

would but rarely occur, and that at any rate ministers would not be relieved of any such embarrassments by the proposed course; and where it is confidently maintained that no improper interference with the sentences of the courts would result.

No doubt in the exercise of this as of many other powers of Government embarrassments and difficulties may from time to time arise; but it is believed that their true solution will depend upon the unflinching application to every question of the constitutional principle, and that greater difficulties and troubles will arise from the avoidance than from the assumption of the full responsibility which the sub-committee suggest should, by the alteration of the existing instruction, be imposed on ministers even in capital cases.

CLXXXIII

LETTERS-PATENT CONSTITUTING THE OFFICE OF GOVERNOR-GENERAL OF THE DOMINION OF CANADA, 1878¹

[Trans.: *Canadian Sessional Papers*, 1879, No. XIV.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India; To all to whom these Presents shall come, Greeting:

Whereas We did, by certain Letters-Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-second day of May, 1872, in the Thirty-fifth Year of Our Reign, constitute and appoint Our Right Trusty and Right Well-beloved Cousin and Councillor, Frederick Temple, Earl of Dufferin, Knight of Our Most Illustrious Order of Saint Patrick, Knight Commander of Our Most Honorable Order of the Bath (now Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George), to be Our Governor-General in and over Our Dominion of Canada for and during Our will and pleasure.

And whereas by the 12th Section of "The British North America Act, 1867," certain powers, authorities, and functions were declared to be vested in the Governor-General, and whereas We are desirous of making effectual and permanent provision for the office of Governor-General in and over Our said Dominion of Canada, without making new Letters-Patent on each demise of the said Office.

Now know ye that We have revoked and determined, and by these presents do revoke and determine, the said recited Letters-Patent of the Twenty-second day of May, 1872, and every clause, article and thing therein contained:

And further know ye that We, of our special grace, certain knowledge, and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), and that the person who shall fill the said Office of the Governor-General shall be from time to time appointed by Commission under our Sign-Manual and Signet. And we do hereby authorize and command Our said Governor-General to do and execute, in due manner, all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or

¹ Various changes have taken place in the position of the governor-general. From the year 1867 to 1878, his instructions forbade him to give his assent to any bill (a) for divorce, (b) for granting land or money or gratuity to himself, (c) for making paper or any other currency legal tender, (d) for imposing differential duties, (e) contrary to treaty obligations, (f) interfering with the discipline or control of the naval or military forces of the crown in Canada, (g) interfering with the royal prerogative, or the rights and property of British subjects outside of Canada, or with the trade and shipping of the United Kingdom and its dependencies, (h) containing provisions to which the royal assent has already been refused or which have been disallowed. Acting on these instructions, twenty-one Bills were reserved. In 1877, after Edward Blake, minister of justice, had visited England, the practice of enumerating the titles to be reserved was discontinued, a suspending clause being inserted in acts which would otherwise require the governor-general's reservation. (*Canadian Sessional Papers*, 1877, No. XIII.) In addition, during lord Dufferin's tenure of office difficulties arose over the prerogative of pardon, and lord Dufferin exercised it without the advice of his ministers. During his visit to England, Blake arranged for a change, which is embodied in the Instructions printed below. In 1878 the office of governor-general of the Dominion of Canada was instituted on a permanent basis by Letters patent. For Blake's opinions, see Nos. CLXXXI, CLXXXII. These instruments are printed here from the permanent prerogative instruments of 1878. They were somewhat revised in 1905, and in that form are in Keith, *Responsible Government*, vol. iii, pp. 1561 ff. (Oxford, 1912).

appointed him by virtue of "The British North America Act, 1867," and of these present Letters-Patent, and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by our Order in Our Privy Council, or by us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion.

II. And We do hereby authorize and empower Our said Governor-General to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

III. And We do further authorize and empower Our said Governor-General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our Said Dominion, as may be lawfully constituted or appointed by Us.

IV. And We do further authorize and empower Our said Governor-General, so far as we lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

V. And We do further authorize and empower Our said Governor-General to exercise all powers lawfully belonging to us in respect of the summoning, proroguing, or dissolving the Parliament of Our said Dominion.

VI. And whereas by "The British North America Act, 1867," it is amongst other things enacted, that it shall be lawful for Us, if We think fit, to authorize the Governor-General of Our Dominion of Canada to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion, and in that capacity to exercise, during the pleasure of Our Said Governor-General, such of the powers, authorities, and functions of Our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us: Now We do hereby authorize and empower Our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our said Governor-General in person.

VII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor-General out of Our said Dominion, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign-Manual and Signet to be Our Lieutenant-Governor of Our said Dominion; or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign-Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in the Senior Officer for the time being in command of Our regular troops in Our said Dominion: Provided that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of Our said Dominion, and in the manner provided by the Instructions accompanying these Our Letters-Patent.

VIII. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Dominion, to be obedient, aiding and assisting unto Our said Governor-General, or, in the event of his death, incapacity, or absence, to such person or persons as may from time to time, under the provisions of these Our Letters-Patent, administer the Government of Our said Dominion.

IX. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter or amend these Our Letters-Patent, as to Us or them shall seem meet.

X. And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor-General shall think fit within Our said Dominion of Canada.

In Witness whereof We have caused these Our Letters to be made Patent, Witness Ourselves at Westminster, the Fifth day of October, in the Forty-second Year of Our Reign.

By Warrant under the Queen's Sign-Manual.

C. ROMILLY.

CLXXXIV

INSTRUCTIONS TO THE GOVERNOR-GENERAL OF THE DOMINION OF CANADA, 1878

[Trans.: *Canadian Sessional Papers*, 1879, No. XIV.]

Dated 5th October, 1878.

Victoria R.

Instructions to Our Governor-General in and over Our Dominion of Canada, or, in his absence, to Our Lieutenant-Governor or the Officer for the time being administering the Government of Our said Dominion. Given at Our Court at Balmoral, this Fifth day of October, 1878, in the Forty-second year of Our Reign.

Whereas by certain Letters-Patent bearing even date herewith, We have constituted, ordered, and declared that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), and We have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters-Patent and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion:

Now, therefore, We do, by these, Our Instructions under Our Sign-Manual and Signet, declare Our pleasure to be that Our said Governor-General for the time being shall, with all due solemnity, cause Our Commission, under Our Sign-Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the members of the Privy Council in Our said Dominion:

And We do further declare Our pleasure to be that Our said Governor-General, and every other officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our Reign, intituled: "An Act to Amend the Law relating to Promissory Oaths;" and likewise that he or they shall take the usual Oath for the due execution of the Office of Our Governor-General in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being, of Our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to tender and administer unto him or them.

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every persons or person as he shall think fit, who shall hold any office or place of trust or profit in Our said Dominion, the said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise

all such others from time to time as he shall find convenient for Our service to be imparted to them.

IV. Our said Governor-General is to take care that all laws assented to by him in Our name, or reserved for the signification of Our Pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.

V.¹ And We do further authorize and empower Our said Governor-General, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed for which the offender may be tried within Our said Dominion, to grant a pardon to any accomplice not being the actual perpetrator of such crime, who shall give such information as shall lead to the conviction of the principal offender; and further, to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within Our said Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. Provided always, that Our said Governor-General shall not in any case, except where the offence has been of a political nature, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from Our said Dominion. And We do hereby direct and enjoin that Our said Governor-General shall not pardon or reprove any such offender without first receiving in capital cases the advice of the Privy Council for Our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprove might directly affect the interest of Our Empire, or of any country or place beyond the jurisdiction of the Government of Our said Dominion, Our said Governor-General shall, before deciding as to either pardon or reprove, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

VI. And whereas great prejudice may happen to Our service and to the security of Our said Dominion by the absence of Our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State.

V. R.

CLXXXV

SIR MICHAEL HICKS BEACH TO THE MARQUIS OF LORNE²

[Trans.: *Correspondence between Imperial and Canadian Governments*, 1880.]

Downing Street,
November 1, 1879.

My Lord,

I received from your Ministers, during their recent visit to England, a confidential memorandum, of which I enclose a printed copy, urging the necessity of providing further means for constant and confidential communication between her Majesty's Government and the Government of Canada, and recommending that a representative of the latter Government should be appointed to reside permanently in London, and that he should be granted a quasi-diplomatic position.

2. Her Majesty's Government are very sensible of the advantage which might result from the appointment by the Dominion Government of a gentleman who, residing in this country, would be fully empowered to explain their views on the various important questions connected with Canada, which, from time to time, demand consideration, and which might often be more satisfactorily, as

¹ For an important note on this clause, see Keith, *op. cit.*, pp. 1561, 1566.

² This and the following document illustrate the difficulties over the creation in London of the office of high commissioner for Canada. (Skelton, *Galt*, pp. 523 ff.)