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HISTORY OF ESTABLISHMENT AND DEVELOPMENT OF THE CANADIAN PARLIAMENT

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ІСТОРІЯ СТВОРЕННЯ ТА РОЗВИТКУ КАНАДСЬКОГО ПАРЛАМЕНТУ

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The article demonstrates the research of establishment and development history of the parliament in Canada based on legal and historical sources. The determination of the role of British colonization in the country's confederation process at the initial stage of a representative body formation is made, as well as the legislative formation of the representative body on the basis of laws passed by the British Parliament. The development of the Canadian Parliament as a legislative body defines the basics of domestic and foreign policy, represents the federal parliamentary system with democratic traditions, although represents certain features as the state is a part of the British Commonwealth.
Key words: *parliament, parliament system, legislative body, representative body, law, legislature.*

The history of Canadian parliamentary institutions begins in Nova Scotia. In 1758, the colony was granted an elected assembly, becoming the first Canadian colony to enjoy a representative political institution. No limit was set for the duration of a legislature; in fact, the Assembly elected in 1770 sat until 1785. In 1792, legislation was passed limiting the duration to seven years and subsequently to four years in 1840. Following the example of Nova Scotia, Prince Edward Island was granted a popular assembly in 1773 and the newly designated province of New Brunswick in 1784. Each of the three maritime colonies continued to be administered by a British governor and an appointed executive council. Upper chambers (called "Legislative Councils") were introduced as distinct legislative bodies in New Brunswick in 1832 and in Nova Scotia in 1838.

In 1774, the British Parliament passed the Quebec Act, which defined a new constitutional form for Quebec. The Act enlarged the boundaries of the province and no longer required Roman Catholics to take the oath of abjuration, should they wish to assume public office. The new Act, however, made no provision for an elected assembly; government was entrusted to a governor and a legislative council, both appointed by the Crown. The council, with the assent of the governor, had the right to make laws but had no authority to impose taxes or duties except those authorized by local inhabitants for roads and other ordinary services. The costs of the civil administration were covered by revenues from duties on spirits and molasses, with any deficiencies made up out of the Imperial treasury. The passage of the Quebec Act represented the first time that the British Parliament had intervened directly in Canadian affairs; previous constitutional arrangements had been imposed by royal prerogative.

The Constitutional Act, 1791, divided the original Province of Quebec into two provinces — Lower Canada (now Quebec) and Upper Canada (now Ontario). Each was provided with both an upper house, or legislative council, and an elected assembly. Members of the legislative council were to be appointed by the Sovereign for life; those of the assembly were to be elected. To sit either in the council or in the assembly, Members had to be at least 21 years of age and subjects of the British Crown. Provision was made for the Governor to appoint a Speaker for the legislative council; none was made for selecting Speakers for the assemblies. Each question coming before the legislatures would be decided by a majority of votes cast; in the event of a tie, the Speaker would have the deciding voice. As well, provision was made for the Crown to appoint, in each province, an executive council to advise and assist the Governor in the administration of the province. The legislature of Upper Canada met for the first time on September 17, 1792, at Newark, now Niagara-on-the-Lake; that of Lower Canada on December 17, 1792, at Quebec. The Governor was authorized to fix the time and place of meetings of the legislature and to prorogue or dissolve it when deemed expedient, provided the legislature met at least once in every year and that each legislative assembly continued for a period of no longer than four years. The Governor was empowered to give, as well as withhold, the Royal Assent for bills and to "reserve" bills for the further consideration and approval of the Crown.

In July 1840, An Act to re-unite the Provinces of Upper and Lower Canada and for the Government of Canada, known as the Union Act, 1840, was adopted by the British Parliament and came into effect on February 10, 1841. The Act provided for a single Legislative Council, composed of no less than 20 members appointed by the Crown, and a single Legislative Assembly, with equal representation from each part of the newly constituted "Province of Canada". Passage of the Act also signalled acceptance of the principle of responsible government by the colonial administration. Lord Sydenham, the first Governor General of Canada following the Union Act, 1840, introduced two practices which were essential prerequisites for responsible government. First, he reorganized the executive, creating departments and placing each under the direction of a single political head, transforming his council into a genuine policy-making body. Secondly, he created a government party, using his powers and patronage to ensure his ministers had support in the legislature. Although his system broke down, it paved the way for the introduction of responsible or cabinet government of the type which still exists. In 1847, the new Colonial Secretary in the British Government, Lord Grey, instructed Governors Sir John Harvey (Nova Scotia) and Lord Elgin (Canada) that, in future, they should choose their Councils from the leaders of the majority party in the Assembly. Shortly thereafter, in 1848, the principle was tested in Nova Scotia where the ministry resigned following its defeat on a motion of confidence in the Assembly and the Governor called upon the leader of the majority party to form a new government. Within a few weeks, similar changes of government had taken place in Canada and in New Brunswick, and the principle of responsible government was firmly established in British North America.

In 1854, the British Parliament had passed, in response to an address (a formal request) from the Legislative Assembly of Canada, an act empowering the legislature to alter the constitution of the Legislative Council. Two years later, the legislature passed an act providing for an elected upper house, and the first election of Members to the upper house took place later that year. Until 1862, the Speaker of the Legislative Council continued to be appointed by the Crown, after which time the Councillors elected their own.

The only other part of the country having pre-Confederation experience with British representative institutions was British Columbia, which was created in 1866 out of an amalgamation of two English colonies: Vancouver Island and mainland British Columbia. While Vancouver Island had authority to elect an assembly when it was created in 1849, in mainland British Columbia, only the Governor was empowered to make laws for the colony when it was constituted in 1858. With the union of the two colonies in 1866, government was exercised by the Governor and legislative council; there was no provision for an elected assembly. When British Columbia joined Confederation in 1871, the terms of union provided for an elected provincial assembly although responsible government was not realized until the following year.

Beginning in the late 1850s and continuing into the early 1860s, there was increasing pressure on the provinces of British North America to unite. The movement was prompted by political difficulties in the Province of Canada and fuelled by collective prospects for economic advantage and improved military security.

Such a federal union had been recommended by Lord Durham in his report and discussed more than once in the legislatures of British North America. On September 1, 1864, delegates from the Maritime Provinces met in Charlottetown to discuss the union of Nova Scotia, New Brunswick and Prince Edward Island. They were joined by representatives from both parts of the Province of Canada with the result that a decision was made to consider a larger union of all the provinces. A second meeting was held in Quebec City beginning on October 10, 1864, attended by 33 delegates representing the provinces of Canada, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. After 18 days of deliberation, the delegates unanimously approved 72 resolutions embodying the terms of a federal union.

The resolutions were debated in the legislature of the Province of Canada from February 3 to March 14, 1865, culminating in the agreement of both houses to proceed with the union. Maritime opposition, however, delayed the process for over a year. In the fall of 1866, delegates from Canada, Nova Scotia and New Brunswick travelled to London, England, to meet with the Colonial Secretary and make their case to legislators in the British Parliament. Sixty-nine resolutions were drafted and introduced in the form of the British North America Act on February 12, 1867. The legislation received Royal Assent a little over a month later, on March 29, and came into force on July 1 of the same year.

The preamble of the Act expressed the desire of the founding provinces to be federally united, with a constitution similar in principle to that of the United Kingdom. The Act entrenched the three principal elements of British parliamentary tradition — monarchy, representation and responsibility — in a new federal form of government. A central government was created for national purposes, and provincial governments for matters of regional or local concern. The provincial governments were not to be subordinate to the national government; rather, within its own jurisdiction, each was to be largely autonomous.

Although only Nova Scotia, New Brunswick, and the Province of Canada (subsequently named Ontario and Quebec) initially chose to be included in the new Dominion of Canada, the Constitution Act, 1867 made provision for the admission of Newfoundland, Prince Edward Island, British Columbia and "Rupert's Land and the North-western Territory" (subsequently designated the Northwest Territories) at a later date. The Northwest Territories became part of Canada in 1868, the province of Manitoba was established in 1870, British Columbia joined the federation in 1871 and Prince

Edward Island in 1873. The provinces of Saskatchewan and Alberta were formed in 1905. Following provincial boundary changes, only the Northwest Territories and the Yukon (created out of the Northwest Territories in 1898) were left as "territories" within Canada. Newfoundland joined Confederation, becoming the tenth Canadian province in 1949. In 1999, Nunavut was created out of the Northwest Territories and given its own legislature.

Section 17 of the Constitution Act, 1867, states that "there shall be one Parliament for Canada consisting of the Queen, an Upper House styled the Senate and the House of Commons". Thus, the legislative arm of Canada's Parliament is bicameral. Each house has equal status as regards to its immunities, privileges and powers, but each is far from being a duplicate of the other. Confidence in the government is tested in the lower house (called the confidence chamber) where by custom members of the Ministry sit. Furthermore, although the same legislation must be adopted by both houses before being given Royal Assent, bills for the appropriation of public revenues or for imposing any tax must originate in the House of Commons. Another marked difference between the two houses is that the Speaker in the Senate is appointed by the Governor General, while the House of Commons elects its own Speaker. Each Chamber functions in accordance with its own traditions, powers and practices.

The Senate is the appointed upper house of the Parliament of Canada. It exercises all the powers of the House of Commons with the exception of the right to initiate financial legislation. Senators are "summoned" or appointed by the Governor General on the recommendation of the Prime Minister. They must be at least 30 years of age, reside in the province for which they have been summoned and have real and personal property worth $4,000, in excess of any debts and liabilities. Quebec Senators must both reside in and hold their property in the electoral division of appointment. A Senator may resign by advising the Governor General in writing to this effect. A Senator's place becomes vacant if the Senator is absent for two consecutive sessions; becomes bankrupt or insolvent or a public defaulter; becomes a citizen or subject of any foreign power; is attainted of treason or convicted "of any infamous crime"; or ceases to be qualified in respect of property or residence. Unless they die, resign, are disqualified or their seat is declared vacant, Senators hold office until they retire at age 75.

At Confederation, provision was made for 72 Senators. This number has been adjusted several times, mainly to accommodate the addition of new provinces and territories. For the purposes of Senate representation, Canada is deemed to be divided into four divisions: the Western Provinces, the Maritime Provinces, Ontario and Quebec. To these four divisions have been added Newfoundland, the Yukon, the Northwest Territories and Nunavut. The Constitution Act, 1867, now provides for 105 members of the Senate.

The Constitution also allows for the appointment of four or eight additional Senators, equally representing the four divisions. When additional Senators have been so appointed, there may be no further appointments in a division until Senate representation for that division falls below 24. At no time may the maximum number of Senators exceed 113.

The House of Commons, or lower house, is the elected assembly of the Parliament of Canada. The Constitution Act provides for the size and distribution of representation in the Commons, as well as for future readjustments, or "redistributions". With the 1997 redistribution and the creation of Nunavut in 1999, the House consists of 301 members.

Both the House of Commons and the Senate have their own committees, comprising members of the respective houses. In some cases, there are also joint committees consisting of members of both legislative houses. The general role of these committees is to review government legislation and policies and to recommend possible improvements to them. Parliamentary committees, however, may only offer advice to the government, which it may or may not heed. Committees, in of themselves, cannot reject or hold up government initiatives. There are standing or permanent committees, which are assigned to key policy fields such as finance, defence, foreign affairs, etc. There are also ad hoc or temporary parliamentary committees which are formed for short periods of time to review a particular government initiative or policy field.

In Canada there are several important limitations on Parliamentary supremacy. One limitation stems from the organization of Canada as a federal state with multiple levels of government. The federal Parliament is not the only legislature in the country; there are also several provincial legislatures with their own constitutionally protected powers and jurisdictions. This means that parliamentary sovereignty is limited in Canada, with the federal Parliament having to share law-making supremacy with its provincial counterparts.

Another limitation on parliamentary supremacy stems from the Canadian Charter of Rights and Freedom, which was formally included within the Canadian Constitution in 1982. The Charter provides all citizens with certain rights and freedoms that cannot be violated by the federal Parliament or provincial legislatures, such as freedom of speech, democratic rights, and the right not to be discriminated against. Accordingly, the judiciary has the power to review any legislation passed by Parliament to ensure it is consistent with these Charter entitlements. This represents an important limit on the Parliament and juxtaposes the courts as an important check on the law-making ability of parliamentarians.

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Антоненко М.І. Історія створення та розвитку канадського парламенту.

У статті на основі правових і історичних джерел досліджено історію створення та розвитку парламенту в Канаді. На початковій стадії виникнення представницького органу визначено роль англійської колонізації в політичному об’єднанні країни в конфедерацію і законодавче оформлення представницького органу на основі законів прийнятих парламентом Великої Британії. Розглянуто розвиток парламенту Канади як законодавчого органу, що визначає основи внутрішньої та зовнішньої політики, уособлює парламентську федеральну систему з демократичними традиціями, але має певні особливості через входження держави в Британську Співдружність.

Ключові слова: *парламент, парламентаризм, законодавчий орган, представницький орган, закон.*

Антоненко М.И. История образования и развития канадского парламента.

В статье на основе правовых и исторических источников исследовано историю возникновения и развития парламента в Канаде. На начальной стадии возникновения представительного органа определена роль английской колонизации в политическом объединении страны в конфедерацию и законодательное оформление высшего представительного органа на основе законов, принятых парламентом Великобритании. Рассмотрено развитие парламента Канады, как законодательного органа, который самостоятельно определяет основы внутренней и внешней политики, объединяет парламентскую федеральную систему с демократическими традициями, но имеет определенные особенности в связи с вхождение в Британское Содружество.

Ключевые слова: *парламент, парламентаризм, законодательный орган, представительный орган, закон.*

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