

These conventions were applied after Confederation to the new Privy Council for Canada, and references to the Council functioning as a Cabinet became general. Furthermore membership in the Canadian Privy Council was made for life as in Great Britain, so that the executive now became the Committee of the Privy Council, in its formal and advisory aspect, and the Cabinet, in its informal, political and policy-making guise. Nevertheless there was no recognition of the changed state of affairs either in the British North America Act constituting the "executive power" or in the Commission and Instructions issued to the Governors General which still envisaged their presiding over meetings of the Privy Council and, under certain circumstances, dissenting with advice tendered.

Although in general these instructions were interpreted along the lines set out by Sir Edmund Head, there were differing views. The Earl of Dufferin, soon after his arrival in 1872, took up the question of attendance with John A. Macdonald, the then Prime Minister. He indicated that he had no wish to interfere with the administration and had noted the tendency "for the Governor General's council to transmute itself into the Prime Minister's cabinet". However he felt the right of the Governor General to preside over Council should not be allowed to fall into disuse,\* and on several occasions he met with his Council.

During Lord Dufferin's term of office, consideration was given by the British Government to setting up permanent letters patent and instructions for governors of colonies. The draft submitted to Canada was severely objected to by the then Minister of Justice (Mr. E. Blake) as bearing no relation to the Dominion status of Canada, made up of federally united provinces with a constitution similar in principle to that of the United Kingdom. The Minister pointed out that all the incongruous provisions of the previous instruments were repeated and that the Governor General would be given an active voice in the executive government, a position long abandoned by the Sovereign in Great Britain. The substance of these protestations was accepted and the new instruments, which guided Lord Dufferin's successor, Lord Lorne, and subsequent Governors General, were suitably revised. This was an important step in self government as the effect was to recognize the extension of Cabinet government to Canada and to make the relation of the Governor General to the central executive analogous to that of the Sovereign to the British Cabinet.

The Minute of Council, assented to formally by the Governor General, was a convenient instrument at hand and was used for a variety of purposes. For many of these it was really an inappropriate instrument. As early as 1873 it was suggested to the Governor General by Mr. Macdonald, the Prime Minister, that Minutes of Council should be treated as the conclusions of the Cabinet and the Order form be only used for formal instruments adopted when the Governor General was present or supposed to be present. He still thought it necessary however at this early stage of evolution for the Minute to be submitted to the Governor General for his sanction as advice tendered by his responsible advisors. Nothing seems to have come of this and nearly seventy years passed before recorded Cabinet Conclusions came into use. Deliberations of Cabinet, as such, continued to be unrecorded unless the Cabinet resolved itself into Council where a policy decision required the passing of a Minute. The public emphasis was on meetings of Council, although the dual position was recognized by the omnibus term 'Cabinet-Council' which came into some use.

With the steady growth of Canada and consequent increase in public business, the desirability of distinguishing between the functions of the two forms of the Central Executive however became more and more evident.

As mentioned before, in earlier years the Minute of Council was used for a wide variety of purposes, many of which are now achieved by other means. For example, at one time despatches on external relations came from the Colonial Office in Great Britain through the Governor General and were referred to departments by the Privy Council; replies were agreed to by a Minute of Council and transmitted back through the Governor

\* Rogers, *op. cit.*