

**CHAPTER 4**  
**THE ROLE OF THE CROWN-IN-PARLIAMENT:  
A MATTER OF FORM AND SUBSTANCE**

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In Canada, the role of the Crown-in-Parliament is a central and obvious feature of our system of government inherited from the United Kingdom. The importance of the Crown, the Kings or reigning Queens and the administration supporting them, was evident from early colonial days and was deliberately and explicitly reinforced through provisions of the *Constitution Act, 1867* (originally the *British North America Act*) adopted by the Imperial Parliament to provide a federated government for Canada. In addition to the preamble statement declaring that the federal union was to be governed by a structure similar in principle to that of the United Kingdom, the preamble also makes it clear that Canada and its provinces were united under “the Crown of the United Kingdom of Great Britain and Ireland”. Various sections of the Constitution underscore this reality. For example, section 9 provides that the Executive Government is declared to continue and be vested in the Queen. Further, section 17 establishes that Parliament consists not only of the Senate and the House of Commons, but also of the Queen. These constitutional provisions are accompanied by a series of conventions that inform and animate the conduct of the Crown-in-Parliament.

The legal status of the Canadian Crown was not altered when the Constitution was patriated from Britain in 1982. Indeed, the position of the Crown as the apex of Canada’s constitutional order was made more secure and virtually permanent through the amending procedures that were part of the patriation package. Section 41(a) of the *Constitution Act, 1982* stipulates that a change “to the office of

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the Queen, the Governor General and the Lieutenant Governor of a province” can only be authorized by resolutions of the Senate and House of Commons and of the legislative assemblies of each of the provinces. As a consequence, there is little prospect that the Crown itself will disappear any time soon. More problematic, perhaps, is the role of the Crown-in-Parliament and whether it falls under the amending procedure of section 41 or of section 44. Section 44 provides that “Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and the House of Commons”. The recent Supreme Court decision on the Senate reference suggests a limited scope for section 44.<sup>1</sup> The current court challenge in Quebec on the *Succession to the Throne Act, 2013* may also deal with the scope of Parliament’s legislative authority under section 44.<sup>2</sup> Whatever the outcome, it remains the case that the role of the Crown-in-Parliament as originally established by the *Constitution Act, 1867* was not altered through patriation and any substantive change is not currently being contemplated.

The role of the Crown-in-Parliament encompasses three determinative acts that are part of Parliament’s core functions as a legislative body: royal recommendation, royal consent and royal assent. The first, royal recommendation, relates to the financial procedures of the House of Commons and stems from the requirement that, to be lawful, any vote, resolution, address or bill authorizing the expenditure of public monies for a specified purpose must be based on a message from the Governor General. This obligation is an explicit part of the *Constitution Act, 1867* as stated in section 54.<sup>3</sup> Royal consent, on the other hand, is a practice based on a convention that limits the right of the Houses of Parliament to debate and adopt without the consent of the Crown any legislative measure which might infringe its prerogative or constitutional powers or, with respect to the Queen in the United Kingdom, which might affect her hereditary revenues or personal property. Finally, royal assent is the necessary and indis-

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1. *Reference re Senate Reform*, 2014 SCC 32.

2. Two professors from Laval University have brought an action for declaratory judgment in Quebec Superior Court challenging the constitutional validity of the *Succession to the Throne Act, 2013*. Geneviève Motard and Patrick Tailon, “Motion to institute proceedings for declaratory judgment” (6 June 2013) SCQ # 200-17-018455-139.

3. Section 54 provides that: “It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.”

pensable approval by the Crown of any bill adopted by the Senate and the House of Commons in order for it to become an Act of Parliament, actual statute law.

While Canada inherited these practices involving the Crown-in-Parliament from Westminster, the terminology identifying them is not completely identical. Both use the term royal assent, but the other two actions are usually designated differently. In Canada, the terms royal recommendation and royal consent are invariably used rather than the Queen's recommendation or the Queen's consent as is often the case at Westminster. The difference is indicative of a basic reality. The Queen herself as the Sovereign of the United Kingdom, descended from a long line of Kings and Queens, is seen personally as an actual player, a real presence in the parliamentary processes of Westminster. This is not so much the case here in Canada where the Queen's constitutional role, including interactions with Parliament, is usually undertaken by her surrogate, the Governor General, an appointee whose tenure has traditionally lasted between four and six years. The Canadian terminology using the word "royal" is a deliberate reminder of the source of the authority that is being exercised through the Governor General.<sup>4</sup> This underscores a significant element of the nature and role of the Canadian Crown-in-Parliament. In Canada, there is a greater distance from the institution of the Crown, including its parliamentary aspects than there is in Britain. In Canada, the Governor General represents the Sovereign, while in the United Kingdom, the Queen is the Sovereign. This distinction is relevant to the development, appreciation and use of royal recommendation, royal consent and royal assent. Just as the public profile of the Governor General cannot match that of the Queen, so too, in parallel, the original and historic purpose of the functions of the Crown-in-Parliament is shifting in Canada, in a way distinct from the British model. While both Parliaments continue to evolve, the profile of the Crown in Canada is at greater risk as procedures are modernized in ways that tend to minimize its role and significance.

The nineteenth century Whig historian, Thomas Babington Macaulay, once observed that in Britain's constitutional monarchy, the Sovereign reigns, but does not rule.<sup>5</sup> At the time, he would certainly have had in mind Queen Victoria. Though Macaulay's observation

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4. The Letters Patent of 1947 authorize the Governor General "to exercise all powers and authorities lawfully belonging" to the Queen in relation to Canada. The same terminology is used in provincial legislatures.

5. Thomas Babington Macaulay, *The History of England from the Accession of James II*, vol IV (London: The Folio Society, 2009) at 7.

was undoubtedly true as a constitutional principle, it must be admitted that Queen Victoria tended to reign a lot. She was very much an engaged Sovereign. Throughout her long years as Queen, Victoria immersed herself in the affairs of “Her” government and exercised to the full the duties attributed to the Crown by another 19<sup>th</sup> century constitutional commentator, Walter Bagehot. Far from public view through her many years as a widow, Victoria remained insistent on her prerogative rights to be consulted, to encourage and to warn.<sup>6</sup>

Without a doubt, the present Queen exercises these same functions but with greater discretion. The difference speaks to the ongoing evolution of the role of the Crown in the public affairs of the United Kingdom. Ever since the Glorious Revolution of 1688, the participation of the Sovereign in government, at that time substantial indeed, has declined gradually, if sometimes unevenly, as the role of ministers grew and the development of responsible government took hold. The pace of this transformation accelerated with the growth of the electoral franchise from the mid-nineteenth century which further enhanced the prominence of the House of Commons and strengthened the accountability relationship of ministerial government to it. Today, the long and successful reign of the current Queen has ensured the Crown’s prestige and its endurance in the constitutional structure of British government, including the role of the Crown-in-Parliament.<sup>7</sup>

But what of the Governor General in Canada who can be said neither to rule nor to reign? The answer is not a simple one. As with the British Crown, there has certainly been an evolution in the office. The early Governors General actually played a dual role as representatives of the Sovereign: they maintained the interests of the British government through their direct relationship with the Colonial Office in addition to providing traditional vice-regal support to their Canadian ministers. The importance of the position was acknowledged by the fact that its early occupants included capable or notable peers, politicians and colonial administrators. Among these was the son-in-law of Queen Victoria, the Marquis of Lorne, husband of Princess Louise, and, in the years leading up to the Great War, the Queen’s third son, Prince Arthur, Duke of Connaught.<sup>8</sup>

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6. Walter Bagehot, *The English Constitution* (London: Chapman and Hall, 1867) at 103.

7. Robert Blackburn, “Queen Elizabeth II and the Evolution of the Monarchy” in Matt Qvortrup, ed, *The British Constitution: Continuity and Change* (Oxford: Hart Publishing, 2013).

8. Carolyn Harris, “Royalty at Rideau Hall: Lord Lorne, Princess Louise, and the Emergence of the Canadian Crown” in D Michael Jackson and Philippe Lagassé,

By the early twentieth century, the prospect of change in the role of the Governor General began to emerge as Canada started to shed its colonial status and assert its own interests in international trade and then foreign affairs. It became virtually inevitable through Canada's participation in the 1914-1918 war.<sup>9</sup> The follow-up from the Great War led directly to the London Conference of 1926 and the *Statute of Westminster* in 1931 which acknowledged the full sovereignty of Canada and the other senior Dominions. From here onward, the British aspect of the Governor General's functions ceased to be as important in comparison to his Canadian constitutional duties as the Sovereign's representative.

The process of fully Canadianizing the office of Governor General reached an important milestone with the appointment of Vincent Massey in 1952, the year of the Queen's accession, and it has continued over the years.<sup>10</sup> While the office of the Governor General has become more distinctly Canadian, this has also exposed some weaknesses in trying to fulfill the role of the Crown. Much of this has to do with the fact that the office of Governor General is temporary; it is held by someone, however accomplished, for just a few years before it is occupied by someone else. The contrast with the current Queen could not be greater. Elizabeth II has been Queen for more than 63 years and she will remain the Queen as long as she lives or until she abdicates. During her reign, the Queen has been served by thirteen Governors General. Equally to the point, the Queen retains significant prerogatives and is routinely consulted as of right by her British Prime Minister. Nothing like this happens in Canada. While the Governor General does possess substantive prerogative rights, there is no equivalent entitlement to be consulted. There is no consistent history of a close relationship with the Prime Minister, especially following a change in government. The nature of the relations with the modern Governor General is determined largely

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eds, *Canada and the Crown* (Montreal & Kingston, McGill-Queen's University Press, 2013).

9. Resolution IX of the Imperial War Conference of 1917 declared: "The Imperial War Conference are of the opinion that the readjustment of the constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the War ... They deem it their duty, however, to place on record their view that any such readjustment ... should be based upon full recognition of the Dominions as autonomous nations of an Imperial Commonwealth..." A Berriedale Keith, *Speeches and Documents on Indian Policy, 1750-1921*, Vol II, ed (London: Oxford University Press, 1922) at 132-3.
10. The appointment of Vincent Massey coincided closely with the accession of Queen Elizabeth II who was the first to carry the explicit title of Queen of Canada as provided for under the *Royal Style and Titles Act*, adopted in February 1953.

at the discretion of the Prime Minister. There is no binding obligation to keep the Sovereign's representative, the Crown's surrogate, fully informed of affairs of state and government through regular meetings or briefings. This difference, this distinction in the status of the Crown in the two countries, has a parallel in the Crown's role and involvement in Parliament.

In Britain, the historic roots that led to the institution of Parliament from the original *curia regis* and the struggle, centuries later, that eventually subordinated Crown to Parliament, once it had successfully asserted its supremacy, created a constitutional monarchy that remains widely respected and even venerated to this day. The role of the Crown-in-Parliament at Westminster is very much part of this ongoing history. The Queen through her Cabinet Ministers has a relationship with Parliament that is mutually reinforcing. The development, from the early eighteenth century, of ministerial government accountable to Parliament generally, and responsible to the House of Commons specifically, has fully integrated the Crown in the exercise of Parliament's powers. The Queen's constitutional identity, neutral and impartial, is folded into the fundamental duties of Government acting through Parliament to secure the peace and ensure the people's welfare. The phrase the Queen-in-Parliament is an expression of this central constitutional relationship.

In Canada, the public significance and profile of the Crown in so far as it is identified with the Governor General has diminished over time even as it remains constitutionally important. As the Queen's representative, the Governor General cannot equal the permanence and experience possessed by the Queen. Certainly, the vice regal office cannot match the Sovereign's majesty and mystique. Instead, the Governor General is duty bound to acknowledge his surrogate status when acting in the Queen's name. Despite the success and merits of this Canadianization, the current result has created a hybrid role for the Governor General who performs a range of responsibilities similar to a Head of State while remaining a surrogate. This has made the admission of subordinate status challenging for some of the recent occupants of the office. At its core, this would appear to be a matter of confusion about form and substance. The balance of the status and role of the Governor General will continue to be a challenge as the office assumes an ever greater Canadian profile at the risk of diminishing that of the Crown.

A similar situation mixing form and substance seems to be occurring in practices relating to the Crown-in-Parliament in Canada.

In this case, the challenge about the involvement of the Crown-in-Parliament arises from its degree of detachment or limited engagement. This has led to the development of modern parliamentary practices associated with the Crown that are not understood, appreciated, or applied in the same way as at Westminster. Aside from this element of detachment, other factors have also contributed to weaken, diminish, and even distort somewhat the parliamentary significance of the Crown. More importantly, some of these practices have affected parliamentarians themselves and their capacity to act as legislators. None of this is really obvious or even deliberate. Nonetheless, that this is happening is evident when these Canadian practices involving the Crown-in-Parliament are compared to the original British model. This applies in different ways to each of the three practices that invoke the Crown: royal recommendation, royal consent and royal assent. An examination of these parliamentary practices reveals how this alternative alignment has developed between form and substance relating to the role of the Crown-in-Parliament.

## ROYAL RECOMMENDATION

### United Kingdom

Without doubt, the most public parliamentary event traditionally performed by the Crown is the Speech from the Throne. The text of the speech setting out the government's legislative agenda is read by the Queen to open a new Parliament or a new session. This speech always contains a passage addressed specifically to Members of the House of Commons. At Westminster, the statement informs the Members that "Estimates for the public services will be laid before you". In Canada, a similar sentence tells Members that they "will be asked to appropriate funds required to carry out the services and expenditures authorized by Parliament". Both of these declarations constitute a generic royal recommendation and each reflects the established practice that estimates or appropriations can only be requested by the Crown through a Minister and can only be used for government purposes.<sup>11</sup> At the same time, the Commons have the initiative and control in these financial procedures of aids and supplies requested by the Crown.

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11. Sir Malcolm Jack, ed., *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24th ed, (London, LexisNexis, 2011) at 717[Erskine May's], 854; G F M Campion, *An Introduction to the Procedure of the House of Commons* (London: Philip Allan & Co, 1929) at 232.

The use of the King or Queen's recommendation requesting specific sums by a Minister as a matter of practice in the House of Commons was first integrated into British parliamentary proceedings early in the 18<sup>th</sup> century. Previously, the Crown was often able to rely on non-parliamentary revenues to cover most of its expenditures. However, as the financial requirements of the Crown grew, the Commons profited by using the situation to increase its role in providing funds and imposing taxes and in denying any right to the Crown to raise taxes on its own authority. This was decisively accomplished with the settlement of 1688. Efforts had already been successfully made by the Commons to exclude the House of Lords from any primary role in the process. Resolutions adopted by the Commons in 1671 and 1678 had the effect of denying the right of the Lords to alter aids and supplies and to claim that Bills based on them ought to be introduced in the Commons.<sup>12</sup>

The gradual introduction of Cabinet government within the parliamentary environment led to a change in the approach of the Commons with respect to consideration of finances. Rather than taking on the obligation of ensuring the appropriation of grants for specific purposes, the Commons decided to hold Ministers accountable for this role. The House of Commons restricted its functions to review and criticism of the expenditure proposals that could only be initiated for and by the Crown and through its Ministers. This accountability framework established the means by which the Commons could involve itself in the entire apparatus of public administration. The procedure reserving to the Government the right to request expenditure was first acknowledged by the House in the form of a resolution in 1706, which was made a permanent standing order in 1713: "The consent of the sovereign thereafter had to be signified to the House by a minister before consideration of any application for money ..."<sup>13</sup>

The practices of financial procedure for appropriations and taxes evolved significantly over time. Before the mid-nineteenth century, this evolution was often uneven and sometimes haphazard. Two major factors affected its pace and direction during the eighteenth century

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12. House of Commons Liaison Committee, Second Report of Session 2007-08, "Parliamentary and Government Finance: Recreating Financial Scrutiny" at 9; Audrey O'Brien and Marc Bosc, *House of Commons Procedure and Practice*, 2d ed, eds (Ottawa, Editions Yvon Blais, 2009) at 824.

13. P D G Thomas, *The House of Commons in the Eighteenth Century* (Oxford: Clarendon Press, 1971) at 72; see also Campion, *supra* note 11 at 28; Office of Parliamentary Counsel, "Financial Resolutions," online: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/342530/Financial\\_Resolutions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342530/Financial_Resolutions.pdf).



and up to the Reform Act of 1832. One was the absence of adequate and prompt accounts, which did not really begin to improve until the establishment of the Consolidated Fund in 1787. The other was the scale of corruption, largely through royal and aristocratic patronage, which determined much of the composition and partisan behaviour of the House of Commons and rendered proper scrutiny of the government's finances difficult.<sup>14</sup>

At the beginning, the means available to track government finances were primitive and incomplete. Various accounts were set up to identify monies to be allocated for different services, such as the Civil List and the Aggregate Fund as well as the Sinking Fund, before the Consolidated Fund was established. To oversee and assess the Government's financial initiatives, the Commons originally created the Committees of the Whole; one for Supply, addressing expenditures revealed through annual Estimates, and one for Ways and Means, detailing proposals for raising revenues to fund expenditures.<sup>15</sup> However, the potential effectiveness of this review mechanism was not realized until the House of Commons itself benefited from a shift in the balance of power that made the Prime Minister more dependent on it than on the King. This shift was well underway in the era of William Pitt and it "continued under his successors, and gained considerably in strength after the Reform Act of 1832. By the middle of the nineteenth century Parliament was politically in a position to exercise the powers of financial control that it gained through the Revolution of 1688".<sup>16</sup>

During this same time, the government's powers of financial control exercised through the requirement for the Queen's recommendation, signified by a Minister, were extended to cover more than the business of Supply and Ways and Means. They were also applied to the appropriation of unspent surplus funds within the Treasury that had first appeared regularly from the early eighteenth century. The process of expanding the requirement for the Queen's recommendation began with petitions of individuals seeking pecuniary relief and was extended "to motions and particularly to motions emanating from Ministers and concerned with matters for which the Crown was responsible."<sup>17</sup> As this practice developed, the use of the recommenda-

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14. Paul Einzig, *The Control of the Purse* (London: Secker & Warburg, 1959) at ch15.

15. *Ibid.*

16. *Ibid* at 130.

17. Sir Charles Gordon, ed, *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 20th ed (London, Butterworths, 1983) at 762.

tion came to imply the broader concept of the royal initiative, and it was soon applied by the government to control legislative measures relating to novel expenditures not included in the ordinary annual expenditure voted on estimates. This control over novel expenditure proposals was secured through additional changes to the Standing Orders of the House of Commons made in 1852 and 1866. In 1852, it was first applied to include motions “for a grant or charge upon the public revenue”, and in 1866 it was further expanded to include bills calling for a grant or charge to be paid “out of money to be provided by Parliament”. These changes were significant. The original purpose of the recommendation had been limited “to proposals which directly and effectively authorized expenditure by ordering payments to be made out of the Consolidated Fund; it was now “extended to proposals which were not in themselves effective, and did no more than direct that payment should be made ...”<sup>18</sup>

This expanded use of the recommendation to include bills of novel expenditure compounded the frustration arising from debate at the resolution stage because the restrictions applied to the consideration of Supply bills were now also being imposed on a broader range of legislative measures. This had the effect of depriving the House of Commons of all power of constructive amendment.<sup>19</sup> By the late nineteenth century MPs began to complain that the resolutions drafted by the Government based on the authorization provided by the recommendation were too detailed and that this unduly constrained their ability to propose amendments. It was noted in the 1937 *Report from the Select Committee on Procedure Relating to Money Resolution* that “the greatly increased output of social legislation in recent years” had prompted the Government to present its “proposals with such minute detail regarding the purposes of expenditure that the House has been debarred not only from increasing the charge, but from varying those proposals.”<sup>20</sup> Whatever the reasons, this was seen as an unacceptable obstacle to the legitimate work of parliamentary scrutiny of the government’s spending initiatives. As the report explained “the House should not be prevented, by the manner in which the resolution is drawn, from varying the purposes of expenditure within the framework of the Crown’s pro-

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18. *Ibid* at 763.

19. Sir Barnett Cocks, ed, *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 17th ed, (London, Butterworth & Co, 1964) at 732.

20. Report from the Select Committee on Procedure Relating to Money Resolutions (London: Her Majesty’s Stationery Office, 1937) at ix.

posals, and thus making its criticism constructive”.<sup>21</sup> For its part, the Government recognized the problem and committed to allowing greater scope for amendments. This was done by deliberately drafting resolutions when possible in a way that was neither too narrow nor overly restrictive. A commitment to maintain this flexible approach was reiterated in 1957.<sup>22</sup>

In modern practice, the Queen’s recommendation remains procedurally significant, but the resolutions based on it are no longer the object of contentious debate. As of 1966, Committees of the Whole ceased to consider resolutions needed in relation to supply, ways and means or novel expenditure bills. The substantive work of Estimates review and the assessment of money resolutions are now performed by a range of select committees, each of which focus on a specific department of Government.<sup>23</sup> There is also a simplified process for debating the Estimates and voting Appropriation Acts. This exercise, in turn, is informed by additional documentation which outlines the Government’s long-term expenditure plans through the multiple-year Spending Review that includes data for Total Managed Expenditure and other financial forecasts for each department.<sup>24</sup> As well, a change was recently made to allow consideration of a money resolution for novel expenditure bills after second reading. Under current Standing Orders, the resolution is passed forthwith, without debate. Previously, the money resolution had always to be adopted before the introduction of the bill.

## Canada

In Canada, the early history of the royal recommendation is somewhat spotty and inconsistent. The British resolution of 1706 and standing order of 1713 assigning control of requests for spending to the Crown was matched in Canada for a time by an equivalent rule of the House of Assembly of Lower Canada adopted in 1793, shortly after that Assembly was instituted in 1791. This rule stated that the Assembly “will receive no petition for any sum of money relating to the public service but what is recommended by His Majesty’s Governor, the Lieutenant Governor or person administering the Govern-

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21. *Ibid* at viii.

22. Office of Parliamentary Counsel, “Financial Resolutions”, *supra* note 13.

23. House of Commons Information Office, “Financial Procedure”, online: <http://www.parliament.uk/documents/commons-information-office/p06.pdf>.

24. Erskine May, *supra* note 11 at 721-22.

ment at the time”.<sup>25</sup> However, this rule was rescinded in 1834 when the Assembly adopted the Ninety-two Resolutions drafted by Louis-Joseph Papineau to protest the broad authority of the colonial Governor and to demand the implementation of responsible government. The rescission of the 1793 rule had the effect of bringing the practices of the Lower Canada Assembly into line with those of the Upper Canada’s, which had never had a rule to limit appropriations to those recommended by the Crown. As a consequence, it became possible in both legislatures for private members to bring in bills that required the use of public money for various schemes and projects without any royal recommendation.

This lack of control over expenditures scandalized Lord Durham who had been sent to Canada from Britain as Governor General to investigate the causes of the 1837 rebellions in Upper and Lower Canada. In his report to London, he strongly urged that the prerogative of the Crown to control spending through the royal recommendation be instituted as part of the Act of Union joining together Upper and Lower Canada.<sup>26</sup> London agreed and section 57 of the Act of Union clearly provided “... that it shall not be lawful for the ... Legislative Assembly to originate or pass any vote, resolution, or bill for the appropriation of any part of the surplus of the ... Consolidated Revenue Fund, or any other Tax or Impost, to any purpose which shall not have been first recommended by message of the Governor to the ... Legislative Assembly during the session in which such vote, resolution or bill shall be passed”.<sup>27</sup>

With Confederation, the new federal Parliament continued to use financial procedures similar to those which had been put in place following Lord Durham’s report. Section 54 of the *Constitution Act, 1867* maintained the obligation to secure the royal recommendation from the Governor General, an obligation which was also made part of the Standing Orders of the House of Commons. In other words, the financial procedures generally conformed to the practices then followed at Westminster. Resolutions accompanied by a royal recommendation and moved by a Minister of the Crown had to be introduced and adopted before considering any bill that sought to spend moneys out of the Consolidated Revenue Fund. This resolution defined precisely the amount and purpose of the proposed

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25. Gary O’Brien, “Requirements of the Royal Recommendation” (1993) 16 Canadian Parliamentary Review 1.

26. *Ibid.*

27. *The Union Act, 1840* (UK), 3 & 4 Vict, c 35, s 57.

appropriation. “Every appropriating clause of the subsequent bill had to conform to the provisions outlined in the resolution, and no Member could move amendments to the legislation that would have the effect of increasing the amount or altering the purposes which the resolution had authorized”.<sup>28</sup>

This system remained in place largely unchanged for one hundred years. Pressure to modify established practice finally came about as a result of two factors: the resolution stage was too often used by the opposition to delay and obstruct the government and the debate on the resolutions often duplicated the second reading debate on the subsequent bill.<sup>29</sup> As to the resolutions themselves, there is little evidence, contrary to the situation at Westminster, that the Members ever complained seriously that the resolutions were too restrictive or that they limited their right to move amendments to any appropriation legislation or money bills.

Significant reforms to the financial procedures came in 1968. These changes affected not just the business of Supply, but all bills authorizing expenditures out of the Consolidated Revenue Fund. The resolution stage was dropped completely. The royal recommendation was now introduced as a notice at the same time as the bill to which it applied meaning all Supply Bills and any bill appropriating public money. As the new Standing Order explained: “The message and recommendation of the Governor General in relation to any bill for the appropriation of any part of the public revenue or of any tax or impost shall be printed on the *Notice Paper*, printed or annexed to the bill and recorded in the *Journals*”.<sup>30</sup> At first, these recommendations were quite detailed, not unlike the resolutions they replaced. From the Fall of 1976, however, the recommendation was stated in a revised standard form that gave little information identifying the amount and scope of the appropriation being requested through the related bill. The invariable form of the royal recommendation simply stated that “His/Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in the message entitled “(long title of the Bill)”.<sup>31</sup>

28. *House of Commons Procedure and Practice*, *supra* note 12 at 831.

29. *Ibid* at 843.

30. John Mark Keyes, “When bills and amendments require a royal recommendation: a discussion paper and guidelines” (1997-98) 20 Canadian Parliamentary Review at 16.

31. *House of Commons Procedure and Practice* *supra* note 12 at 831.

The language used in the standard message of royal recommendation resembles that found in Erskine May describing the restrictions imposed on potential amendments: "An amendment infringes the financial initiative of the Crown not only if it increases the amount, but also if it extends the objects or purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has recommended a charge".<sup>32</sup> The generality or vagueness of this wording has made it difficult to determine what amendments might or might not be in order, a difficulty which is compounded by a perception that the royal recommendation is sometimes used when there is no evidence of any appropriating clauses in the bill.<sup>33</sup> Despite this confusion, or maybe because of it, rulings by Commons Speakers, relying too much on British practice, generally tend to protect the financial initiative of the Crown at the expense of Members' rights.<sup>34</sup>

Questions about the new version of the royal recommendation attracted the attention of the Senate National Finance Committee which produced a report addressing it in 1990.<sup>35</sup> Having questioned a former Law Clerk and Parliamentary Counsel of the House of Commons and also the Chief Legislative Counsel of the Department of Justice, the committee was left dissatisfied by the new form of the royal recommendation. Testimony suggested that officials responsible for considering whether the royal recommendation was needed applied a broader standard than what is strictly necessary. Justice officials explained that they were inclined to add a royal recommendation to bills that seemed to entail the expenditure of money even if it was not actually authorized. In effect, this approach indirectly bound Canadian financial procedure to the stringent limitations of the British Standing Orders of 1852 and 1866.<sup>36</sup>

Curiously, the situation raised by the National Finance Committee is the opposite of the complaint examined by the 1937 UK

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32. Erskine May, *supra* note 11 at 857.

33. Joan Small, "Money Bills and the Use of the Royal Recommendation in Canada: Practice versus Principle?" (1995-96) 27 *Ottawa L Rev* 33 at 56.

34. *Ibid.*

35. Ninth Report of the Standing Senate Committee on National Finance (13 February 1990) 130 *Journals of the Senate of Canada*, Part 1 at 568-579.

36. *Ibid* p 574-575; for a discussion on this point see: Rob Walsh, "Some thoughts on Section 54 and the Financial Initiative of the Crown" (1994) 17 *Canadian Parliamentary Review* 2. John Mark Keyes, "When Bills and Amendments Require the Royal Recommendation: A Discussion Paper and Guidelines" *supra* note 30; John Mark Keyes, "The Royal Recommendation: An Update" (1999) 22 *Canadian Parliamentary Review* 19.

committee and yet, in some ways, it has had a comparable impact. In the UK, the elaborate details of the royal recommendation provoked a complaint because Members believed their review of financial legislation was being hampered since they were being prevented from proposing amendments. The constitutional right to assess and criticize the Government's spending plans was being thwarted. This, in turn, undermined the core accountability relationship between the Government and the House of Commons. In Canada, however, the generality of the royal recommendation now in use has also limited opportunities to examine financial legislation effectively. Amendments can be ruled out of order for infringing the financial prerogative of the Crown even when it is difficult to be certain that the bill actually authorizes a new appropriation. The unquestioned default position seems to be that if the bill has a royal recommendation, it must need it. Any bill or amendment is therefore ripe for a challenge based on an infringement of the royal recommendation. There is an abundance of rulings by the Speakers and committee chairs that rely on a broad application of the requirement of a royal recommendation to rule bills or amendments out of order.

The situation first identified by the Senate National Finance Committee almost twenty-five years ago still persists. It remains a real challenge sometimes to identify a specific expenditure being authorized by a legislative proposal. Despite this, there is scant evidence that the use made of the royal recommendation seriously troubles many parliamentarians. Certainly there is little to suggest that Members want to push back and question whether the royal recommendation is unreasonably preventing them from proposing amendments that might otherwise be permissible. This apparent indifference may be a consequence of the strict timetable that was put in place with the reforms of 1968 dealing with financial procedures. Under the Standing Orders adopted at that time, the Government is assured that the House of Commons will deal with votes on the various bills of Supply at fixed times of the year. While some obstruction is still possible, delay is no longer a serious or meaningful threat. As to other bills authorizing an expenditure, their passage can be accelerated through the use of time allocation.

The "power of the Purse" that historically was the foundation of the accountability relationship between the House of Commons and the Government of the day no longer retains the same political appeal it once had in Canada. Fallout from this development seems to have also influenced how any so-called money bill is assessed. Members do not question whether a royal recommendation is actually needed

when it is attached to a Government bill purporting to spend money from the Consolidated Revenue Fund.

## ROYAL CONSENT

### United Kingdom

The traditional prerogative rights and powers of the Crown enjoy protected status. They cannot be altered by statute unless the Queen agrees by royal consent to allow the Houses of Parliament to debate and adopt a bill affecting these prerogatives. These rights and powers were originally exercised directly by the Sovereign and remain with the Crown. Now, however, most of these prerogatives are used only on ministerial advice and are associated with the responsibilities of modern government. Important prerogative powers include the authority to declare war and peace, to make treaties with foreign governments, to issue passports and, with respect to Parliament itself, to issue summons, prorogations and dissolutions. Royal consent is also needed in instances with respect to legislation that would engage the Queen's hereditary revenues or properties or that would involve her role as the Supreme Governor of the Church of England.<sup>37</sup>

Royal consent dates back to at least 1728, the first known instance of its use, though there is some suggestion that it could go back as far as the reign of Elizabeth I.<sup>38</sup> It is a parliamentary practice that is based neither on statutory requirement nor any explicit rule or order of either the House of Lords or the House of Commons. It may have developed from the King's emerging status as a constitutional monarch. Vested with authority that was no longer accepted as belonging to the Sovereign exclusively and that was increasingly constrained by conventions that came with parliamentary supremacy and responsible government, the practice of royal consent nonetheless acknowledges the continuing importance of the role of the Sovereign.

From an historical perspective, there was another authority that once belonged to the Sovereign, now long since abandoned, that had a parallel kinship to the tradition of royal consent. It was based on the close relationship of the King with his Cabinet Ministers in their

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37. House of Commons Political and Constitutional Reform Committee, "The impact of Queen's and Prince's Consent on the legislative process" (Eleventh Report of Session 2013-14).

38. *Ibid* at 9.



role as his principal advisors. It was also wrapped up in the immense amount of patronage that was actually controlled by the King through the reign of George III. In order to bring government legislation into Parliament, it seems that Ministers sought and needed the approval of the King. Because this approval could be withheld, it amounted to a preemptive royal veto. Some examples that support the existence of this practice are reasonably well known. Catholic emancipation, for one, was delayed by George III who opposed granting civil liberties to Catholics, considering the measure a violation of his coronation oath despite the clear preferences of several of his Ministers.<sup>39</sup> The measure was finally enacted by Parliament in 1828 during the reign of George IV at the initiative of a Tory Prime Minister, the Duke of Wellington. In another example, Prime Minister Grey, in pushing a measure to modernize the electoral system, the Reform Act, felt the need to secure the approval of William IV before it was introduced in Parliament as a government proposal.<sup>40</sup> The exercise of this royal veto was undermined by the eventual success of the Reform Act and the substantive growth of the franchise by mid-century which gave greater legitimacy and power to the House of Commons and strengthened its role with respect to responsible government. This loss of the royal veto was also accompanied by a gradual reduction of royal patronage. Royal consent is a vestigial remnant of the once larger role played by the Crown when its authority was still more substantive and real, when the Sovereign actually played a prominent efficient role as well as today's more evident dignified role, according to Walter Bagehot.

The use of the royal consent today arises mainly, though not exclusively, in connection with proposed laws affecting the Crown estates, the Duchy of Lancaster and the Duchy of Cornwall. With respect to the latter, consent must be obtained from the Prince of Wales, if he is of age, since these hereditary lands traditionally furnish his revenues. This expansion of the royal consent to include the heir to the throne was put in place by Prince Albert, the Prince Consort, by 1848.<sup>41</sup> This simple innovation reflects in its own way how the Crown, because of its long history and enormous prestige, could still exert an influence on parliamentary practices to reflect its importance

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39. See William Hague, *William Pitt the Younger* (New York: Alfred A Knopf, 2004) at 390-92 and Richard W Davis, *A Political History of the House of Lords, 1811-1846* (Stanford: Stanford University press, 2008) at 6-7.

40. Antonia Fraser, *Perilous Question* (New York: Public Affairs, 2013) at 71.

41. "The impact of Queen's and Prince's Consent on the legislative process", *supra* note 37.

and to preserve its interests. A hundred and seventy years later, that influence still survives.

A British parliamentary committee recently looked into the practice of royal consent to determine whether it should be kept, changed, or abolished. In the end, the committee opted to recommend that royal consent continue to be a part of the legislative process. In pursuing its review, the Commons Political and Constitutional Reform Committee clarified several constitutional and procedural aspects of royal consent. Because it is a matter of convention, the committee recognized that royal consent could be abolished at any time through an address to the Crown followed by the adoption of an appropriate resolution by both Houses. And while there may be no compelling constitutional justification for royal consent, its retention underscores the important comity that exists between Parliament and the Crown. Though it can be seen as a formality, failure to provide royal consent on bills needing it can have consequences. If royal consent has not been signified when the bill reaches third reading in each house, the Speakers will not put the question. However, if a bill should be enacted without royal consent due to an oversight of whatever kind, its status as an Act of Parliament is not in doubt. In such a case, the royal consent is deemed to have been granted by virtue of the approval it received through royal assent.<sup>42</sup>

In addition, the committee explored other aspects associated with royal consent. It noted that as the Queen and Prince of Wales are bound by ministerial advice in the exercise of royal consent, there was no reason to believe that either has ever acted inappropriately to influence the legislative process. This is because, in practice, when the government believes that royal consent should not be granted, the Ministers will not bother to advise the Queen or the Prince of Wales to withhold it. In other words, Ministers would simply not seek consent in the first place. Nonetheless, the committee acknowledged that the confidentiality of communications, albeit mostly routine, between government departments with the Queen's solicitors when royal consent is being considered can fuel speculation of royal influence or interference and this applies especially with respect to Private Members' bills. In addition, the committee acknowledged that royal consent could be used by the government itself to block progress on such bills and this could potentially override the wishes of Parliament. To avoid either problem, the committee recommended that the

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42. *Ibid* at 9-10, 17.

correspondence between the Government and the Royal Household be provided to the Private Member sponsoring any relevant bill and that the Government ensure that royal consent for Private Members' bills be granted as a matter of course. Finally, to standardize when royal consent is applied in the legislative process, the committee proposed that it always be signified at the third reading when the bill has reached that stage in either House and this should be indicated on the Order Paper rather than through an oral statement made by a Privy Counsellor.<sup>43</sup>

The UK committee report offers substantial evidence that the application of royal consent in the legislative process at Westminster is taken seriously and the question of its ongoing use warranted a proper evaluation. There are two reasons to explain why this might be so: its relatively frequent occurrence during a session because of bills touching the personal properties and hereditary revenues of the Queen and because it is a step in the very serious business of altering a prerogative power. Though this second reason does not arise too often, two recent instances demonstrate how it is still important. As quoted in the report: "In 1999, the Deputy Speaker refused to put the question at second reading of the Military Action Against Iraq (Parliamentary Approval) Bill. The Bill's sponsor, Tam Dalyell, has said that the Government has advised that royal consent be refused."<sup>44</sup> More recently, in 2011, royal consent was signified at second reading to the Fixed-term Parliaments Act which effectively abolished the prerogative power to dissolve Parliament.<sup>45</sup>

## Canada

The Canadian procedural authorities from Todd,<sup>46</sup> Bourinot,<sup>47</sup> Beauchesne<sup>48</sup> and the more recently published manual *House of Commons Procedure and Practice* all reference royal consent and describe how and why, in varying levels of detail, it is applied in Canada. *House of Commons Procedure and Practice* explains how

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43. *Ibid* at 14, 20.

44. *Ibid* at 12.

45. *Ibid* at 7.

46. Alpheus Todd, *The Practices and Privileges of the Two Houses of Parliament* (Toronto: Rogers and Thompson, 1840) at 166, 228.

47. Sir John George Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada*, 4th ed (Toronto: Canada Law Book Company, 1916) at 413.

48. Alistair Fraser et al, eds, *Beauchesne's Rules & Forms of the House of Commons of Canada*, 6th ed (Toronto: Carswell, 1989) at 213.

royal consent is derived from British practice and how its practice is among the unwritten rules and customs of the House of Commons. However, the history of the use of royal consent in Canada suggests that in some significant respects it is not well understood nor is it used in the same way as at Westminster. As the *House of Commons Procedure and Practice* states: "Consent is necessary when property rights of the Crown are postponed, compromised or abandoned, or for the waiver of a prerogative of the Crown. It was, for example, required for bills in connection with railroads on which the Crown had a lien, with property rights of the Crown (in national parks and Indian reserves), with the garnishment, attachment and diversion of pensions and with amendments to the *Financial Administration Act*".<sup>49</sup>

Aside from matters dealing with the prerogative rights of the Crown, these examples do not seem to fit the criteria applied in British practice and it is difficult to see an obvious need for royal consent in matters relating to liens and garnishments. It could be argued that there is no real harm in granting royal consent when it is superfluous, but it would be another matter if a claim were made incorrectly that royal consent were needed and it was refused. Given the history of questionable examples, combined with the near-binding nature of precedent in House of Commons procedure, the Canadian practice of royal consent constitutes a potential risk to the rights of parliamentarians and their ability to propose and adopt bills if they were not allowed to proceed because royal consent was refused when it was not actually required. In a House that is often driven by partisan interests, it is not unthinkable that debate could be thwarted on otherwise procedurally acceptable bills by invoking royal consent and refusing to grant it. Though less often used than royal recommendation to frustrate the legislative process, the confusion surrounding the use of royal consent makes its incorrect use a distinct possibility.

In other respects too, it seems that royal consent is not followed in ways that resemble the British model despite its derivative nature. In Britain, royal consent must be signified at the appropriate stage of a bill's consideration in both the House of Lords and the House of Commons. In Canada, royal consent usually occurs at second reading, but it can occur at any stage during a bill's consideration. This aspect of practice is not substantially different. What is different is that royal consent is usually signified in only one of the two Houses, and, more

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49. *House of Commons Procedure and Practice*, *supra* note 12 at 755-56.

often than not, it is the House of Commons.<sup>50</sup> The most recent example of royal consent was provided in 2013 in the case of Bill C-53, *An Act to assent to alterations in the law touching the Succession to the Throne* which was signified by a statement made by the Minister of Justice as the bill quickly proceeded through all stages. On February 4, by a motion made by unanimous consent, the bill was deemed read a second time, deemed referred to the Committee of the Whole, deemed reported back without amendment, deemed read a third time and passed without any debate at all. When debate on second reading began in the Senate, the Leader of the Government informed the House that the Minister of Justice had signified royal consent in the Commons and, in keeping with established practice, this was thought sufficient. However, in the case of Bill S-34, *An Act respecting Royal Assent to Bills passed by the Houses of Parliament*, adopted in 2001, the reverse happened. As the bill had been initiated in the Senate, royal consent was announced in the Senate and not the House of Commons. The only other example found of royal consent being given in the Senate, rather than the House of Commons occurred in 2000. This was with respect to a bill that had actually originated in the House of Commons, Bill C-20, known as the *Clarity Act*, dealing with the Supreme Court opinion in the *Quebec Secession Reference*. The decision to seek royal consent was in response to a point of order that had been raised June 20, 2000.<sup>51</sup> It was signified by the Leader of the Government, the Hon. Bernard Boudreau several days later, on June 29, 2000.<sup>52</sup>

As a derivative practice, as an unwritten custom, not unlike the situation at Westminster, there is no real impediment to abolishing the requirement for royal consent. Few of the provincial legislative assemblies seem to have ever used it.<sup>53</sup> So far as can be determined, abolition has never been raised and it does not seem likely to be considered any time soon. Whether or not royal consent is abolished, the consideration of any bill proposing to alter a prerogative power may now be subject to a constitutional process that is far more rigorous and substantial. As part of the constitutional amending formulas put

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50. See "Royal Consent Given to Bills", online: <<http://www.parl.gc.ca/Parlinfo/Compilations/HouseOfCommons/Legislation/CrownConsent.aspx>>

51. Debates of the Senate, 36th Parl, 2nd Sess, No 138, Issue 69 (June 20, 2000) (the point of order was raised by Senator Joyal and discussed by several senators before the Speaker reserved his decision).

52. *Journals of the Senate*, 36th Parl, 2nd Sess, No 135, Part II (June 29, 2000) at 819.

53. One instance of its use in Quebec demonstrates how royal consent was not well understood. The case involved the extension of the boundaries of a village. Quebec, Legislative Assembly, *Journals of the Legislative Assembly of the Province of Quebec*, (June 11, 1886) at p 309.

in place by the *Constitution Act, 1982*, section 41(a) stipulates that changes affecting “the office of the Queen, [and] Governor General” can only be made through resolutions authorized by the Senate and the House of Commons and by the legislative assemblies of all the provinces. The threshold required now for passage of a bill affecting a prerogative power may be significantly higher than royal consent. If the bill can be said to substantially affect the office of the Queen or the Governor General, a constitutional amendment might be needed.<sup>54</sup> This requirement has no parallel in the United Kingdom.

## ROYAL ASSENT

### United Kingdom

Of the three activities that engage the Crown-in-Parliament, the most important is royal assent. Without royal assent, no bill adopted by the two Houses of Parliament can become a statute, an Act of Parliament. It demonstrates, among other things, the fact that the Crown remains an integral, constituent part of Parliament and that it is the Queen-in-Parliament that makes the law of the land. The opening words of every bill enacted by Parliament at Westminster make the role of the Crown very clear:

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

In Canada, the words are basically the same in recognizing that the making of statute law is by authority of the Crown:

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

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54. Compare, for example, the subject of fixed date elections. In the United Kingdom, the prerogative of dissolution was abolished; but, in Canada, it was preserved on the theory that an alteration to such an important power might only be accomplished by constitutional amendment. Indeed, in *Conacher v Canada (Prime Minister)* (2010) 320 DLR (4th) 530 (FCA), the Federal Court of Appeal touched on this question when it stated that any restrictions to the Governor General’s power to dissolve Parliament would have to be explicit with specific wording to that effect. This was not the case in section 56.1 of the *Canada Elections Act*, the legislation concerning fixed elections that was at issue in that case. But then the Court went on, *in obiter*, to raise the question as to whether such a restriction would be constitutional, even with explicit and specific wording restricting the Governor General’s power in the *Canada Elections Act*. In other words, any restriction to the Governor General’s power to dissolve Parliament may require a constitutional amendment.

Royal assent as a feature of the English Parliament dates back to the era when it was developing the practices of a legislative body in the 14<sup>th</sup> century. During this period of English history, the King actively ruled and the decision to assent or not to legislation adopted by Parliament was made by him as the Sovereign. Evidence about this ceremony before the reign of Henry VIII is limited, but the history during his reign from 1509 to 1547 suggests that its pattern was already well established. One distinct feature of the royal assent ceremony still followed today was the use of Norman French to signify whether assent to a bill was granted or withheld. In addition, royal assent took place just once at the close of each session prior to the prorogation. "The reason for this was that it was held that the giving of assent had in itself the effect of terminating the session. However, this doctrine caused obvious inconvenience when statutory authority was required for some urgent action".<sup>55</sup> The practice of having royal assent at the end of the session was finally abandoned during the early years of the Long Parliament when tensions between Parliament and the King ran increasingly high. In the short period from November 1640 to June 1642, for example, when relations between Parliament and Charles I finally collapsed, royal assent was given twenty-four times.<sup>56</sup>

Prior to 1541 and the passing of the *Royal Assent by Commission Act*, the ceremony of assent was always communicated to Parliament by the King in person. Royal assent by commission was instituted as an option in 1541 to deal with the Bill for the attainder of Katherine Howard and her accomplices. Henry VIII did not want to be seen personally giving assent to the execution of his wife. The Royal Assent by Commission Act 1541 was replaced by the Royal Assent Act 1967. The use of commissions did not outnumber attendances by the Sovereign until the reign of George III. From the late eighteenth century, royal assent by the Sovereign became increasingly infrequent and in the case of George IV and William III, each did it once at the beginning of their reigns to assent to a bill enacting the Civil List, in the case of the former, and the Queens's Annuity Bill, in the case of the latter.<sup>57</sup> The last Sovereign to participate personally in a royal assent was Queen Victoria in 1854.<sup>58</sup>

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55. Stanford Lehmborg, *The Later Parliaments of Henry VIII: 1536-1547* (Cambridge, Cambridge University Press, 1977) at 264-5.

56. House of Lords, *Parliamentary Functions of the Sovereign*, Memorandum No 64 (London, House of Lords Record Office, 1980) at 3.

57. *Ibid* at 6.

58. *Ibid*.

Since 1967, Parliament's involvement in royal assent is limited to an announcement made by the Speaker of the House of Commons and the Lord Speaker of the Lords during the sitting. It is no longer necessary to have Members of the Commons assemble at the bar of the House of Lords to witness the declaration in the House of Lords by the Commissioners. This change was prompted by growing opposition through the early 1960s to the inconvenience of Commons' business being interrupted by a summons to attend royal assent in the Lords. Under the terms of the current Royal Assent Act, the commission is still available and will likely occur at the time of prorogation. These practices have helped to update royal assent without sacrificing the obligation to involve the Queen.<sup>59</sup>

The right of the Sovereign to refuse assent was undoubted through the 17<sup>th</sup> century. Indeed, it was not unusual for the King to exercise this power to withhold approval to bills adopted by the Houses of Parliament. However, following the settlement based on the Declaration of Rights and the subsequent accession of William and Mary in 1688, the expectation grew that the King should not contest the judgment of Parliament with respect to legislation. The last instance of a royal veto occurred in 1707 during the reign of Queen Anne.

Though now generally accepted as being highly improbable, the issue of the royal veto still comes up. It was apparently raised in connection with the Government of Ireland Bill in 1914. Fears about the prospect of a civil war in Ireland led some advisors close to King George V to urge him to consider refusing royal assent.<sup>60</sup> More recently, some academics have raised the prospect of a sovereign declining to give assent on the basis of moral right, although the prospect of this happening is remote.<sup>61</sup> The convention of compliance and neutrality on the part of the Sovereign is so much a part of the accepted approach that it has become difficult to imagine that royal assent could ever be withheld. If a veto survives at all, it is as a reserve power that might be used in only the most unusual circumstances.<sup>62</sup>

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59. P D G Hayter, "Royal Assent: A New Form" (1967) 36 *The Table* at 53.

60. Harold Nicolson, *King George the Fifth: His Life and Reign* (London: Constable & Col, 1952) at 199; Kenneth Rose, *King George V* (New York: Knopf, 1984) at 148-49.

61. Robert Blackburn, "The Royal Assent to legislation and a monarch's fundamental human rights" (2003) *PL* at 205.

62. Yann Allard-Tremblay, "Proceduralism, Judicial Review and the Refusal of Royal Assent" (2013) 33 *Oxford J Legal Stud* 2 at 379-400.



## Canada

In keeping with their British heritage, colonial legislatures had a royal assent process. It existed in all of the American pre-Revolutionary assemblies<sup>63</sup> and its history in Canada dates to the first General Assembly of Nova Scotia in 1758 and to establishment in Canada of the Constitutional régime of 1791.<sup>64</sup> The act of royal assent underscored the vice regal role and the extent of its authority. Throughout this period, the governor, as an agent of imperial interests, had the authority to withhold assent to bills or to reserve them for the signification of the royal pleasure.<sup>65</sup> Even after Confederation, these powers of the Governor General, enumerated in the instructions received at the time of appointment and also authorized under the *Constitution Act, 1867*, continued.<sup>66</sup> In fact, the Governor General of the new Dominion did not ever actually withhold assent, but up to 1878, twenty-one bills were reserved and one bill was disallowed.<sup>67</sup> After that date, the practice of reservation by the agency of the vice-regal representative was discontinued. Instead, in cases “where the jurisdiction of Parliament was doubtful, a clause was inserted in the bill to the effect that the Act would come into effect only on Proclamation of the Governor General. This suspending clause allowed negotiations with the Imperial government and if necessary – as in the case of the Copyright Act of 1889, the proclamation was not issued”.<sup>68</sup> The

63. Leonard W Labarbee, *Royal Government in America: A Study of the British Colonial System before 1783*, (New York: Frederick Ungar Publishing, 1958) at 226, 228.

64. Maurice Ollivier, *British North America Acts and Selected Statutes 1867-1962* (Ottawa, Queen's Printer, 1962) at 623.

65. Great Britain. Parliament. House of Lords. Return to an address dated 28th February 1893 for return of the names of Bills passed by both Houses of the Legislature, in colonies possessing responsible government, to which Her Majesty has not given Her assent, showing, in each case, whether the principle contained in such measure is or is not at the present date law in the colony: (The Earl of Onslow): ordered to be printed 2nd August 1894 (London, Her Majesty's Stationery Office, 1894) at 3-8.

66. Section 55 of the *Constitution Act, 1867* states: Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the signification of the Queen's Pleasure.

67. The assent to bills or their reservation and disallowance are sanctioned by section 55, 56 and 57 of the *Constitution Act, 1867*. Though never repealed, these provisions, aside from providing for assent, are taken to be generally obsolete. They reflect a relationship between Canada and Britain when Canada did not possess full sovereignty even though it was self-governing.

68. *Supra* note 59.

practice of reservation and disallowance was also sanctioned through the *Colonial Laws Validity Act* that was only repealed in 1931 by the *Statute of Westminster*.<sup>69</sup>

During these first Parliaments, royal assent occurred once at the end of the session. The sessions themselves were usually short, lasting a few months and so there was little risk or harm in delaying royal assent to the end. The Governor General himself participated in this ceremony in the Senate Chamber. Normally there were a fair number of bills, both public and private. Among them, there was always the all-important supply bill, bound in green ribbon. It was presented for assent by the Speaker of the House of Commons in keeping with the British constitutional principle that the Commons have the exclusive right to grant monies to support the operations of government. Unlike the British practice, however, supply bills are always presented after any other bills receive assent. After a Clerk reads the titles of the non-supply bills, which are bound in red ribbon, the royal assent is signified by a simple nod of the head by the Governor General as the Clerk of the Senate states that “In Her Majesty’s name, His Excellency the Governor General doth assent to these bills”. After the Speaker of the House of Commons has presented the supply bill, the Clerk reads the declaration of royal assent saying “In Her Majesty’s name, His Excellency the Governor General thanks Her Loyal Subjects, accepts their benevolence, and assents to this Bill.” This ceremony is always conducted in French and English rather than the old Norman French used at Westminster. This practice respects the bilingual character of the Canadian Parliament reinforced by section 133 of the *Constitution Act, 1867*. Up to 1983, when there was a royal assent at the end of the session, the Governor General or a Deputy would then proceed to deliver a prorogation speech expressing gratitude for the legislation passed during the session that was now ended.

The traditional ceremony of royal assent performed by the Governor General preserves the constitutional principle of the Crown-in-Parliament. It is a public event performed in the presence of the Senators in their Chamber together with the membership of the House of Commons who are summoned to the bar of the Senate by the Black Rod. The ceremony is enhanced by having a Minister, sometimes the Prime Minister or, more usually, the Government House Leader, as well as the Leader of the Government in the Senate proceeding with the Governor General and his Aide-de-Camp into the Senate

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69. *Statute of Westminster, 1931 (UK)*, 22 & 23 Geo V, c 4 s. 2.

Chamber and sitting near the Governor General who occupies either the throne or the Speaker's Chair.<sup>70</sup> When the Governor General was not available, royal assent was given by a Deputy of the Governor General, one of the Justices of the Supreme Court commissioned to act on the Governor General's behalf.

The use of a Deputy to perform royal assent is authorized through section 14 of the *Constitution Act, 1867* and is further confirmed through the Letters Patent that instruct the Governor in the performance of his duties<sup>71</sup>. Section 7 of the most recent Letters Patent, issued by the King in 1947 and signed by the Canadian Prime Minister, W.L. Mackenzie King, empowers the Governor General to appoint Deputies who can perform the duties of his office including royal assent.<sup>72</sup> In some ways, this may seem similar to the use of the Lords Commissioners at Westminster, but there is a substantial difference. In Britain, no one but the Queen, except during a regency, can give royal assent. The Lords Commissioners only announce the assent, they do not grant it. Here, the Governor General, the vice regal surrogate, acts in the Queen's name in assenting to bills, making them law. The power of the Governor General to delegate his functions to a Deputy has no parallel in Britain.

Providing an alternative to the traditional ceremony is one of several major changes that have been made to royal assent practice in recent years. After several failed attempts dating back to 1983, Parliament adopted the *Royal Assent Act* in 2002 which allowed for assent to be granted by written declaration.<sup>73</sup> The Act still preserves the traditional ceremony which must be used at least twice each calendar year as well as for the first supply bill of each session of Par-

70. More recently, when the Prime Minister is present, the Governor General will sometimes sign an attestation confirming that he granted royal assent in addition to giving the nod of the head.

71. Section 14 provides that "It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or Persons jointly or severally to be his Deputy or Deputies ... and in that Capacity to exercise ...such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen ..."

72. Section 7, after repeating the text of section 14 of the *Constitution Act, 1867*, provides that: "Now We do hereby authorize and empower Our Governor General ... to any person or persons, jointly or severally, to be his Deputy or Deputies ..."

73. Jessica Richardson, "Modernization of Royal Assent in Canada" (2004) 27(2) Canadian Parliamentary Review at 32-36. See also *House of Commons Procedure and Practice*, supra note 12 at 801-2.

liament. Under the procedure for written declaration, the bills are presented to the Governor General or a Deputy either at Rideau Hall, the Supreme Court, or at an alternative location as circumstances require. Bills are presented for assent by the Clerk of the Senate who is accompanied by another Senate Clerk in addition to a representative of the Privy Council Office. If a supply bill is among the bills ready for royal assent, the Clerk of the House of Commons will participate in presenting the bill. The Act also allows other witnesses, interested parliamentarians from either the Senate or the House of Commons, to attend. The steps followed in the ceremony by written declaration mimic some of the traditional ceremony with the Clerk of the Senate presenting the bills to the Governor General saying in French and English “May it please Your Excellency: The Senate and the House of Commons have passed the following Bill(s), to which they humbly request Your Excellency’s Assent”. The title of each bill is then read following which the Governor General or the Deputy signs a Declaration of Royal Assent that is witnessed by the Clerk of the Senate who also notes the date and time. Under this procedure, the royal assent is not effective until both Houses are notified through letters to the respective Speakers. In the Senate, the Speaker must actually read the letter in the Chamber while in the House of Commons, if it is adjourned, the Speaker can provide notification through the publication of a special issue of the Journals.<sup>74</sup>

Having royal assent by written declaration has made it easier to ensure the prompt enactment of legislation. It has also increased the use of the Deputies when the Governor General is not available. To minimize the inconvenience to the Justices of the Supreme Court, authorization to act as a Deputy to the Governor General was extended to include the Governor General’s Secretary and also the Deputy Secretary. This was done in 2011.

## **OPENING AND CLOSING SPEECHES IN PARLIAMENT**

### **United Kingdom**

In the language of Walter Bagehot, the three functions relating to the role of the Crown-in-Parliament – royal recommendation, royal consent and royal assent – reflect the efficient dimension of the Crown. They relate to long-established and still evolving procedures

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74. Standing Order 28(5).

that are a necessary component of the legislative work of Parliament. The Speech from the Throne, on the other hand, is an obvious manifestation of the dignified role of the Crown. Certainly it is the most public display of the Sovereign's association with Parliament. This ceremony of the state opening, which has been followed in much the same manner for several centuries, provides a splendid reminder of the origins of Parliament as the council of the nation summoned by its crowned head to deliberate on "all weighty and arduous affairs" which may the state and defence of the realm concern.

The central purpose of the ceremony is to read the Speech from the Throne, but it is the pageantry surrounding the speech that attracts much of the public's attention. Riding from Buckingham Palace in a series of state coaches with the imperial state crown escorted by the mounted Household Cavalry to the Palace of Westminster, the Queen, usually accompanied by the Duke of Edinburgh, passes through the Royal Gallery in a grand procession into the Lords Chamber to the throne. It is all part of the rich tradition that embodies the role of the Queen as sovereign. It is a spectacle that has become an indispensable feature of the modern monarchy in the United Kingdom and which adds lustre and dignity to the routine work of Parliament.

The state opening has been performed almost annually in this regal fashion since the time of Edward VII who became King in 1901. It was his decision to revive the grand ceremonial of the State Opening of Parliament.<sup>75</sup> For years, during the widowed years of Queen Victoria's reign, the state opening lacked any pageantry because the Queen refused to appear in state. The few times she did participate in the opening, she remained silent on the throne while the speech was read out by the Lord Chancellor.<sup>76</sup> King Edward had the insight to realize that much of the popularity and perceived blessings of the monarchical system depended on the sovereign's engagement with people through these displays of pageantry.<sup>77</sup> During his reign, he did not miss one opening and his successors have been equally dutiful. Queen Elizabeth II has maintained the tradition, missing only two openings since 1952.

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75. John Cannadine, "The Context, Performance and Meaning of Ritual: The British Monarchy and the 'Invention of Tradition', c 1820-1977" in Eric Hobsbawn and Terence Ranger eds, *The Invention of Tradition* (Cambridge, Cambridge University Press, 1983) at 136.

76. Henry S Cobb, "The Staging of Ceremonies of State in the House of Lords" in *The Houses of Parliament: History, Art, Architecture* (London, Merrell, 2000) at 43-44.

77. *Supra* note 67 at 120-1.

The Speech from the Throne itself has always been relatively short with content that is often little more a bland statement on the issues that the Government plans to address during the course of the session. This brevity and neutrality is perfectly suitable to the modern expectation that the sovereign takes no public position of such matters and is bound by the advice of the government which is the actual author of the royal speech. This reality is also in keeping with the status of a King or Queen who reigns rather than rules, but it was not always so. When the balance between reigning and ruling was not as clear as it is today, the King exercised a role in deciding the content of the speech. This was expressed through the process of review of the legislative measures to be introduced in Parliament in the name of his government. Without the King's approval, it was difficult to insist on having these bills included in the speech as part of the government's agenda. This situation seems to have persisted through the reign of George III and, less clearly, into that of his two sons, George IV and William IV.<sup>78</sup> As already mentioned, the growth of democracy through the expanded franchise, the increasing role of the House of Commons, matched by greater independence of the Ministers in their relations with the King and a concomitant loss of royal patronage, progressively reduced the power and authority of the Sovereign to what it has become today.

A standard element of the Speech from the Throne connects it to a core function of the House of Commons, voting Supply. The statement informing the House and its members that Estimates will be placed before them constitutes a generic royal recommendation. It acknowledges implicitly the primary responsibility of the Commons to control the public purse, a fundamental constitutional principle. In addition, for more than a century, from George III (1760) to Edward VII (1901) the first Throne Speech of a new reign contained a declaration placing all hereditary revenues at the disposal of Parliament in order to enable it to determine the Civil List, the fixed sum provided annually to the Sovereign for the expenses of the Royal Household.<sup>79</sup> This practice of having the King or Queen give royal consent in person for the Civil List seemed to validate its use with

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78. See Richard W Davis, *A Political History of the House of Lords 1811-1846*, *supra* note 39 at 6-9.

79. For example, in the first Speech of William IV given November 2, 1830, the King said: "By the demise of my lamented brother, the late King, the Civil List Revenue has expired. I place without reserve at your disposal my interest in the Hereditary Revenues ... In surrendering to you my interest in revenues which in former settlements of the Civil List [have] been reserved to the Crown, I rejoice in the opportunity of evincing my entire reliance on your dutiful attachment, and my

respect to other legislation that touched either on the prerogative powers or the hereditary revenues of the Crown.

The Speech from the Throne, in setting out the legislative agenda of the Government, allowed it, through the subsequent debate in the Commons, to demonstrate it had the support necessary to pursue these objectives. This debate was the first real test of the confidence of the House in the Government of the day, the basis of the constitutional principle of responsible government. The acceptance of this principle by the King depended on the recognition of the limitations on his rights to rule and the importance of his relationship to Parliament. This recognition became increasingly significant during the course of King George III's reign and even more fully in the first years of the nineteenth century. It was also facilitated by his several prolonged illnesses, especially between 1810 and 1820, and the limited abilities of the Prince of Wales who acted as the Prince Regent before succeeding to the throne as George IV. By the mid-nineteenth century, Macaulay's characterization of the Sovereign's role to reign rather than rule was beyond dispute. From this point on, the Speech from the Throne was solely an instrument of the government's legislative and policy objectives without any determinative role for the Sovereign. All that was left for the King or Queen were some opening statements touching on activities or events involving members of the royal family since the last speech.

The debate in the House of Commons and the House of Lords on the Speech from the Throne, known as the Address-in-Reply, takes several days involving three distinct stages on the resolution expressing thanks for the Queen's gracious speech. The first is for general debate, followed by more specific policy debates, and finally debate on amendments to the resolution. After the Address has been agreed to, it is presented to Her Majesty. This, in turn, leads to a response from the Queen which is usually read in the Lords by the Lord Chamberlain and in the Commons by a member of the royal household appearing at the bar of the House.<sup>80</sup>

The companion event to the Speech from the Throne occurring at the end, rather than the beginning, of the session is the Prorogation Speech.<sup>81</sup> Like the summons that initiates a new Parliament or

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confidence that you will cheerfully provide all that may be necessary for the support of ... the honour and dignity of the Crown."

80. Erskine May, *supra* note 11 at 160-162, 170.

81. Prorogation without a Speech is achieved by a simple proclamation.

session, fixing the date for a prorogation is a prerogative power exercised by the Sovereign on the advice of the Government. The prorogation is an announcement of the Queen's command that the session is ended. The last time that the Queen herself prorogued a session of Parliament was in 1854. "The royal functions at prorogation are now exercised by certain Lords acting by virtue of a commission under the Great Seal".<sup>82</sup> If there is to be royal assent, it is pronounced first before reading the Queen's speech once the commission has been read by the Clerk. The speech itself reviews the legislation and achievements of the Government of the session. At the conclusion, the Lord Chancellor prorogues Parliament to the date set in the commission. If there is to be a dissolution, it is declared by a separate and subsequent proclamation.

### **Canada**

There is perhaps no other parliamentary ceremony than the Speech from the Throne that so closely imitates the British original. This is true both with respect to its parliamentary purpose and its importance as an occasion of state representing basic principles of governance. In the first years of Confederation, the Speech from the Throne was also as much a social event as a parliamentary occasion. With the Governor General as the ranking member of Canadian society, a peer and the personal representative of the Sovereign, the opening of Parliament was the highlight of the social season for Ottawa and the excuse for celebration and as much pageantry as the young country could muster. It continued like this for years and remained very much a local event engaging senior politicians, civil servants, professionals and the partisan elite. Following the end of the Second World War, the social aspect of the opening was further elevated as those participating in the festivities expanded to include diplomatic representatives assigned to Canada from the early decades of the twentieth century.

Still, it must be admitted that, from the beginning, the home-grown pageantry was modest by British standards and it has not changed that much to this day. The procession from Rideau Hall to Parliament Hill along Sussex Drive consists of a single carriage (if one is used at all) with a modest escort. There are gun salutes and troop inspections on Parliament Hill before the Governor General enters

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82. Erskine May, *supra* note 11 at 145-146.



Parliament to parade to the Senate Chamber. The parade of officials accompanying the Governor General, aside from the Secretary to the Governor General and the Aide-de-Camp, includes the Prime Minister, the Leader of the Government in the Senate, the Chief of the Defence Staff and the Commissioner of the RCMP. In the Senate Chamber, the Governor General reads the Speech before the assembled Senators, Members of the House of Commons and the Justices of the Supreme Court. The participation or not of the diplomats has led to two distinct levels of opening: one, more modest, limited mostly to the parliamentarians themselves; and one that is larger to include as guests the broader membership of the Privy Council and the diplomatic corps sitting in the Senate Chamber and galleries. The decision of having a “small” or “large” opening is one that is made at the discretion of the Prime Minister.<sup>83</sup>

The purpose of the Speech from the Throne in Canada is identical to that at Westminster, to present the government’s legislative agenda for the coming session. The presentation of this agenda, however, is quite different. The speech read by the Queen is brief, usually containing a short summary of duties recently performed by the royal family, before listing the legislation to be introduced by the government. It often takes no more than ten minutes. In Canada, the Governor General reads a text that is usually much longer. The latest speech, opening the second session of the 41<sup>st</sup> Parliament, took an hour to read. The government’s legislative proposals are packaged with extensive explanations that frame their justification. In some respects, the Speech resembles the US President’s annual State of the Union Address before the Congress.<sup>84</sup> This similarity is becoming more obvious, but it has attracted little commentary. This may not be too surprising when the public’s views are more influenced by American, rather than British, media. Also featured in the Speech is introductory text prepared by the Governor General on certain issues or causes that reflect personal interests that sometimes become identified with the mandate of the particular vice regal representative.

Though it is unclear whether there is a direct connection to the more promotional content of the Speech from the Throne, there has

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83. Richard Berthelsen, “The Speech from the Throne and the Dignity of the Crown” in D Michael Jackson and Philippe Lagassé, eds, *Crown and Canada: Essays on Constitutional Monarchy* (Montreal, McGill-Queen’s Press, 2013) at 164 (notes that in 2011 the Prime Minister had members of the Canadian Armed Forces as guests in the Senate chamber).

84. *Ibid* at 163, 165.

been a trend to skip altogether the Address-in-Reply debate in the House of Commons. The last time the Address motion was adopted in the House of Commons was for the first session of the 40<sup>th</sup> Parliament, November 27, 2008. There has been no debate at all on the Address-in-Reply for either of the two subsequent sessions of the 40<sup>th</sup> Parliament or for the two sessions of the current 41<sup>st</sup> Parliament. Some of this might be explained by the government's reluctance to give the opposition additional opportunities for debate. It could also be due to the practice of having budget speeches sometimes follow immediately after the opening of the session with their own set timetable for debate. Whatever the cause, what is particularly noteworthy is the absence of any real objection from the opposition. This may be because there is realization that the outcome of the debate on the Address-in-Reply is a foregone conclusion when the government has a majority. However, this explanation did not apply to the sessions of the 40<sup>th</sup> Parliament. The same phenomenon has not yet occurred in the Senate, but the length of time taken before a final vote on the Address motion is growing longer. In the present session, it took more than two years before the motion was finally adopted.

The lack of debate in the Commons on the Address-in-Reply motion has had consequences in relation to the traditional ceremony of presenting the engrossed motion thanking the Governor General for his gracious speech. This event has the Speakers of both Houses together with the movers and seconders of the motion in the two Houses, other selected parliamentarians and senior parliamentary officers going to Rideau Hall to deliver the engrossed parchment personally to the Governor General. Until recently, the ceremony has always involved both Houses acting together. However, the pattern of presenting Addresses simultaneously is no longer followed. On May 11, 2009, the first time this happened, the two Houses presented Addresses for different sessions – the Commons for the first session of the 40<sup>th</sup> Parliament while the Senate presented a parchment relating to the second session of the same Parliament. In June 2010, March 2012, and November 2014, the Senate went alone to Rideau Hall to deliver the engrossed parchment.

These recent adaptations to traditional parliamentary ceremonies are the latest manifestation of our evolving political culture at the federal level. They are the evidence of changes that have always been a feature of the country's evolving parliamentary history. Another significant change that seems to have been little noticed occurred more than thirty years ago. The practice of having a prorogation speech to end the session was abandoned after 1983. Like the Speeches from

the Throne, these too had become longer as they extolled the merits of the government's legislation adopted over the course of the session. Nonetheless, in the end, it is fair to assume that the prorogation speech was seen as an unnecessary bother that produced little benefit to the government. Consequently, there was no need to continue with it. Parliamentary sessions are ended, as they always were, by proclamation, though now unaccompanied by any event that gathers Senators and MPs together in the presence of the Governor General or a Deputy to receive an acknowledgement of their service.

### CONCLUDING REFLECTIONS

In reviewing the role of the Crown-in-Parliament, it is clear that Westminster and Ottawa share the same constitutional principles, but the two Parliaments do not really share the same history and this makes a big difference. Westminster provided the model that Ottawa copied. The practices that developed at Westminster involving the Crown were part of Britain's political and constitutional evolution that established the linkages explaining the original purpose behind the royal recommendation, royal consent and royal assent. The royal recommendation limited any requests for appropriations to the Crown. The Commons furnished the revenues required by the King to supplement income derived from royal properties and other traditional means. This exchange was based on the understanding that the Crown would provide government while the House of Commons in funding it would also hold it accountable for the peace and welfare of the realm. Royal consent acknowledged the preeminent rights of the Crown with respect to its residual prerogative powers as well as its subsisting hereditary revenues and property rights. Finally, royal assent was the very manifestation of the Crown-in-Parliament, the King's approbation to the laws adopted by the two Houses of Parliament for the good governance of the kingdom and its people. These three roles of the Crown-in-Parliament became part of the fabric of the British Parliament's procedures that were adapted or modified as needed to suite changes that took place over time as the Sovereign's real powers declined in face of the development of ministerial government, the growth of democracy and the obligations of a modern state.

In Canada, the role of the Crown-in-Parliament was part of the basic governmental structure that came with the adoption and implementation of the *Constitution Act, 1867*. The new country inherited concepts and practices of government and Parliament of mid-nineteenth century Britain. Prior to and immediately after Con-

federation, while Canada grew as an autonomous, self-governing colony, the role of the Crown-in-Parliament, based on the British model, was closely followed but with some deviations. By this time, the Sovereign's constitutional powers were substantially reduced in Britain, but in Canada, the Governor General retained some authority as an agent of Imperial interests that mimicked superficially some aspects of the Sovereign's powers from an earlier era. This was particularly so with respect to royal assent when bills adopted by the Canadian Parliament could be disallowed or reserved. The ceremony itself was also a reminder of an older time since the Governor General or a Deputy always came in person to give assent to the bills. As for royal consent, it was not really a coherent feature of Canada's parliamentary practices. The Sovereign possessed no hereditary land or revenues in Canada and there was little prospect of government surrendering its prerogatives at a time when it needed all its powers to build the country. Nonetheless, it was included as a legitimate aspect of Canadian parliamentary procedure. The practices related to the royal recommendation were perhaps the ones that Canada followed most closely. The government's control over expenditures was even confirmed and protected by section 54 of the *Constitution Act, 1867*. The complex processes involving the Committee of the Whole, Supply, and Ways and Means developed in the British Parliament were assimilated into Canadian parliamentary practices. These processes remained fundamentally unchanged for a hundred years.

The pressures and challenges facing Canada as it grew from coast to coast, undertook important infrastructure initiatives, encouraged immigration and settlement to populate the country, aided in the process of establishing a distinct Canadian identity. At first, the response to these challenges was seen as part of the mosaic of the British Empire, but in the aftermath of the Great War, it was a spur to claim a sovereign, national identity. This process of maturation was an expression of the country's confidence. Within this climate of change, the influence of British parliamentary practices was still evident, but it depended more and more on how well it served to improve the specific parliamentary situation in Canada. The time line of this process is not yet fully exhausted. The most important adaptation involved changes to the supply and appropriation processes in the 1960s. The reforms made at Westminster did influence the innovations put in place by Ottawa in 1968. At the same time, some of the specific changes took on a distinctive Canadian character. The traditional resolution stage was abandoned altogether and the post-1976 form of the royal recommendation has assumed a function that is significantly different than that applied at Westminster. The

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Queen's recommendation at Westminster is still part of the resolution stage though the practice is much simplified. In Canada, it is now in the form of a non-specific notice printed with the first reading version of the bill to which it is attached without any certainty that it is actually required.

The role of the Crown-in-Parliament as expressed through current practices is part of an ongoing process of Canadianization and modernization. The first reinforces the second. The pressure to adapt to current conditions, really often to simplify, is stimulated in large measure by the national political environment and its needs. This has led to some differences with Westminster practices which are likely to continue and possibly widen. These changes run parallel to the continuing developments in the role of the Governor General as the surrogate of the Queen. This office too is assuming a character that is increasingly identifiable by the national purpose it serves and not just the Sovereign it represents. Like the vice regal surrogate, the role of the Crown-in-Parliament continues to have constitutional meaning and purpose. It embodies past realities without unduly limiting the possibility of future changes. It will continue to evolve, and, in the end, remains a matter of the relationship form and substance.