by which the government would guarantee the interest, at a rate not over six per cent, on half the bonds of any railway over 75 miles in length provided that half the railway had already been built.⁵⁸ In the first part of the 1850s, cabinet ministers, and in particular the Attorney General, would sometimes chair the important Standing Committee on Railways, Canals and Telegraph Lines. In 1854, Sir Allan MacNab was the Chairman. In 1856, Attorney General Cartier, and in 1863 Attorney General John A. Macdonald served as Chairmen.

Governments were also aware of the economic importance of certain private acts and ardently supported their passage. One such example was the Grand Trunk Railway Bill. The concept of this railway was promoted openly by the Hincks government in London in 1851. In 1852-53, the bill to incorporate the Grand Trunk Railway Company of Canada was introduced as a private bill, based on a petition presented by Georges-Etienne Cartier, who was still a private member at the time. It was alleged that Inspector General Hincks had once declared that his government would stand or fall on the fate of the bill in the Assembly. Although the Attorney General William Richards clearly stated that the bill was not a

government measure, the bill did involve provincial guarantees with regard to the construction of the railroad.⁵⁹ Given the possible advantages to trade and communication to the United Province if the bill passed, it was understandable that the government would not stand idly by. However, since it was not a government bill, members of the cabinet could vote as they wished. For example, at report stage, an amendment proposed by Attorney General Richards was opposed by Hincks.⁶⁰

To compensate somewhat for the instability of government and the constant threat of prorogation, both Houses proceeded in the latter part of the Union period to pass a special rule to allow bills whose proceedings were interrupted by prorogation to be re-instated at the stage they had reached in the previous session. This procedure was followed in the sessions of 1864⁶¹ and 1865 (2)⁶² and provided a certain amount of relief to the very heavy legislative agenda.

(ii) Controlling the Administration

With regard to the proceedings for the control of the administration, the use of the vote of confidence has been reviewed in the first part of the chapter. It remained the most effective method of holding an administration in check. It had replaced the more ancient procedures of withholding supply until grievances were redressed and impeachment. None of the administrations was brought down over an appropriation act. Even when governments changed, the same supply bill introduced by one administration would be taken over and carried through by the succeeding administration. For example, the (J.A.) Macdonald-Cartier government resigned on May 20, 1862. The (J.S.)

Macdonald-Sicotte government took office on May 24 and proceeded to sponsor both the supply and ways and means bills which were passed before the session ended on June 9.

Two other practices were established to aid in controlling the executive. In 1852-53, the House agreed to a motion by William Lyon Mackenzie that "it shall be the duty of the Clerk to make and cause to be printed and delivered to each Member, at the commencement of every Session of the Legislature, a List of the Reports or other periodical Statements which it is the duty of any Officer or Department of the Government, or any Bank or other corporate body, to make to the Legislative Assembly, referring to the Act or Resolution, and page of the volume of the Laws or Journals in which it may be contained, and placing under the name of each Officer or Corporation a List of Reports or Returns required of him, or if to be made, and the time when the Report or periodical Statement may be expected".⁶³ The second procedure was the formal establishment within the rules for questions put by members. Oral questions had been asked, more by permission of the House, since the creation of the legislature in 1841. As responsible government evolved, questions became more frequent. Before 1860, they appear to have been asked under the item "Notices of Motions". In 1860, Rule 36 was amended to read that "Two Days Notice shall be given of a Motion for leave to present a Bill, Resolution or Address, for the appointment of any Committee, or for the putting of a Question".⁶⁴ Questions put by members were made part of the daily routine of business, but this was changed the following year when questions put by members were to be asked on Mondays, Wednesdays and Thursdays, days which were not allotted to government business.

The expectations held out for responsible government, and particularly the promise of the vote of confidence, were not entirely fulfilled. Instead of the House controlling the executive, it appeared as if the executive was controlling the House. Charges were made from time to time of the unauthorized expenditure of public money by the cabinet and yet on only one occasion was an administration brought down by the Assembly for doing so. On December 11, 1854, J.S. Macdonald unsuccessfully moved that "this House learns with alarm, that during the year about to expire, not only have Monies been taken from the Public Chest to defray the necessary Expenses of Government, but works and enterprizes involving large liabilities, have been undertaken and carried on with the Public Money", without the consent of the Assembly. The Drummond ministry admitted it had made these expenditures but defended itself on the grounds that the appropriation "could not have been delayed without detriment to the public interests". On May 3, 1861, Antoine Dorion charged that the Cartier-Macdonald administration defied the privileges of parliament by advancing sums to the Grand Trunk Railway "under the sole responsibility of the Executive". His motion was defeated, 48 to 38. On June 14, 1864, Dorion moved another no confidence motion condemning the government for expenditures "made from the Public Chest without the authority of Parliament" again involving the Grand Trunk Railway. On this occasion, the motion was adopted by a margin of 60 to 58 and the Taché ministry resigned. 65

C. The Machinery of Direction and Delegation in the Assembly

(i) Presiding and Permanent Officers

As in the first part of the period, Speakers changed with every parliament and alternated on an English-French or Upper Canada-Lower Canada basis. Just as Speaker MacNab (1844-47) and Speaker Morin (1848-51) assumed leadership roles within the House after leaving the Chair, so did such Speakers as J.S. Macdonald and Louis Victor Sicotte.

The period saw the election of five different Speakers: J.S. Macdonald (1852-54), Louis Victor Sicotte (1854-57), Henry Smith (1858-61), Joseph Edouard Turcotte (1862-63) and Lewis Wallbridge (1863-66). On only one occasion was there no recorded division for the election of the Speaker, that being the election of Henry Smith in 1858. Some Speakers, after being chosen in one parliament, were nominated again in another parliament but not re-elected. Macdonald, after serving in the Fourth Parliament, was nominated in the Fifth. Sicotte was Speaker in the Fifth Parliament and an unsuccessful candidate in the Seventh Parliament.

Unlike the years 1841-51, however, the Speakership became a direct test of the confidence of the government. The winning candidate for Speaker was invariably nominated by a cabinet minister. Inspector General Francis Hincks proposed J.S. Macdonald in 1852. Attorney General J.S. Macdonald nominated Henry Smith in 1858 and Lewis Wallbridge in 1863 and Attorney General G.E. Cartier proposed Joseph Turcotte in 1862. It was openly recognized that the practice of the ministry being involved

in the election of the Speaker differed from that of Britain. In nominating J.S. Macdonald in 1852, Hincks told the House:

It was not the English practice for a member of the Government to propose a Speaker, but it was usual here. He could not forget that as well as being a minister of the crown, he was a representative of the people, and he, therefore, did not think he ought to refrain from taking part in the discussion of this question.

The opposition, however, saw the matter otherwise. Henry Smith claimed that Hincks:

... had said that he did not propose the member for Glengary as a member of the Government, but as a private member of the house. He (Mr. Smith) believed that if the gentleman proposed were defeated, that it would be a ministerial defeat. The ministry themselves had acknowledged this, and had forced supporters to vote for them, by threats of resignation. They had thus coerced their supporters into voting for this proposition, and he challenged them to deny it. Let every gentleman, then, vote independently, and not be cajoled into giving a vote which would hereafter be regarded as a vote of confidence. ⁶⁶

In the following parliament, while no candidate was formally nominated by the weakened Hincks-Morin ministry, the election of Sicotte by the Dorion forces signalled the end of the Reform ministry.

The alternation of Speakers from the two sections of the province was one of the more positive features of pre-Confederation procedure and was obviously used as a means of keeping the legislature united. In nominating Macdonald in 1852, Hincks said: "During three parliaments since the union, the reform party had steadily voted for Lower Canadians -- Frenchmen -- and it was now the duty of the House to elect a member from Upper Canada to that honorable position". Joseph Turcotte explained his support of Macdonald as follows:

(He) was of opinion that the Lower Canadian members of the House in voting for Mr. Macdonald, made a certain sacrifice, because, he felt that, however much Mr. Macdonald understood French, he did not understand it sufficiently to comprehend the purport of what a speaker said. But he believed that Upper Canada had a right to the Speakership and he would ... vote for Mr. Macdonald for the sake of equality between the two sections of the Province. ⁶⁷

The role of the Speaker was becoming more important in the proceedings of the House. Pursuant to the 1851 Controverted Elections Act, he had certain statutory duties to perform in trying election petitions. He ruled on points of order, either on his own volition or when asked to, and did so in a more judicial than partisan manner. The number of decisions increased and Canadian case law developed. Augustin Laperrière, in Decisions of the Speakers of the Legislative Assembly and House of Commons of Canada, records that between 1848 and 1851, Speaker Morin made 8 rulings while ten years later, between 1858 and 1861, Speaker Smith made 56. The increase reflected certain changes in the Assembly, such as longer sittings, a larger volume of business and a greater complexity to house procedures. A list of selected rulings is made in Table 5.8.

The Speaker was charged with preserving order and decorum in the House. In this capacity, he could "name" delinquent members as a preparatory step in having the House expel them.⁶⁸ He was also given the duty of making a statement at the end of the session during the prorogation ceremony. In his statement, the Speaker usually summarized the accomplishments of the session, such as the bills passed and what issues held the attention of the members. He would then present the appropriation bill for the Governor General's sanction. On one occasion, the Speaker, J.S. Macdonald, rebuked the Governor General for dissolving parliament before any bills had been passed. On June 22, 1854, six sittings after the session had begun, the Speaker went up with the House to the Legislative Council to hear the Prorogation Speech. Although he had no bills to present, he spoke anyway and told the Governor:

It is not now part of my duty thus to address Your Excellency, inasmuch as there has been no Act passed or judgement of Parliament obtained, since we were honored by Your Excellency's announcement of the cause of summoning the Parliament by your gracious Speech from the Throne. The passing of an Act through its several stages according to the law and custom of Parliament, (solemnly declared applicable to the Parliamentary proceedings of this Province, by a decision of the Legislative Assembly of 1841,) is held to be necessary to constitute a Session of Parliament. This we have been unable to accomplish owing to the command which Your Excellency has laid upon us to meet you this day for the purpose of prorogation

One of the more important changes in the machinery of direction and delegation within the Assembly was the large increase in the staff employed. In 1856, for example, the total number of officers and messengers paid an annual salary by the House was 30. The organization of the House and number of employees in each section was as follows: Clerk (1); Assistant Clerk (1); Law Clerks and English Translator (2); Office Clerk and Accountant (2); Committee Clerks (3); French Translators (4); Clerks of Journals (2); Librarians (2); Sergeant-at-Arms (1); Junior Clerks and Extra Clerks (8); and Messengers (4). 69

By 1862, the total number of employees paid on a full-time basis was 60. The organization of the House was now established on the basis of departments with the following employees employed in each: Chief's Department (3) (i.e., Clerk, Clerk Assistant and Deputy Clerk Assistant); Law Department (3); Accountant's Department (2); General Department (12) (i.e., Office Clerks, Writing Clerks, Junior Clerks); Committees Department (3); Private Bill Department (4); Translators' Department (10); Journal Department (4); Library Department (3); and Sergeant-at-Arms Department (16). In addition the House hired 96 more employees on a sessional basis as extra writers and messengers, bringing the total employees working in the Assembly to 156. 70

The increase in the size of the staff paralleled the increase in the number of members of the House in 1853 from 84 to 130. The larger staff also reflected the longer sessions and sittings of the Assembly. It indicated as well a greater degree of professionalism within the House bureaucracy. The Canadian parliamentary staff were starting to become

. specialists as opposed to being 'Jacks of all trades'. In 1846, for example, the two Law Clerks also performed the task of English translation. In 1862, there were three persons working only as Law Clerks. Procedurally, an additional Clerk Assistant had been added to the list of Table officers and a department created dealing exclusively with private bills.

Many permanent staff had long years of service within the House. Of the full-time employees in 1862, 11 had served in the old legislatures of either Upper Canada or Lower Canada. Five had been employed before 1830: William Burns Lindsay, Clerk of the House (1808), William Patrick, Chief Office Clerk (1818), Alfred Patrick, Deputy Clerk Assistant (1827), Gustavus Wicksteed, Law Clerk (1828) and Thomas Vaux, Accountant (1829).

The House provided services in both English and French. There were usually parallel English and French positions. Despite the efforts to create a bilingual legislature, there was not complete satisfaction among the members about the services received. In 1859, a French-speaking member moved that "all the Officers employed at the table of this House should be sufficiently acquainted with the English and French languages to be able to translate into, and read in either of the said languages, any motion or document which may be brought before the House". In amendment, an English-speaking member moved "this House having full confidence in its officers and servants, deems it unnecessary to adopt any special order in relation to their appointments or qualifications". A compromise was quickly reached, however, by the adoption of a further amendment which read that: "in the opinion of this

House, it is expedient that all officers hereafter to be appointed to employment at the table of this House should be conversant with both the English and French languages". 71

On May 15, 1862, the Speaker began the sitting by stating "that it was his painful duty to announce to the House the death of its Clerk". The Attorney General, Mr. Cartier, rose and moved "that this House entertains a just and high sense of the distinguished services and exemplary conduct of the late William Burns Lindsay, as its Clerk, and of the efficient manner in which he uniformly discharged the duties of his office; and also, of his faithful services as a Public Officer in various situations, during a period of more than fifty years; and that, as a mark of respect to his memory, this House do now adjourn". The passing of Lindsay signalled a break between the old colonial system and the new parliamentary arrangement achieved with the coming of responsible government. Lindsay's father had been appointed the Clerk of the Legislative Assembly of Lower Canada in 1808. He (the son) had entered the House in 1808, as a Copying Clerk and to attend committees. In 1828, he was made Deputy Clerk of the House and in 1829 succeeded his father as Clerk. In 1841 he was appointed Clerk of the new Legislative Assembly of Canada and stayed in that position until his death. 72

It is difficult to assess Lindsay's impact on the procedure of the pre-Confederation legislatures. As Clerk, he was obviously in a position to influence Speaker's decisions and the adoption of rules. He was a man who could adapt well, as he served under such diverse Speakers as Joseph Louis Papineau in the 1830s and Sir Allan MacNab in the 1840s. He was an important figure in the carry-over of the rules developed in Lower

Canada into the Union period and oversaw procedural reform as responsible government evolved. He represented, as did John Hatsell in the British parliament, the more traditional and ancient position of the Clerk who claimed by virtue of his commission the right to appoint all his deputies and assistants. Although, as mentioned in Chapter Four, this right was challenged by a committee of the House, the House never formally denied that the Clerk did possess this privilege. However, Lindsay always used his prerogative with discretion. In 1852, when asked by the Committee on Contingencies if he claimed the right to appoint all his deputies, he replied that he did but added: "I never exercised that right without first consulting the Speaker of the House, and getting his approval to any appointments or changes required in my Department". ⁷³

Although Lindsay's death represented a change in the Canadian procedural evolution, the break with the past was not entirely complete. Lindsay's son, W.B. Lindsay, Jr., was appointed to succeed his father. Fluently bilingual, he had entered the House in the 1840s and had been named by the Legislative Assembly Clerk Assistant in 1855. Lindsay Junior served as Clerk to the end of the Union period and became the first Clerk of the House of Commons in Canada in 1867. Like his father, he played an important role in the transition of the rules from one era into another.

(ii) Committees

The method of appointing committees was slightly reformed in the 1860 general revision. Hitherto, the rules had provided for two

procedures: (i) a cumbersome practice of permitting each deputy to name one committee member; and (ii) if not objected to by two members, allowing the mover to submit the names of the members. If two members objected, the first method would be reverted to. The new 1860 rule stated that the mover "may submit the names to form the Committee, unless objected to by Five Members; if objected to, The House may name the Committee in the following manner: - each Member to name one, and those who have most voices, with the mover, shall form the same". The wording of the rule disqualifying opposing members was also amended. The old wording was "no Member who declares himself or divides against the body or substance of the Bill, motion or matter to be committed, upon any of the Reading thereof, can be nominated to be of a committee ...". The 1860 wording read "no Member who declares or decides against the principle or substance of a Bill, Resolution, or matter to be committed can be nominated of such Committee". Greater facility was therefore given to opposition members serving on select committees.

The number of standing committees increased from eight to ten. In addition to the committees on (i) Privileges and Elections; (ii) Railroads, Canals and Telegraph Lines; (iii) Expiring Laws; (iv) Miscellaneous Private Bills; (v) Standing Orders; (vi) Printing; (vii) Contingencies; and (viii) Public Accounts, in 1863 there was added the Committee on Banking and Insurance and the Committee on Immigration and Colonization. In 1864, the name of the Banking and Insurance Committee was changed to Banking and Commerce.⁷⁴ The addition of these two new standing committees indicated a recognition of the importance of these subjects by Canadian legislators.

The number of members serving on the committees also increased. Although committees varied in size, in 1852-53 each committee averaged nine members. In 1860, a rule was made that no select committee, without leave of the House, could be more than 15 members. By 1866, the size of most committees ranged from 24 to 33, with three committees having over 40 members: Railroads, Canals and Telegraph Lines had 46 members; Miscellaneous Private Bills had 42 members; and Immigration and Colonization had 41 members. ⁷⁵

The larger memberships reflected the importance of these subjects to the members. Railroads, private bills and immigration were keen topics of interest. Members obviously felt they could have some influence on the legislation which emerged from these committees and therefore wished to become members. There was much criticism in 1852 over the limited number of members proposed to serve on the Railway Committee. George Brown complained that "there were eight names in the Railway Committee from Upper Canada, but everyone of them were members interested in the counties on the front, and on the line chalked out by the government. He went over several counties to show that though greatly interested in the Railway question, they had no representatives on the Railway Committee." ⁷⁶ With the passing of time, the membership on committees became almost open-ended and whoever wished to become a member could do so. In 1863, George Brown was himself a member of seven of the ten standing committees.

Despite the large memberships, attendance at meetings was poor. Although quorums were traditionally to be half the size of the membership, many committees requested the House to reduce their quorum.

In 1858, for example, the Miscellaneous Private Bill Committee which had 25 members asked that its quorum be reduced to 7, as did the Committee on Standing Orders which had 23 members. In 1860, the Committee on Contingencies reported "in view of securing the active operation of your Committee, they recommend that the number of Members be reduced from 28 to 13". ⁷⁷

The committees where attendance was compulsory were the select election committees whose proceedings were regulated by the 1851 Act for the Trial of Controverted Parliamentary Elections. Section 74 of the act stated: "That if any Member of the said Select Committee do not attend in his place within one hour after four of the clock on the day appointed for swearing the Committee ... or if, after attending, any Member depart the House before the said Committee is sworn ... he shall be ordered to be taken into custody of the Sergeant at Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it appear to the House by facts specially stated and verified upon oath, that such Member was by a sudden accident or by necessity prevented from attending the House". There were many instances during the period of members being ordered to appear at the Bar and explain to the House under oath "the course of their non-attendance". ⁷⁸ In most cases their reasons were accepted and they were excused. However, in 1863, three members -- James Morton, Alexander Galt and Jean-Baptiste Mongenais -- were taken into custody by the Sergeant-at-Arms for their neglect of duty. ⁷⁹

In addition to standing committees, the House appointed special select committees to study matters of inquiry and bills after second

reading. Joint committees with the Legislative Council were also established to inquire into special subject matters such as the 1864 Joint Committee for the Advancement of Agriculture in the Province. In 1859, the Joint Committee on Printing was formed and in 1863, the Joint Committee on the Library of Parliament.

9. Parliamentary Privilege in the United Province

As in the preceding period, there were few cases of parliamentary privilege. None involved instances where the freedoms of members were seriously threatened. With respect to cases arising internally within the legislature, the following may be cited. In 1856, it was noted that an amendment made by the House and agreed to by the Legislative Council in the previous session to a bill did not appear when the printed version of the statute appeared. The matter was investigated by a committee of the House and it concluded that the error was not intentional. A bill to correct the error was passed forthwith by both Houses.⁸⁰ On March 1, 1865, a member claimed he had been struck in the face by another member during a sitting. The accused member, Joseph Cauchon, explained his actions by telling the House: "That from words which had been thrown across the House, and which were repeated behind Mr. Speaker's Chair, he went over to the other side to the Honourable Member for Iberville. The Honourable Member having asked him for some explanation of certain words that he (Mr. Cauchon) had used; told him that he was telling a lie. He did not give a slap to the Honourable Member for Iberville, he only touched him on the nose with his finger. He felt that he had committed a gross breach of the privileges of the House, and begged to apologize to

the House for having done so, and to withdraw the language he had used towards the Honourable Member." Cauchon was found guilty of breaching privilege and his apology was taken as sufficient. In 1866, a member, Mr. J.B.E. Dorion, claimed he had been assaulted by Elzéar Gérin Lavoie, the editor of Le Canada, in the Library. Lajoie was ordered into custody and brought before the Bar of the House. Lajoie refused to apologize and instead claimed that Dorion had struck him in the face with a book first. The House resolved, on division, that Lajoie be reprimanded at the Bar by the Speaker and committed to the custody of the Sergeant-at-Arms during the pleasure of the House. 81

With respect to cases arising from events outside the Assembly, many persons were summoned to appear at the Bar of the House in regard to controverted elections, especially returning officers. In 1854-55, 11 persons were summoned. It should be noted that in cases of improprieties during elections, the House had, by statute, authority to punish. Section 159 of the 1851 Controverted Elections Act stated that where non-observance of the provisions of the act took place, by either the Speaker, the Clerk or other officers or any Clerk, Bailiff or other Officer acting under such commission, those persons guilty of such non-observance "may, by order of the said House in its discretion, be taken into the custody of the Sergeant at Arms ... and be otherwise dealt with, at the like discretion of the said House, by censure or imprisonment ...".

As stated in the previous chapter, the nature of parliamentary privilege had changed enormously from that which existed in the old colonial system. The House, having acquired greater sovereignty with the coming of responsible government, felt less threatened by outside

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bodies. Challenges would arise from time to time. In 1859, for example, the Speaker informed that House that since bailiffs were seen serving processes on members in the lobbies of the House, he had given orders that if it occurred again, they would be taken into custody and brought to the Bar.⁸² However, most infractions of privilege were committed by inadvertence as opposed to a desire to restrict the freedoms of members.

4. Summary

By the end of the Union period, parliamentary procedure in central Canada had become fairly complex. Many defined and workable procedures had been established which permitted the Assembly to deal efficiently with a large amount of business. Much had changed since the beginning of parliamentary government in the 1790s. A brief review of some of those changes will be made.

Table 5.9 traces the evolution of the rules and standing orders since 1792. The table shows that, with the exception of the early years of Upper Canada, the pre-Confederation Assemblies had based much of their procedure on written rules as opposed to unwritten customs and traditions. The greatest areas of rule development were private bills, committees and the arrangement of House business. Much of this development occurred with achievement of responsible government. While many of the rules created in 1793 regarding the legislative process of public bills lasted throughout the Union period, important additions were made. These included a fixed ranking on the Order Paper of bills according to how far they had advanced and the restriction of debate on

certain subsidiary motions. A quasi-judicial procedure was created for private bills, the number of which grew tremendously during the Union period. One of the most significant differences between the legislature of the United Province and the parliament of the new Dominion of Canada was the transfer of the bulk of private legislation to the provinces. Pursuant to section 92 of the British North America Act, 1867, each provincial legislature was given exclusive power to make laws regarding "generally all matters of a merely local or private nature in the Province". By placing most private bills under provincial jurisdiction, the federal parliament was better able to focus on public business.

The procedures to control the administration of government used in the early 1800s such as the refusal to pass supply and impeachments were replaced after 1840 by new ones. These were the vote of confidence, addresses that papers be produced, and questions to the ministry. These techniques, which varied in effectiveness, would become the standard procedures for attempting to make government responsible in future Canadian parliaments.

The Speakership changed from a position of political leadership during the old colonial system to one of a more judicial character. To countervail the increasing power the cabinet had over the House, members looked to the Speaker to rule on points of order and to ensure due consideration of minority views in the proceedings of the House. The rule that 'whenever the Speaker is of the opinion that a Motion offered to the House is contrary to the Rules and Privileges of Parliament, he shall apprise the House thereof immediately, before putting the Question thereon ...' became of increasing importance. The government appears to have recognized the political importance of the Speakership and took a direct interest in his election. The choice of Speaker was effectively a test of confidence in the administration.

Committees evolved from an arrangement of ad hoc appointment into a system of permanent committees. Under the old colonial system, committees were important focal points in the parliamentary process. Two factors may account for this: (i) in the absence of responsible government, they were the best forum for examining issues in detail and formulating the views of the House; and (ii) existing party groupings were fairly weak and members were permitted much independence. During the Union period, committees generally were less important. Under responsible government, the representative views of the legislature were expressed in cabinet, not standing committees. Political parties became better organized and members became less independent. Committees grew to unwieldy sizes and lost much of their effectiveness as forums of inquiry.

A comparison of the types of committees established in Lower Canada in 1835 with those of the United Province 30 years later is most revealing of the changing focus of attention of legislators and of the times. Although both Assemblies had created standing committees on privileges and elections, private bills, expiring laws, contingencies and accounts, the Lower Canadian committees on grievances, courts of justice, roads and improvements, lands and seigneurial rights and the Jesuit estates had disappeared. The new committees of the 1860s dealt with such subjects as railroads, canals and telegraph lines, banks and insurance and immigration and colonization.

Parliamentary privilege also evolved from being a broad claim for jealously guarded rights to one whose scope was more restricted. There were fewer and fewer cases of privilege during the Union period and many of these were of a frivolous nature. With the achievement of responsible government there was less pressure on the House to use privilege to exert its sovereignty. With respect to individual claims, the Assembly became more careful not to use privilege to gain rights for its members over and above the rights belonging to all citizens.

Despite its achievements, the United Province parliament was subjected to much criticism and deemed unworkable by its legislators. Efforts were begun in the later years of the period to establish a new constitutional arrangement for the Canadian colonies. Unlike in the 1830s, the new legislative system was not imposed from abroad, nor was an equivalent to Lord Durham's mission sent over from Britain to make recommendations on the form of the future government. The proposals originated internally. On October 12, 1863, in a stunning move, George Brown, an important leader of the opposition, introduced a notice of motion calling for the establishment of a select committee to examine the constitutional question and to recommend remedies acceptable to both Canada West and Canada East. After commenting on it, Brown withdrew the notice on the understanding it would be considered early in the next session.⁸³ In the 1864 session, a special committee was appointed with the following order of reference:

... to enquire into the important subjects embraced in a despatch to the Colonial Minister, addressed to him on the 2nd February, 1859, by the Honourable George E. Cartier, the Honourable A.T. Galt, and the Honourable John Ross, then members of the Executive Council of this Province, while in London, acting on behalf of the Government of which they were members, in which they declared that "very grave difficulties now present themselves in conducting the Government of Canada in such a manner as to show due regard to the wishes of its numerous population;" - That "differences exist to an extent which prevents any perfect and complete assimilation of the views of the two sections;" - That "the progress of population has been more rapid in the Western section, and claims are now made on behalf of its inhabitants for giving them representation in the legislature in proportion to their numbers;" - That "the result is shown by an agitation fraught with great danger to the peaceful and harmonious working of our Constitutional system, and consequently detrimental to the progress of the Province;" ... and the best means of remedying the evils therein set forth.⁸⁴

The committee, chaired by George Brown, reported that it had held eight meetings. It had endeavored:

... to find some solution for existing difficulties likely to receive the assent of both sections of the Province.

A strong feeling was found to exist among the members of the Committee in favor of changes in the direction of a Federative system, applied either to Canada alone, or to the whole British North American Provinces, and such progress has been made as to warrant the Committee in recommending that the subject be again referred to a Committee at the next Session of Parliament. ⁸⁵

The history of the events leading up to Confederation has been told elsewhere and need not be repeated in detail here. ⁸⁶ The major events were that a Great Coalition Ministry formed by Cartier, Macdonald and Brown, whose object was to make a new union, took office in June, 1864. Speaker Wallbridge referred to the coalition in his speech during the prorogation ceremony of that session as "the most prominent and important event in our political history that has taken place for a number of years". ⁸⁷ The Charlottetown Conference took place in September of that year and the Quebec City Conference in October. On February 3, 1865, Attorney General J.A. Macdonald moved that "an humble Address be presented to Her Majesty praying that she may be graciously pleased to cause a measure to be submitted to the Imperial Parliament for the purpose of uniting the colonies of Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island in one government". The Confederation resolutions were debated for 20 sitting days and passed

on March 14. ⁸⁸ In the next session, on July 13, 1866, Attorney General J.A. Macdonald moved a series of resolutions "providing for the local government and Legislature of Lower and Upper Canada respectively when the Union of the Provinces of British North America is effected". These resolutions were debated for four sitting days and passed on August 2. ⁸⁹ There was much criticism by the opposition, particularly from Lower Canadian members led by Antoine Dorion, that the constitutional resolutions not be carried into effect "until the people shall have had an opportunity of expressing their approval thereof". Such criticism was put down decisively by the Assembly. Dorion's no confidence motion in 1866 calling for an appeal to the people was negatived 19 to 79. ⁹⁰ The new Dominion of Canada was established on July 1, 1867 and the new parliament of Canada opened on November 6, 1867.

Table 5.1 - Acts passed by the Parliament of the United Province, 1852 - 1866

Session	Public Acts	Private and Local Acts	Total
1852-3	112 (42%)	154 (58%)	266
1854	0	0	0
1854-5	107 (43%)	144 (57%)	251
1856	65 (47%)	74 (53%)	139
1857	105 (55%)	121 (45%)	226
1858	42 (30%)	100 (70%)	142
1859	63 (48%)	68 (52%)	131
1860	71 (48%)	78 (52%)	149
1861	120 (86%)	19 (14%)	139
1862	39 (36%)	70 (64%)	109
1863	18 (27%)	50 (73%)	68
1863(2)	25 (27%)	69 (73%)	94
1864	60 (35%)	114 (65%)	174
1865	24 (33%)	50 (67%)	74
1865(2)	63 (53%)	56 (47%)	119
1866	62 (36%)	112 (64%)	174
Total	976 (43%)	1279 (57%)	2255

**Table 5.2 - Petitions Presented to the Legislative Assembly of Canada,
1852 - 1866**

Session	Number Presented
1852-3	1490
1854	127
1854-5	2166
1856	2078
1857	1670
1858	1757
1859	1363
1860	1714
1861	728
1862	923
1863	949
1863(2)	277
1864	931
1865	615
1865(2)	237
1866	529

**Table 5.3 - Bills passed by Legislative Council and sent down to
Legislative Assembly for concurrence, 1852 - 1866**

Session	Number
1852-3	24
1854	0
1854-5	22
1856	11
1857	16
1858	22
1859	21
1860	24
1861	19
1862	13
1863	15
1863(2)	18
1864	25
1865	13
1865(2)	17
1866	16

**Table 5.4 - Conferences between the Legislative Assembly
and Legislative Council, 1852 - 1866**

Session	Subject	Ass. Journ. Ref.
1852-3	1. Saguenay Fisheries Bill (amds)	p. 583
	2. Gas and Water Companies Bill (amds)	p. 1104
1854-5	1. L'Assomption Reeves and Radwood Company Bill (amds)	p. 1119
	2. Seat of Government	p. 1259
1857	Rules relating to Private Bills	p. 544
1858	1. Presenting of Journals, etc.	p. 361
	2. Attorney's Bill (amds)	p. 1022
1860	Central Canada Railway Bill	p. 321
1861	1. Rules relating to Private Bills	p. 195
	2. Lévis Incorporation Bill (amds)	p. 376
1862	Ocean Steamship Service Inquiry	p. 169
1863(2)	Bristol Side Lines Bill (amds)	p. 285

Source: Alfred Todd, General Index to Journals of The Legislative Assembly
of Canada, 1852 - 1866 (Ottawa: Hunter, Rose and Company, 1867).

Table 5.5 - Government Defeats on Questions of Confidence in Legislative Assembly, 1853 - 1866

Ministry	Date	Item	Vote	Outcome
1. J.A. Macdonald-Cartier	July 28, 1858	Address to Queen to reconsider choice of capital city and that Ottawa ought not to be permanent seat of Government	64-50	Ministry resigns no dissolution
2. Brown-Dorion	August 2, 1858	Motion to issue Election writ: amdt. that the Administration does not possess the confidence of this House and of the Country	71-31	Ministry resigns no dissolution
3. J.A. Macdonald-Cartier	May 20, 1862	2nd reading of Militia Bill	54-61	Ministry resigns no dissolution
4. J.S. Macdonald-Sicotte	May 8, 1863	Motion to go into Supply Comm: amdt. that the Administration does not deserve the confidence of this House.	64-59	Dissolution
5. J.S. Macdonald-Dorion	March 16, 1864	2nd reading amdt. to Weight and Measures Bill - 3 month hoist	46-46 Speaker breaks tie, votes no.	Ministry resigns no dissolution
6. Taché	June 14, 1864	Motion to go into Comm. of Supply: amdt. that House disapproves of an unauthorized advance of public money	60-58	Ministry resigns no dissolution

Table 5.6 - Voting Divisions in the Legislative Assembly, 1852 - 1866

Session	Number Taking Place	Average Number Per Sitting
1852-3	386	2.7
1854	5	0.8
1854-5	512	3.6
1856	282	3.1
1857	220	3.3
1858	266	2.1
1859	168	2.0
1860	105	1.4
1861	69	1.3
1862	43	1.0
1863	42	0.3
1863(2)	32	0.4
1864	55	0.7
1865	33	0.7
1865(2)	39	1.2
1866	65	1.2

Table 5.7 - Sittings of the Legislative Assembly of Canada, 1852 - 1866

	Provincial Parliament and Seat of Government	Date of Session	Number of Sittings
1852-53	Fourth (Quebec)	August 9 - June 14	144
1854		June 13 - June 22	6
1854-55	Fifth	September 5 - May 30	140
1856	(Toronto)	February 15 - July 1	67
1857		February 26 - June 10	128
1858	Sixth	February 25 - August 16	83
1859		January 29 - May 4	75
1860	(Quebec)	February 28 - May 19	52
1861		March 16 - May 18	52
1862	Seventh	March 20 - June 9	46
1863		February 12 - May 12	48
1863	Eighth	August 13 - October 15	71
1864		February 19 - June 30	78
1865		January 19 - March 18	46
1865		August 8 - September 18	33
1866	(Ottawa)	June 8 - August 15	56

**Table 5.8 - Selected Speaker's Rulings,
Legislative Assembly of Canada, 1852-1866**

<u>Session</u>	<u>Speaker</u>	<u>Journals Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>	
1852-53	Macdonald	p. 127	Motion	Any one member objecting to mover appointing members of committee was sufficient not to receive motion	Yes	Yes
1852-53	Macdonald	p. 248	Bill	Bill inconsistent with provisions of the General Railway Clauses Consolidation Act cannot be proceeded with	Yes	Yes
1852-53	Macdonald	p. 892	Bill	As bill had been read a third time, referred to a committee of the whole before passing, and reported without amendment, motion that bill do pass does not need to appear on Order Paper	Yes	Yes
1852-53	Macdonald	p. 1057	Amendment	Motion to recommit bill to provide for a payment not in order; appropriation contemplated should originate in committee of the whole	Yes	Yes
1854-55	Sicotte	pp.593-4	Motion	Not in order, motion tends to appropriate public monies not recommended by Governor General	Yes	Yes
1854-55	Sicotte	pp.922-3	Amendment	Not in order, no notice given; at third reading, resolutions ought to be declaratory of some principle adverse to the bill	Yes	Yes

Table 5.8 - Selected Speaker's Rulings, (Cont'd)
Legislative Assembly of Canada, 1852-1866

<u>Session</u>	<u>Speaker</u>	<u>Journals Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>	
1854-55	Sicotte	p. 957	Bill	Not in order, unprovided cases rule states rules of British Parliament should be followed, bills relating to trade must first be considered in committee of the whole	Yes	Yes
1858	Smith	p. 15	Petition	Cannot be received as it had not lain on table for two days	Yes	Yes
1858	Smith	p. 526	Amendment	Not in order as no amendment could be made to the question that the Orders of the Day be now read	Yes	Yes
1858	Smith	p. 733	Sub- Amendment	Imperial practice permits but one amdt. to motion that the Speaker do now leave the Chair on questions of supply and ways and means	Yes	Yes
1859	Smith	p. 553	Vote	Rules of House do not apply to members whose votes were excepted to with regard to question that election petition committee be adjourned to next session	No	
1862	Turcotte	p. 175	Motion	Not in order, tends to an appropriation of public monies not recommended by Governor General	No	

Table 5.8 - Selected Speaker's Rulings, (Cont'd)
Legislative Assembly of Canada, 1852-1866

<u>Session</u>	<u>Speaker</u>	<u>Journals Reference</u>	<u>Proceeding</u>	<u>Ruling</u>	<u>Appealed/ Upheld</u>
1864	Wallbridge	p. 379	Bill	Not in order, contains clauses granting public lands in aid of the object of the bill, ought to originate in Committee of the Whole; cites United Province precedent of 1857	No
1865(2)	Wallbridge	p. 191	Previous question	Not an amendment, a member may move the previous question upon his own motion	No
1865(1)	Wallbridge	p. 181	Amendment	No amdt. can be made to adjournment motion except as to the time of adjournment	Yes Yes
1865(1)	Wallbridge	p. 240	Amendment	Amdts. made to private bill ought to be referred to Standing Committee on Standing Orders to see that they are not in excess of the standing order regarding notices	No
1865(2)	Wallbridge	p. 123	Bill	Bill passed by Council as a public bill is a private bill and subject to the rules of private business	No
1865(2)	Wallbridge	p. 228	Vote	Interest which disqualifies a member must be a direct pecuniary interest and not one in common; since bill relates to building societies in general, member is not precluded from voting	No
1866	Wallbridge	p. 299	Bill	Not in order as it affects the public revenue and should have originated in committee of the whole	Yes Yes

**Table 5.9 - Evolution of the Rules and Standing Orders of the
Lower Houses of Lower Canada, Upper Canada and the United Province of
Canada, 1792-1866**
(Number per category)*

(LC - Lower Canada, UC - Upper Canada, C - United Province of Canada)

		<u>1792-3</u>	<u>1802</u>	<u>1825</u>	<u>1837-40</u>	<u>1841</u>	<u>1853</u>	<u>1860</u>	<u>1866</u>
1. Meetings and adjournments	(LC)	3	3	3	3	(C)	3	3	3
	(UC)	-	2	3	3				
2. Quorum	(LC)	4	4	4	4	(C)	2	2	2
	(UC)	1	1	1	1				
3. Minutes and Journals	(LC)	4	5	6	6	(C)	5	4	2
	(UC)	-	1	2	6				
4. Speaker	(LC)	3	3	3	3	(C)	3	3	2
	(UC)	-	3	4	6				
5. Members and Rules of Debate	(LC)	14	14	14	14	(C)	12	12	9
	(UC)	-	5	9	9				
6. Motions	(LC)	9	9	11	11	(C)	11	12	8
	(UC)	2	5	4	4				
7. Divisions	(LC)	1	1	1	1	(C)	1	1	2
	(UC)	-	1	1	1				
8. Legislative Council	(LC)	4	4	5	5	(C)	5	5	5
	(UC)	-	-	2	2				
9. Rules of the House	(LC)	2	2	2	2	(C)	2	2	1
	(UC)	-	2	2	1				
10. Public Bills	(LC)	10	10	12	12	(C)	10	11	10
	(UC)	1.5	2.5	4.5	4.5				
11. Private Bills	(LC)	6	6	13	13	(C)	13	23	26
	(UC)	.5	.5	.5	.5				
12. Petitions	(LC)	2	2	3	2	(C)	2	1	3
	(UC)	1	1	1	4				
13. Aid and Supply	(LC)	2	3	3	3	(C)	3	3	3
	(UC)	-	-	1	1				
14. Committees	(LC)	3	3	4	4	(C)	4	5	7
	(UC)	1	1	7	8				
15. Orders of the Day and Business of the House	(LC)	1	1	2	2	(C)	2	4	10
	(UC)	-	-	1	4				
16. Privilege	(LC)	1	1	1	1	(C)	1	1	1
	(UC)	-	-	-	-				
17. Papers laid before House	(LC)	1	1	1	1	(C)	1	3	2
	(UC)	-	-	-	-				
18. Strangers	(LC)	1	1	1	1	(C)	2	2	2
	(UC)	-	1	-	-				
19. Prayers	(LC)	-	-	-	-	(C)	-	-	-
	(UC)	-	1	1	-				
20. Appointment of messengers	(LC)	-	1	1	1	(C)	1	1	1
	(UC)	-	-	1	1				
21. Questions Put by Members	(LC)	-	-	-	-	(C)	-	-	1
	(UC)	-	-	-	-				
22. Miscellaneous	(LC)	-	5	10	12	(C)	3	19	16
	(UC)	-	-	2	8				
Totals	(LC)	71	79	100	101	(C)	92	117	116
	(UC)	7	27	47	64				

* excludes rules regarding controverted election trials

Endnotes

1. See for example, Kylie, op.cit.; and J.L. Finlay and D.N. Sprague, The Structure of Canadian History (2nd ed.; Scarborough: Prentice-Hall, 1984).
2. These administrations were: (i) Hincks-Morin (1852-54); (ii) MacNab (Taché)-Drummond (1854-56); (iii) J.A. Macdonald-Cartier (1856-58); (iv) Brown-Dorion (1858); (v) Cartier - J.A. Macdonald (1858-62); (vi) J.S. Macdonald-Sicotte (1862-63); (vii) J.S. Macdonald - Dorion (1863-64); (viii) Taché (1864); and (ix) Taché (coalition) (1864-66).
3. Kylie, op. cit., p. 147.
4. Quoted in H.D. Forbes, Canadian Political Thought (Toronto: Oxford University Press, 1985), p. 31.
5. Quoted in Stanley B. Ryerson, Unequal Union (New York: International Publishers, 1968), p. 255.
6. See House of Commons Journals, December 20, 1867, pp. 115-125.
7. Kylie, op.cit., pp. 131-135.
8. Assembly Journals, 1849, p. 318.
9. For a list of the cities, dates and buildings of the various capitals of the United Province, see Michel Desgagnés, Les édifices parlementaires depuis 1792 (21ème édition; Québec: Assemblée nationale du Québec, 1979), pp. 79-80.

10. Assembly Journals, 1854-55, pp. 745-746.
11. Assembly Journals, 1857, p. 133.
12. Finlay and Sprague, op.cit., p. 173.
13. Assembly Debates, 1854-55, p. 3170. Macdonald may have been interpreting the rule in terms of the old Rule 74 adopted in 1841, which was originally established in Lower Canada in 1821. That rule stated that "whenever a petition tending to incorporate any number of persons to carry on any commerce or trade, is presented to this House, such of the Members of the House who are to become incorporated in consequence of such petition to carry on such commerce or trade, are personally interested in all questions that may arise upon such Petition, and in any after proceeding that may take place upon it". Rule 74, however, was eliminated in the 1853 revision.
14. These rules were recommended to be sessional orders by the 1860 committee on the revision of the rules. See Assembly Journals, 1860, pp. 396-405. See also Assembly Journals, 1861, p. 9.
15. See Finlay and Sprague, op.cit., p. 158.

16. See Carl Berger, ed., Approaches to Canadian History (Toronto: University of Toronto Press, 1967), pp. 15-28.
17. Robinson, Canada and the Canada Bill, p. 43.
18. Assembly Journals, 1856, pp. 566-67.
19. Assembly Journals, 1858, p. 843; 1861, pp. 31-32.
20. Robert A. MacKay, The Unreformed Senate of Canada (Toronto: McClelland and Stewart, Carleton Library, 1963), pp. 28-29.
21. An Act to Empower the Legislature of Canada to alter the Constitution of the Legislative Council for the Province and for other purposes, United Kingdom Statutes 17 and 18, Vict., c. 118.
22. Assembly Debates, March 27, 1855, p. 2469.
23. Canada Statutes, 19 Vict., c. 140.

24. Assembly Debates, March 27, 1855, pp. 2470, 2482.
25. MacKay, op.cit., pp. 30-31.
26. Assembly Journals, 1860, p. 351.
27. Canada Statutes, 16 Vict., c. 153.
28. Garner, op.cit., p. 107.
29. Jones, op.cit., p. 25.
30. Kylie, op.cit., p. 136.
31. Finlay and Sprague, op.cit., p. 481.
32. Canada Statutes, 16 Vict., c. 152.
33. Canada Statutes, 18 Vict., c. 86.
34. Canada Statutes, 20 Vict., c. 22.
35. Canada Statutes, 18 Vict., c. 88.

36. Canada Statutes, 19 Vict., c. 41.
37. U.K. Statutes, 18 and 19 Vict., c. 84.
38. See Assembly Journals, Lower Canada, 1802, p. 72; 1808, p. 172; 1810-1, p. 440; 1830, p. 235.
39. Assembly Journals, 1846, pp. 83, 88.
40. Canada Statutes, 20 Vict., c. 23.
41. Garner, op.cit., p. 210.
42. Assembly Journals, 1860, pp. 395-405.
43. See Dawson, op.cit., p. 169.
44. This new rule was agreed to on March 6, 1855 on division. See Assembly Journals, 1854-55, p. 634.
45. Assembly Journals, 1854-55, p. 823.
46. Assembly Journals, 1860. p. 47.
47. Assembly Journals, 1861, pp. 372-73.

48. See May, Parliamentary Practice (18th ed.), p. 862.
49. Alfred Todd, op.cit., p. 11.
50. [Benjamin], op.cit., pp. 48-50.
51. Assembly Journals, 1860, p. 404.
52. Assembly Journals, 1862, p. 351.
53. Assembly Journals, 1865, pp. 200-203.
54. House of Commons Debates, December 20, 1867.
55. Assembly Journals, 1866, p. 2.
56. Assembly Journals, 1860, p. 400.
57. Assembly Journals, 1846, pp. 270-271.
58. An Act to provide for affording the Guarantee of the Province to the Bonds of Rail-way Companies in certain conditions and for rendering assistance in the construction of the Halifax and Quebec Rail-way, Canada Statutes, 12 Vict. c. 29.
59. Assembly Debates, 1852-53, p. 1247, p. 1267.

60. Assembly Debates, 1852-53, pp. 1247-8.
61. Assembly Journals, 1864, p. 36.
62. Assembly Journals, 1865 (2), pp. 16-17.
63. Assembly Journals, 1852-53, p. 23.
64. Assembly Journals, 1860, p. 398.
65. See Assembly Journals, 1854-55, pp. 509-10; 1861, pp. 226-7; 1864, pp. 285-286.
66. Assembly Debates, 1852-53, pp. 2-3.
67. Assembly Debates, 1852-53, p. 4.
68. Assembly Journals, 1852-53, p. 126.
69. Assembly Journals, 1856, p. 84.
70. Assembly Journals, 1862, Appendix No. 2.
71. Assembly Journals, 1859, p. 323.
72. Assembly Journals, 1844-45, p. 127; 1862, p. 210.
73. Assembly Journals, 1852-53, p. 451.

74. Assembly Journals, 1864, pp. 63-64.
75. Assembly Journals, 1866, p. 4.
76. Assembly Debates, 1852-53, p. 22.
77. Assembly Journals, 1860, p. 46.
78. See Assembly Journals, 1854-55, pp. 419-20; 1859, p. 254; 1863(2), p. 214.
79. Assembly Journals, 1863(1), pp. 16-17.
80. Assembly Journals, 1856, pp. 125-126. The bill in question was to incorporate the Champlain and St. Lawrence Railroad Company.
81. Assembly Journals, 1866, p. 257, pp. 263-265.
82. See Laperrière, op.cit., p. 30.
83. Careless, ed., The Pre-Confederation Premiers: Ontario Government Leaders, 1841-1867, pp. 285-286.
84. Assembly Journals, 1864, pp. 383-84.
85. Ibid., p. 384.
86. See P.B. Waite, The Life and Times of Confederation, 1864-1867 (Toronto: University of Toronto Press, 1962); D.G. Creighton, Road to Confederation: The Emergence of Canada, 1863-1867 (Toronto: Macmillan, 1964); Ontario Historical Society, Profiles of a Province (Toronto: Ontario Historical Society, 1967); Joseph

Pope, ed., Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act (Toronto: Carswell, 1895); Peter J. Smith, "The Ideological Origins of Canadian Confederation", Canadian Journal of Political Science, 20 (1987), pp. 3-29.

87. Assembly Journals, 1864, p. 507.
88. See Assembly Journals, 1865, February 3, 6, 7, 8, 9, 16, 20, 21, 22, 23, 24, 27 and 28 and March 3, 6, 7, 8, 9, 10 and 13. See also Parliamentary Debates on the Subject of the Confederation of the British North American Provinces (Quebec: Hunter, Rose and Co., 1865).
89. See Assembly Journals, 1866, July 13, 27, 31 and August 2. The resolutions were carried on August 2. The address to the Queen praying that the measure be submitted to the Imperial parliament was passed on August 11.
90. Assembly Journals, 1866, p. 13.

Chapter Six - Conclusion

1. The Significance of Parliamentary Procedure

There is often a perception that parliamentary rules are limited in their significance and meaning in that they are concerned primarily with the preservation of order and unconcerned with the exercise of power or for what purpose. Thomas Hobbes in Leviathan referred to civil laws as "Artificiall Chains" made by men in civil society "for the atteyning of peace, and conservation of themselves thereby".¹ One of the most celebrated procedural textbooks, Jefferson's Manual, expresses this Hobbesian view of parliamentary procedure in its introduction: "And whether these forms be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is; that there may be an uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members. It is very material that order, decency and regularity be preserved in a dignified public body."²

This dissertation submits that the importance of parliamentary procedure goes well beyond the mere maintenance of order. Erskine May, Jeremy Bentham and Josef Redlich identified three purposes of parliamentary procedure. Erskine May believed procedure had a constitutional purpose and was a means by which constitutional and other legal functions could be implemented. Jeremy Bentham viewed procedure as a method to achieve rationally certain goals or ends set by the legislators themselves that went beyond constitutional law. Members could 'think' about the rules they made and need not be bound by custom or precedent. In contrast to May's constitutionalism and Bentham's rationalism, Josef Redlich emphasized the political nature of procedure and the functions it performed within the broad political system.

With respect to the applicability of the interpretations given by May, Bentham and Redlich as modes of explanation of pre-Confederation procedure, the foregoing analysis has shown that they all revealed important factors which influenced procedural evolution. The constitutional approach emphasized the impact of the various constitutional and provincial acts, royal instructions and certain constitutional conventions such as those associated with responsible government. The goal orientation approach pointed to the importance of such factors as the desire by Upper Canadian members for rapid economic development and the desire by French-speaking Lower Canadian members to use procedure to ensure la survivance of their people. The contextual approach focused attention on such variables as party development, population growth, ideological differences, the social structure of the Assemblies, the link between business and politics, and racial, religious and regional cleavages.

The preceding study has also shown that taken by themselves each of the interpretations fails to provide a complete explanation of the development of procedure in central Canada. May's approach fails to analyse the human and political elements which also influenced procedural evolution and places too great an emphasis on the legal nature of legislative practice. His definition of procedure as a method of discharging constitutional duties offers little explanation of the procedural problems of Lower Canada where, as Governor General Gosford claimed in his 1837 Prorogation Speech, there had occurred "a virtual annihilation of the Constitution under which the Legislature derives its existence". The approach fails to account for the impact of such factors as nationality and economic goals and poorly explains the role the Speaker played in the Assemblies of Upper Canada and Lower Canada. Bentham's goal orientation approach does not pay enough attention to either the law of parliament or such variables as political party conflict. The changes made to pre-1867 legislative practice did not come about primarily because the members' goals for procedure had altered. Other factors, namely constitutional evolution and the development of

political parties, had greater importance. Redlich's interpretation downplays the importance of constitutional functions and over-emphasizes the influence of societal variables. With respect to the pre-Confederation era, many members undoubtedly saw themselves as being on the Crown's business to make laws for the good of their province. Petitions were often impartially judged on their merits. Certainly the proceedings regarding private bills evolved into ones conducted on a quasi-judicial basis. Members had important statutory duties to perform in judging controverted election petitions. The way the Assembly organized its business during the Union period resembled in certain ways the manner by which actions were treated by the courts.

With regard to the influence of the social environment, situations developed where the major societal cleavages were not reflected in parliament. Whereas in Lower Canada the major environmental divisions were represented in the legislature in the days leading up to the armed rebellion of 1837, this was not the case in Upper Canada, where the forces favouring an uprising had been defeated in the 1836 election and did not hold seats in the Assembly when the rebellion occurred. There was little indication in the Upper Canadian Journals of 1836 and 1837 of the House that a crisis was even at hand. As well, Redlich's depiction of the functions legislative practice performs is too limited. Redlich writes that the fundamental character of British House of Commons procedure in the seventeenth century was "the procedure of an opposition" but following the passage of the 1832 Reform Act it became a means for the disposing of business and "an aid to the Ministry in governing".³ Legislative practice cannot be reduced to such simplified characterizations.

The significance of procedure is much greater than being a method either to obstruct the exercise of power or to establish efficiency in government. The functions of procedure are legal and psychological in nature as well as political. Legislative practice is a complex process

and must be viewed in the totality of its roles. It is a tool to implement constitutional, psychological and political objectives set by members in the course of their work and may vary from one assembly to another. Procedural crises occur when these three objectives work at cross-purposes and become dysfunctional. Parliamentary rules alone cannot ensure order. To increase procedural stability within a legislature, presiding officers who render rulings and House leaders who study procedural reform should always take into consideration the constitutional, psychological and political nature of parliamentary practice. It cannot be claimed that there is one standard form of parliamentary procedure: each legislature can establish practices to suit its own needs. Proper procedure can only be defined in terms of an assembly's own methods of proceeding. To use the rules of other parliaments to determine unprovided cases can cause confusion and may add practices which are not appropriate to the assembly.

2. Procedure and the Nature of Canadian Society

A. The Major Characteristics of Pre-Confederation Practice

A review of the literature on Canadian procedure shows there has been no systematic analysis of the evolution of central Canadian legislative practice from its origins to Confederation. The years 1792 to 1866 do not remain completely unilluminated however. Specific subjects have been ably addressed, notably private bill procedure by Alpheus Todd, Alfred Todd and Alfred Patrick, rulings by the Chair by Augustin Laperrière and parliamentary privilege by Joseph Maingot. Two manuals of Canadian procedure were written by legislators of the period to guide members in their deliberations, specifically A Manual of Parliamentary Practice, by H.C. Thomson in 1828 and Short Lessons for Members of Parliament, by George J.P. Benjamin in 1862. Bourinot's Parliamentary Procedure and Practice traced the development of parliamentary institutions in Canada since the French regime to Confederation and cited many pre-1867 case law procedural precedents. In

the more recent academic vein, W.F. Dawson's Procedure in the Canadian House of Commons, and Henri Brun's, La formation des institutions parlementaires québécoises, offered certain hypotheses regarding pre-Confederation procedure.⁴ The general conclusions drawn from these studies were the following. In its formative years, central Canadian procedure was primitive, based primarily on custom, with comparatively few written rules. The British parliament was the dominating model of development with neither the United States nor France having much influence. The major stimulus in procedural evolution was the growing tension between private members and government over control of the time of the House, but during this early period, given that responsible government had only been achieved in 1849, such tension was fairly minor. Notwithstanding the imperial influence, certain local practices developed, notably a greater liberality within the parliamentary system, a rapidity of decision-making and an English-French entente with respect to the languages by which proceedings could be conducted.

This dissertation has shown that many of these attributes did exist but suggests that they should be more accurately described. Upper Canadian procedure was quite primitive in its early years but Lower Canadian practice was not. Canadian procedure was based not so much on custom but on legal instruments such as the Constitutional Act, 1791, royal instructions and certain provincial statutes as well as written rules. The British parliament represented the prime development model, but its applicability was not entirely relevant because a different law of parliament governed the old colonial system. The American model influenced procedure in areas other than the provision of desks for members, pages and roll-call votes. It also influenced the choice of

procedural authorities by members, shown by the widespread use of Jefferson's Manual in Upper Canada, the role of the Speaker, the system of committees and the previous question procedure. The French parliamentary model may have had some influence with regard to the system of committees used in Lower Canada.

The major stimuli in procedural evolution were: (i) constitutional developments, in particular the movement from the old colonial system towards responsible government and later to Confederation; (ii) the goal orientations of Upper Canadians toward rapid social and economic development and of French-speaking Lower Canadians toward national survival; and (iii) the development of political parties. The major tension in Canadian procedural evolution was not so much between government and private members for control of the time of the House, but between private business and public business. Certain practices were developed which were in variance with the Westminster model, the most important being rapid decision making, a bilingual approach to the conduct of parliamentary government in both Lower Canada and in the United Province, and the alternation of Speakers on a French-English basis in each parliament of the United Province.

B. Procedure as a Link Between State and Society

Rudolf Gneist in The English Parliament in Its Transformations Through a Thousand Years and Josef Redlich in The Procedure of the House of Commons regarded parliamentary government as a connecting link between state and society. In the Canadian context, how much of a state-society

link was parliamentary procedure and what does it reveal about the nature of pre-Confederation society and the pre-Confederation Canadian state?

Under the old colonial system of government, some procedures were imposed upon the provincial parliaments through the Constitutional Act and royal instructions. These legal provisions were important and formed the basis of the legislative process used. However, both Houses of Assembly were fairly free to choose the procedures with respect to how their chambers were to operate. There was no legal obligation to follow British procedure outside of the practices described in these instruments. Even the rules adopted linking their standing orders to those of the British House of Commons had an important condition attached. The regulation agreed to by Lower Canada in 1793 and by Upper Canada in 1802 stated: "That in all unprovided cases resort shall be had to the rules, usages and forms of the Parliament of Great Britain, which shall be followed until this House shall think fit to make a rule or rules applicable to such unprovided cases". 5

Pre-Confederation procedure had the potential of serving as a link between state and society and, in certain ways, did reflect social conditions. Upper Canada's original legislative practice was not excessively complicated and reflected pioneer conditions. As the province grew in population and socially and economically developed, procedure became more formalized and the number of rules increased. Lower Canadian procedure was less reflective of a pioneer society since French Canadian society had been in existence for over 100 years and many

social institutions and structures, including a developed legal system, had been established by 1792. The legislative practice of Lower Canada was more complicated than that of her sister province and many more procedural rules were adopted.

Petitions emanating from the public represented an important procedural connection with the social environment. The number presented increased with the development of central Canada. In Upper Canada between 1792 and 1820, an average of 23 petitions per session was presented. That number grew to 105 between 1821 and 1829 and to 335 between 1830 and 1840. In Lower Canada, the average number per session was 14 between 1792 and 1820, 40 between 1821 and 1829, and 130 between 1830 and 1837. In the United Province, 600 petitions were presented each session between 1841 and 1851, and 1100 per session between 1852 and 1866.

The importance of the state-society link should not be exaggerated, however. In both colonies, parliamentary procedure was restricted in its evolution since under the old colonial system the assemblies remained non-sovereign legislatures. Accountability mechanisms were weak because the Houses had a limited constitutional role in the financing of the administration of government and royal instructions did not require governors to choose their advisors from amongst the leading members of the Assembly. In spite of social environment conditions which encouraged a more democratic parliamentary process, the constitutional structure remained autocratic.

With the establishment of responsible government, new practices were adopted, including the vote of confidence and questions to ministers, and the link with society was strengthened. Paradoxically, legislative practice became more similar to that of Great Britain in the post-1841 era than it had been under the old colonial system. The new procedures adopted under responsible government were not merely transplantations. Parliamentary leaders, like Robert Baldwin, recognized their usefulness as techniques in conducting business in a modern state. Westminster's procedures giving the financial initiative in legislation to the Crown, its arrangement of parliamentary business on the Order Paper, and its system of committees were looked upon favourably since they had been tried and seemed to work.

Certain themes which have characterized Canadian society were reflected by pre-Confederation procedure, perhaps not to their fullest extent, but to a significant degree. Such themes included economic development, democracy, the slow growth of a Canadian national identity and English-French relations. Other subjects were reflected either in a minor way, or not at all; for example, the conflict during the Union period between western agrarian areas and eastern business interests, class conflict which was in evidence on the canals of Upper Canada and in the rapidly growing areas of Montreal and Toronto and the influence of the Church in French Canada and its dispute with the Patriote and later the Rouge members of the Assembly. At certain points in the pre-Confederation era, the legislative assemblies seemed to be cut off from the reality of the social environment. As has been noted, the Journals of Upper Canada at the time of the rebellion do not portray the crisis which existed. Some themes were slow to develop. Concerns over railway

morality were voiced in newspapers and other media long before the Legislative Assembly took action in 1860 by adopting sessional orders regarding conflict of interest.

Despite the tenuous nature of the state-society link, parliamentary procedure does provide certain insights into important subjects of Canadian history. The themes of economic development, democracy, the growth of a national identity and English-French relations will be analysed separately.

(i) Economic Development

Economic development was a major goal of parliamentary procedure in the pre-Confederation period. Yet the goal was achieved in almost a negative way. The legislatures seemed to be determined not to let parliamentary procedure stand in the way of development and adopted an almost laissez-faire approach. In Upper Canada, there was no constitutional requirement that bills which called for the appropriation of public money had to be first recommended by the Crown's representative. The financial initiative was not restricted therefore to the government. Such a procedural environment facilitated the passage of money bills which contributed to the economic development of the province. The only rule pertaining to money proposals was that such motions would be referred to a Committee of the Whole before being voted upon. Up until the 1850s, few procedural regulations were placed on the presentation of private bills dealing with the granting of special legal privileges to private individuals or corporations, making the introduction of bills relating to private enterprise comparatively easy. Even the modest 1841 restriction that petitioners for private bills

should deposit a fee to pay for the costs attending on such bills was opposed by many members such as William Merritt, who claimed that the rule "imposes an unnecessary restriction, and may deter individuals from applying for an incorporation for the improvement of the Country, by Canals, RailRoads, etc. and with-hold the introduction and concentration of capital for other public uses". 6

Lower Canadian procedure was not quite as laissez-faire with respect to economic development. It too specified that motions for public aid or charges would be first referred to a Committee of the Whole. Up until 1834, the House of Assembly enforced the rule that it "will receive no petition for any sum of money relating to the public service but what is recommended by His Majesty's Governor". It adopted more rules than did Upper Canada regarding private bill legislation, including cut-off dates as to when private petitions were to be received and the establishment of private bill fees. Although more restrictive than her sister province, Lower Canadian practice was certainly much less formalized than that of Great Britain where by 1810 over 130 standing orders had been adopted regarding private legislation. Lower Canada never adopted more than 13 such rules.

Lower Canada was also more disposed than Upper Canada to blocking the passage of appropriation bills in order to obtain redress of political grievances, even at the expense of hindering economic development within the colony. In Upper Canada, rarely was supply not granted. Even during the Twelfth Parliament when the colony was nearing the outbreak of open rebellion, there was a reluctance on the part of the Reformers to withhold supply.

Economic legislation passed fairly quickly in Upper Canada. So vigorously did the Assembly pursue economic objectives that at times it acted uncautiously and had to be restrained by imperial authorities. Between 1835 and 1837, over 40 bills passed by both Houses were reserved, many of which dealt with chartered banks. In his despatch of November 27, 1837, the Colonial Secretary, Lord Glenelg, wrote that if royal assent had been given to the reserved bank bills:

... they could not, in the existing state of trade, have been carried into effect (T)heir effect would be to increase the aggregate capital of the Chartered Banking Establishments in the Province from 500,000 [pounds] to 4,500,000 [pounds] and to confer a power of issuing and circulating notes to the extent of 13,500,000 [pounds]. To introduce at once changes of such magnitude in the commercial and financial operations of a country possessing not more than 400,000 inhabitants ... is evidently impossible. ⁷

Economic development remained an important goal of the Canadas after 1841. While more procedural restrictions were adopted, including restoring to the Crown the financial initiative and adopting more private bills rules, the parliamentary calendar abounded with bills to foster economic development. With the passage of the Guarantee Act in 1849, the government's interest in the passage of railway legislation increased. The Attorney General sometimes chaired the important Standing Committee on Railways, Canals and Telegraph Lines. Allegations were made that cabinet ministers and members of the Assembly often promoted the passage of economic development bills from which they personally profited. T.C. Keefer, in Eighty Years of Progress of British North America, depicted representatives as being under the corrupting influence of railway agents. Keefer wrote:

One bold operator organized a system which virtually made him ruler of the province for several years. In person or by agents he kept "open house" where the choicest brands of champagne and cigars were free to all the people's representatives, from the town councillor to the cabinet minister; and it was the boast of one of these agents that when the speaker's bell rang for a division, more M.P.s were to be found in his apartments than in the library or any other single resort! ⁸

The procedural rules and practices reveal the following about Central Canada: (i) economic development was highly valued by pre-Confederation deputies and presumably by pre-Confederation society. This was an understandable occurrence given the legal foundations of private property and freedom-of-exchange upon which Canadian society was based and the fact that the two provinces were rich in natural resources and geographically situated in a favorable position; (ii) state restrictions on economic development, such as procedural rules, were unwelcome, even though those which were imposed did not nearly approach the ones in operation in Great Britain. The approach taken was almost laissez-faire. As a result, procedure contributed to the unplanned development which central Canada experienced in the nineteenth century; (iii) up until the 1850s, the state played very poorly if at all the role of ensuring that the public was protected when private bills were passed and that the exclusive rights bestowed on individuals did not infringe on others' rights. Alfred Todd's observation that there was "comparatively little risk of infringing upon existing rights or privileges" ⁹ in central Canada may have had validity in the early years of development. However, by the time of the Union, the combined population of the two provinces was over a million and the potential that private bills would

affect existing rights was much greater. The way the representatives approached the management of private business suggests they placed a greater importance on individual needs than on public needs. Through its adoption of more complicated standing orders regarding private legislation, the House began to perform a more judicial function regarding private bills, but not to the extent that the British parliament did; and (iv) while economic development was emphasized, 'human' development was not. It was only in 1863 that a standing committee on immigration was established, despite the fact that central Canada was situated at the very cross-roads of the great immigrant movement from Europe of the nineteenth century. Agriculture, canals, internal improvements and the incorporation of banks and insurance companies were subjects of greater priority for members than those relating to the social problems of early Canadian life.

(ii) Democracy

The importance of parliamentary procedure in the achievement and maintenance of democratic government has been noted by such political theorists as John Locke and Alexis de Tocqueville. Locke stressed that such procedures as parliamentary privilege ensured a legislature's freedom of debate and warned that if those privileges were violated, constitutional government would collapse. In Treatise of Civil Government, Locke wrote:

When the prince hinders the legislative from assembling in its due time, or from acting freely, pursuant to those ends for which it was constituted, the legislative is altered. For it is not a certain number of men, no, nor their meeting, unless they have also freedom of debating and leisure of perfecting what is for the good of the society, wherein the legislative consists. When these are taken away or altered so as to

deprive the society of the due exercise of their power, the legislative is truly altered. For it is not names that constitute governments, but the use and exercise of those powers that were intended to accompany them; so that he who takes away the freedom, or hinders the acting of the legislative in its due seasons, in effect takes away the legislative, and puts an end to the government. 10

De Tocqueville felt that procedural forms, such as legislative rules, mediated power and protected the weak from the strong, even though such rules were often resented. In Democracy in America, de Tocqueville stated:

Men living in democratic centuries do not readily understand the utility of forms; they feel an instinctive contempt for them Forms arouse their disdain and often their hatred. As they usually aspire to none but facile and immediate enjoyments, they rush impetuously toward the object of each of their desires, and the least delays exasperate them. This temperament, which they transport into political life, disposes them against the forms which daily hold them up or prevent them in one or another of their designs.

Yet it is this inconvenience, which men of democracies find in forms, that makes them so useful to liberty, their principal merit being to serve as a barrier between the strong and the weak, the government and the governed. Thus democratic peoples naturally have more need of forms than other peoples, and naturally respect them less. 11

Under the old colonial system, democracy was quite restricted. According to the Constitutional Act, government was to be a balance between the monarchical, aristocratic and democratic elements. As Professor Wise has noted, the 1791 Act reflected the Toryism of the late eighteenth century England which he describes as "a conservatism freshly

minted into a fighting creed through Edmund Burke's philippics against the French Revolution".¹² Given such a constitutional arrangement, it is not surprising that parliamentary procedure was generally unreflective of democratic values. Bills passed by the elected Houses in both Upper Canada and Lower Canada could be blocked by the unelected Legislative Councils or reserved or disallowed by the Crown's representatives. Detailed legislative practices were not developed since the political and constitutional role of the elected Assemblies was not very important.

Not all procedures, of course, could be described as undemocratic. Certain procedures such as the practice of referring petitions to committees for examination and the extensive use of committees for special inquiries strengthened representative government. Given the constitutional position of the Assemblies, however, their effectiveness was limited. In de Tocqueville's terms, previous to 1841, legislative rules were not very much needed to mediate power since the assemblies had very little constitutional power.

Parliamentary procedure mirrored not only the undemocratic constitutional arrangement but also the dominant social values of the time which on the whole regarded democracy with scepticism. Leading members of the Upper Canadian Assembly, such as John Beverly Robinson, defended the right of the Legislative Council to block Assembly bills. Robinson claimed:

A power of legislation in such important matters as the making canals [sic] and railroads, and regulating the police of the whole country, could not, with any degree of prudence or propriety, be instructed to the wisdom and disinterestedness of a single elective assembly. Without check from another body, which might be less liable to be influenced by temporary causes of excitement, and more independent of popular

caprices, they would assuredly soon become anything but a blessing to the community. 13

Following the terrorism of the French Revolution, many leaders of French Canadian society, such as the clergy, also were not enamoured with democratic institutions. According to Monseigneur Plessis of the Seminary of Quebec, the Legislative Assembly should have no share in sovereignty. Its function was only to express an opinion to the Crown. 14

Compared to colonial America, which followed a British type of parliamentary government, central Canadian procedure was generally more conservative and less democratic. The role of the Canadian lower houses never equated to that played by their American counterparts. With respect to royal government in America, Jack P. Greene has written:

The rise of the representative assemblies was perhaps the most significant political and constitutional development in the history of Britain's overseas empire before the American Revolution. Crown and proprietary authorities had obviously intended the governor to be the focal point of colonial government with the lower houses merely subordinate bodies called together when necessary to levy taxes and ratify local ordinances proposed by the executive. Consequently, except in the New England charter colonies, where the representative bodies early assumed a leading role, they were dominated by the governors and councils for most of the period down to 1689. But beginning with the Restoration and intensifying their efforts during the years following the Glorious Revolution, the lower houses engaged in a successful quest for power as they set about to restrict the authority of the executive, undermine the system of colonial administration laid down by imperial and proprietary authorities, and make

themselves paramount in the affairs of their respective colonies. ¹⁵

Under the old colonial system, the central Canadian Assemblies did not make themselves paramount in the affairs of their provinces. The Governor and the Legislative Council resisted all challenges and remained the main focal points in the governmental process. Although both Assemblies tried at different times to exert their sovereignty, they failed to convince the general population that they and not the other branches of parliament should occupy the central position of political power. Canadian practices were generally less 'publicly oriented' than those of colonial America. For example, the Canadian Assemblies were smaller in size than some American ones. The colony of Massachusetts in 1765 had a population of less than 224,000 yet elected over 100 members to its House of Representatives. ¹⁶ By comparison, Upper Canada in 1840 had a population of 432,000 but in the 1836 provincial election only 69 members were elected. Lower Canada's population by the mid-1830s was nearing 600,000 but it elected only 84 members in the 1835 provincial election. Even in the United Province, the combined population of Upper Canada and Lower Canada in 1861 was approximately 2,500,000 but the number of members elected in 1862 was 130. It should be remembered that the size of the Assemblies was not prescribed by the constitutional acts: the provincial parliaments were free to choose the number of members they wished to have.

A review of the procedures of the Massachusetts House of Representatives from 1762-1775 reveals other examples of its more democratic procedures. This American House elected its Clerk, Chaplain, and with the upper house, chose the Attorney General of the province. ¹⁷ If a town failed in returning a member to the House of Representatives, the

Assembly would emit a financial penalty on the town by adding a certain sum to the next provincial Tax Act. ¹⁸ Members from some towns, such as Boston, would sometimes be instructed as to how to vote on issues. ¹⁹ On certain occasions the House of Representatives would order that a bill once passed and enacted be printed in all the newspapers of the capital. ²⁰ Such procedures were not followed by the Canadian legislatures.

It would be inaccurate to say that pre-Confederation legislators rejected the goal of strengthening democratic government in favour of other goals, such as economic development or nationalism. There is evidence to suggest that the Upper Canadian Reformers attempted to implement procedures which had a more democratic flavour. In 1829, the Reform-dominated Assembly removed from every member the right to have the House cleared of strangers and established the practice that such questions would be decided by the chamber as a whole. Also in 1829 it stripped from the Clerk of the House his arbitrary control over staff appointments. In Lower Canada, the Patriotes called for an elected upper house and objected to the implementation of a permanent civil list. In the United Province, after returning from exile, William Lyon Mackenzie continued his efforts to reform parliament and tried unsuccessfully to implement a procedure whereby members would be required by law to have their votes recorded on the final passage of bills. Mackenzie contended that the measure "was necessary as a protection for the country against midnight legislation, with scarcely a quorum in the House". Inspector General Hincks "opposed it and contended that the rules of the House were sufficient protection as any two members might call for the yeas and nays". ²¹

Parliamentary procedure played an important role in the struggle for greater representative government. Democratic forces existed within central Canadian society and used procedure as a political tool in changing the old colonial system. Many of the crises which occurred in the two colonies were procedural in nature. William Lyon Mackenzie's five-time expulsion and re-election to the Upper Canadian House, the refusal by the Governor in 1827 of Louis Joseph Papineau as Speaker, the Lower Canadian Assembly's opposition to a civil list and its resistance to Lord Russell's resolution to appropriate money for the expenses of civil government without the consent of the colonial legislature, and the passage of the Rebellion Losses Bill of 1849 all turned on questions of procedure. These struggles, as well as the achievements in establishing a de facto recognition of the Assembly's privileges by groups outside of the legislature and of its right to initiate money bills by the Legislative Council, aided the call for more popular government.

With the establishment of responsible government, there was a greater need for formalized practices. Procedures were necessary to hold the government accountable to the Assembly and to regulate the access points by members and the public in the overall legislative process. How well parliamentary rules carried out the important role of regulating the the use and exercise of power under responsible government is questionable. It appears there were serious shortcomings. The theory and practice of responsible government were to be two different things. Expenditures were sometimes made by the executive without the consent of the Assembly and charges of corruption and conflicts of interest abounded. The failure of the Union was in a certain way a procedural failure as more steps should have been taken to limit the growth of the ministerial control of the House and to sever the link more clearly between pecuniary advantage and the way members voted. As a result of such failure, democratic government in the United Canadas was never adequately protected from corruption.

(iii) The Growth of a National Identity

Many writers have commented upon the historical weakness of a uniquely Canadian national identity. ²² While many factors have been identified to explain this weakness, including regionalism, constitutional arrangements and the various religious, racial and linguistic cleavages making up the Canadian polity, one of the more important reasons which has been emphasized was the transplanted nature of Canadian society. The early British settlers clung to the English model of development because they were familiar with it and because it promised progress and protection against the threatening influence of the United States. As a result, a colonial mentality developed and the blossoming of an indigenous identity was retarded.

With respect to how government should be conducted, both the loyalists from the American colonies and the Irish, Scottish and English arrivals shared a common exposure to British practices and brought that familiarity with them to the early provincial parliaments. The evolution of Canadian parliamentary procedure testifies to the strength of their colonial mentality. The pre-Confederation Houses of Assembly were not necessarily bound to follow Britain with respect to many aspects of their procedure. Yet in the colonial mind, British procedure was much admired. Little thought was given to developing native practices.

As has been noted in earlier chapters, not all British procedure was applicable to Canadian conditions. The constitutional arrangement and the political formations within parliament were quite different. The pioneer social environment varied greatly from that of Great Britain and the role of government was not the same. As much as it was admired, Westminster practice was reluctantly rejected if found impractical. An

incident in the 1844-45 session of the United Province illustrates the point. As the session neared Christmas Day, a motion was moved to adjourn for six or seven weeks. The Solicitor General noted that it was consistent practice in the British parliament to have a lengthy adjournment over Christmas. One member, J.P. Roblin of Prince Edward, objected to following the British practice. He told the House:

It was true that the practice prevailed in England of adjourning for three or four weeks, but we were not in England, we were very differently situated, and though he was for following British example as far as practical in all important matters, yet he did not think in this case it would be at all advantageous or proper. It must be recollected that all the Clerks and Messengers of the House would be kept without occupation, while the expenses of the Legislature were still going on. He thought they had no right to make such a bad use of their time which ought to be devoted to the service of the country. 23

The motion was amended and the House agreed to a one-week adjournment.

Even in the Lower Canadian Assembly, where the majority of members were of non-British descent, English practice was held in great esteem. In its Ninety-two Resolutions, the House of Assembly stated:

That this House has seized every occasion to adopt and firmly establish by Law in this Province ... the Constitutional and Parliamentary Law of England ... and that this House has, in like manner, wisely endeavoured so to regulate its proceedings, as to render them as closely as the circumstances of the Colony permit, analogous to the practice of the House of Commons of the United Kingdom. 24

There was very little that was uniquely 'Canadian' about pre-Confederation procedure. Except for the bilingual method of conducting proceedings in Lower Canada and the United Province, the Lower Canadian rule that bills relative to the criminal laws of England and to the rights of the Protestant clergy would be introduced in English and

bills relative to civil rights of the Province would be introduced in French, the alternation of Speakers and rotation of capitals during the Union period, and after 1856 an elective upper chamber, most of the practices adopted were modified versions of English procedure.

The movement to responsible government did not suddenly bring to fruition organic Canadian procedures. As has been noted, responsible government restored to central Canada traditional British procedures, an objective which Lord Durham had strongly urged in his Report. However, as the Union period progressed, a new interest in Canadian procedures occurred. Written essays on Canadian practices appeared, such as those by Alpheus Todd, Alfred Patrick, Alfred Todd and George Benjamin. The publication of these works perhaps indicated an increased recognition of the importance of Canadian parliamentary procedure and reflected a growing nationalism throughout all of British North America. Even suggestions for Canadian parliamentary symbols began to be voiced. In the 1844-45 session the Speaker suggested to the Legislative Assembly that it should acquire a new mace. Robert Baldwin told the House that he had "no objection if the Canadian emblem, the beaver and maple branch, found a conspicuous portion of it".²⁵ Despite such indications of nationalist sentiment, pre-Confederation procedure reflected a general disposition towards non-nationalism which has so typically characterized the Canadian people.

With respect to English Canada, procedure revealed certain perceptions of what the Tories and the Reformers believed the Canadian identity to be. Upper Canadian Toryism has been described as emphasizing loyalty to the British connection, hostility to the American political and social model, support for a mixed constitution, and a graded social

order. Some of these attributes were reflected by the flowery monarchical language used in the addresses passed by the Assembly assuring the Crown of the province's loyalty and satisfaction with its "happy constitution".²⁶ Up until 1831, the House of Assembly retained the services of an Anglican Chaplain to read the prayers at the commencement of every sitting. The House's unruly debates were abhorrent to such High Tories as John Beverly Robinson, who once complained that "upon the vote or passage of any bill or measure, to express approbation or satisfaction on the floor of the House and in a tumultuous manner giving loud huzzas, is a breach of Parliamentary decorum and unbecoming the dignity of a deliberative Assembly".

Upper Canadian Reformism is described as emphasizing small and cheap government, abolition of non-elected ruling bodies, popular control over finances and disestablishment of the Church. Certainly the role such Reformers as Robert Nichol and Charles Duncombe played as chairmen of the Assembly Finance Committee, the move by Mackenzie to abolish the position of Chaplain in 1831, and the Reformers' dispute with Sir Francis Bond Head regarding how executive councillors were to be selected illustrated such characteristics.

Parliamentary procedure reveals, however, that such stereotype images of both Toryism and Reformism can be somewhat misleading. It must be remembered that the motion to abolish the reading of prayers in 1801-32 was adopted in a parliament where the Tories had a majority and that the tie vote was broken by the Tory Speaker, Archibald McLean. Also the 1837 motion to bestow upon the Speaker the power to appoint members to standing committees, which if adopted would have made the Upper Canadian Speaker very similar to that of the Speaker of the American

House of Representatives, was presented by Charles Richardson. Richardson was a well-known Tory and one of the "young gentlemen" recruited by Samuel Jarvis to wreck William Lyon Mackenzie's printing shop in 1826. ²⁷ Such a suggestion was not typical of someone who is commonly perceived as a Compact Tory. With respect to Reformism, it appears that most Reformers were content with the monarchical nature of parliamentary proceedings. Certainly there was a profound dislike of the undemocratic features of the old colonial system but there was acceptance if not admiration of traditional British procedure. Such Reformers as Barnabas Bidwell and his son, Marshall Spring Bidwell, while members of the House, played out their parliamentary roles in conformity with the British model.

With respect to French Canada, J.-C. Bonenfant and J.-C. Falardeau have characterized early nineteenth century national sentiments as "defensive nationalism". The philosophy of the Patriote party "was largely derived from the prevalent continental catchwords of social progress, democracy, reform and liberty. It was liberal with a view to integrating the Canadian tradition into a fully worked out framework of British parliamentary institutions." ²⁸ Fernand Ouellet felt that French Canadian nationalism was designed to promote the interests of the middle class. Its prime goal, however, was to conserve French Canadian society. Ouellet writes: "Since neither the clergy nor the legitimate aristocracy seemed to be aware of the perils threatening the French-Canadian community, the middle class would take it upon themselves to head the opposition to the English. As seen from this new angle, Parliament no longer served as anything but a convenient device

for keeping national institutions alive, whatever their worth, and for protecting class interests." 29

It was the desire to demonstrate the national identity of French Canada which made the Lower Canadian Assembly so different from her Upper Canadian counterpart. As has been mentioned, the Assembly was not really a legislature since its major role was not to perform the constitutional function of passing legislation. Its primary function, derived not from the Constitutional Act but from the social context, was to ensure la survivance of its people. The Assembly of Lower Canada dealt with much less legislation than the Upper Canadian House. Between 1821 and 1837, the Lower Canadian Assembly studied an average of 60 bills per session, while the Upper Canadian Assembly dealt with 120, double that number. Far fewer petitions were presented in Lower Canada than in Upper Canada.

Lower Canada was more interested than her sister province in using procedure as a weapon of political combat. The Assembly adhered to many practices which were becoming antiquated in Britain such as impeachments, refusal to pass supply bills until grievances were met and the maintenance of an independent relationship with the Legislative Council and the Crown. Parliamentary government under the Stuarts, not the Hanoverians, was the Assembly's role model.

French Canadian nationalism entered a new phase following the passage of the Union Act. In contradiction to Durham's goal to restore parliamentary government on an English basis, the coming of responsible government ensured greater survival for the French community. The Union Act provided for equal representation from Canada East and Canada West and specified that any bill which altered the system of representation

had to be passed by at least two-thirds of the members of the Council on both second and third reading. Such a procedure offered a certain amount of protection of French Canadian representation. French Canadian members assumed leadership roles in the Province for the first time in 1843 within the Lafontaine-Baldwin ministry. In 1848 the much disliked section 41 of the Union Act which prohibited French as a language of record of the legislature was repealed. With cultural goals becoming more secure, there was less need for obstructionist tactics. French Canadian representatives turned their attention to other objectives, such as economic development. Whereas Louis Joseph Papineau, the hero of the 1837 rebellion, was the leading French Canadian deputy under the old colonial system, Georges-Etienne Cartier, chief counsel of the Grand Trunk Railway, became the leading member following the achievement of responsible government. These two parliamentarians seemed to symbolize the changing nature of French Canadian nationalism in the pre-Confederation period.

(iv) English-French Relations

One reason why the Lower Canadian Assembly adopted so many rules in its opening session, apart from the influence of its civil law tradition, was that a clear modus operandi had to be laid down before the English and French deputies could begin their work. The 1793 rules were not established easily. Acrimonious debate over them occurred and 14 divisions took place. The controversy surrounding the adoption of the regulations indicated the degree of distrust between the two communities which existed both in the legislature and outside it.

The Lower Canadian rules regarding language added new dimensions to British procedure. For the first time 'group' rights as opposed to just 'individual' rights were recognized in parliamentary practice. Both language groups were granted equal rights in having the proceedings conducted in their own language. One of the 1793 rules stated: "When a motion is seconded, it shall be read in English and in French by the Speaker, if he is master of the two languages; if not, the Speaker shall read in either of the two languages most familiar to him; and the reading in the other language shall be at the table by the Clerk or his Deputy, before debate". Whereas traditional British procedure stipulated that there could only be one motion on the floor at one time, Canadian procedure provided for two: one in English and one in French. The Lower Canadian rules also established a dual legislative process for public bills, a variance from English procedure. It was agreed that "Bills relative to the Criminal Laws of England in force in this Province, and to the rights of the Protestant Clergy ... shall be introduced in the English language; and the Bills relative to the Laws, Customs, Usages and Civil Rights of this Province, shall be introduced in the French language, in order to preserve the unity of the texts". Although all bills would be put in both languages, the rules stated it was "well understood that each member has a right to bring in any Bill in his own language, but that after the same shall be translated, the text shall be considered to be that of the language of the Law to which the said Bill hath reference".

The bilingual nature of the proceedings of Lower Canada established in 1793 endured throughout the history of the province and was continued into the Union period, notwithstanding section 41 of the

Union Act. Both languages were used in parliamentary debates. All the papers and records of the Assembly of the United Province such as its addresses, messages, committee reports and Journals were bilingual. Although serious language conflict was prevalent in the social environment of central Canada, representatives generally accepted without hysteria the basic linguistic demands of the other language group with respect to the operation of the House. When difficulties occurred, there was usually a disposition to compromise. When the unilingual and prime representative of Compact Toryism, Sir Allan MacNab, took the Chair as Speaker of the United Province in 1844, one of his first duties upon returning from the opening ceremonies held in the Council chamber was to read the Speech from the Throne. Sir Allan did so in English. When Thomas Aylwin and other Lower Canadians yelled, "en français, en français," MacNab replied that "such was not the custom and there was no rule of the House to that effect". With the uproar continuing, one reporter wrote, "Attorney General Smith leant over the Speaker, and urged him to make the second clerk read the document in French," whereupon "[t]he speech was handed to the clerk, who translated it." ³⁰ Such accommodation was normal in the Union period. There was an implicit recognition that such was the cost to keep the parliamentary process working.

Upper Canada was not quite so generous in its willingness to accommodate the French-speaking community. It must be remembered that the upper and lower provinces were divided for racial, linguistic and religious reasons, not economic. The 1785 petition from the Loyalists to the King praying for the creation of a new province stressed their unfamiliarity with the "rigorous Rules, Homages and Reservations, and Restrictions of the French Laws and Customs, which are so different from

the mild Tenures to which they had ever been accustomed".³¹ After repeated Loyalist demands for English institutions, the British government agreed to the division of Quebec.

Although a motion was adopted by the Assembly on June 3, 1793, stating that "such Acts as have already passed or may hereafter pass the Legislature of this Province be translated into the French Language for the benefit of the inhabitants of the Western District of this province and other French settlers who may come to reside within this Province", it does not appear that any acts were translated. The sentiments of the Assembly were obviously not shared by the Legislative Council or the Lieutenant Governor and they would have had to concur with the motion for it to take effect. At times, the Upper Canadian House took a very anti-French attitude. Directed more against revolutionary France than French Canada, in 1799 the House resolved that "energy will be shown by all classes of the people to prevent the introduction of French principles and preserve uncontaminated the Constitution which the Mother Country has given us".³² The Assembly was very much against the proposed bill of the United Kingdom in 1823 for uniting Upper Canada and Lower Canada. Many Upper Canadian Tories also opposed any form of union. In the 1836-37 session, William H. Draper, a future leader of the United Province, gave notice of a motion that if the two legislatures were united "a perpetual scene of altercation would succeed and in the opinion of this House, an irredeemable evil would be thereby inflicted on Upper Canada".³³

The attitude of the Reformers was more accommodating. On January 30, 1836, during the parliament controlled by a Reform majority, William Lyon Mackenzie moved the following motion which was agreed to on a division of 28 to 15:

That it is the desire of this House to cultivate a good understanding with Lower Canada and that a select committee be appointed to draft and report a bill of this House for the appointment of Commissioners to meet any Commissioners that may be appointed by the Legislature of Lower Canada to consider matters of mutual importance to both Provinces, especially the questions of boundaries, trade, emigration, customs' duties and revenue. ³⁴

Later that session, Speaker Bidwell informed the House that he had received a letter from Speaker Papineau regarding cooperation in procuring a better colonial system of government. ³⁵

With the movement towards responsible government, political necessity dictated that a basic working relationship between the two language groups be established if political power was to be achieved and retained. The co-operation between Baldwin and Lafontaine was continued by Hincks and Morin, J.A. Macdonald and Cartier, Brown and Dorion, and J.S. Macdonald and Sicotte. The bi-national nature of the province encouraged dual ministers. To the misfortune of the United Province, however, the Assembly did not build upon the procedures adopted in Lower Canada. It never formally established the double-majority concept as a procedure for passing bills or voting confidence in a ministry. Due to that failure, the harmony between the two groups deteriorated. In 1850 for example, charges were made that Canada East had interfered in the affairs of Canada West with the passing of a School Act increasing state aid to Roman Catholic schools in Upper Canada. ³⁶ The rules regarding the bilingual conduct of proceedings were inadequate to ensure good

English-French relations. A new constitutional framework was demanded and sought in Confederation.

C. The Legacy of the Pre-Confederation Period

This dissertation has emphasized that parliamentary procedure is an evolutionary process and changes with the political, economic and social environment. Given the differences between pre-Confederation Canada and the one of the 1980s, we should not expect that the legacy of the pre-1867 period would be great. Parliamentary government is conducted so differently today. Political parties dominate the legislative process to an extent unimaginable in the pre-Confederation era. The size of the lower house is more than double what it was in 1866. The constitutional basis is very different as Canada has become a self-governing state. Federalism has also altered the constitutional functions of the House of Commons. Certain proceedings which were so very important in the pre-Confederation era are no longer of great significance, notably, petitions, private bills and private-member public bills. The number of motions which are not debatable has increased tremendously. Westminster has even ceased being the dominant procedural model for the Canadian parliament. In 1986, the Commons agreed that "in all cases not provided for ... decisions shall be based on the usages, forms, customs and precedents of the House of Commons of Canada and on parliamentary tradition in Canada and other jurisdictions, so far as they may be applicable to the House". The House meets at least 10 months of the year and most members work at their jobs on a full-time basis. They are also provided with staffs and research budgets.³⁷ Such facilities were not available to the pre-Confederation representatives.

Given such differences, it is somewhat surprising to see the extent of the pre-1867 legacy. The most important inheritance was the written rules. The basic structure of modern Canadian legislative practice was established before Confederation. With respect to the federal legislature, the pre-1867 rules lasted unchanged into the early 1900s. W.F. Dawson notes that the House of Commons "moved towards the revision of 1906 with practically the same set of rules as it had adopted in 1867". 38

Of the 159 present standing orders of the Canadian House of Commons, many date back to the pre-Confederation period. Table 6.1 traces the pre-1867 origins of approximately 80 rules of the House of Commons still in effect today. They deal with most aspects of procedure, including rules of debate, privilege, notices, motions, relations with the upper house, summoning of witnesses, petitions, the legislative process of public bills, the offer of money to members and bribery in elections, the officers of the House and private bills. The retention of such rules indicates that many of the practices of the United Province were quite sound and relevant to the conduct of modern parliamentary government.

Another inheritance was the bilingual nature of parliamentary proceedings. To conduct the workings of a legislature in two languages was not easy in the pre-1867 period but it was one of the most positive features of the colonial parliaments. A working relationship was established between English and French members and this relationship was passed on to the federal House. It has been built upon and expanded but many procedures remain the same, such as the publication in both

languages of all House documents and the reading of motions by the Chair in English and French. The Canadian House of Commons was fortunate to have inherited such a developed system of parliamentary government.

Another legacy was the predominant influence of the central Canadian provinces on the legislative process after 1867. As has been noted, the rules adopted by the Dominion House were those of the United Province even though both Nova Scotia and New Brunswick had experienced parliamentary institutions for as long or longer. Ottawa became the capital and the legislative building to be used was that of central Canada's Legislative Assembly. Staff employed in the United Province continued with the new Parliament of Canada. The first Clerk of the House was W.B. Lindsay, Jr., who had been the Clerk of the United Province's Legislative Assembly. Speakers of the Canadian House have generally been from central Canada. Dawson writes: "Quebec and Ontario naturally have provided the bulk of the incumbents". 39

Another feature of the pre-Confederation legacy was a desire to remain independent of the Crown and to resist being treated as just another department of government. The struggle to establish the independence of parliament was an important facet of pre-Confederation parliamentary history. The Assemblies of Lower Canada, Upper Canada and the United Province all fought to maintain their independence and to protect themselves from undue influence through claims of privilege and the passage of special acts of parliament. Neither the Constitutional Act, 1791, nor the Union Act, 1840 guaranteed the independence of parliament as an institution. It had to be established. The Canadian House of Commons can be accused of a certain laxity in failing to be

vigilant in protecting its independence but it has demonstrated its desire for independence on many occasions. The famous Pipeline debate of 1956 and the final 1985 McGrath Report regarding the role of private members are such examples.

Finally, it must be noted that the pre-Confederation period was important not just for laying the foundation of parliamentary procedure of the federal House of Commons but also for establishing the procedural basis of the provincial legislatures of Quebec and Ontario. The first premiers of both provinces after 1867, P.J. Chauveau and J.S. Macdonald, had served in the Legislative Assembly of the United Province. J.S. Macdonald had in fact been Speaker of the House from 1852 to 1854. Both Quebec City and Toronto were the alternating seats of government in the latter part of the Union period and their Parliament Buildings housed the new provincial legislatures after 1867. Historical symbols of the pre-Confederation period are proudly displayed by both provincial Assemblies today. Although new procedures had to be adopted following Confederation for the new provincial legislatures since their constitutional powers were quite different from those of the United Province, both Houses were able to draw upon the procedural experience gained during the Union period.

With the changes in the constitutional framework of the country, the development of the party structure, economic pressures and the strains of federal-provincial relations, parliamentary procedure undergoes continuous refinement. New precedents are established, new practices come into existence and new rules are made. Although legislative practice is an evolving process, the influence of pre-Confederation procedure can still be felt. It established the basic

characteristics of the Canadian parliamentary tradition, contributed to the success of parliamentary government in Canada and played an important role in accommodating English-French duality within a political union.

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

House of Commons 1987 S.O.#	Subject	United Province 1860 Rule#	United Province 1853 Rule#	United Province 1841 Rule#	Upper Canada 1825 Rule#	Lower Canada 1793 Journal Reference
6	House adjourns for want of quorum	1,4	1,3	1,3	1,3	pp. 90, 12
7	Receiving Black Rod	7	5	5	9	p. 124
8	Attendance required	18	20,21	21,22	-	p. 242
12	No debate before division	83	-	-	-	-
13	When vote recorded	84	32	35	31	p. 118
14	Speaker mute in debate	9	7	8	10	p. 90
15	Pecuniary interest	16	11	12	14	p. 112
16	Decorum in House	8	6,8	7,9	8,11	pp. 90, 12
17	Notice of Strangers	6	19	19	20	p. 124
18	Conduct of Strangers	5	27	28	-	p. 174
20	Privilege	38	89	83	-	p. 120
25	When Senate and House disagree	99	24	25	23	-

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

Cont'd

<u>House of Commons</u> <u>1987 S.O.#</u>	<u>Subject</u>	<u>United Province</u> <u>1860 Rule#</u>	<u>United Province</u> <u>1853 Rule#</u>	<u>United Province</u> <u>1841 Rule#</u>	<u>Upper Canada</u> <u>1825 Rule#</u>	<u>Lower Canada</u> <u>1793 Journal</u> <u>Reference</u>
26	Message to and from Senate	95-98	22,23,25	23,24,26	21,22	pp. 174-6
27	Motion to read orders	28	87	81	-	p. 118
28	Motion to adjourn	30	33	36	33	p. 118
30	Journals for Gov.Gen.	91	28	30	-	p. 202
41	Precedence of Private Members' Business	20-23	S.O.14	-	-	-
42	Dropped Orders	25	-	-	-	-
52	Member speaking	10	9	10	12	p. 92
53	Members rising together	11	10	11	13	p. 92
54	Member withdrawing	Sess.Order	-	-	-	-
58	Member called to order	12	14	14	16	p. 114
59	Disrespectful language	13	15	15	-	p. 120
60	Reading the question	14	16	16	18	p. 120
61	No Member to speak twice	15	17	17	19	p. 122

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

Cont'd

<u>House of Commons 1987 S.O.#</u>	<u>Subject</u>	<u>United Province 1860 Rule#</u>	<u>United Province 1853 Rule#</u>	<u>United Province 1841 Rule#</u>	<u>Upper Canada 1825 Rule#</u>	<u>Lower Canada 1793 Journal Reference</u>
64	Written questions	29	-	-	-	-
68	When notice required	31	35	-	32	-
70	Motions written, read in both languages	33	36	38	-	p. 92
71	Privileged motions	-	38	40	-	p. 94
72	When amdt. precluded	36	40	42	35	p. 94
74	Leave to withdraw motion	34	37	39	34	p. 94
75	When motion contrary to rules	37	44	46	11	-
76	Previous question	35	39	41	-	p. 94
79	Com. of the Whole - Rules, Decorum	76,77	30	33	24	p. 118
80	Motion to leave Chair	78	34	37	28	p. 113
86	Royal recommendation	Union Act cited	-	-	-	p. 546

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

Cont'd

<u>House of Commons</u> <u>1987 S.O.#</u>	<u>Subject</u>	<u>United Province</u> <u>1860 Rule#</u>	<u>United Province</u> <u>1853 Rule#</u>	<u>United Province</u> <u>1841 Rule#</u>	<u>Upper Canada</u> <u>1825 Rule#</u>	<u>Lower Canada</u> <u>1793 Journals</u> <u>Reference</u>
87	Commons alone grants aids	89	46	48	-	p. 546
88	Pecuniary penalties in Senate Bills	90	47	49	-	-
95	Quorum in committee	80	85	79	27	-
100	Witnesses certificate	82	S.O.7	-	-	-
106	Petitions	85-87	80	73	43	p. 112
107	Introduction of bills	39	48	50	40	p. 114
108	Imperfect bills	40	S.O.18	-	-	-
109	Motion for first reading	42	-	-	-	-
110	Printed in English and French	93	57	-	-	p. 166
111	Three separate readings	43	51	53	38,41	p. 114
112	Clerk certified readings	44	52,54	54,56	37	p. 116
113	Referral to committee	45	49	51	38	p. 114
114	Proceedings, in committee, reported	46,47	50,53	52,55	29	pp. 114-6

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

Cont'd

<u>House of Commons 1987 S.O.#</u>	<u>Subject</u>	<u>United Province 1860 Rule#</u>	<u>United Province 1853 Rule#</u>	<u>United Province 1841 Rule#</u>	<u>Upper Canada 1825 Rule#</u>	<u>Lower Canada 1793 Journal Reference</u>
118	Offer of Money	Sess. Order	-	-	-	-
119	Proceedings in bribery cases	Sess. Order	-	-	-	-
122	Safe-keeping of records	104	S.O.6	-	-	-
123	Printing Order Paper	105	S.O.3	-	-	-
124	Documents to be tabled	106	S.O.16	-	-	-
125	Extra Writers	110	S.O.20	-	-	-
126	Duties of Law Clerk	48	96	58	-	-
127	Duties of Sergeant	107	-	-	-	-
128	Close of Session	103	S.O.4	-	-	-
129	Travelling expenses	109	S.O.9	-	-	-
130	Hours of attendance	101	95	89	-	-
131	Vacancies	102	96	90	-	-

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

Cont'd

<u>House of Commons 1987 S.O.#</u>	<u>Subject</u>	<u>United Province 1860 Rule#</u>	<u>United Province 1853 Rule#</u>	<u>United Province 1841 Rule#</u>	<u>Upper Canada 1825 Rule#</u>	<u>Lower Canada 1793 Journal Reference</u>
132	Time limits re private bills	49	58-60	67-69	-	-
133	Printing costs, fees and charges	58,59	67	71	-	-
134	Publication of S.O.s	50	61	72	-	-
135	Publication of notices	51	62	66	40	-
142	Private bills introduced on petition	56	65	60	40	p. 120
144	Bills and petitions referred	60	68	61	-	-
145	Notice of committee sitting	61	71	63	-	p. 544
146	Voting in committee	64	-	-	-	-
147	Provision not covered	65	-	-	-	-
148	All bills reported	66	72	-	-	-
149	When preamble not proven	67	73	-	-	-

Table 6.1 - Pre-Confederation Origins of Canadian House of Commons Standing Orders

Cont'd

<u>House of Commons 1987 S.O.#</u>	<u>Subject</u>	<u>United Province 1860 Rule#</u>	<u>United Province 1853 Rule#</u>	<u>United Province 1841 Rule#</u>	<u>Upper Canada 1825 Rule#</u>	<u>Lower Canada 1793 Journal Reference</u>
150	Chairman to sign bills	68	75	-	-	-
153	Senate amts.	69	76	-	-	-
154	Record of private bills	71	78	-	-	-
155	List of bills in lobbies	72	79	-	-	-
156	Parliamentary agents	73	-	-	-	-
157	Liability of agents	74	-	-	-	-

Sources: House of Commons, Standing Orders (1987); Assembly Journals, 1860 (United Province), pp. 396-405; Assembly Journals, 1852-53 (United Province), pp. 975-985; Assembly Journals, 1841 (United Province), pp. 40-48; Assembly Journals, 1825 (Upper Canada), pp. 27-29; Assembly Journals, 1792-93 (Lower Canada).

Endnotes

1. Thomas Hobbes, Leviathan, ed. by C.B. Macpherson (Harmondsworth: Penguin Books, 1968), p. 263.
2. Wm. Holmes Brown, Constitution, Jefferson's Manual and the Rules of the House of Representatives (Washington: U.S. Government Printing Office, 1985), pp. 113-4.
3. Redlich, The Procedure of the House of Commons, Vol. 1, pp. 57, 125.
4. For references to these works, see Chapter One.
5. The rule adopted by the Upper Canadian Assembly in 1825 removed the condition. The new rule stated "that in all unprovided cases, resort shall be had to the rules, usages and forms of the Parliament of Great Britain and Ireland".
6. Assembly Journals, 1841, (United Province), p. 48.
7. Assembly Journals, 1837-8, (Upper Canada), p. 208.
8. H.Y. Hind, T.C. Keefer, et al., Eighty Years of Progress of British North America (Toronto: Stebbins, 1863), p. 222.
9. Alfred Todd, op.cit, p. 11.
10. John Locke, Treatise of Civil Government and a Letter Concerning Toleration (New York: D. Appleton-Century Co., 1965), pp. 144-45.
11. Quoted in Harvey C. Mansfield, "The forms and formalities of liberty," The Public Interest, 70 (1983), p. 121.

12. S.F. Wise, "Upper Canada and the Conservative Tradition," in Ontario Historical Society, Profiles of a Province (Toronto: Ontario Historical Society, 1967), p. 20.
13. Quoted in Terry Cook, "John Beverly Robinson and the Conservative Blueprint for the Upper Canadian Community," Ontario History, 64 (1972), pp. 86-87.
14. See Fernand Ouellet, Lower Canada, 1791-1840, p. 67-68.
15. Jack P. Greene, "The Role of the Lower Houses of Assembly in Eighteenth-Century Politics," in Interpreting Colonial America: Selected Readings, ed. by James K. Martin (New York: Dodd, Mead, 1975), p. 291.
16. See United States Department of Commerce, Historical Statistics of the United States: Colonial times to 1970 (Washington: U.S. Government Printing Office, 1975), p. 1169 and Journals of the House of Representatives of Massachusetts, 1765.
17. Journals of the House of Representatives of Massachusetts, 1762, pp. 5, 9; 1767, p. 279.
18. Ibid., 1762, p. 12; 1771, p. 15.
19. Ibid., 1773-4. Samuel Adams is quoted as saying "It is a very common practice for this town to instruct their representatives". p. ix.
20. Ibid., 1764-5, p. 219. The bill dealt with the courts and times of meeting. In the Canadas, notifications to the public of the passage of bills was the responsibility of the executive.
21. Assembly Debates, 1852-53, (United Province), pp. 698-99.
22. For example, see McKee, "The Structure of Canadian History"; F. H. Underhill, The Image of Confederation (Toronto: Canadian Broadcasting Corporation, 1964); D.V. Smiley, The Canadian Political Nationality (Toronto: Methuen, 1967); Reg Whitaker, "Images of the State in Canada," in The Canadian State: Political Economy and Political Power, ed. by Leo Panitch (Toronto: University of Toronto Press, 1977), pp. 28-68; Bell and Tepperman, The Roots of Disunity; David Elkins and Richard Simeon, Small

Worlds: Provinces and Parties in Canadian Political Life (Toronto: Methuen, 1980); Garth Stevenson, Unfulfilled Union: Canadian Federalism and National Unity (Revised ed.; Toronto: Gage, 1982).

23. See Assembly Debates, 1844-5, (United Province), pp. 352-53.
24. Assembly Journals, 1834, (Lower Canada), p. 310.
25. Assembly Debates, 1844-45, (United Province), p. 2577.
26. Assembly Journals, 1836-37, (Upper Canada), p. 43.
27. Dunham, op.cit., p. 107; Charles Lindsey, The Life and Times of William Lyon Mackenzie, Vol. 1 (Toronto: Randall, 1862), p. 79.
28. J.-C. Bonenfant and J.-C. Falardeau, "Cultural and Political Implications of French-Canadian Nationalism," in Cook, French Canadian Nationalism, p. 21.
29. Fernand Ouellet, "The Historical Background of Separatism in Quebec," in Cook, French-Canadian Nationalism, p. 53.
30. Assembly Debates, 1844-45, (United Province), p. 17.
31. Quoted in Craig, Upper Canada, p. 9.
32. Assembly Journals, 1799 (Upper Canada), p. 102.
33. Assembly Journals, 1836-37 (Upper Canada), pp. 130-131.
34. Assembly Journals, 1836 (Upper Canada), pp. 88-89.
35. Assembly Journals, 1836 (Upper Canada), pp. 499-505.
36. See Finlay and Sprague, op.cit., p. 167.
37. In Upper Canada, pursuant to a statute passed in the second session of the First Provincial Parliament (1793), it was enacted

that "members of the House of Assembly be allowed wages for their attendance thereat, not exceeding ten shillings a day". This per diem payment remained constant throughout the history of the province. It was not until 1830 that the Lower Canadian House of Assembly agreed "that after the next General Election, there be allowed an Indemnity for Members for the expenses which may have been incurred for attending at the sittings of the House". It was limited to ten shillings and was not to exceed sixty days of attendance. It was also agreed that one shilling and sixpence be granted per league for the distance between usual place of residence and meeting of the legislature. See Assembly Journals, 1830 (Lower Canada), pp. 145-146 and E. Fabre Surveyer, The First Parliamentary Elections in Lower Canada, p. 8.

In 1841, the Legislative Assembly of the United Province agreed that the per diem allowance be increased to fifteen shillings. See Assembly Journals, 1841 (United Province), pp. 236-7. The rate was later increased to \$4.00 per day, and in 1859 to \$6.00 "for each day's attendance, if the session does not extend beyond thirty days; and if the session extends beyond thirty days, then there shall be payable to each Member ... attending at such session, a sessional allowance of six hundred dollars, and no more". See Canada Statutes, 22 Vic., c. 12. Members were also allowed a travelling allowance of ten cents a mile. A deduction of \$5.00 per day was made for every day a member did not attend a sitting or a committee of which he was a member.

In 1986, members of the House of Commons received a sessional indemnity of \$56,100 per year and a tax-free expense allowance of \$18,700 per year. Certain members, such as the party leaders and whips, received a special salary. Members also have ample travel allowances, including weekly return trips by air to their constituencies and an office budget of \$100,400. See C.E.S. Franks, The Parliament of Canada (Toronto: University of Toronto Press, 1987), pp. 82-87.

38. Dawson, op.cit., p. 22.

39. Ibid., p. 63.

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