The Prince Edward Island Legislative Assembly

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Province House is perhaps best known to Canadians as the Birthplace of Canada, where the Fathers of Confederation met in 1864. A sandstone structure with Greek and Roman architectural lines, it was completed in 1847. It is now a national historic site, tourist mecca and still continues as a legislative chamber. Over the years, it has been witness to Royal visits, state funerals, countless demonstrations, protests, sit-ins, celebrations, rallies, vigils, debates, deliberations and occasional random acts of graffiti artists. This paper will examine the evolution of the legislature, the electoral system, the Island's political culture and how it is reflected and legislative procedures and processes.

The Prince Edward Island Legislative Assembly, established in 1773, is the second-oldest parliament in Canada, the first having been established in Nova Scotia in 1758. The establishment of the colonial government, and its subsequent evolution, was the result of one of the most unusual arrangements in British colonial history. Land in the colony, then part of Nova Scotia, was awarded by lottery to proprietors in 1767 who undertook, as part of the conditions of their grants, to settle the colony with Protestants, pay quitrents (a form of taxation) to the Crown and to fulfill various other conditions. The new proprietors, many of whom were to not fulfill the conditions of their grants, petitioned the Crown for the establishment of a separate government free from the influences of Nova Scotia. In return, the proprietors agreed to defray the expenses of the new colonial government. Prince Edward Island thus became a separate colony in 1769. The subsequent conflicts between absentee proprietors and tenants, known as the "Land Question," dominated Island politics for more than a century.

At first, administration of the new colony was limited to the Governor, an appointed Legislative Council and a Supreme Court. Although provision was made for a twelve member Legislative Council, the first Governor, Walter Patterson, limited the number to seven because he could not find enough suitable candidates in the small and struggling colony. Despite his best efforts, Patterson was unable to enforce collection of quitrents. The establishment of an assembly to reflect the popular will of the inhabitants was seen as a means of validating the administration's actions, and so, on July 7 of 1773, the Prince Edward Island Legislative Assembly convened for the first time. Its first acts confirmed the previous proceedings enacted by the Governor and Legislative Council.

Because of the small size and limited range of skills of the colony's residents, the number of members of the new assembly was limited to eighteen. They were elected at-large by male, Protestant residents over the age of 21. Folklore has it that the first assembly met in a Charlottetown tavern. Surveying the elected members, the sergeant-at-arms is reported as observing, "This is a damned queer parliament." He was fined for the outburst.[1]

In the small confines of Island politics, personal rivalries emerged; disputes occurred among the various factions of the population; there were ongoing disagreements and disputes with the Colonial Office; enforcing the conditions imposed upon the proprietors was proving difficult, if not impossible; corruption was widespread; and the progress of the colony was constrained. Less than 15 years after Prince Edward Island was made a separate colony, it was once again placed under the jurisdiction of the Governor of Nova Scotia. The rank of the Prince Edward Island Governor was reduced to that of Lieutenant-Governor. In a letter

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from the Colonial Office to Patterson, it was noted that, "The Civil Establishment still continues a Burthen upon this country."[2]

Then as now, the governmental structures in Prince Edward Island demonstrate the operation of elaborate constitutional provisions in a small province. Although the tiny colony had all the trappings of a full-fledged Westminster model, the Legislative Assembly struggled to achieve an effective position and recognition of its parliamentary privileges. The political system was dominated by the appointed Executive Council and Legislative Council, largely consisting of the same people. Successive Governors would routinely dissolve the Legislative Assembly in efforts to achieve a more compliant membership. In some cases, Governors even refused to summon members for regular sessions. Members were relatively poor, uneducated and disorganized. The attitudes of the ruling cliques were expressed by one Governor who extolled the virtues of members of the two ruling councils, "men of Education, experience in the world" whose duty it was to, "oppose the overbearing dominion of ignorance" found in the assembly.[3] He blocked every attempt to grant more powers to the Assembly where, he said, "there neither is, nor do I think there can be for a long time yet, any sufficient intelligence to govern at all." His view of the electorate was equally dismissive, saying that Islanders, "are very carefully taught that only a 'backwoodsman' knows how to legislate for a 'backwoodsman'."[4] According to Frank MacKinnon, the Legislative Assembly, "found itself tolerated when needed and its power confined by the other branches."[5]

With some progress gradually being made in the settlement of the colony, the number of members in the Legislative Assembly was increased to 24 in 1839. At the same time, the single, colony-wide constituency was replaced by four dual-member constituencies in each of the three counties. (That number would be increased again in 1856 to 30 members elected from five dual-member constituencies in each county.)

Various reform movements were led in the Legislative Assembly, although political parties were slow to coalesce. One of the more successful movements was the Escheat Party which captured a majority of seats in the assembly in the 1830s. It sought to have the estates of the proprietors who had not fulfilled the original conditions of their grants returned to the Crown for redistribution to the tenants. Like many other reform and protest movements in the early years, it was frustrated by what was called the "backstairs influence" of the proprietors in London and the complicity and intimidation of their local agents who dominated the government of the colony and the political life of the day.

The Legislative Assembly achieved only minor progress in its efforts to be recognized. In 1839, the Executive Council and Legislative Councils were separated. The Legislative Assembly was given three seats on the Executive Council, although the members were appointed by the Governor without the approval of the assembly. Eventually, the movement towards responsible government joined with the demands for land and other reforms. The achievement of responsible government in Nova Scotia, led by reformers such as Joseph Howe, and the agitations in Upper and Lower Canada, made similar demands in Prince Edward Island inevitable. The view of the Colonial Office, however, was that Prince Edward Island was yet too small and backward to be entitled to responsible government.

In 1850, the Liberal Reform party, led by George Coles, won 18 of the 24 assembly seats, and made responsible government its main objective. Despite the continued opposition of the Governor, and the controversy the demand generated in the colony, the Liberals refused to back down. Leading members of the party were offered seats on the Executive Council, but they rejected the invitation. In the 1851 session, the legislature virtually went "on strike", passing a vote of want of confidence in the government and refusing to vote supply. A petition previously tabled in the assembly stated that it would refuse to cooperate, "until the Government of this Island shall be remodeled, so as to enjoy the confidence of the people."

The impasse was eventually resolved when the Governor invited Coles to form a government which had the confidence of the Legislative Assembly. On April 23, 1851 the Liberals under Coles were appointed as members of the Executive Council, finally achieving the goal of responsible government. It was perhaps the finest hour experienced in the Legislative Assembly, before or since. "This was one of the boldest strokes ever attempted in colonial politics," it was noted, "but in light of all the circumstances it seems to have been almost inevitable."[6]

Responsible government, however, would not be the panacea for the colony's troubled political life. Religious, class and group rivalries, along with partisan and personality differences, led to shifting and temporary coalitions. The result was political instability: between 1851, when the colony achieved responsible government, and 1873, when Prince Edward Island joined Confederation, there were no less than 12 different governments. Debates over the Island's

entry to Confederation, continued efforts to resolve the land question and political machinations related to the building of the Prince Edward Island railway (which bankrupted the colony) served to further exacerbate and enliven the colony's troubled political life.

The achievement of responsible government led to new calls for legislative reform. With the executive now drawn from members of the Legislative Assembly, the appointed Legislative Council became largely redundant. In an effort to resuscitate its increasingly moribund existence, it became an elected chamber with 13 members in 1862. It differed in one important respect from the assembly, however: its members were elected by only property owners as a check on the democratic impulses of the lower house.

With the entry into Confederation, there were new demands for legislative reform. The move to abolish upper houses which was taking place in other provinces had special resonance in Prince Edward Island, which many residents already considered to be over-governed. That sentiment was further exacerbated when it joined Confederation, which was seen as an affront to the colony's independence and autonomy. Members of the assembly, many of whom were opposed to Confederation, were concerned that its hard-won rights would be undermined by the decision to surrender some of its sovereignty to Canada. "In this House," said George Coles to the assembly, "scarcely anything would be left us to do, but to legislate about dog taxes and the running at large of swine."[7]

The Electoral System

Until 1966, the Prince Edward Island electoral system was based on an informal set of rules which accommodated – and perpetuated – several distinctive features of Island society: its rural character, religious cleavages and intense partisan rivalries. The new *Elections Act* which preceded the 1966 election provided, for the first time, the appointment of enumerators, an official voters list, revising and returning officers and a chief electoral officer. The new act also provided for the expansion of the legislature to 16 dual-member ridings to accommodate the growing population of Charlottetown and its suburbs.

As the province became more urbanized, the disparity between voters in urban and rural districts became increasingly pronounced. A special committee of the legislature was established in 1974 to review electoral boundaries. It recommended the establishment of 30 single-member ridings with roughly the same number of voters, but nothing was changed. By the 1990s, the disparity was much more pronounced. In one rural Kings County riding, there were fewer than 2,000 voters. Meanwhile, in one of the Charlottetown districts, there were more than 12,000 voters. That growing disparity led to a proceedings in the Prince Edward Island Supreme Court in 1991 after a Charlottetown architect, Donald MacKinnon, claimed that the provisions of the *Elections Act* related to the distribution of districts and the number of voters was inconsistent with and contravened Section 3 of the *Canadian Charter of Rights and Freedoms* which provided for voter equality. Citing precedents made in similar cases in provinces such as Saskatchewan, the Supreme Court agreed. It ruled that the *Elections Act* was unconstitutional, and ordered the provincial government to bring in a new act.

The arguments heard before the Supreme Court went simply beyond the strict interpretation of the *Charter* as it applied to voter parity. Many of the arguments heard before the courts were concerned with the long-standing objective to protect the rural nature of the province and its representation in the legislature. Rural residents, it was argued, needed more than their share of representation given that there was only limited local government; that the primary industries based in rural communities needed a strong voice in the legislature; and that the demands placed on rural MLAs were greater than those of their urban counterparts. In testimony before the court, Liberal cabinet minister and rural MLA Keith Milligan said that anytime redistribution took place, it resulted in more seats for urban areas, and that the voice of the legislature became much more of an urban voice. "That is not healthy," he testified. "Many things made our country and province strong. As the rural voice gets weaker, it gets to a point where it can't be heard."[8]

In 1993, an *Election Act* and Electoral Boundaries Commission was established to recommend a new electoral system. The commission was made up of MLAs and private citizens, and conducted wide-ranging public consultations. It submitted its report to the Legislative Assembly in the spring of 1994. Among its recommendations were that the titles Councillor and Assemblymen be abolished, and that the title Member of the Legislative Assembly be adopted. Members would be elected in 30 single-member ridings. It recommended that the number of voters in each district not vary beyond plus or minus 15 percent of the average number of voters per district. (The Supreme Court had suggested a variance not to exceed plus or minus 10 percent.)

In recommending a 30-seat legislature, the Commission was motivated by several factors. One was the prevailing sentiment at the time that the size and

cost of governing the province be reduced, hence the reduction by two members of the legislature. The other was the need to preserve a reasonably effective balance between the number of people in cabinet, then 10, with the size of the legislature. The establishment of single-member ridings reflected the fact that religion was no longer a significant factor in the selection of candidates. It was also believed that single-member ridings would increase the accountability of MLAs to their constituents.

Legislation was introduced in the spring session of 1994 to incorporate the recommendations in a new elections act. However, the debate soon came to a standstill. The new act would have allocated 10 districts to Prince County, 15 to Queens County and a mere five to Kings County. In a province where the notion of county equality was deeply ingrained, and where rural residents feared the loss of representation, the proposal was unacceptable to Kings County MLAs. One of those, Ross Young, put forward a compromise position which would give Kings County a larger share of the seats . Under the compromise, a 27-seat legislature was proposed in which Prince County would be allocated nine seats, Queens 13 and Kings five. To achieve this, a variance of plus or minus 25 percent was proposed. This bill was eventually passed as the *Electoral Boundaries Act*, S.P.E.I., 1994.

The reduction in the size of the legislature also reflected a widespread – and long-held – ideological belief that Prince Edward Island was over-governed. At that time, the provincial government was undergoing significant cost-cutting exercises; reducing the size of the legislature was consistent with that process. However, this meant weakening the already-inadequate capacity of the legislature to scrutinize government activity and hold it accountable. In commenting on similar reductions in the sizes of legislatures in other provinces at the time, David Docherty warned that, "Smaller is not cheaper. In the end, all it really means is fewer people charged with keeping government honest and on its toes."[9]

Another important outcome of the electoral system is the dominance of two political parties. Prince Edward Island has the purest two-party system in Canada. Only the Liberals and Conservatives have ever formed a government. There has never been a minority government. Only two people, an Independent in 1919, and the leader of the NDP in 1996, have ever been elected to the legislature who were not from the two old-line parties. With the intense rivalry between parties, election results were close in a province with no marked ideological differences between the Liberals and Conservatives. In a study of voting behavior in 19 general elections from 1893 to 1963, Marlene Clark found that 10 percent of all elected representatives owed their seats to 25 or fewer votes. Over one-third won by margins of 100 or fewer votes. Even a small shift in votes would result in a significantly different outcome. In 1943, for example, the Liberals won 20 of the 30 seats, but a shift of 100 votes would have given the Conservatives an identical majority.

With rare exceptions, election outcomes in the province were relatively close. One notable exception took place in 1935 when the Liberals won every single seat, shutting out the opposition. It is believed to be the first time that any party in the Commonwealth won every single seat.

In the past 20 or so years in Prince Edward Island, lopsided majorities have become commonplace. The first-past-the-post electoral system tends to produce larger majorities and weaker oppositions. As well, with the decline in party attachment, voting has also tended to become more strategic in recent years. As a result, elections are not as close as they once were in the province. In the elections of 1989, 1993 and 2000, the opposition was reduced to one or two members. In 1993, the Progressive Conservative party won roughly 40 percent of the popular vote but ended up with only one seat of the 32. That led to increased calls for the replacement of the first-past-the-post system with some form of proportional representation. In 2003, the provincial government appointed retired Supreme Court Justice Norman Carruthers in an effort to determine whether an alternate voting system might be better suited to the province. After an extensive review, Carruthers recommended the establishment of a mixed member proportional (MMPR) system. That system would combine elements of the first-past-the-post system, and a proportional representation system. Some candidates would be elected as usual under the old system, and with a second ballot, electors would vote for the party of their preference. The number of candidates elected from the party list would be proportionate to the popular vote for each party. Carruthers recommended the adoption of a MMPR electoral system, with 21 members elected under the first-past-the-post system and 10 by PR.

Those who felt that third parties should receive a proportion of seats related to their popular vote endorsed the report. Others saw it as a way of potentially electing more women and minorities, thereby increasing the diversity of representation in the house. There was also a belief that MMPR would result in a stronger opposition in the legislature.

"Winner-taker all systems are designed to deliver decisive wins and large majority governments," wrote Jeannie Lea, a former Liberal MLA and proponent of MMPR. "They were designed for another era and a two party system."[10]

A province-wide plebiscite was called for the fall of 2005 on the question of adopting a new electoral system. Earlier that spring, a commission on the Island's electoral future had been established to provide information on the respective advantages and disadvantages of both systems. "Yes" and "No" committees campaigned over the summer and fall on the issue.

However, Prince Edward Island opted out of making political history. In the November vote, MMPR was voted down by a margin of 64 to 36 percent. Only one-third of eligible voters bothered to turn out. In an analysis of the results, University of Prince Edward Island political studies Professor Peter McKenna said the entire electoral reform process was, "more an exercise in public relations and political symbolism than an honest and forthright effort at purposeful and fundamental electoral reform in PEI."[11] McKenna pointed to the government's decision (with blessing from the Opposition) to set the threshold for voter approval at 60 percent, along with a reduction in the number of voting stations and a change in voting procedures, to explain the low turnout and the final result. "Clearly, the major parties did not want this proposal to see the light of day," concluded McKenna. "Indeed, they did everything humanly possible to ensure that it was derailed politically, put out of its misery and unceremoniously buried."

It is highly unlikely that further significant reforms will take place in Prince Edward Island's electoral system in the foreseeable future. The only other recent reform was the adoption of a fixed election date to begin in 2011. Regardless of the nature of the electoral system, Prince Edward Island's average voter turnout rate of more than 80 percent is the highest in Canada. It can be said with some certainty that Islanders will continue to turn out in record numbers to elect members who, they hope, will represent their views in the Legislative Assembly.

The Honourable Members

In 1993, the premier, the leader of the opposition, the speaker and deputy speaker of the legislature and the lieutenant-governor sat down together to have their picture taken. In what surely is a precedent in Canadian politics, all of them were women. Despite the appearance that women had finally broken through the glass ceiling, it was a temporary occurrence.

The traditionalist nature of Prince Edward Island society has found expression, not only in the way the legislature operates, but also in the characteristics of the men and women who have been elected to it. In a study of the composition of the legislature between 1966 and 1996, John Crossley said that until recently the legislature was a man's club and it remains predominantly so. Members of the legislature - male and female - are drawn from the two old-line parties which have few ideological differences. They also largely represent the leading socio-economic characteristics of Islanders. Those with left-wing orientations or representatives of minority groups have not found a voice in the legislature. "Indeed, the political class is essentially a petit bourgeoisie class, and one that has evolved with the middle class – drawn in the early years from the ranks of the owner-workers of farms, stores and small businesses; drawn in the later years from the new middle class of professionals."[12] More than a decade later, that is still the case.

The vast majority of MLAs are drawn from the traditional or new middle classes. Farmers, teachers, business people and professionals have been the leading occupations of MLAs. Significantly, no lawyers have become candidates in recent years, perhaps as a result of the low pay and high demands placed on MLAs. There were eight farmers in the legislature elected in 2007, reflecting the importance of agriculture to the province. Although the "farm vote" has declined proportionately over the decades, farmers have remained politically active, perhaps because of that. As David Docherty has noted about the representation of farmers in Canadian legislatures, their decrease in proportion over the past number of years has been less than the decrease in the number of farmers in the population.

Crossley's analysis of the composition of the legislature found that, on average, MLAs were middle aged; the average age of men was 45, women, 54 (in 2007, the average age of MLAs was 46.1 years). MLAs are generally well educated (while lower than the average in other provinces, 40 percent held university degrees compared with just under 11 percent for the population as a whole); 60 percent were Protestants versus 40 percent Roman Catholic; and in terms of gender, approximately 20 percent were female. (In 2007, females made up 26 percent of the legislature, an all-time high and greater than the average of other provinces and the House of Commons.) Reflecting the closeness of Island communities, the vast majority of MLAs were born in the province (although Pat Binns became the first "non-Islander" elected as premier, even though he had resided in the province for more than a quarter of a century.) Former premier Joe Ghiz,

and now his son, Premier Robert Ghiz, remain the only members of a visible minority elected to the legislature.

In general terms, then, Island MLAs tend to be better educated, with a higher socio-economic status and with a greater history of community involvement than the rest of the population.

Critics will point out that, as a whole, many groups remain under represented or unrepresented in the provincial legislature. However, members may well represent the population without being representative of it. As well, the small size of the population and the immediacy of contact between represented and representative helps ensure that the values, views and attitudes of Islanders are recognized and reflected at the political level. In his survey, Crossley assumed that the type of people elected to the legislature makes at least a small difference to the practice of democracy and to public policy. "While the evidence reviewed in the paper suggests the existence of a political class in Prince Edward Island, it does not support the notion that there might be a political elite connecting the economically powerful to the political system."[13]

The increased participation of women in the political system, and in electoral politics, signals underlying shifts in the socio-economic and demographic nature of the province. Despite having received the right to vote in 1922, it would be almost a half-century before the first woman was elected to the legislature. Women were not encouraged to seek elected office. The institutionalized preference for men reflected the rural, traditional nature of the province. The traditionalist nature of the Island's political culture, along with the absence of a credible voice from the left, have exacerbated the barriers to increased participation of women. "The Island's political system has always excluded women, withheld their power, ignored their contributions, and left their needs largely unmet," charged the Prince Edward Island Advisory Council on the Status of Women in its submission to the Electoral Reform Commission in 2003.

By the 1980s, women were increasingly being encouraged to seek public office. Although women's groups continue to point out that women remain at a disadvantage in seeking a party nomination, an analysis of election results over the past 30 years reveals that, once nominated, women have been as successful at the polls as their male counterparts. Increasingly, all parties are making more of an effort to recruit females based on their electoral appeal. In 1993, Catherine Callbeck, who was serving as a Member of Parliament, easily won the leadership of the Liberal party with the overwhelming support of the party elite after polls showed her to be the most popular candidate. She won the next election, becoming the first woman in Canada elected to lead a government.

The increased participation of women in politics has resulted from a combination of rapid social change, a decline in traditional community life and the increased participation of women in the economy. As well, traditional assumptions about the role of women have been undermined and alternate assumptions introduced through the women's movement and other political realities. As well, social and economic changes in the province have led to the emergence of concerns of particular interest to women, such as education, health care, and community and family life.[14]

David Docherty points out that Prince Edward Island has achieved a better gender equity record than many other provinces. He has noted, however, that the former dual-member ridings made it easier for political parties to reflect the underlying nature of the population. "Balancing gender – and other social factors – was easier under such a system," he concluded.[15]

In reviewing the progress made by women, Olive Crane, leader of the Progressive Conservative party, pointed out that there has been a woman in every cabinet since 1970.[16] Women have also made a number of "firsts" in achieving the leadership of their respective parties. "So, we can claim our share of firsts in Prince Edward Island and we are proud of this," states Crane. "However, I wish that we did not have to discuss this topic at all. I wish it was simply accepted that women play an equally important role in our political process."

The Legislature in Session

After opening prayers, members of the legislature offer special greetings to "faithful viewers" at home and in seniors' residences who are watching proceedings on the local cable television channel or through the internet. That is followed by short statements by members recognizing volunteer groups, sports teams, special events or others matters of interest taking place. It is all very friendly and informal.

Then it is on to Question Period, when members are allotted 40 minutes daily to grill government ministers on any and all subjects. By convention, under guidelines adopted in 1964 and updated in 1975, members are given wide latitude with regard to supplementary questions. As a result, Question Period is a free-wheeling affair: there are no limits on supplementary questions from the opposition. Government backbenchers are given the opportunity to ask two questions with two supplementaries, more at the discretion of the Speaker. Question Period

is followed by Statements by Ministers regarding initiatives being undertaken by the government. Again by convention, government announcements must be made first to the legislature when it is in session. Then the legislature moves on to Orders of the Day including government bills, resolutions, budget and throne speech debates and line-by-line consideration of legislation and budget estimates in Committee of the Whole. Private members are granted two time periods a week to bring forward private members bills and resolutions; these are usually taken up by the Official Opposition.

An examination of the *Order Paper* during the Second Session of the 63rd General Assembly in the spring of 2009 reveals the varied scope and nature of the business before the legislature. In a small province such as Prince Edward Island, no issue is too large or too small to escape the attention of legislators. In addition to routine amendments to acts such the *Highway Traffic Act*, the *Liquor Control Act* and the *Environmental Protection Act*, there were more than 125 notices of motion introduced to the legislature, ranging from subjects such as computers in schools, poverty reduction, the inevitable requests for federal government support of various kinds, the crisis in the lobster industry and a motion to celebrate Mother's Day. Few are actually debated and voted upon.

Each session sees upwards of 50 pieces of legislation introduced by government. The vast majority of bills are routine amendments. Unless the bill is contentious, there is usually little debate. The legislation is examined clause-by-clause in committee of the whole following second reading. Although the second reading provides members with the opportunity to debate the bill in principle, it never happens. Although there are no time limits on debates, most bills are dealt with expeditiously. Since the province has always enjoyed a majority government, the government can easily pass the legislation it introduces.

All this takes place on Tuesday and Thursday afternoons and evenings, Wednesday afternoons and Friday mornings. The schedule was established more than a century ago to allow members sufficient time to get home on weekends and back to Charlottetown from their ridings. Despite the fact that no members now live more than two hours by highway from their homes, the traditional schedule is unchanged. When the legislature is not in session, members attend to constituency matters or serve on special or standing committees. The sessions provide sufficient opportunity for all members to participate, hold the government accountable and gain public exposure.

However, as will be discussed later, opportunities are often lost. The range of matters which comes before the legislature is not reflective of its actual power and influence in the province. The Legislative Assembly is little more than window dressing for the intricacies and intrigues of the Island's political system.

The two main political parties have dominated Island politics. Over the years, parties have perfected the art of brokerage politics, attempting as much as possible to be all things to all people. Both parties have hugged the political centre, leaving little room for third parties. With few ideological differences, they alternate in and out of power. Despite (or perhaps because) of the lack of ideological differences, there is a high level of partisanship in the province. This high degree of partisanship is reflected in the operations of the legislature. During the sessions, the two caucuses meets daily to review the agenda and their respective positions, ensuring a united front is presented. Except for relatively minor and inconsequential matters, members rarely vote against their own party. Although all votes are "free votes," party discipline is enforced rigidly.

The formal proceedings of the legislature, conducted under the symbol of the mace, carried in at the beginning of each day in a formal procession, are not unlike those which occur in other jurisdictions. In the tiny legislative chambers of Prince Edward Island, the rules are bent, not broken or changed. One manifestation of the unique character of the legislature is that, unlike other chambers (except for Newfoundland and Labrador), the government sits to the left of the Speaker. That side of the chamber is on the south, sunny and warmer side of Province House. If past governments, without the benefit of central heating, had to endure the sessions, they might as well be comfortable. No successive government has seen the need to change.

The Prince Edward Island legislature is characterized by short sessions, few supporting services and low pay for its members. Over the past decade, the legislature sat from a low of 27 to a high of 63 days annually. Beginning in 1997, regular fall sessions were introduced along with the traditional spring session. In April 2008, the Standing Committee on Rules, Privileges and Private Bills recommended adoption of the first-ever parliamentary calendar. The legislature is now scheduled to be called into session the first week of April and the first weekday (from Tuesday onwards) after Remembrance Day. The move responds to a long-standing criticism that legislative sessions are too short and infrequent to provide ample opportunity to scrutinize government actions. Yet, a former clerk of

the legislature said that the short sessions are largely self-inflicted by the members themselves. "On many occasions, I have had the distinct sense that House sessions are something to be got out of the way as quickly as possible," he wrote.[17]

Few supporting services are provided to members. Until 1996, Prince Edward Island was the only Canadian province that did not produce a full *Hansard.* Proceedings of the legislature were not televised until 1997; it was feared that cameras would be too intrusive and that some members would attempt to grandstand. Although members have been provided offices in a building adjacent to the legislature since the 1980s, they receive little staff support. The only public funding is an annual grant provided to the Government and Opposition Members' Offices for staff and other supports. The amount is determined by the Standing Committee on Legislative Management.

Beginning in 2008, the legislature provides non-partisan staff support to members and legislative committees in the form of a legislative librarian and a researcher. (Although a legislative library was established early in the history of the colony, it had languished for decades. In the 1970s, it was made a part of the provincial library system, before being returned to the legislature.)

The *Rules of the Legislative Assembly of Prince Edward Island* list the standing committees which the House has decided should be appointed every session. There are eight standing committees on subjects such as agriculture, economic and social development, fisheries, transportation, public accounts and housekeeping committees including privileges, rules, private bills and legislative management. In addition, a special committee may be created for a particular purpose, and disbanded when that purpose is discharged. The membership of the various committees is determined by the Committee on Committees, which usually meets only once in each session. Backbenchers put forward their interest in the various committee assignments to their respective house leaders. The number of members on each standing committee is eight, and members serve on more than one committee. Although cabinet ministers may sit on committees, in practice they do not. The committees choose their own chairs. Since 1987, the Public Accounts Committee has been chaired by an opposition member, consistent with the practice in other legislatures.

The committees meet frequently during legislative sessions, and, depending on what issues are before them, will occasionally meet throughout the year. They meet to consider matters which are referred to them by the legislature. In earlier days, that was the only source of matters that could be considered by committees. In recent years, however, by majority decision of their membership, committees may select those issues they wish to pursue. Because committees are provided with little staff support beyond a clerk, they are limited in the scope of their activities.

Key to the efficient operation of the legislature is the role of the Speaker. The main duties are to preside impartially over the operations of the legislature, maintain order and cast a deciding vote if necessary. Following the 1996 election, the Speaker was elected by secret ballot for the first time. Until then, the selection of Speaker was made on the recommendation of the government party. Despite the move to a secret ballot, the government party still controls the selection of the Speaker by putting forward its nominee.

In the highly-charged partisan political environment of Prince Edward Island, conflicts have occasionally arisen over the presumed impartiality of the Speaker and his or her partisan loyalties. In the 1974 session, the Speaker, Cecil Miller, was criticized by an opposition member over a "very political speech" he allegedly made at a Liberal nominating convention in which he criticized certain opposition members for "having indulged in questionable practices while in government." Miller walked out of the legislature, saying he would not return until a committee on privileges cleared his name of misconduct. The committee said it had no jurisdiction, and referred the matter back to the legislature. When Miller returned to the chair, the opposition member demanded an apology and a retraction. A heated verbal exchange ensued, followed by a 20 minute recess. Miller eventually apologized, saying he did not want his statements to reflect on members' honesty and integrity.

Another incident involving the Speaker occurred during the 1983 session. The Liberal members of the opposition walked out after the Speaker, Marion Reid, refused to allow questions relating to charges that the highways minister had spent $100,000 on shale for private driveways. The Speaker said that questions would not be permitted while the matter was under police investigation. In the absence of the opposition, the government assigned backbenchers to ask questions while giving approval to estimates and second reading to some bills.

Given the sometimes close party standing in the legislature, the Speaker can be forced to cast a deciding vote on issues. During the 1970 session of the legislature, the government of Premier Alex Campbell was reduced to the same number of members as the opposition because of a resignation. To avoid possible

defeat, and to ensure the government would not have to rely on the Speaker's vote, the legislature was dissolved and an election called.

In 1979, confronted with only a one-seat majority, the government of Premier Bennett Campbell acknowledged that it would be impossible for the legislature to operate if the opposition did not want it to. The government called an election rather than put the Speaker in the position of having to cast a deciding vote. "One can continue to place the Speaker in a position of having to break ties only so long before the objectivity of his position becomes questionable," said Campbell.[18]

Although Doug Boylan, a former clerk of the legislature, once described the sessions as dull, there are enough controversies and raucous incidents to maintain interest among the public. Allegations of conflict of interest, mismanagement, abuses of power and other misdeeds have kept oppositions on the alert and governments on their toes. Debates have sometimes been ferocious; at other times petty. Nonetheless, members, with rare exceptions, observe legislative norms and adhere to the accepted rules of parliamentary decorum.

While the Prince Edward Island legislature may reasonably exercise its representative function, Ian Stewart has previously made the point that it would be a mistake to equate political control with legislative control. That is not unique to Prince Edward Island; across Canada, legislative bodies are being overshadowed by the executive branch of government and are finding it much more difficult to hold governments accountable. Even larger and more sophisticated legislatures such as those in Ontario are said not to be fulfilling their potential. As Graham White has observed, "The Ontario legislature has developed greatly in recent years yet it often fails to reflect seriously on its potential, so that many important possibilities – for reform, for contributing to the policy process, and for promoting governmental accountability – are not being realized."[19] In Prince Edward Island, the slow pace of electoral reform, the informal nature of the system and the preoccupation of members with more than their legislative duties, have impaired the effectiveness of the provincial legislature.

Minding the House

In an effort to determine the work-life balance for members of the legislative assembly, the Prince Edward Island Coalition for Women in Government conducted a national research study to compare the responsibilities of Island MLAs with their counterparts in other provinces and territories. The research indicated that Prince Edward Island MLAs spend more time on constituency duties than elected representatives in other provinces and territories. It found that while most members of the general public are likely aware of the times members work when the legislature is in session, less obvious are the many additional hours that MLAs spend on constituency responsibilities. In a tongue-in-cheek addendum to the research, the coalition drafted a job advertisement for MLAs. Among the duties listed in the advertisement were meeting and communicating with constituents wherever they may deem appropriate; assisting constituents to access programs and jobs; attending sessions of the legislature and standing committees; completing constituent tax returns as required; attending at least one stranger's birthday party, wake, funeral, retirement party or other private event each week; and all other duties as required. "This is a full-time temporary position, requiring 50-80 hours of work per week, offering a benefit package as well as the lowest salary in the country," read the ad.

The research, undertaken to point out that the lack of work-life balance might make the job less appealing to some potential candidates, including women, underlined the fact that Prince Edward Island MLAs are highly preoccupied with constituency responsibilities. To illustrate the many constituency demands on MLAs, it quoted one respondent as recalling that he had a call from a woman in the middle of the night because there was a cat on her roof, and he had to go with a ladder and get the cat down.

It is this preoccupation with constituency responsibilities versus legislative responsibilities that most characterizes the work of MLAs in Prince Edward Island. While many factors account for that, the overwhelming reason is the sheer predominance of the executive versus the legislative branch. In a legislature of 27 members, typically 11 are members of cabinet. Theoretically, a majority government could be formed with 14 members. With a 12 member cabinet, and a Speaker and Deputy Speaker from the government benches, there would be no backbench government MLAs!

The lines between the executive and legislative branches were blurred even further during the administration of Premier Pat Binns. When he came to office in 1996, he named the clerk of the Executive Council as clerk of the Legislative Assembly as well, prompting a criticism from a former legislative clerk of a potential conflict of interest: "It's a question of having two masters and not being able to fully serve both all of the time."[20] Binns went even further in undermining the independence of the legislature when he appointed

most government backbenchers to cabinet committees. While some may regard this as a way of expanding the role of backbenchers by giving them a voice in the executive, it only contributed to the continued decline of the role of the legislature itself. The decision to place backbenchers on cabinet committees, where they were sworn to secrecy, blurred the distinction between legislative and executive responsibilities, undermined the independence of the legislature and stifled the voice of backbenchers by subjecting them to executive authority.

The dominance of the executive branch has left the legislature as little more than a rubber stamp in the affairs of the province. With little or no influence over the executive branch, little wonder that MLAs see their role primarily in terms of constituency service.

There is unrelenting pressure on MLAs, particularly rural MLAs, to deliver jobs, favours and projects for their districts. With 27 electoral districts in a small province, the spoils of power must be divided in such a way that every MLA can point to having obtained a share. That has resulted in parish pump politics of the worst kind; MLAs tend to be more concerned about local gains than about the interests of the province as a whole. As Frank MacKinnon has observed, "The pressures of his voter demands on a candidate are very great, and without question they limit his perspective both when he is a candidate and when he holds office."[21] Patronage remains widespread, and that has undermined the credibility of the political system. "MLAs are now just 'godfathers' giving out favours to political supplicants," charged journalist Martin Dorrell, who added that the only role for backbenchers was "to create 10 week jobs for constituents."[22] Issues of patronage remain among the most contentious in the province.

The rise of a professional public service within the province since the 1970s has also seriously eroded the traditional role of MLAs in decisions over local projects, highway construction and even welfare payments. Major decisions are now made in large part by cabinet ministers on the advice of their officials, leaving backbench MLAs on the sidelines. The real power is now exercised by cabinet ministers who have continued the tradition of political involvement in the day-to-day activities of government. Because politics is so pervasive, and because ministers continue to take a hands-on role in the work of governing, the sobriquet that best applies to them is "diddlers."[23] With power increasingly concentrated in the cabinet and the bureaucracy, the role of backbenchers is increasingly being marginalized.

The marginalization of the traditional role of the MLA first became evident when the provincial government modernized the public service in the early 1970s. At that time, the government contracted with an arms-length organization to carry out a community development process as part of its ambitious development program. MLAs perceived the community development workers as usurping their roles and responsibilities. As Premier Alex Campbell noted at the time, "You had then, a confrontation between what was traditionally perceived to be the role of the MLA, elected, and the role of the employees of an organization who had no constitutional responsibility, faced no elections, responsible to no one but their boss." Mounting criticism of the organization by both backbench MLAs and cabinet ministers was one of the major factors that led to the cancellation of the contract.

Typically, the vast majority of legislation is put forward by government. Bills put forward by private members are rare, and unless they deal with some routine matter (such as amendments to acts of incorporation of non-governmental organizations) are never passed. In the fall 2008 session of the legislature, government backbencher Alan McIsaac put forward a private member's bill to amend the *Revenue Tax Act* which would provide for tax-in pricing, allowing consumers to know the total cost of their purchases. The bill was referred to the Standing Committee on Community Affairs and Economic Development, which held public hearings on the proposal. Although the committee recommended against adoption, the initiative may signal a more activist backbench.

The Way Forward

There has never been a serious effort at reforming the provincial legislature. Although some minor reforms have been made over the years in rules and procedural practices, any significant changes have largely been in response to external reasons, and not necessarily to advance the interests of the legislature itself. The decision to reduce the number of MLAs during the electoral reform process in the early 1990s stemmed more from the objective to reduce the overall size of government than the need to protect the role of the legislature. In recent years, the only reform initiative stemmed from a special committee established to review matters relating to the operations of the legislature with a view to making it more effective, efficient and accountable.

The 1995 report put forward a number of recommendations dealing with committee structures and powers, supports for members and the election of the Speaker. It endorsed in principle the introduction of television coverage on the condition that the legislature would not have to pay for it. It recommended against

the holding of two separate sessions each year. (Two separate sessions were established in 1997 under a new government.) The committee agreed that reform would not involve more free votes. It noted correctly that all votes are treated by the Speaker as "free votes," and that the question involved party and caucus reform, not legislative reform. The committee acknowledged that the Prince Edward Island legislature had not kept pace with the changes that occurred in other jurisdictions, and questioned its operational and procedural effectiveness in holding the government accountable. However, it offered no substantive recommendations for reform that would address these shortcomings in a meaningful way.

Over the years, there have been repeated questions about whether Prince Edward Island deserves provincial status, which would result in the elimination of its own legislature. It is argued that Maritime union would give legislatures more of a voice in the affairs of the region, but that proposal, kicking around since 1864 at the time of the Charlottetown Conference, is too stubborn to die and too weak to live. More staff and other resources to members and committees could help to enliven and inform debates, but given the constraints of cabinet dominance and caucus solidarity, the cost of the additional heat and light would not likely justify the effort.

Real reform must begin with members themselves. Although Prince Edward Island's political culture and traditions are different than other provinces and territories, there are lesson to be learned from jurisdictions that have benefitted from a more activist leaning among its legislators. That will only happen if Prince Edward Island MLAs begin to think of themselves as legislators, not lapdogs, meddlers or muddlers.

Notes

1. Ian Stewart, "A damned queer parliament," in *Provincial and Territorial Legislatures in Canada*, Gary Levy and Graham White, eds., University of Toronto Press, 1989, p. 14.
2. Copy of a letter (unsigned) from Whitehall to Patterson, June 8, 1784 (as cited in Frank MacKinnon, *Government of Prince Edward Island*, University of Toronto Press, 1951, p. 18).
3. Huntley to Gladstone, April 22, 1846, Prince Edward Island Public Archives and Records Office (as cited by MacKinnon, *ibid.,* p. 79).
4. Huntley to Stanley, April 22, 1845, Prince Edward Island Public Archives and Records Office (as cited in MacKinnon, *ibid.,* p. 73)
5. Frank MacKinnon, *ibid.,* p. 43.
6. W. Ross Livingston, *Responsible Government in Prince Edward Island: a triumph of self-government under the Crown*, University of Iowa Studies, 1931, p. 59.
7. Francis W.P. Bolger, *Prince Edward Island and Confederation*, St. Dunstan's University Press, 1964, p. 118.
8. "Minister defends ridings," *Guardian,* October 28, 1992.
9. Docherty, *Legislatures,* p. 137.
10. Jeannie Lea, "The Prince Edward Island Plebiscite on Electoral Reform," *Canadian Parliamentary Review*, Vol. 29, No, 1, Spring, 2006.
11. Peter McKenna, "Opting Out of Electoral Reform - Why PEI Chose the Status Quo," *Policy Options,* June 2006, p. 59.
12. John Crossley, "Who Governs Prince Edward Island? A Profile of Members of the Legislative Assembly, 1966-1996," a paper presented at the annual meeting of the Canadian Political Science Association, June 1996, p. 1.
13. Crossley, *op. cit.,* p. 1.
14. John Crossley, "Picture This: Women Politicians Hold Key Posts in P.E.I.," in *In the Presence of Women: Representation in Canadian Governments*, Jane Arscott and Linda Trimble, eds, Harcourt Brace, 1997.
15. Docherty, *Legislatures*, p. 34.
16. Olive Crane, "Women in Politics: A Prince Edward Island Perspective," *Canadian Parliamentary Review*, Vol. 29,Number 3, Autumn 2006.
17. Doug Boylan, "Musings on the Role and Functioning of the House," presented to the Public Forum on Minding the House: the Legislative Assembly, 1893-1993, Institute of Island Studies, p. 4.
18. *Guardian,* November 14, 1978.
19. Graham White, "A legislature in adolescence," in *Provincial and Territorial Legislatures in Canada*, p. 29.
20. "Premier takes heat for clerk jobs merger," *Guardian,* December 12, 1996.
21. Frank MacKinnon, "Big Engine, Little Body," p. 245.
22. "PEI legislature failing Islanders," *Guardian,* December 14, 1993.
23. Peter E. Buker, "The Executive Administrative Style in Prince Edward Island: Managerial and Spoils Politics," in Luc Bernier, Keith Brownsey and Michael Howlett, eds., *Executive Styles in Canada*, (University of Toronto Press, 2005).