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Bringing New Brunswick's Legislative Assembly into the 21st Century

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Series of Papers on Provincial and Territorial Legislatures

The Canadian Study of Parliament Group (CSPG), as part of its efforts to foster knowledge and understanding of Canadian parliamentary institutions, is publishing a series of papers describing and analyzing the thirteen provincial and territorial legislatures. The papers are being made available free of charge, in both official languages, on the CSPG Web site. The views and opinions contained in these papers are those of the authors and are not necessarily reflective of those of the CSPG.

Introduction

New Brunswick entered Confederation in 1867 with the rudiments of the Westminster model of legislative democracy – representative and responsible government – already in place. These particular institutions were typical of those in other British colonies at the time, which were characterized by a relatively small electorate, a limited scope for governmental activity, and elitist decision-making practices. But while the parliamentary institutions and political culture in other former British colonies developed and matured over the course of the late 19th and early 20th centuries, New Brunswick seemed caught in a time trap. Reflecting on the proclivity for clientelism and corrupt practices still present in New Brunswick, Patrick Fitzpatrick was able to write in 1972 that “[p]rovincial politics in New Brunswick might best be described as parochial, stagnant, and anachronistic – reminiscent, in some ways, of politics in 19th-century Britain before the reform movement” (116; see also Doyle 1976 and Thorburn 1961).

Nevertheless, the seeds of reform had already been sown. The 1960s in particular were characterised by sweeping changes in governance, social services, education and income redistribution, all under the visionary programme known as Equal Opportunity shepherded by Liberal Premier Louis Robichaud (1960-70) (Stanley 1984; Young 1986, 1987; CIRRD 2001; Cormier 2004). Since then, a parade of premiers and party leaders have tried to put their own stamp on the province, ranging from the “McKenna Miracle” in the 1990s (Milne 1996; Lee 2001; Savoie 2001; Sawler 2009) to the “transformational change” promised by Liberal Premier Shawn Graham (Desserud 2007a). Some of these premiers did indeed change the province, others not so much.

Perhaps to some observers New Brunswick politics once appeared to be, well, provincial. However, today they might want to take a look, for example, at the tenor and tone of public protest in

the province over the four years of Graham's Liberal government (2006-2010). The Liberals faced unprecedented protests and public campaigns against a range of ambitious if somewhat reckless proposed policies, and was forced to back down or reverse their stance on most of them. The Liberals were defeated in a landslide rout in 2010, marking the first time a government in New Brunswick was defeated after just one term. In 2011, "parochial, stagnant, and anachronistic" no longer describes New Brunswick politics nor its system of government.

Meanwhile, the province's legislative assembly has continued along, adapting slowly but certainly to such needs as simultaneous translation (in a province which is, after all, one-third Francophone), televised proceedings, and election of the Speaker through secret ballot. A few legislative committees now hold public hearings, sometimes travelling across the province to do so. In some cases, these changes were the result of a normal and gradual evolution; in others, a crisis, or near-crisis forced the issue. But the result is that the New Brunswick Legislative Assembly of today is professional and modern, and functions as well as any assembly in the country does, or can.

This paper portrays legislative democracy in New Brunswick as it has evolved from its 18th-century origins into the early years of the 21st century. While there is now a substantial body of literature studying New Brunswick's political parties, elections and political culture, and a growing body of literature examining public policy in New Brunswick, little attention has been paid to the history and structures of its government and in particular its legislative assembly. The authors hope to redress this imbalance.²

Setting the Stage: Historical Overview

Representative government in Canada first took root with the establishment of the legislature in Nova Scotia in 1758 (Dawson 1970: 3 ff.; Smith and Turnbull 2008: 4), and was well established by the time of the great influx of Loyalists who began arriving in the 1780s following the American Revolution. Nova Scotia once encompassed much of today's Maritime Provinces, including the territory north of the Bay of Fundy then known as the (Nova Scotian) county of Sunbury. This territory became the home for many of the Loyalist newcomers, with most of them settling in Saint John (incorporated as a city in 1784) and further up the St. John River.

Given their physical distance from the seat of government in Halifax, the new settlers soon demanded their own representative assembly. There was little opposition from authorities in Halifax: Nova Scotia had been "neutral" during the Revolution, but many Nova Scotians had been quite sympathetic with the revolutionary rather than the Loyalist cause, and did not always agree with the politics expressed by the Loyalist newcomers, who in turn wondered about Nova Scotia's loyalty to the Empire (see Desserud 1999). In any case, as both R. MacGregor Dawson (1970: 3-6) and J. R. Mallory (1984: 4-7) have observed, the new settlers had British common law on their side because as a "settled" colony (that is, not conquered), they had the right to have such a representative assembly. Exercising his royal prerogative, King George III granted the settlers' request in 1784 by granting Sunbury County status as a separate colony, naming it New Brunswick after his ancestral home, and sending Thomas Carleton to be its first governor. The first elections were held in November 1785, with the first meeting of the legislature taking place in Saint John the following January (MacNutt 1963: 59-63; see also Bell 1983, Condon 1984, and Raymond 1914: 140-93).

Original Structure: New Brunswick's new government followed the model used by the other colonies. The legislature was bicameral with an upper assembly known as the Legislative Council, and a lower house called the Legislative Assembly. The Governor appointed the Legislative Council and, as was the case across British North America before the advent of "responsible government," the council commanded more power than did the elected assembly. But the Governor, who was appointed by the King through the British Colonial Office, wielded most of the power, or at least he did if he chose to. As well, all members of the Legislative Council were also members of the Governor's privy council -- known as his Executive Council -- and in this capacity (in addition to their legislative functions) they assisted the Governor in the administration and governance of the colony. Most of the time, the councillors met as the Executive Council; when the legislature was in session, however, they met as the Legislative Council (Raymond 1914: 159; Thorburn 1961: 5).

Responsible government: The practice of choosing the prime minister and cabinet from the elected assembly, upon which the government then depends for support, derives from the parliamentary reforms that took place in Britain in the eighteenth and nineteenth centuries. In Upper and Lower Canada, as well as in Nova Scotia, the impetus for these reforms was led by charismatic local politicians, and in some cases came in the aftermath of violent protests.³ But in New Brunswick, responsible government crept rather than marched into the province. New Brunswick did have its own reformers, such as Charles Fisher and Lemuel Allan Wilmot, but neither captured the province's imagination the way that Joseph Howe did in Nova Scotia or Louis Papineau did in (Lower) Canada (see Whitcomb: 20-25). On the other hand, some New Brunswick's lieutenant-governors during this period were less than enthusiastic when it came to the day-to-day governance of their colony, largely leaving

the job to a succession of premiers. These premiers soon found it useful to appoint members from the Legislative Assembly (MLAs) to the Executive Council, and so eventually Premier and Council did come to depend on the support of the lower chamber in order to govern. Nevertheless, and with the benefit of hindsight, it can be said that the implementation of responsible government in New Brunswick was largely a matter of emulating developments in the other colonies. Furthermore, the proclivity of the Colonial Office to interfere in New Brunswick's provincial affairs did not end until Confederation in 1867. In synch with the rest of British North America, New Brunswick was granted responsible government in 1854, but it arrived with little fanfare.

This is not to say that 19th-century New Brunswick politics was devoid of passion; curiously, a relative indifference to issues such as responsible government coincided with strong public emotions concerning alcohol consumption in the province. Political factions like the Rummies faced off against temperance advocates such as the Smashers, and their members included people like New Brunswick's future premier and Father of Confederation, Sir Samuel Leonard Tilley.⁴ As well, the various Women's Temperance societies played an unusually active role in providing the disenfranchised women of New Brunswick a forum for political activism. Some of these societies even drafted legislation on a variety of social causes and then convinced sympathetic MLAs to introduce the bills on their behalf. The legacy of these societies is no less than the right of women to vote and run for office in New Brunswick, as much of the success of what would be the New Brunswick Women's Enfranchisement Association is attributable to the political acumen and organizational skills of these societies (Desserud 1996b: 259; also see Mitchinson 1979 and Tulloch 1985).

Confederation 1867: New Brunswick, Nova Scotia and what would become Quebec and Ontario are Canada's founding provinces. But New Brunswick was not, at first, a willing participant in Confederation (MacNutt 1963: 414-61). While Premier Tilley led the New Brunswick delegation to the Confederation meetings in Charlottetown and Quebec City, he was defeated in an election on the Confederation question in 1865, losing to the Anti-Confederation Party led by Albert J. Smith. Nevertheless, New Brunswick's Governor, Arthur Hamilton-Gordon, was ordered by the Colonial Office to dismiss the duly elected government and call another election, which was held in 1866. This time, New Brunswickers saw the writing on the wall – that they had little choice but to join Confederation – and the Confederation Party led by Peter Mitchell won with a substantial majority. Meanwhile, Tilley left provincial politics and would serve in Prime Minister John A. Macdonald's first cabinet in Ottawa.

As was the case in the other provinces (except Quebec), New Brunswick soon took steps to abolish its upper chamber, the Legislative Council, a job it completed in 1891. The impetus to rid the province of its upper assembly seems to have been less a concern over the council's elite status, and more because it cost money to operate (Campbell 2007: 284). Nevertheless, the time it took to abolish the upper chamber tested the patience of New Brunswick's premier, Andrew Blair (1883-1896), who complained that his appointees to the upper chamber -- chosen for their supposed willingness to support his reform agenda -- developed an alarming independence once they took their seats (Garland and Machum 1980: 27; also see Kitchin 1972). Blair eventually got the vote he wanted; however, the council imposed a condition: the council would continue until the next election. So Blair requested and was granted a dissolution two years early (Campbell 2007: 283), and "An Act Relating to the Legislative Council" formally abolished the chamber on 16 April 1891.

Political Parties

Highly disciplined parties were slow to emerge in the province (Doyle 1983: 16-17), but since the early years of the 20th century two parties and only two have dominated: the Liberals and the Conservatives (or PCs). Of the twenty-six provincial elections held between 1908⁵ and 2010, the Liberals have won thirteen and the PCs thirteen. Only the Liberals and the PCs have ever won elections in New Brunswick, and until 2010 neither party had ever been defeated after just one term and only rarely after two. Of the 1371 seats up for election in this time period, 51 per cent have been awarded to Liberals and 47 per cent have been PCs.⁶ Third parties have rarely received significant support in New Brunswick. The New Democratic Party (NDP) won a single seat in five general elections (1982, 1991, 1995, 1999, and 2003), and was briefly represented by two members following a by-election victory in 1984. The only other parties to win seats in the Legislative Assembly were the United Farmers of New Brunswick, which won six seats in 1920, and the Confederation of Regions party (CoR), which won eight and three seats in 1991 and 1995 respectively.⁷ The CoR party is also notable for being the only party other than the Liberals or the PCs to ever form the Official Opposition in the province. Table 1 shows the number of seats won by each party in each general election since 1982.

Table 1: Party representation in the New Brunswick Legislative Assembly following each general election since 1982 (**bold** = government party).

Year	Liberals	Progressive Conservatives	New Democratic Party	Confederation of Regions*	# seats in Legislative Assembly
1982	18	39	1	N/A	58
1987	58	0	0	N/A	58
1991	46	3	1	8	58
1995	48	6	1	0	55**
1999	10	44	1	0	55
2003	26	28	1	N/A	55
2006	29	26	0	N/A	55
2010	13	42	0	N/A	55

* The Confederation of Regions Party only contested the elections of the 1990s.

** Redistribution reduced the number of seats from 58 to 55.

Effect on the workings of the Legislative Assembly: New Brunswick's two-party system, then, has been highly stable, and this has affected the government-opposition dynamics. Although the results of the 2010 election may be a signal that this cycle has been broken, for much of New Brunswick's political history, the following pattern has occurred: A party wins a healthy majority and faces a now-demoralized opposition primarily made up of former government members who had become too accustomed to being in power. The newly defeated party embarks on a rebuilding process that invariably results in the experienced members (especially the leader of the party) resigning to make

room for “new blood.” But this means the governing party now faces an opposition led by an ineffective and inexperienced leader, which in turn means the party in power has little difficulty being re-elected. More times than not, the defeated “inexperienced” opposition leader is pushed out in favour of yet another new leader, who has even more difficulty providing effective opposition to a now very-confident governing party.

Table 2: Premiers and Opposition Leaders in New Brunswick when general elections were called, with the winning party, since 1960.

General Election	Premier (and party)	Leader of the Opposition	Winning Party
1960	Flemming (PC)	Robichaud (Lib)	Lib
1963	Robichaud (Lib)	Sherwood (PC)	Lib
1967	Robichaud (Lib)	Van Horne (PC)	Lib
1970	Robichaud (Lib)	Hatfield (PC)	PC
1974	Hatfield (PC)	Higgins (Lib)	PC
1978	Hatfield (PC)	Daigle (Lib)	PC
1982	Hatfield (PC)	Young (Lib)	PC
1987	Hatfield (PC)	McKenna (Lib)	Lib
1991	McKenna (Lib)	Cochrane (PC) / Pafford (CoR)*	Lib
1995	McKenna (Lib)	Valcourt (PC) / Hargrove (CoR)**	Lib
1999	Theriault (Lib)	Lord (PC)	PC
2003	Lord (PC)	Graham (Lib)	PC
2006	Lord (PC)	Graham (Lib)	Lib
2010	Graham (Lib)	Alward (PC)	PC

* Strictly speaking, there was no Leader of the Official Opposition in 1991 because of the absence of opposition MLAs following the 1987 election. Thus, Dennis Cochrane and Archie Pafford were only leaders of their respective parties.

** Both the PCs and CoR held six seats at dissolution, although officially the latter still held the position of Official Opposition. See Hyson 1996.

However, the ease of governing under such conditions engenders complacency and carelessness, and confidence soon turns to arrogance. Eventually, after two or three terms in office, this arrogance provokes increasing public resentment and so the government is soundly defeated. The party in power finds itself now in opposition, demoralized but determined to rebuild with a new leader. And so the cycle repeats itself. As Table 2 shows, only once has the same pair of premier and opposition leader faced off in subsequent elections since 1960.

Since the 1950s, New Brunswick premiers have been quite young when their parties have been elected. In 2010, David Alward became the “oldest” premier to assume office after an election in New Brunswick since Hugh John Flemming in 1952. Alward was just 50; Flemming was 53. Louis Robichaud, Richard Hatfield, Frank McKenna, Bernard Lord and Shawn Graham were all under the age of 40 when they became premier. Alward’s victory is significant for a number of other reasons, not the least of which is the fact that he is the first leader to defeat a government that had only served one term. However, given that Bernard Lord came within a few votes of losing the election after his first term, it may be more accurate to say that since 1999, the pattern of governments being assured an election victory after their first term has been broken.

Electoral System

Electoral-party politics were traditionally dominated by leading local notables and families (“patrons”) in each county/electoral district. This was the basis for the province’s tradition of “localism,” clientelism, “treating,” and patronage (Thorburn 1961: 135-43; Young 1986: 133-42), and it also explains the delay in the development of political parties: politics was very much a local affair, and local notables were suspicious of losing power to central party officials. New Brunswick’s counties originally provided the basis for the province’s electoral districts, an arrangement which would last with only minor changes until 1974 (Garland and Machum 1980: 117). Each district was assigned multiple MLAs (2-5) roughly according to population size and the presence of distinct communities inside each district. However, the boundaries of the new counties and number of seats to be assigned were assigned arbitrarily, and not without a little gerrymandering (Hyson 2000). As well, a sense of localism was also fostered by the presence of elected county councils (and other governmental apparatus) with considerable responsibilities and powers (Garland and Machum 1980: 68).

Under the multi-member riding system, citizens could vote for as many candidates as there were MLA positions to be filled for their district. Elections were held on different dates in the different districts and continued over several days,⁸ and winners were chosen on the basis of plurality. In 1857, New Brunswick adopted the secret ballot, the first colony in British North America to use one, and just one year after Australia did (Campbell 2007: 275). The secret ballot would be used for the first time in the 1861 provincial election (Garner 1963: 32).

Mind you, it took more than 100 years for New Brunswick’s ballots to be truly secret. Until electoral reforms passed in the late 1960s, ballots were blank sheets of paper, upon which voters were

expected to write the names (without spelling mistakes) of their chosen candidates. As a “public service,” political parties in the province prepared their own ballots, listing only their party’s candidates and handed them out at the door of the poll. Voters found it easy to choose and so vote a “straight ticket” for all candidates of one party. It was fairly obvious who was voting for whom.

Although John Garner famously described pre-Confederation New Brunswick as possessing the “most restrictive franchise in British North America,” he also explained that New Brunswickers were quite good at finding ways around these restrictions (Garner 1969: 54-72; see also Campbell 1990). Land ownership was an early qualification, but land was cheap in pre-Confederation New Brunswick and urban centres were few, so most male citizens owned land. Those who did not may have been “freemen” (tradespeople living in Saint John, for example) who were also afforded the right to vote. There were even some instances where free-holding women voted (Tulloch 1985: 3; also see Campbell 1990), although under the guise of clarifying the franchise, legislation was passed in 1843 explicitly denying women the vote (Campbell 2007: 276). Roman Catholics (and Jews) had already been disenfranchised in 1786, in no small part because of the revelation that Acadian landowners (almost all of whom were Roman Catholic) in Westmorland County had voted in sufficient numbers to defeat the establishment candidate (Elections Canada 2007: 18). The property qualifications were eventually repealed in 1889 (Campbell 2007: 282).

New Brunswick was also one of the last provinces to enfranchise (or more correctly re-enfranchise) women. They received the right to vote in 1919, and the right to run for office in 1934, although no women were elected to the legislature until PC candidate Brenda Robertson managed to win her seat in 1967 (Tulloch 1985; Desserud 1996b). No election returned more than four female MLAs

until 1987, when seven women were elected to the legislature. This number rose to ten in 1991, a number that has not been repeated since (eight were elected in 2010: see Table 3).

Table 3: Women elected to the New Brunswick Legislative Assembly, according to party affiliation, in general elections from 1967 to 2006.

General Election	Liberal	PC	NDP	CoR	Green	PANB	Total Number of Women Elected	As % of Total Number of MLAs
1967	0/32*	1/26**	0/0	N/A	N/A	N/A	1	2
1970	0/26	1/32	0/0	N/A	N/A	N/A	1	2
1974	1/26	1/32	0/0	N/A	N/A	N/A	2	2
1978	1/25	3/33	0/0	N/A	N/A	N/A	4	7
1982	1/18	3/39	0/1	N/A	N/A	N/A	4	7
1987	7/58	0/0	0/0	N/A	N/A	N/A	7	12
1991	8/46	0/3	1/1	1/8	N/A	N/A	10	17
1995	7/48	0/6	1/1	0/0	N/A	N/A	8	15
1999	1/10	7/44	1/1	0	N/A	N/A	9	16
2003	1/26	5/28	1/1	N/A	N/A	N/A	7	13
2006	3/29	4/26	0/0	N/A	N/A	N/A	7	13
2010***	0/12	8/42	0/0	N/A	0/0	0/0	8	15

* The first number refers to the total number of women elected; the second to the total number of MLAs elected.

** The general election of 1967 was the first time that a woman (Brenda Robertson) was elected to the New Brunswick Legislative Assembly.

*** Neither the Green Party, NDP nor the PANB elected MLAs in the 2010 election. However, 22 of the Greens' 51 candidates were women as were 16 of the 55 NDP candidates and six of the PANB's 14 candidates. The PCs fielded 14 women candidates while the Liberals ran 12 (both out of 55).

Anglophones and Francophones

Cultural-linguistic issues have always been a part of New Brunswick's political history, and have been especially dominant since the 1960s. During the early part of the province's history, however,

these issues unfolded largely within the Roman Catholic Church whose membership primarily consisted of Anglophone New Brunswickers of Irish descent and Francophone Acadians (Aunger 1981; Wilbur 1989). Within the political arena, however, the ability of Acadians to participate was severely limited, Catholics not being allowed to vote until 1810 or hold government office until 1830 (Andrew 1996: 6).

The only Acadian premier prior to 1960 was Peter J. Veniot, who had assumed the position in 1923 following the incumbent premier's resignation; however, the Liberal party under Veniot's leadership was defeated in the following general election of 1925 (Doyle 1983: 47-50). Thus, in 1960, Louis J. Robichaud became the first Acadian to lead a party to electoral victory; he was also the first premier whose mother tongue was French. But Robichaud and other Acadian MLAs knew they had to speak in English to be understood by a wider audience. One of the comprehensive reforms instituted by Robichaud included the 1967 adoption of simultaneous translation for the legislature in both the chamber and its committees (Peterson 1989: 158). This development within the legislature coincided with the province's broader adoption of official bilingualism in respect to governmental operations and services: New Brunswick's *Official Languages Act* received Royal Assent 18 April 1969, but the Translation Bureau in the Department of Supply was created two years before (August 1967). In 1973, the *Revised Statutes of New Brunswick* was published in both official languages, as has been all legislation since.

At present, and after being served by a succession of bilingual or near-bilingual premiers (beginning with Frank McKenna in 1987), it is considered a necessity that a premier in New Brunswick speaks both official languages. All premiers have been bilingual since the days of Richard Hatfield, New Brunswick's last unilingual premier.

Ironically, or perhaps significantly, Hatfield's unilingualism did not prevent his party from gaining support from New Brunswick Francophones. Until Hatfield, and for much of New Brunswick's electoral history, voting behaviour had been entrenched so that (most) Anglophones voted for the PCs and Francophones voted for the Liberals. However, as Cross and Stewart (2002: 46-52) point out, this pattern was broken in 1982 when the PCs managed to attract a substantial number of Francophone votes, a direct result of PC premier Richard Hatfield's efforts to court the Francophone vote (Starr 1987: 64 ff.; Carty and Eagles 2003). The trend continued in the 1987 election, remarkable not just because the Liberal Party won every seat, but because the Liberals did so by receiving a substantial number of votes from New Brunswick Anglophones. Today, as recent surveys have shown, support is not entrenched for any party, nor is there discernible difference in Anglophone or Francophone support for either the Liberals or PCs.⁹

The Shock of the 1987 General Election

No account of New Brunswick can avoid a discussion of the 1987 general election. The shock of the results was well captured by television cameras on election night, when, stepping on stage to acknowledge his party's electoral victory, Liberal leader Frank McKenna physically cringed when learning that his party was about to win all 58 seats.

At first blush, it appeared that with McKenna's cataclysmic win the traditional two-party dominance of the Liberals and Progressive Conservatives in electoral politics in the province was finally broken (Kincade and Everitt 2001). To a certain extent this was true. As explained above, the PCs had already made significant incursions into Francophone ridings in 1982. Now, in 1987, the Liberals had, in turn, captured all of the predominantly Anglophone ridings. Furthermore, the vacuum left by the

obliterated PCs allowed for other parties to arise, most notably the Confederation of Regions party (CoR), a right-wing populist party that enjoyed limited success in the 1991 and 1995 general elections. So in the wake of the 1987 election, traditionally stable patterns of voting seemed to be more volatile, and in the next few elections voters did switch parties again and again.

However, more than twenty years later, the two-party system seems to have returned, with even the old geographic pattern of northern New Brunswick voting Liberal, and southern New Brunswick PC. With one exception, all of the Liberals' 13 seats won in the 2010 election are found along what is known as the Acadian shore, from the town of Dalhousie through to the county of Kent. The Liberals hold but one seat in southwest New Brunswick, and two in the Moncton region (southeast NB). They have no seats in the Saint John or Fredericton metropolitan regions. As well, while voting volatility is higher than it was in the last election (2006), it is still moderate compared to the 1987-1999 period.¹⁰ New Brunswick does indeed appear to still possess what has been called "Canada's most perfect and durable two-party system" (Dyck 1996: 177).

Structural consequences – electoral boundaries: The 1987 election did have significant consequences for legislative democracy in New Brunswick. Initially, attention was mostly focussed on the scale of the Liberal victory and the distorting impact of the plurality electoral formula (Hyson 1988a; 1988b; 1990). But focus later shifted to the need for electoral boundary redistribution, the under-representation of certain groupings in the legislature and the possibility of replacing the first-past-the-post electoral system. McKenna's government only addressed the issue of redistribution, while Lord's Commission on Legislative Democracy (see below) dealt, or tried to deal, with other electoral matters.

The Liberals' margin of victory was huge in 1987, with the party winning 60 per cent of the vote and 100 per cent of the seats. However, constituency disparities were also tremendous. The largest district in 1987 (Petitcodiac) had 19,930 eligible voters, while the smallest (Queens North) had 4,064 eligible voters (Hyson 2000: 178-80). Since one MLA represented each district, the value of a vote cast in the latter district was five times that of a vote in Petitcodiac. Other measurements of inequality were just as dramatic. While such district inequalities had long been present in New Brunswick, a new factor had entered the picture: section 15, the equality provisions of the *Canadian Charter of Rights and Freedoms* of 1982, had come into effect in 1985.¹¹

Section 3 of the *Charter* already guaranteed all citizens the right to vote. Together, sections 3 and 15 lent ammunition to the argument for voter parity: citizens had the right to have their vote weighted equally in the demarcation of constituency boundaries. Though there were court cases elsewhere in the country, the government of New Brunswick decided to hold a major redistribution via an independent commission (Hyson 1995: 285-99; 2000: 174-97). Appointed in March 1991, the New Brunswick Boundaries Commission held two extensive rounds of public hearings across the province during the next two years, and submitted its final report in December 1993. The commissioners were influenced by the Supreme Court of Canada's Carter decision of 1991 (*Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158) that the Section 3 required "effective representation," not voter parity (Hyson 2000: 184). Nevertheless, the thrust of the *Charter* decision also necessitated justification of variations from voter parity. The New Brunswick Commission thus eliminated the gross variations in district sizes by requiring constituencies to be within 25 per cent (plus or minus) of the provincial average. Its recommendations for a new electoral map were accepted by the legislature, moving the province from having one of the country's highest levels of constituency inequality to having one of the

lowest by the time of the 1995 election. The Gini index of inequality, which is frequently used in electoral redistribution studies, went from 0.205 in 1987 to 0.079 in 1995 (Hyson 2000: 192).¹² This redistribution exercise also became the springboard for even more redistribution reforms a decade later (see below).

Structural consequences – legislative procedures: The McKenna government also had to respond, at least on a short-term basis, to the internal proceedings of the Legislative Assembly following the 1987 general election. With the total absence of opposition MLAs, arrangements were made including: having Liberal backbenchers ask questions of the government, seating some cabinet ministers, including the premier, to the left of the Speaker, providing research assistance to the unelected opposition parties,¹³ and, eventually, allowing the leaders of the opposition parties to sit on the floor of the chamber in seats normally reserved for the media. Admittedly, these were temporary measures and were quickly abandoned following the 1991 election which returned a dozen opposition MLAs. To some extent, however, the measures did direct attention to the need 1) to enhance staff support both in the legislative building and constituency offices of the MLAs, and 2) to strengthen the monitoring task of the legislature.

Commission on Legislative Democracy

These and related matters were later addressed by the Commission on Legislative Democracy (CLD), established on 19 December 2003 by the Lord government. The PCs under Bernard Lord's leadership has been termed a "populist" party (Poitras 2004; Belkhodja 2002a; 2002b), and the mandate of the commission seemed to reflect this view with its instructions to consider the (increased)

use of referenda, the possibility of recall legislation, “fixed-date” elections and MLA accountability legislation. Of course, many of these proposals could be found on the reform agendas of other jurisdictions across Canada during the 90s and through the first decade of the 21st century, and so the attempts by the Lord government to reform New Brunswick’s political system can be seen as evidence that such populist and reform agendas were present and significant in New Brunswick as well.

The CLD’s eight commissioners, with Lorne McGuigan and Lise Ouellette as co-chairs, were chosen from across the province and attempts were made to ensure the members would be demographically representative of New Brunswick society (McLaughlin 2007: 25). Its director of research was Bill Cross, a political science professor then at Mount Allison University, while David McLaughlin, a senior advisor to the Lord government, led a full-time staff of five by serving as the deputy minister responsible for the commission. So assembled, the commission proceeded with a research phase during which a number of scholars submitted papers on various topics, subsequently published in a book titled *Democratic Reform in New Brunswick* (Cross 2007). As well, the commission consulted widely through public hearings, meetings with community leaders and targeted social groupings (youth, women, and Francophones), and solicited input online (McLaughlin 2007: 31-33).¹⁴

Mandate: The commission was charged with enhancing “citizen-centred democracy in New Brunswick, building on the values, heritage, culture, and communities of our province” (181).¹⁵ More specifically, the commission was: “[t]o examine and make recommendations on strengthening and modernizing our electoral system and democratic institutions and practices in New Brunswick, to make them more fair, open, accountable and accessible to New Brunswickers” (181). To do so, the commission was asked to consider three key themes:

- Electoral Reform
- Legislative Reform
- Democratic Reform (181-82).

However, the commission's mandate was not as wide open as its stated mandate might first imply; in many areas, the government imposed certain parameters within which the commission was to make its recommendations. For instance, electoral reform was to include recommendations for "implementing a proportional representation electoral system for the New Brunswick Legislative Assembly" (181), but was to do so in a manner that "continued [the] role for directly-elected MLAs representing specific geographic boundaries" (181). In other words, neither the status quo nor a strictly proportional representation system would be acceptable. The commission was also asked to recommend a means by which election dates could be fixed. It was not asked to consider whether fixed-election dates were a good idea or even possible under the province's constitution (Desserud 2007b). With respect to redistribution reform, the government essentially set the commission on the path of entrenching and strengthening the McKenna changes of the mid-1990s. What the government meant by "Democratic Reform" was also spelled out: in part, the commission was to "examine and make recommendations for enhancing direct democracy by proposing a New Brunswick Referendum Act that sets out the rules and procedures for allowing province-wide, binding referendums on significant public policy issues" (182; see Belkhodja 2007; Hyson 2001-02).

Other mandated directions were vaguer and less tangible. For instance, the directive to make recommendations "on enhancing public involvement in government and legislative decision-making" (182) was wide open and provided little direction. As it turned out, besides dealing with the referendum item, the commission decided on its own initiative to examine the disengagement of youth (see Howe

2007) and under-representation of women and Aboriginal people in the legislature, and it made specific recommendations designed to encourage parties to broaden their recruitment endeavours. It also called on the Department of Education to adopt a “mandatory provincial Civics Program from Kindergarten through Grade 12” (95). Similarly, under the “Legislative Reform” category, the commission had merely to make “recommendations on enhancing the role of the Legislative Assembly and MLAs in decision-making while ensuring greater accountability of MLAs to their constituents and to New Brunswickers,” as well as to “examine and make recommendations on enhancing transparency and accountability in appointments to government agencies, boards, and commissions” (181). The commission seemed to be out of their league on this matter, devoting proportionately little time and effort to it. The commission did decide, however, to focus on such matters as decreasing party discipline, allowing for more free votes, and having votes considered matters of confidence. As well, it called for more research staff and constituency support for the legislators.

Recommendations and government responses: The Commission completed its report on schedule (year’s end, 2004), but nothing was immediately forthcoming from the Lord government. In May 2005, through an amended Liberal motion, the Legislative Assembly passed a resolution (Motion 76) that one of the House committees would examine and recommend action on (at least) chapter four of the report, which detailed the commission’s recommendations on “enhancing the role of the MLAs and the Legislature” (CLD 2004: 67). However, the Legislative Administration Committee was still reviewing the recommendations when the election was called in 2006. Meanwhile, the Lord government issued its own response June 2006. In its response, the Lord government promised it would (among a number of reforms) pass legislation fixing election dates, strengthening its *Referenda Act*, revising and making

more effective the Legislature's committee system, and holding a referendum on a proposal for a electoral system based on proportionate representation (*PC Government Response 2006: 1-2*).

However, none of these measures were instituted as Lord called an election two months later (and just three years into his mandate). Lord lost that election, and so it was left to his replacement, the Graham Liberals, to deal with the commission's recommendations (see *Liberal Government Response 2007*).

The Liberal government rejected or ignored many of the recommendations, but did institute others. One notable rejection was of the commission's most controversial and dramatic recommendation: its attempt to satisfy its directions to combine proportional representation with single-member constituencies. Not taking the easy way out, the commission's hybrid model would have also made provisions for regional representation, combining 36 single-member riding seats with 20 list PR seats:

- the 36 seats would resemble the existing 55 constituencies (albeit covering more territory with larger population sizes), each electing one MLA based on a plurality vote (first-past-the-post system)
- the 20 list seats would be divided into five for each of four regions, and would be allocated based on the percent of party vote in a region. (As well, each of the four regions would encompass nine of the single-member districts). (CLD 2004:ch 2 passim)

Under this system, elections would be complicated affairs. Electing MLAs representing one of the new 36 constituencies would remain the same: voters would choose one name off a standard ballot. But then voters (grouped in four regions) would be asked to cast a second vote, this time for one of the registered parties. The five seats in each region would be assigned to the parties "based on the

D'Hondt electoral formula, so as to partially correct for disproportionality in the single member constituency elections" (46). Simply put (!), the D'Hondt system provides for a calculation that allocates seats to parties whose total votes on the regional party ballot are not reflected in the results of the single-member constituency ballot. To qualify for the bonus seats, a party would need to receive more than five per cent of the party vote. Candidates would not be allowed to stand for elections in both single-member and regional constituencies. The candidates eligible for these PR seats would be determined through a list system, chosen in "in open conventions based on clear party nomination, financing, and disclosure rules" (17).

The commission realized that New Brunswickers might find the new system difficult to understand, and so recommended that the proposal be put to a referendum, after a public education programme directed by Elections New Brunswick. This, however, never came to pass and the new Liberal Government simply rejected the recommendation, stating bluntly that "the case for proportional representation has not been made" (*Liberal Government Response: 6*).

One recommendation that was fulfilled was legislation to fix election dates. This was a reform Premier Lord promised in his first campaign (while still opposition leader), when he voiced a concern that many have expressed: that premiers should not be able to time elections to their partisan advantage. The Commission agreed, and recommended that provincial elections "be held on a fixed date every four years commencing Monday, October 15, 2007, and on the third Monday of October every four years thereafter" (CLD 2004:19). Of course, such legislation could not bind the Lieutenant Governor, nor is it clear what penalty could be imposed on a premier who ignored such legislation.¹⁶

Nevertheless, Bill 75, *An Act to Amend the Legislative Assembly Act*, was eventually passed in the first session of the 56th Legislative Assembly, and received Royal Assent on 26 June 2007, with one

minor change: the fixed date for the next election was set to 27 September 2010, not 15 October 2007 as recommended. Changing the dates became necessary in order to fix four-year terms now to the date of the 2006 election, which had been called by Premier Lord a year before his own proposed date. As Desserud (2008: 53) writes, “two events convinced Lord to abandon his claim that he would never call an election just to take advantage of favourable circumstances.”

The first was a bump in the polls, showing that despite the debacle of the last legislative session, the PCs were once again favoured by a majority of New Brunswickers – the first time since 2003. The second was the resignation of the PC member for Tantramar, Peter Mesheau. Lord now faced the prospect of meeting the Assembly with only 26 members, not counting the Speaker. The Liberals, with 26 seats, could likely rely on the vote of the Independent MLA. This would give them 27 votes, and, once again, the Speaker’s vote would not help if and when the government faced a vote of non-confidence. A quick by-election was a possibility; however, with the popular Mesheau gone, the PCs were not confident of a win. Were the Liberals to win back the seat (they held it from 1987 to 1999), they would have more seats than the PCs.

Another recommendation that was accepted and that has now been instituted was the establishment of an Electoral Boundaries and Representation Commission. Actually, the haste in which this legislation was introduced and approved, and came into effect on 30 June 2005, is peculiar. As noted in an earlier section of this paper, electoral redistribution and its calculation had been the most significant reform affecting the Legislative Assembly during the McKenna years. Hyson has observed (2000: 192-94) both strengths and weaknesses of New Brunswick’s independent boundaries commission of 1991-93, and the Commission on Legislative Democracy (CLD 2004: 50-55) had also suggested improvements. Thus, the momentum was in place to enact a statute to guide future redistributions. With the benefit of hindsight, this may have been the main intent in appointing the Commission on Legislative Democracy.

The *Electoral Boundaries and Representation Commission Act* (EBRC Act) requires, for the first time in the province, the appointment of independent boundaries commissions to consider redistributing seats after each decennial census. The 2006 general election was the first election to benefit from such a commission, which consisted of two co-chairs representing both linguistic communities plus five other members. The act also requires these commissions to conduct public hearings, stipulates a rigid time schedule for the completion of the redistribution exercise, and lists demarcation criteria for determining riding boundaries. Unlike the 1991-93 boundaries commission that only used eligible voters in its calculations, commissions formed under the EBRC Act must use the total population as revealed by the census in its calculations. A quotient is determined by dividing the provincial population by 55 (the number of districts), and then the commission proceeds to draw district boundaries based on that quotient within the acceptable range of population deviation (or variance). This unprecedented commitment to voter parity is where the new act truly stands out.

The province's boundaries commission is now statutorily limited to a deviation of no more than 10 per cent above the quotient; as well, deviations below the quotient cannot exceed 10 per cent except in extraordinary circumstances. Only one district in 2006 – Tantramar – was established as a small district because of such circumstances. In contrast, the boundaries commission of the 1990s was legally allowed to have deviations of plus or minus 25 per cent, although it set its own working standard of plus or minus 20 per cent (Hyson 2000: 184). The CLD (2004: 55) had recommended a permitted deviation of plus or minus 15 per cent (and up to +/-25 per cent in exceptional circumstances). Moreover, it needs to be stressed that the 2005 act now gives the boundaries commissions the final determining authority in drawing New Brunswick's electoral map: cabinet must adopt the commission's recommendations and the Legislative Assembly can only correct an error in the legal description of a

district boundary and amend the name of a district.¹⁷ The impact of this most recent redistribution exercise was evident in the 2006 general election: the Gini index in respect to district inequality was 0.056 (it had been 0.079 in the 1995 election following the 1991-93 redistribution).

In addition to accepting the CLD's recommendations for fixed election dates and regular electoral boundaries commissions, the Graham Government also followed the CLD's advice to make other significant, albeit incremental, adjustments to the electoral process. Elections New Brunswick has begun to "modernize the elections process" (*Liberal Government Response 2007*: 6). Voting machines, rather than the traditional paper ballots dropped into a box, are now being used for municipal elections, and in 2010 were used for special ballots. As well, voters can now vote at any time during the official campaign period; either in a series of scheduled advanced polls or by special ballot at the local returning office, nor are voters asked to justify why they require a special ballot or access to an advanced poll.

Other changes affecting the proceedings of the Legislative Assembly include the adoption of "a standard legislative calendar with set fall and spring sessions" (6). Amendments have also been made to the *Members' Conflict of Interest Act*, which now prohibits cabinet members from accepting "a salary, financial assistance or other benefit from a registered political party or a registered district association."¹⁸ Finally, the mandate of Elections New Brunswick has been expanded and merged with the Supervisor of Political Financing, in order to better supervise new rules governing public financing.

Modern Structure and Operations

Composition of the Legislative Assembly:

*MLA Backgrounds*¹⁹ -- New Brunswick's 57th Legislature is dominated by members of the PC Party, a party which has traditionally seen itself as right-of-centre and business friendly. Therefore it should

come as no surprise that 14 of the 55 MLAs have either a business background or a university degree in Business Administration. All sit in the PC caucus. Nine (5 PC, 4 Lib) MLAs have backgrounds in education, including education degrees and experience teaching at the high school, college or university levels. Five (3 PC, 2 Lib) are involved in either the forestry, agriculture or fisheries industries. Four MLAs (3 PC, 1 Lib) have backgrounds as members of the armed forces, police or fire departments. Three (2 PC, 1 Lib) have careers in real estate and two (1 PC, 1 Lib) have backgrounds in social work or social activism. There is one medical doctor, one dentist, one lawyer (all PCs) and one nurse (Lib).²⁰ It is a tradition in New Brunswick that the Attorney General and Minister of Justice be a serving member of the New Brunswick Bar (so a lawyer). As a consequence, the one lawyer in the PC caucus, and for that matter in the entire Assembly (Hon. Marie-Claude Blais, Moncton North) was the one MLA everyone knew would be in cabinet.²¹ Six (5 PC, 1 Lib) served terms at the municipal level, including as mayor, deputy mayor or city/town councils.

Gender Representation -- Women are seriously under-represented in the New Brunswick legislature (see Everitt and Pitre 2007). At present, only eight of New Brunswick's 55 MLAs are women, and all are members of the PC caucus. The 1987 election seemed to indicate that women were going to be elected into the legislature in increasing numbers; however, Table 3 indicates that the numbers have quickly stabilized and may now be revealing a gradual decline.

The CLD recommended some reforms with the goal of increasing the likelihood of more women in the legislature, specifically by offering parties financial incentives to nominate more female candidates:

That amendments be made to the *Political Process Financing Act* as a way to achieve gender equality in the Legislative Assembly that would include an increase of the annual allowance to political parties by \$1 per valid vote to any party in which women comprise at least 35 percent of the candidates in the preceding provincial election. This

incentive would be reviewed once the New Brunswick legislature reaches a minimum of 45 percent women. (CLD 2004: 101)

The former Liberal government promised instead to increase the current rebate for election expenses granted to riding associations for the 2010 election, so that a female candidate receiving at least 15 percent of the vote would be eligible for a 55 per cent rebate, rather than the regular 50 per cent (*Liberal Government Response 2007: 28*). However, this reform was never instituted.²²

Aboriginal Representation – Despite early indications that it would seriously address the issue, in the end the CLD’s recommendations with regards to Aboriginal Representation amounted to a call for further study.²³ And while the former Liberal government’s subsequent pledge to initiate meetings between Aboriginal leaders and the Executive Council was promising (*Liberal Government Response 2007: 28*), its failure to include other legislators in the proposed dialogue is worrisome.²⁴ Meanwhile, in 2003 Thomas J. Burke became the first and so far only Aboriginal New Brunswicker to ever be elected as an MLA. Burke was re-elected in 2006 and served briefly in Graham’s cabinet (MLA Bios 2009); however, he lost his seat in 2010. Finally, the first Aboriginal to be appointed Lieutenant Governor – Graydon Nicholas – took office in the fall of 2009. He had previously been a provincial court judge for eighteen years. In 2011, there are no MLAs from any of New Brunswick’s First Nations.

Linguistic Representation -- Determining the Anglophone-Francophone distribution in the Legislative Assembly is difficult, as many members are bilingual and last names are not always useful as a means of deciding which member’s mother tongue is French or English. However, it would appear that in 2010, 15 of the 55 MLAs are Francophones, of whom eight are Liberal MLAs.

Election of the Speaker: The sitting MLAs elect the Speaker of the New Brunswick Legislative Assembly, as is the case in most Canadian legislative assemblies (Levy 1998), and follow what is known as the Ottawa method; that is, all MLAs (except for leaders of registered parties and cabinet ministers) are considered candidates unless they ask that their name be removed. In theory, Speakers in New Brunswick have always been elected, but in fact have been and continue to be nominated by the government. In 1995, procedures for choosing the Speaker were formalized, and provisions for secret ballots were adopted under the Standing Rules of the Legislative Assembly (Part III, Rule 11). However, 1995 also remains the only time procedure was needed, as two candidates vied for the position. Since then, as before, the post of Speaker has been used by premiers as a quasi-cabinet post to reward or placate an MLA who might otherwise have been appointed to cabinet, and the nominee has run unopposed. This use of the appointment has been criticised, most recently (2010) by former Clerk of the Legislative Assembly David Peterson. “When the premier nominates somebody, it chases everybody else away. I think the premier does an injustice to system by doing that,” Peterson said (Bundale 2010b). The Speaker of New Brunswick’s 57th Legislature is veteran PC MLA and former cabinet minister Dale Graham, chosen 27 October 2010.

Internal Operations:

Remuneration – As of 1 April 2008, the annual indemnity for an MLA was increased from just over \$45,000 to \$85,000, the salary recommended by the *Report of the MLA Compensation Review Commission 2007*. The report explained that this increase was the consequence of taxing MLA benefits which were hitherto tax free (in other words, adding them directly to the MLAs’ salaries), and so was not as substantial an increase as it might seem. Furthermore, the previous indemnity rate was one of

the lowest in the country. However, the new rate now puts the salaries of NB MLAs solidly in the top half of provincial legislative salaries rates,²⁵ and so not surprisingly the move attracted considerable controversy (Bundale 2010a). In addition, each member receives certain sums meant to cover “operating expenses,” including an allowance for his or her constituency office (\$40,000 for a private member, and \$15,000 for a cabinet minister). Private members also receive non-taxable allowances to cover expenses for attending committee meetings that have been scheduled for times when the House is not sitting, for sessions of the House, and up to 40 trips per year to Fredericton between sessions.

MLAs with additional responsibilities receive other reimbursements, as listed in Table 4, which also provides some comparison (as of 2009), with counterparts in Nova Scotia, a province of roughly equal size. Other reimbursements of varying amounts go to cabinet ministers without portfolio, party whips, house leaders, and caucus chairs.²⁶

Table 4: Indemnities, New Brunswick and Nova Scotia compared

	NB	NS
Premier’s indemnity	\$79,000	\$109,485
House Speaker’s indemnity	\$52,614	\$47,609
Cabinet Minister’s indemnity	\$52,614	\$47,609
Leader of the Opposition’s indemnity	\$55,300	\$47,609
Leader of a Registered Political Party’s indemnity	\$19,750	\$23,804

Under the *Members’ Conflict of Interest Act* (1999), backbench MLAs are free to pursue or maintain their businesses and professions, but must not hold or accept federal or provincial Crown appointments. However, being a member of the armed forces or a teacher in New Brunswick is not

considered a Crown appointment under this legislation, nor is an appointment to the Executive Council; that is, cabinet ministers. Ministers, however, are not permitted to maintain their businesses or professions unless the Conflict of Interest Commissioner rules that the activity has no connection or potential conflict with their duties in cabinet. Cabinet ministers, but not MLAs, are also restricted from receiving salaries or compensation from political parties.

Hansard and Journals – As an officially bilingual province, all publications of the legislature (and for that matter, all government publications) are presented in both official languages. This includes committee reports, Question Period transcripts, and both the Speech and Reply to the Speech from the Throne. All are available through the Legislative Assembly’s web portal, and users can switch back and forth between English and French.²⁷ An unofficial transcript of the Question Period is also available in PDF format through an email subscription service.

Television Coverage – Television coverage of the Assembly’s proceedings began in 1988, originally broadcast on a community cable channel. In March 2006 the Legislative Assembly launched “a New Brunswick parliamentary channel dedicated to broadcasting proceedings to keep the public informed of the important work of the House and the elected representatives” (*Legislative Activities* 2006: 7). There are five video cameras strategically located in the walls of the chamber that the producer operates from a control room. The signal directing a camera to focus on a particular MLA who is speaking is activated by the (audio) Hansard microphone console that is located in the chamber. The video and audio recordings are made available to members of the press gallery and their news organizations, and copies are placed on DVD-R for archiving purposes. Unfortunately, we do not know the size of the viewing audience, nor its demographic breakdown. Nor is clear whether televising the debates has had an effect, positive or negative, on the conduct of MLAs in the Legislature; however,

there have been several instances recently of bizarre behaviour, and at least two of these have “gone viral” thanks to YouTube’s rebroadcasting of certain performances by MLAs (CP 2010a, 2010b).

Legislative Assembly at Work

The activities of the Legislative Assembly are detailed in an annual report entitled *Legislative Activities* that is readily available online (see Works Cited). Table 5 provides a quantitative portrait of activities in the House.

Table 5: House Statistics by Session, from 1999 to 2007.

	56 th legislature, 1 st session 2007	55 th legislature, 3 rd session 2005-06	55 th legislature, 2 nd session 2004-05	55 th legislature, 1 st session 2003-04	54 th legislature, 5 th session 2002-03	54 th legislature, 4 th session 2001-02	54 th legislature, 3 rd session 2000-01	54 th legislature, 2 nd session 1999- 2000*
Daily sittings	79	54	58	62	68	71	63	65
-Number of sitting days	28	0	3	3	23	17	15	18
-Evening sittings								
Govt bills								
- Introduced	72	54	50	50	50	63	62	49
- Received royal assent	71	42	40	48	48	63	60	45
Private bills								
- Introduced	3	2	3	7	5	4	10	3
- Received royal assent	3	2	3	7	5	4	7	2

Private members' bills	10	29	28	25	7	1	0	2
- Introduced	0	2	0	2	0	0	0	1
- Received royal assent								
Govt motions	10	23	10	18	10	12	10	8
-Total	3	9	4	8	6	6	8	6
-# debated	10	23	10	17	6	12	8	6
-# agreed to	--	--	--	--	--	--	2	1
-# withdrawn								
Private mem-bers' motions	74	86	108	107	92	83	118	144
-Total	15	14	17	9	4	6	5	11
-# debated	14	3	7	5	0	4	4	4
-# agreed to	50	71	91	83	71	53	102	130
-motions for returns								
Committee of Supply								
-in House (days)	39	25	27	35	35	41	32	35
-in Committee on Estimates	0	9	5	0	0	0	0	0
Annual reports tabled	51	59	58	62	57	71	54	64
Petitions	52	26	52	48	16	13	16	16
Written questions	0	11	7	25	1	3	4	0

Source: *Legislative Activities*, online annual reports – data have been gleaned from a table entitled

“House Statistics.”

* There are insufficient data for the 1st session of 54th legislature.

Passage of Legislation: The New Brunswick legislature follows the standard Westminster model, in which bills receive three readings, and are (normally) sent to a standing, select or committee of the whole between second and third readings. Standing committees are permanent committees whose job it is to review legislation prior to its final approval by the Legislature. Select committees are *ad hoc*; that is, they are struck to deal with a specific need, and generally have mandates beyond simply scrutinizing a specific piece of legislation (although the result of their deliberations will normally be recommendations for specific legislation). Finally, when the House sits as Committee of the Whole, the entire assembly acts as a committee with the Speaker absent from the Chair (usually the Deputy Speaker or another MLA acts as Chair).

As of December 2010, New Brunswick has nine standing committees: Crown Corporations, Estimates, Law Amendments, Legislative Administration, Legislative Officers, Private Bills, Privileges, Procedure, and Public Accounts. Presently, New Brunswick has just one Select Committee: the Select Committee on Point Lepreau.²⁸ The decision to strike such a committee is made because legislature is responding to what it believes to be a pressing concern that deserves particular attention, or perhaps because an issue has arisen that is too complicated to fall within the purview of a specific standing committee. Finally, all government bills (that is, bills introduced by a minister of the Crown, which have a general or “public” purpose) automatically stand referred to the Committee of the Whole. The Committee then holds hearings, with the minister associated with the bill serving as a witness. She or he may be advised by department officials during the procedures, but the advisors do not speak.

Speaking of government bills, these are drafted by staff members in the Department of Justice at the request of a minister of the Crown. The resulting draft is discussed at cabinet and, if approved, sent for printing. The minister associated with the bill then introduces it in the Legislative Assembly by moving “that a Bill entitled [name of bill] be now read a first time.” As is usually the case under the Westminster model, this is not a debatable motion, although on occasion a brief explanation or rationale is provided. The bill is then ordered to be read a second time (second reading), and is copied, deposited with the Clerk, and distributed to all MLAs.

Second reading is the debate stage, and here the government members, particularly the minister associated with the bill, will explain and justify it. Debate will be general in nature; that is, the specific details of the bill will not be discussed, as that becomes the responsibility of the appropriate committee. If the bill is approved at second reading, it will either proceed to Committee of the Whole, to a standing committee, or a select committee.

Once a bill has received committee scrutiny (and possible amendments), it is returned to the legislature for third reading. Debate at third reading follows similar principles as second reading: the Bill and its contents as a whole are discussed and debated, but not the specifics or details. *Royal Assent* follows the successful passage of the bill at third reading, and after the title of the bill has been placed on the *Order and Notice Paper*. With the Lieutenant-Governor sitting in the Speaker’s Chair, the Clerk reads the titles of the bills passed and the Lieutenant-Governor signifies assent in Her Majesty’s name (LANB 1995).

Private bills in New Brunswick follow, for the most part, the same legislative procedures used in the Canadian House of Commons (Marleau and Montpetit 2000: ch. 23). Private bills are essentially requests or petitions from private citizens or corporations for a specific “favour,” (exemption,

incorporation, etc.), and so the process begins with the “petitioner” engaging a lawyer currently practicing in the province to draft the proposed bill. This is then sent to an MLA (Private Bills are, by definition, also Private Member’s Bills and cannot be introduced by a Minister of the Crown as the Crown cannot petition itself) for introduction in the legislature. The Assembly’s *Standing Rules* also stipulate that due public notice must be given that such a bill will be proposed, and that the draft of the bill must be in both official languages. After first reading, private bills are referred to the Standing Committee on Private Bills. The petitioners or agents acting on their behalf are required to appear before the committee. As well, parties whose interests might be affected by the bill (property owners, for example) may also ask or be asked to appear.²⁹

In the fourth and last session of the 56th Assembly (2009-2010), 59 Bills were put forward (including the pro forma *An Act to Perpetuate a Certain Ancient Right*, with which a session is always opened). Of these, 13 were private bills and nine were private member’s public bills (PMPBs). The latter refer to bills proposed by MLAs who are not ministers of the Crown, but nevertheless involve matters of public (so not a specifically private) interest. All nine PMPBs were introduced by opposition members, and only one was read a second time (#52, *An Act to Amend the Education Act*, moved by the then-Leader of the Opposition, David Alward). (LANB 2010).

Committee System: The New Brunswick legislature has a full array of committees to facilitate the conducting of its business. As the *Legislative Activities* report for 2007 (16) explains, “[p]roceedings in committee are often more informal and collegial than in the House itself, providing an atmosphere that is more conducive to collaborative thought and cooperation.” That, anyway, is how it is supposed to work. From 2003 to 2006, when the governing PCs found themselves outnumbered on some committees, rancour and animosity seemed to be the order of the day. Difficulties continued under

Premier Graham's tenure, but more because of the controversial nature of the several initiatives embarked on by the Liberals (such as the proposed sale of NB Power to Hydro Quebec). Premier Alward's lopsided victory in 2010 will mean that the 13 remaining Liberals will have to do double and triple duty staffing the several committees. With two fewer MLAs than there are cabinet members, the Opposition Liberals will each hold a critic's portfolio, with several doing double duty in that role as well.³⁰

The names and mandates of the committees have changed somewhat over the years, although the committees on Crown Corporations, Legislative Administration, and Public Accounts have remained constant. Actually, although the array of committees is impressive, the fact of the matter is that most committees rarely meet. The three previously-mentioned committees are the exception as they meet quite often each session; as for the other committees during the past decade, it is not uncommon for each to meet one, two or three times per session, or not at all. In some cases, such as the Standing Committee on Privilege, the committee only meets when needed, specifically when a question of privilege is raised and deemed important or complicated enough to warrant committee review (rather than the Speaker's ruling).³¹ In any case, while the "number of meetings" is not the best measurement of committee performance – it does not take into consideration preparatory work or quality measurements – it cannot be ignored. As noted below, the legislative division of duties and subjects is now under review. Table 6 provides a listing of the committees, composition and number of meetings from 2006-2010.

Membership on each committee is based on party standings in the House. Given the small size of the legislature and the fact that it is common for cabinet to include twenty or more MLAs, it is the practice to include ministers – some of whom chair -- on some legislative committees. In 2008, these

were: the Standing Committee on Law Amendments (chaired by the Attorney General); the Standing Committee on Procedure (which is chaired by the Speaker, but also includes two cabinet ministers); the Standing Committee on Privileges (in which chair and vice-chair are cabinet members). The Legislative Administrative Committee is also chaired by the Speaker, but has no members from cabinet. A member of the opposition chairs the Standing Committee on Public Accounts, while someone from the government side of the House usually chairs the other committees.

The Standing Committee on Law Amendments has a unique public role. As the Committee Clerk's report on committee activities explains:

On occasion bills introduced in the Legislative Assembly do not receive second reading, but instead are referred to the Standing Committee on Law Amendments for review. This referral is often made to allow for public consultation in order to receive input from interested stakeholders, groups and individuals (*Legislative Activities* 2008, 20).

Early in 2008, this committee met to discuss Bill 60, *An Act to Amend the Industrial Relations Act*. Bill 60 was a PMPB introduced by then-opposition MLA (PC) Margaret-Ann Blaney and its intent was to "introduce common employer provisions into the *Industrial Relations Act*." Unlike most PMPBs, this bill did proceed through the reading stages, and was referred to the Standing Committee on Law Amendments so that public hearings could be held (*Legislative Activities* 2008, 15). The act received royal assent on 18 June 2008.³²

As well, three select committees held meetings in 2008: the Select Committee on Life Long Learning (appointed on 5 July 2007, 11 members); Select Committee on Tax Review (5 June 2008, 10 members); and the Select Committee on Wellness (5 July 2007, 9 members). None of the members of these committee were Ministers of the Crown, and all committees held public hearings across the province.

In the wake of the 2010 provincial election, the committee structure is, once again, slated for a review. Premier Alward has suggested that some committees expand their mandates, take advantage of the opportunity to travel and hold public hearings, and thus help in his government's promise to improve civic engagement in the province.³³

Table 6: Legislative committees and membership (2006-2010)

Committee	Total	Chair	Vice Chair	Ministers	Meetings
Crown Corporations	12	G	G	0	7
Estimates	11	G	G	0	0
Law Amendments	9	M	G	1	6
Legislative Administration	10	S		2	14
Legislative Officers	9	G	G	0	0
Private Bills	9	G	G	0	2
Privileges	8	M	M	2*	0
Procedure	10	S	M	2	0
Public Accounts	10	O	G	0	17

Legend: G = government member

O = opposition member

M = Minister

S = Speaker

*In addition to the two ministers, the Speaker sits as a member of this committee

Staff Support – As in other jurisdictions, the modern Legislative Assembly of New Brunswick has become a very complex organization. Sixty-seven permanent positions in a variety of offices were reported in 2007, in addition to a growing number of people hired on a sessional or other basis (*Legislative Activities 2007: 24*). The main staff support components are:

- the Clerk of the Legislative Assembly, who is the Speaker's chief procedural adviser and administrative deputy;

- the Office of the Clerk, which provides a wide range of procedural and administrative support for the House, its committees, and some independent officers of the legislature;
- the Legislative Library, which provides information and reference services to MLAs;
- the Hansard Office, which records and transcribes House and committee proceedings;
- the Debates Translation service, which translates proceedings, reports, etc.;
- the Sergeant-at-Arms, who is in charge of security, page and messenger services, visitor information services, and building maintenance and custodial services.

Table 7: Budget for the Legislative Assembly including its MLAs and Staff Support Complement for each Fiscal Year.

Fiscal Year Ending March 31 each year	Budget (\$)
2007	\$12,716,700
2006	\$12,008,200
2005	\$11,310,000
2004	\$10,734,300
2003	\$10,197,100
2002	\$9,268,100
2001	\$8,827,600
2000	\$8,344,400

Source: *Legislative Activities*, Online Annual Reports (the report for 2007 was the most recently available). Meanwhile, e-mail communication with the Office of the Clerk of the Legislative Assembly indicates that the budget for 2009-10 is approximately \$13,800,000.

There are five staff members, who in addition to duties relating to House operations, are

assigned to provide support for the committees, all of whom work under the direction of the Clerk of the Assembly. These staff positions are: Clerk Assistant and Clerk of Committees, Clerk Assistant and Committee Clerk, Legislative Officer, Executive Secretary and Researcher and Journals Clerk. Table 7 indicates the budget of the Legislative Assembly and how it has grown during the first decade of the 21st century.

Statutory Officers: New Brunswick has seven statutory officers, all of whom report directly to the Legislative Assembly. They are: the Access to Information and Privacy Commissioner, the Auditor General, the Chief Electoral Officer, the Commissioner of Official Languages, the Conflict of Interest Commissioner, the Consumer Advocate for Insurance and the Ombudsman.³⁴ Of the seven, perhaps the Commissioner of Official Languages and the Ombudsman -- particularly in his role as Child and Youth Advocate -- have garnered the most attention. In an officially bilingual province, the on-going issues of assimilation as well as continuing debate over the "official" nature of bilingualism in New Brunswick require the Language Commissioner to regularly explain and report on success and failures of NB's two language policy. A recent example concerned the decision of the City of Dieppe to pass a by-law (Z-22) insisting that all external commercial signs in the city be either bilingual or French only (that is, the intent was to outlaw English-only signs). The Official Languages Commissioner issued a statement in which he expressed his hope that the Dieppe City Council would strike a more balanced approach to deal with what it agreed was a real problem: a predominately Francophone community nevertheless immersed in an English-only world of commerce.³⁵ The Child and Youth Advocate has been in the national news over his challenges to the way in which mentally challenged youth are incarcerated, specifically in the wake of the death of Ashley Smith, who died while in custody (Dooley 2008).

Legislative Accountability

Finally, New Brunswick's Legislative Assembly is subject to the same criticism that is levelled at many of the legislative bodies in Canada: its MLAs are not perceived to be, at least by its critics, accountable beyond the requirement they face elections on a periodic basis. As has taken place in many parliamentary systems, decision making is increasingly concentrated in the Premier's Office (Savoie 2010; Hyson 2005). Furthermore, decisions are made (or again, there is a perception among some) without appropriate transparency and MLAs have too ready access to public funds. Whether this is an accurate picture is debatable; however, what is not debatable is that every political party in the province – whether it be Liberal or PC, NDP or CoR, Green, Grey³⁶ or PANB -- has included a call for more transparency and accountability in their party platforms. The CLD recommended a *Transparency and Accountability Act* which would, among other measures, fix the dates for the Throne Speech and Budget as well as require frequent and regular reporting of MLA expenses (CLD 2004: 140). Other proposals made over time, including by parties which have won elections, include recall legislation and mandating MLAs to regularly schedule public meetings. None of these measures has been enacted; however, New Brunswick does have balanced budget legislation, an initiative originally pursued by the McKenna government and passed in 1993. The current PC government under David Alward has also promised his government would be more transparent and accountable, and his government's first Speech from the Throne stated that a *Referendum Act* and more free votes would be priorities (GNB 2010).

Conclusion

New Brunswick has had a lengthy history of legislative democracy since its time as a colony and

upon entering Confederation with both constitutional principles of representative government and responsible government firmly in place. As such, legislative democracy has continued to change, adapting to the demands for greater democracy and meeting the challenges of serving a bicultural-bilingual province.

Studies of legislative democracy invariably focus on three critical dimensions:

- Election process: the bridge between society and its legislature in terms of the formal-legal rules of choosing MLAs;
- Composition of the legislature: the extent to which the legislators are a mirror-image of society;
- Legislature's activities: the policy role of the legislature especially in monitoring the executive.

All three dimensions as found in New Brunswick have been probed and described in this paper. Substantial changes have been made especially during the past two decades, intended to make the legislature more representative of society, more transparent and accountable to the public, and more efficient and efficacious within the policy process. The under-representation of women in the legislature (and in politics in general) remains the key issue in respect to the composition of the legislature. Under-representation of Francophones, Aboriginals and of the growing number of new Canadians in the province is not as strikingly disproportionate, but is of concern nonetheless. As for the legislature's role to make certain that the executive governs in the public interest, MLAs are now well paid and are better supported by legislative staff. Most progress has been made in respect to the election process, although there remains the debate over the first-past-the-post electoral formula and its reform. The propensity of the electoral system to seriously exaggerate support for the victorious party, and punish smaller

parties, has meant that two remarkably similar parties dominate the province's legislative proceedings. This homogenization of political discourse is exacerbated by the large majorities victorious parties usually win: governments must only contend with an ineffective and demoralized opposition, and so are rarely pressed to clarify their policies or explain the ideological principles upon which they are based. This undermines the Legislative Assembly's potential to behave as a deliberative body, and has increased public cynicism about its value.

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The Standing Rules can be found at www.gnb.ca/legis/publications/rules-reglement.pdf.

ENDNOTES

¹ The authors wish to thank the staff of the office of the Legislative Assembly of New Brunswick for graciously supplying much of the statistical and related information on the current operations of the legislature presented in this section.

² A more substantial bibliography on New Brunswick politics is available from the authors.

³ For the history of cabinet in Canada, see Mallory (1984) and Dawson (1970). For responsible government, see, among others, Ajzenstat (2003).

⁴ Tilley's allegiance with the Smashers was said to have its origin when, as a young man, he witnessed a man murder his wife in a drunken rage (DCB).

⁵ Following Cross and Stewart (2002: 35), this paper uses 1908 as the starting point. See also Simerl (1977). It should be noted that the Liberals in New Brunswick did not formally campaign under that name until 1935, and the Progressive Conservatives only adopted their name in 1943. See Garland and Machum 1980: 14-15.

⁶ If the anomalous 1987 election, in which the Liberals won all 58 seats, is taken out of the equation, the Liberals and Conservatives have each won 49 per cent of the seats contested since 1908.

⁷ On the short-lived CoR Party, see Belkhodja (2002a, 2002b, 1999) and Martin (1998, 1996). There was one other party that attracted some attention: the Parti Acadien (PA), a left-wing party promoting a separate province for New Brunswick's Acadian population. The PA made a strong showing in two constituencies in the 1978 general election and captured five per cent of the provincial vote, but soon after folded (see Gauvin and Jalbert 1987, and Ouellette 1992).

⁸ Brian Cuthbertson (1994) provides a most insightful account of the practices of open voting and non-simultaneous elections in colonial Nova Scotia that were probably not dissimilar to those in neighbouring New Brunswick. Also see Garner (1963: 28-32, and 1969: 54-72).

⁹ Cross and Stewart (2002) claim that the "ties between ethnicity and party have weakened substantially in New Brunswick during the past two decades" (53). This conclusion was verified by the **Error! Main Document Only.**New Brunswick Social Capital Survey (Howe et al. 2006). The survey was developed by D.A. Desserud, J. Everitt and P. Howe and conducted between early July and late September in 2003 (sample size: 1004; margin of error: +/- 3 per cent, 19 times out of 20). Among other questions, the survey asked NBers whether they "identified" themselves with a New Brunswick political party. "No party" was the choice of 28.5 per cent of Anglophones and 28.9 per cent of Francophones; Liberals were the choice of 26.8 per cent of Anglophones and 30.3 per cent of Francophones, while the PCs were the choice of 19.1 per cent of Anglophones and 16.3 per cent of Francophones. Note that the 2003 provincial election had

been held just a few months before the survey was conducted. In that election, the PCs ended up with 28 seats, the Liberals 26 seats and the NDP one seat.

¹⁰ Volatility scores are calculated by comparing the popular vote percentages a party received in subsequent elections. The smaller number is subtracted from the larger (so the value is always positive) and the results for all parties are then totaled for a score. NB's volatility scores since 1987 are as follows (all calculations completed by Desserud): 1987: 19.1; 1991: 21.2; 1995: 15.1; 1999: 21.8; 2003: 8.1; 2006: 4.7; 2010: 12.5.

¹¹ Although the Constitution Act 1982 was patriated 17 April 1982, the implementation of the equality section (15) was postponed until 1985 (see Constitution Act 1982, section 32.2). This was to provide the two levels of government with sufficient time to amend any laws that might now be found in violation of the equality provisions.

¹² The Gini Index is a “measure of the degree of equality of district populations.” The Index “scores complete equality of constituency population size as 0 and complete inequality as 1. The nearer a group of constituencies approaches 0 or 1, the closer it will be to perfect equality or inequality respectively” (Courtney 2001, 12).

¹³ Together with the creation of the Office of Research Services designed to assist the opposition parties, this move revealed a *de facto* recognition of the Legislative Assembly of the party status of both the NDP and the PCs. Indeed, such recognition remains informal in New Brunswick. Even with one seat during the 1980s and 1990s, the NDP had party status in the assembly. For a detailed description of the various attempts made to deal with a “one-party” House, see Catali Sonier (2004).

¹⁴ For the publications and presentations given to the Commission, see online CLD Publications 2004 and CLD Presentations 2004, as listed in the Works Cited.

¹⁵ Unless stated otherwise, page references in this section of the paper refer to CLD 2004.

¹⁶ For a discussion of the problems of imposing fixed-date election legislation onto the Westminster model, see Desserud's contribution to the CLD (Desserud 2007b).

¹⁷ Of course, the Government can always amend its own Act.

¹⁸ The recommendation is found at page 31 of the Commission's report. The relevant section in the Act (Chapter M-7.01 *Members' Conflict of Interest Act*) is 14(2.1).

¹⁹ The statistics presented here are based on the biographies posted on the NB Legislature website (MLA Bios 2010: Online). As such, they reflect what the MLAs wished to post or thought relevant, and so some information is likely missing. As well, some MLAs (e.g. Jody Carr and

Trevor Holder) were elected at very young ages, and so public service is really the only career they have had; others (e.g. Dale Graham) have served so long that their previous careers are equally irrelevant.

²⁰ A variety of occupations account for the remaining MLAs, including several incumbents who listed their occupation as “MLA.”

²¹ That only one lawyer was elected in 2010 is curious, but is likely just a fluke. Seven lawyers were elected in 1999 (4 Liberals, 2 PCs, 1 NDP). In 2003, eight lawyers took their seats (5 Liberals, 2 PCs and 1 NDP) and in 2006, twelve lawyers were elected.

²² Personal communication with Paul Harpelle, Director of Communications, Elections New Brunswick.

²³ Statistics Canada (2006) reports that just under 2.5 per cent of New Brunswick’s population are aboriginal. 2006 Aboriginal Population Profile. www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-558 (Accessed 25 October 2010).

²⁴ In its Throne Speech, the Alward government promised to hold some cabinet meetings in First Nations’ reserves.

²⁵ For comparison data, see www2.parl.gc.ca/parlinfo/compilations/provinceterritory/ProvincialIndemnities.aspx.

²⁶ According to Jill Joseph (2010), New Brunswick ranks 5th among the ten provinces in terms of per capita expenditures on its legislative assembly.

²⁷ www.gnb.ca/legis/index.asp

²⁸ The name refers to the nuclear generator at Point Lepreau, about 50 kms to the West of Saint John. The reactor has been undergoing refurbishment for several years now, with significant delays and cost overruns. See Weston 2010.

²⁹ See “Part IV - The Procedure for a Private Bill” at www.gnb.ca/legis/publications/billbecomeslaw/bill4-e.asp (Accessed 28 December 2010).

³⁰ The exception is former premier Shawn Graham, who requested that he not be assigned a shadow cabinet position.

³¹ Parliamentary privilege refers to the rights of members of legislative assemblies to fulfill their functions as legislators. Claims that such a right has been violated, then, would normally refer to actions or measures taken by another member or a third party deemed to inhibit the legislator or

legislators from doing their job. Such claims are rarely made; however a relatively recent example in New Brunswick took place when the name of an individual being consider for a government appointment was leaked to local media. Some of the MLAs serving on the Select Committee to Review Appointments claimed their ability to discuss such appointments in a free and open matter was thereby compromised. See www.gnb.ca/legis/business/pastsessions/54/54-2/journals-e/991217-e.asp (Accessed 28 December 2010). For discussion of parliamentary privilege in Canada, see Maingot 1997.

³² www.gnb.ca/0062/acts/BBA-2008/Chap-34.pdf

³³ The CLD also recommended that the committee system be revamped. It suggested a seven-committee structure: **Error! Main Document Only.** 1. Standing Committee on Natural Resources; 2. Standing Committee on Social Policy; 3. Standing Committee on Finance and Economic Policy 4. Standing Committee on Public Safety; 5. Standing Committee on Government Operations; 6. Standing Committee on Public Accounts and Crown Corporations; 7. Standing Committee on Legislative Administration, Procedures (CLD 2004: 21).

³⁴ Includes the position of Child and Youth Advocate. On the role of the Ombudsman in New Brunswick, see Hyson 2009.

³⁵ See www.officiallanguages.nb.ca/newsroom_view.cfm?news_id=148&page_type=1 (Accessed 08 October 2010). Dieppe's population is approximately 75% Francophone. Unfortunately, the Commissioner did not comment on the constitutionality of the by-law, which would be unlikely to survive a court challenge. For discussion on language rights in New Brunswick, see Desserud 1996a.

³⁶ The Grey Party appeared briefly in New Brunswick, running candidates in the 2003 election. Its leader was Jim Webb, who had been a candidate for the CoR Party. The Greys, whose platform includes the call for better services for seniors, ran candidates in 10 ridings and picked up 1550 votes.