

GOVERNMENT

**Restraints on Business which may be transacted
by Governments in Certain Circumstances** **PAGE**

Order in council cancelling appointments made on Macdonald's resignation
in 1873 145

Extract from memorandum from Lord Aberdeen to Sir Charles Tupper
explaining refusal to approve certain recommended appointments 147

**Order in Council cancelling Appointments made on Macdonald's
Resignation (1873)**

CANADA
PRIVY COUNCIL

P.C. 1595

*Certified to be a true copy of a Minute of a Meeting of the Committee
of the Privy Council, approved by His Excellency the Governor
General on the 13th November, 1873.*

The Committee of the Privy Council have had under consideration the several appointments made by the late administration after the 27th day of October last up to the date of their resignation, during which time a motion of want of confidence was under discussion in the House of Commons.

The rule in Canada has been that Ministers against whom a motion of want of confidence is pending have exercised no authority except such as is incident to the routine of their respective offices—similarly, and for the same reasons, they do not conduct any Parliamentary work until such a motion is disposed of.

While this Committee does not dispute that the right to make appointments necessarily remains in the hands of every Administration, a power to be exercised as the exigencies of the Public Service may require, yet it is evident that such a power is liable to abuse by an improper exercise of it, and that no Ministry can with propriety exercise the ordinary authority to create new offices and make appointments to such offices, when their existence as Ministers is imperilled and their right to official position challenged by a motion of want of confidence in Parliament.

A new Administration might by such a course as that under review, be subjected to very serious inconvenience and their policy respecting necessary changes or a reorganisation of a Departmental character be impeded or frustrated.

They have to assume the responsibility of conducting the affairs of the country, and it would be manifestly unfair, if the retiring Administration should by making at the last moment a large number of appointments and creating new offices, which the new Administration might not deem to be necessary, have it in their power so to embarrass them as to make their task much more difficult and force upon them a responsibility they themselves would not assume.

The mere filling of some offices when the vacancy would be prejudicial to public interests could not be objectionable, that being such an emergency as would be recognised by all. The recent appointments are not of this character, most of them are entirely new, in seven cases even the names of the appointees are not given in the Orders in Council, so great appears to have been the haste in accomplishing the nomination of the intended officials; in others, the appointments are under the authority of an Act of Parliament not yet in operation.

Altogether the result is that if most of these appointments were not cancelled an enormous expenditure would take place, even without taking into account another Order in Council enormously increasing the salaries of existing officials, dated October 31st 1873.

After mature consideration the Committee conceiving that such of the said appointments as are mentioned in the accompanying list¹ were unwarranted by the exigencies of the Public Service and inexpedient, recommend that the several Minutes of Council mentioned in said list be cancelled.

“According to English Precedent—by which the opinion of the Governor General would naturally be guided—an outgoing Administration has a right to “fill up vacancies”, even after they have tendered their resignation to the Crown. If this be so it can hardly be contended that the mere introduction of a vote of want of confidence into the House of Commons must of necessity paralyse such a right.

It must also be remembered that in the ordinary course of administration Ministers make arrangements and take the pleasure of The Crown in regard to them, before they receive the formal sanction of an Order in Council—the date therefore of the Order in Council cannot always be taken as an exact indication of the period when the appointments may have been virtually made.

It is also evident that the head of a Department, in clearing up arrears of business, would have a legitimate claim to perfect appointments—supposing them to be proper in themselves—to which he had pledged himself, and which had been accidentally postponed.

But it is equally evident that the exercise of this right of filling vacancies should be used with moderation and discretion and within the limits described.

With regard to the particular appointments referred to in the above Report of the Committee of the Privy Council, His Excellency being advised that a great number of them cannot be justified on the foregoing principles, are unwarranted by the exigencies of the public service, and are inexpedient, has no difficulty in assenting to the recommendation submitted to him, and approves the Minute accordingly.

Dufferin”

(Sgd.) R. G. ROBERTSON

Clerk of the Privy Council

[¹ Not included.]

**Extract from Memorandum dated 4 July, 1896 from Lord Aberdeen
to Sir Charles Tupper explaining Refusal to approve Certain
Recommended Appointments—(Sessional Papers,
2nd Session, No. 7, 1896)**

The previous Administration (with Sir Mackenzie Bowell as Prime Minister), representing the views of the same political party and having a majority in both chambers, failed to pass its proposed legislation, and on the 25th of April Parliament expired by efflux of time, without having granted supplies for the public service beyond the 30th of June. Subsequently, when no Parliament was or could be, under the circumstances, in existence, the present Administration was formed. So far, therefore, as these are dependent upon the subsequent approval of Parliament, the acts of the present Administration are in an unusual degree provisional. And as the powers of an Administration undoubtedly full and unrestricted, must surely always be used with discretion, their exercise would seem to be rightly limited, under such circumstances as the present, to the transaction of all necessary public business, while it is further a duty to avoid all acts which may embarrass the succeeding Government.

On this ground I would ask your further consideration of some of the recommendations which we discussed incidentally on Thursday. On this ground too, I felt obliged to withhold the expression of my acquiescence in your suggestion as to the appointment of Senators or Judges. (You have since then laid before me certain recommendations as to Senatorships which are vacant).

These are life appointments, and with them, under such circumstances as the present, it would seem proper to leave all other life appointments, and the creation of all new offices and appointments for the consideration of the incoming Ministers, unless always such a course is shewn to be contrary to the public interest.

In the case of the Senate, which consists of seventy-eight members, it is to be noted also that there are said to be now no more than five Senators who are Liberals. And it may well be urged that to aggravate this inequality at the present time would not only tend to embarrass the probable successor of this Government, but to increase the risk of friction between the two chambers of the Legislature.

In the case of Judges, I will only add that, bearing in mind the ordinary length of their tenure of office and also the long political predominance of one political party in the Dominion Parliament, the current deduction as to the complexion of the political opinions represented upon the Bench, whether baseless or well founded is not unnatural.

As to the remaining recommendations which are before me, and generally as to other business of a similar nature, all seem to me to be subject to the same governing consideration. Whatever business can wait without detriment to the public interest, may properly do so.