***Ottawa Public Law Tour – Track 7 Parliament Hill***

**Transcription of podcast**

Track 7: Parliament Hill. You are standing on Parliament hill, the centre of federal parliamentary governance in Canada. And so we have reached the physical seat of the second branch of government that we are encountering on our public law tour, the legislative branch. In front of you is Centre Block with its distinctive Peace Tower, to the left is the West Block, and to the right is the East Block. These buildings are all undergoing renovations, so parts of them may be obscured with scaffolding, but nevertheless, they should impress with their majesty. Woe on the Parliamentarian who enters this precinct without a sense of humility about their responsibilities and obligations.

Construction on the Parliament buildings began in 1859, and after regular engineering challenges, the original Centre Block was completed six years later. Sadly, the original building was mostly destroyed by fire in 1916, with only the majestic library, found at rear of the building, surviving. The current Centre Block was reconstructed and dates from 1920. And during the four intervening years, Parliament sat in the Victoria Memorial Museum, now the magnificent Museum of Natural History, located to the south along Metcalfe Street.

Parliament Centre Block, of course, houses the Senate and Commons chambers, as well as many parliamentary offices. Likewise, the West and East Blocks are parliamentary offices. But during renovations of Centre Block, beginning in 2019, the Commons will sit in a specially created chamber fashioned from the courtyard of the West Block. And as already noted, the Senate will repair to the old Union Station, assuming of course, that that now more than usually, and perhaps somewhat unfairly, tarnished institution still exists by that time.

But before all that, you must, of course, visit the magnificent Centre Block. Perhaps some of you will have a chance to do internships inside its walls, or perhaps appear before committees as witnesses, or meet with MPs on matter of legal significance. All of you should consider the regular tours that run through this building. But today we shall stay outside and wend our way around the exterior of the Centre Block.

Walk up the central concourse towards the front entrance to the Centre Block. Once at the top of the stairs, turn to your right and walk to the east, following the road and pathways that wend their way among many statues. Use the large statue of Queen Elizabeth II mounted on a horse to situate yourself. If you are doing this tour as a run or as a cycle, simply power-walk across Parliament Hill. As you might imagine, it is not advisable to run at great speed towards the Centre Block of Parliament, given security sensitivities. Now pause this podcast until you have reached the statue of Queen Elizabeth II.

Follow the pathway through the statues, and find the statue of Baldwin and LaFontaine. Pause this podcast. Pause this podcast and take in the views along the nearby embankment. Now turn back to the statues. Baldwin and LaFontaine are the two lawyers and moderate reformers, one from English Canada and the other from French Canada, who did so much to achieve what is known as “responsible government” in pre-Confederation Canada. Responsible government is the clasp that links the legislative branch of government with the executive branch. And it is the doctrine, the principle, that makes the executive branch – the prime minister, and the ministers, and all those departments of government that they head – responsible to an elected House of Commons.

As you will learn, in the early nineteenth century, the British North American colonies had elected assemblies, albeit elected by less than universal adult suffrage. And they had colonial governors aided by executive councils appointed by those governors. But there was no responsible government. Executive councils were not linked to elective assemblies, and they were not accountable to them. And indeed, they were members of political and economic elites, appointed for life, and these councils wielded local governance authority. In the result, the proto-democratic institutions, the legislative assemblies, had no power. This grated on reformers, looking not just to developments in the United Kingdom, but the even more democratic United States. The constitutional arrangement and other divisions between the elite commanding political power and others in society precipitated two rebellions in 1837 and 1838, one in Lower Canada, and the other in Upper Canada. Neither amounted to much militarily, although the Lower Canadian rebellion resulted in some serious military engagements and deaths, and overall the two uprisings culminated in many prison sentences; exile to Australia, then a British penal colony; and several executions.

The rebellions did, however, attract the attention of a generally distracted Britain, and the new governor, Lord Durham, produced a report proposing the fusing of the two colonies, Upper and Lower Canada; a policy of assimilation towards Francophones; and more positively, responsible government. The fusing took place and representation in the new conjoined Legislative Assembly was weighted equally between the two former colonies, a source of controversy in the expanding Canada West, now Ontario. But the British did not actually establish responsible government in the conjoining statute, known as the Union Act of 1840. Instead, responsible government arrived only in 1848, and in fact, initially in Nova Scotia, but then through the efforts of Baldwin and LaFontaine, arrived in the Province of Canada. And so now membership of executive councils was determined by legislative assemblies.

So because of this legacy, the House of Commons, which sits so close to where you stand now, is the supreme authority in our system government, curbed only by the rules of our constitution. Do not make the mistake made by so many of assuming our Parliament is subordinate to the prime minister and to the executive government. Because of responsible government – and indirectly, the principles defended by the people in the statue before you – the prime minister and his or her ministers retain office only with the consent and on the suffrage of the House of Commons. If they lose that confidence, the confidence of the House of Commons as determined by a vote, that loss of confidence typically ignites a new parliamentary election, or in some instances, the resignation of the prime minister and his or her cabinet, one that does no longer enjoy the support of the House of Commons. That is how our system works, and when you vote as a citizen, you vote for the Member of Parliament responsible for upholding this tradition. None of us has and none of us constitutionally ever could vote directly for a prime minister.

Responsible government was an accomplishment the politicians of the era were keen to preserve as talk turned to conjoining the British North American colonies into a new confederation. The timing of such a union in the 1860s was not accidental. The question of representation between East and West Canada in the unified, post-1840 colony grated and called out for resolution, as did regular political chaos erupting in this fused colony. There were expensive railway and canal ventures that had left the colonies with serious financial difficulties. Previously protected British commercial trade was being lost, increasing appetite for enhanced inter-colonial trade. And meanwhile, colonial trade with the United States was in jeopardy, given British sympathy for the Confederates during the US Civil War. And there was a real risk that the victorious US Unionist armies might simply turn north and squelch the remaining British administrations in North America. Militarily, the colonies would be no match for a battle-hardened US army, and the British were keen to see a more robust, unified, and loyal colony that would not call on British arms for its survival.

In the end, the imperial parliament, that is the United Kingdom Parliament, enacted the British North America Act in 1867, which we’ve already mentioned. And this was the act of the British Parliament that confederated the British North American colonies. As lately amended, it is now called the Constitution Act of 1867, and is now the chief constituting document creating Canada.

The most famous figure associated with confederation was the first prime minister of a confederated Canada, Sir John A. Macdonald. Walk back toward Wellington Street and find his statue in the greenspace near the eastern corner of the Centre Block. Pause this podcast until you do.

The 1867 British North America Act was renamed the Constitution Act in 1867 in 1982 when our Constitution was finally patriated from the United Kingdom. Together it along with that Constitution Act of 1982 constitute the key written components of our constitution. Some of the most important parts of this 1867 Act created our federal system of government, partitioning legislative authority between federal and provincial levels of government. And this 1867 Act is also the gateway to the so-called unwritten principles of the constitution so important to our public law tradition, and these include: judicial independence; the continuance of parliamentary governance, and the guarantee that the legislative bodies of Canada possess similar although not necessarily identical powers to the English Parliament as of 1867; democratic institutions and a parliament working under the influence of public opinion and public discussion; ministers responsible to the House of Commons and a parliament that is supreme in the government of the nation; political neutrality of crown servants; the separation of powers between different branches of government; even an implied Bill of Rights, guarding such things as freedom of speech; and then most elementally, the concept of the Rule of Law. You will be reading this elemental document, the 1867 Act, although you will not find emphatic reference to many of these concepts I have just listed for reasons you will be discussing.

But it is time now to move on, and in keeping with our constitutional trip, we have one more stop on Parliament Hill. Near where you are standing, just to the west, you will find a series of statues entitled “Women are Persons,” a tribute to the Famous Five, the five women who won the 1929 Persons Case, in which the then-highest court for Canada, the Judicial Committee of the Privy Council sitting in London, ruled that women were persons under Canada’s written constitution, the then-British North America Act, and therefore they could be appointed as Senators. An important decision for this reason alone, the decision is also famous for illustrating the importance of judges in interpreting the rules in our constitution.

The Persons Case gives voice to a classically Canadian approach to interpreting our rather opaque and now aged constitution, that of the “Living Tree,” a constitution whose interpretation can be evergreen in keeping with changing social mores. In the Judicial Committee’s words, “The British North America Act planted in Canada a living tree, capable of growth and expansion within its natural limits. The object of the Act was to grant a constitution to Canada. Like all written constitutions, it has been severed to development through usage and convention.” But, of course, an evergreen constitution raises perplexing problems that were left unaddressed by the Judicial Committee, but which lurk in every decision on constitutional law that has followed. If the Constitution is evergreen, whose view of changing social mores, usage, conventions, expectations, should govern? Those of the courts? Those of legislators? Those of the people? How do you decide? These are questions that run through public law and which you will encounter throughout your legal studies.

It is time now to leave the Parliamentary precinct and return to where we started, near the War Memorial. Exit Parliament Hill by following the sidewalk running along the back of the East Block down the hill from the statues, and flush against the lip of the gorge down which the canal flows. Exit through the gates at the bottom of that walkway. As you step on the sidewalk of Wellington Street, you will be across the road from the War Memorial. When you reach this sidewalk, go to the final track, Track 8.

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