

Sir John A. Macdonald Papers  
Volume 48

PUBLIC ARCHIVES PUBLIQUES  
CANADA

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Sir John A. Macdonald Papers, Volume 48  
Confederation (3) - Various Drafts of B.N.A. Act, 1866-1867

1. Draft in Sir John Macdonald's handwriting	18728
2. Rough Printed Draft (8 copies)	18768
3. Revised Draft, 23 January 1867	18971
4. 1st Draft, 30 January 1867	19007
5. 2nd Draft, 31 January 1867	19022
6. 2nd Draft Revised, 31 January 1867	19040
7. 3rd Draft	19101
8. 3rd Draft Revised, 2 February 1867	19125

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Act, 1866-1867.  
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3.1  
78

London  
Conference  
1866-1867.  
Draft

in Sir John Macdonald's  
handwriting  
of the  
British North America Act.

This one carries the several drafts of the  
B. N. A. Act, from the first, never had  
'rough draft,' to the actual of

J. Robt.

This was lent to D. Douglas to be  
photographed 29<sup>th</sup> July 1913. & returned  
on the same day. J. Robt.

3. 1

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 'rough draft,' to the act itself.

J. Pope.

This was lent to Dr. Douglas to be  
 photographed 29<sup>th</sup> day 1913, & returned  
 on the same day. J. Pope

18729

Facsimile of portion 2  
Sir John Macdonald's first rough  
draft, in his own handwriting, of the  
British North America Act, showing  
the various allusive denunciations  
suggested for the Dominion.

To go under reproduction  
P. 2. This is by search pamphlet  
Hobbs 3rd ed 09

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Unworn

By Title -

His Excellency  
Governor General  
should be  
omitted -

15 Months in  
Session Act  
of 1840. -

24.

Province  
Dependency  
Colonial  
Government  
Directly  
Kingdom -

Executive

4 Res'n

Command  
of Naval  
Militia Force

Be it therefore enacted

1. It shall be lawful for Her Majesty with the advice of Her Privy Council to declare, (or to authorize the Governor General of British North America to declare) by Proclamation that the said Provinces of Canada, Nova Scotia and New Brunswick upon from and after a certain day in such Proclamation to be appointed, which day shall be within Calendar Month next after the passing of this Act. shall from and be one United Kingdom in the name of "The Kingdom of Canada" and henceforth the said Provinces shall constitute and be one Kingdom under the name aforesaid upon from and after the day so appointed as aforesaid.

3. The Executive Government of the said Kingdom of Canada shall be vested in Her Majesty the Queen her Heirs and Successors.

4. The Queen is and shall be Commanded in Chief of the

1873P

4

These papers were  
found by me after Sir John  
Macdonald's death in  
great confusion. None of  
these sheets were together.  
I have not been able to find  
numbers two and four

Joseph Pope  
1892.

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1873P

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*Continued at the end of the  
 Seat of the Government of Canada.  
 Provided <sup>always</sup> that in the case of  
 the Province of Quebec that*

Each of the twenty-four Legislative Coun-  
 cillors representing ~~Lower Canada~~ <sup>the Province of Quebec</sup> in the Legis-  
 lative Council of the General ~~Legislature~~ <sup>Parliament</sup>, shall  
 be appointed to represent one of the twenty-four  
 electoral divisions mentioned in schedule A of  
 chapter first of the Consolidated Statutes of  
 Canada, and such Councillor shall reside or  
 possess his qualification in the division he is  
 appointed to represent.

in his Majesty's name by an instrument under the Great Seal of the Kingdom of Canada to Commission to the <sup>Said</sup> Legislative Council a person duly qualified according to the provisions of this Act to fill ~~the~~ such Vacancy.

11. Every member of the Legislative Council of Canada shall hold his seat therein for the term of his life, but subject nevertheless to the Provisions in this Act contained in vacating the same.

Term of office of Legislative Councillor

12. If any Legislative Councillor of Canada shall for two successive sessions of Parliament fail to give his attendance within Legislative Council in qualification or shall be disqualified without the permission of the Governor General, expressed by him to the Legislative Council or shall take any oath or make any declaration or acknowledgment of Allegiance or Adherence to any Foreign Prince or Power or shall do, concur in, or adopt any Act whereby he

Vacation of seat by absence or disqualification

may become a subject or  
 citizen of any Foreign State or  
 in title to the rights, privileges or immunities of a subject or citizen of any Foreign State or shall cease or ~~leave~~ or shall become bankrupt, or take the benefit of any act relating to insolvent debtors or become a public defaulter or be attainted of Treason, or be convicted of Felony or any infamous Crime, his seat in such Council shall thereby become vacant. -

13. Every Legislative Councillor of Canada shall before taking oath of office his seat take the oath in the Schedule B before the Clerk of the said Council.

14 Any member of the Legislative Council of Canada may resign his seat by writing under his hand and seal addressed to the Governor General which resignation when received in the Legislative Council shall thereupon such seat shall become vacant.

15 If any question shall arise as to the qualification of a Legislative Councillor, the same shall be determined by the Legislative Council.

By act to amend?

16  
 Appointments of Speaker. The Governor General shall have power and authority from time to time (until otherwise provided by Parliament) by an instrument under the Great Seal to appoint one Member of the said Legislative Council to be Speaker thereof and to remove him and appoint another in his stead.

17  
 10 quorum in session act of 1840. -  
 The presence of at least members of the Legislative Council including the Speaker shall be necessary to constitute a meeting for the exercise of its powers - and all questions which shall arise in the said Legislative Council shall be decided by a majority of votes of the members present, other than the

24 - 7  
 7 Speaker, and when the votes shall be equal the Speaker shall have the casting vote.

House of Commons

18  
 7 11  
 For the purpose of constituting the House of Commons of Canada shall be

1. Local Government of N. C.
2. Do of S. C.
3. Do of N. S.
4. Do of N. B. -
5. Dr. Tupper's proposition as to N. S. Constitution - giving one Member to each County & that the County of Halifax including the City of Halifax shall have two Members
9. Interim Government.
10. Necessary powers of Government for Contempt &c.
11. Commission to be appointed to fix proper salaries to each Province
12. Alteration of Royal Instructions
13. Transfer of
14. - Prince Edward to be made a Const. Province
15. Dr. Tupper's proposition as to Halifax's Expenditure for Railways
16. Fishing Question
17. Northern Railway.

Objections to ~~Head~~ <sup>1870</sup> Bill

1. Preamble to be extended.
2. 2<sup>d</sup> & 3<sup>d</sup> clauses to be  
by Proclamation fresh  
by Council
3. United Colony to be  
attend. - to Dominion  
of Kingdom -
4. General Power to be  
Canada
5. U C to be British  
L C to be Quebec -
6. Independent Clause  
Parliament -  
Legislature..  
L C
7. 5<sup>th</sup> Clause is at request
8. As to appt of Executive

18739

12<sup>th</sup> Amend. to substitute  
45<sup>th</sup> clause of Union  
Act. -

9. - A clause declaring  
that the Executive  
Authority is vested in  
the Queen

10 Upper House to be  
called Senate. -

11. - Oppose 18<sup>th</sup> Clause  
as to naming the  
Upper House. -

12 - 12, 13 & 14 Res<sup>ns</sup>  
to be opposed

13 - Amend<sup>mt</sup> of 1<sup>st</sup> sub  
section of 15<sup>th</sup> Clause  
5<sup>th</sup> subsection, to have  
the words "under the"

General Journal 18740

14 - 3<sup>d</sup> subsection of  
16 Clause to be added  
to.

15 - 17 & 18 Clauses to be  
omitted. -

16 - 19<sup>th</sup> Clause to be  
amended. -

16<sup>th</sup> - 22<sup>d</sup> Clause  
part of H. of Lords  
to be adopted

17<sup>th</sup> - 24<sup>th</sup> Clause to be  
amended. -

18<sup>th</sup> - 34 clause. Sup<sup>er</sup>  
to be removed.

19 - 37 clause to be  
amended. -

20 - 9 Sub. Sec of 37<sup>th</sup> Clause  
to be amended also as  
to a, b, c & d. - also as to

14  
1871  
13 Sub-Section - 16 Sub-section  
to stand over. -

21. - 38<sup>th</sup> Clause to be  
amended so as to  
harmonize. -

22. 39<sup>th</sup> Clause to be  
reconsidered. -

23. - 41<sup>th</sup> Clause to be  
expunged. -

24. - 43<sup>rd</sup> Clause to be  
remodelled. -

25. 44<sup>th</sup> Clause to be  
provided for by <sup>inserting</sup> ~~the~~ <sup>the</sup> ~~territory~~ <sup>territory</sup>  
& the reduction of ~~the~~ <sup>the</sup> ~~territory~~ <sup>territory</sup>  
of C. - when P. L.  
Clause in

- Additions - 18742<sup>15</sup>

1. Powers & Privileges  
of the House - Wanted  
an Imperial Clause
2. 31 to 37 Courts & Judges  
to be sent in imperial  
act -
3. Local Constitutions to be  
settled on consultation
4. 53-63. Property &  
Debitatus -
5. Intercolonial Trading  
Guarantee -  
Resumable  
Existing Clause
6. - Pardoning Power -  
4

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Observations on Govt  
Bill.

1. The Preamble should be more full, & contain allusion to Hisp. Govt & the principles of the British Constitution. -
2. Clause - Vol. by Patent. name should be inserted in the Act. - ~~also names~~ of U. S. & C. - Rank of Provision should be given. The word "Colony" is ~~inapplicable~~.
3. Clause. Proclam<sup>n</sup> in the London Gazette copied in each Prov. Gazette.
4. Clause - New names for O. & C. Canada should be given.
5. Clause - unnecessary & improper -
6. Clause - unusual - but can do no harm. ~~rather~~ Court would find it not absurd...
7. Clause - 24? -
8. right -
9. do

Confidential

Small Caps

Whereas the Provinces  
of Canada, Nova  
Scotia and New  
Brunswick had  
expressed their desire  
to form a Federal Union  
under the British Crown  
for the purposes of  
Government and  
legislation under  
the British Crown  
based upon the  
principles of the  
British Constitution

*Am 11/7*  
*Pien Lande*  
*21 ann*

Be it therefore  
Enacted by the Queen's  
most excellent Majesty,  
and with the Advice and  
Consent of the Lords  
Spiritual and Temporal  
and Commons in this  
present Parliament

Assembled and by  
the Authority of  
the same, as  
follows:—

(1) This Act may be cited  
as the British North  
American Act, 1867.

*all those  
not in Canada*

43  
sent

4. It shall be lawful  
for the Queen, with  
the advice of Her  
Privy Council to  
declare by Proclamation  
that the said Province  
of Canada, Nova  
Scotia and New  
Brunswick upon  
from and after a  
certain day ~~to be~~  
in such Proclamation  
to be appointed  
which day shall  
within  
calendar months  
next after the  
passing of this  
Act, shall form  
and be one United  
Dominion under  
the name of the  
Kingdom of Canada

By Dominion

and thereafter the  
said Provinces shall  
constitute and be  
one Kingdom under  
the name aforesaid  
upon four weeks  
after the day so  
appointed as  
aforesaid.

5. From and after  
the Union, the  
Provinces of Upper  
Canada and  
Lower Canada  
shall be severed  
and each Province  
shall be bounded  
as they were  
bounded before

1877

6. From and after  
the said Union,  
~~the Province of~~  
Upper Canada shall  
be named and  
known as the  
Province of Ontario,  
and Lower Canada  
shall be named  
and known as  
the Province of  
Quebec.

The Executive Power.

7. The Executive  
Government and  
Authority <sup>is said to be</sup>  
vested in Her  
Majesty the Queen.

8. The Queen has

and shall have  
the Command in Chief  
of the Land and Naval  
Militia and of all  
~~land and naval~~  
and Military Forces  
whatssoever.

The legislative Power.  
Upper Chamber

9. From and after  
the Union, there shall  
be, within the Kingdom  
of Canada one  
General Parliament  
which shall be  
composed of  
the Queen, an  
Upper Chamber to  
be called, the Senate,  
and a House  
of Commons  
Senate.

10. For the purpose  
of forming the Senate

the Kingdom of Canada  
shall be considered  
as consisting of  
three Divisions -

- (1) Ontario.
- (2) Quebec
- (3) The Maritime  
Provinces of  
Nova Scotia and  
New Brunswick,  
and each Division  
shall have an  
Equal representation  
in the Senate -

11. Ontario shall  
be represented in  
the Senate by  
twenty four Members  
Quebec by twenty  
four Members, and  
the Maritime  
Provinces by twenty

four members of  
which Nova Scotia  
shall have twelve  
members and New  
Brunswick twelve  
members.

Qualification for  
Senate.

*Journal*

12. - The Senators shall  
each be of the full  
age of thirty years,  
shall each be a  
natural born subject  
of the Queen or her  
subject naturalized  
by act of the  
Parliament of the  
United Kingdom of  
Great Britain and  
Ireland, or by an  
act of any or either  
or one of the legislatures

24

of the said Provinces  
 of Canada, Upper  
 Canada, Lower Canada,  
 Nova Scotia or New  
 Brunswick, or by  
 an Act of the  
 Parliament of Canada  
 hereby created, and  
 shall each be  
 legally or Equitably  
 seized or entitled  
 as of freehold for  
 his own use and  
 benefit of lands  
 or Tenements held  
 in fee and Common  
~~charge~~, or seized  
 and possessed for  
 his own use and  
 benefit of lands or  
 Tenements held in

~~free~~ franchise,  
or roture, in the  
Province for which  
he shall be appointed  
of the value of  
Four thousand dollars  
over and above all  
debts. Charges dues  
and incumbrances  
thereon and shall  
be each be and  
continue to be worth  
the sum last,  
aforesaid over,  
and above his  
debts and liabilities.  
and shall each  
also possess a  
continuous residence  
in the Province for

20  
 which he is appointed  
 except during the  
 time that he shall  
 hold an Office under  
 the Government  
 the duties of which  
 will require his  
 continuous attendance  
 at the Seat of  
 Government of  
 Canada -

Journal  
 13. - In the case of  
 Quebec, each of  
 the twenty four  
 Senators representing  
 such Province shall  
 be appointed to  
 represent one of  
 the twenty four  
 Electoral Divisions

mentioned in Schedule  
A of Chapter fourth  
of the Consolidated  
Statutes of Canada,  
and such Senator  
shall reside or  
possess his qualification  
in the Division he  
is appointed to  
represent.

14

~~In the case~~  
~~of any money bill~~  
~~rejected in one session~~  
 and if any <sup>money</sup> bill  
 passed by the House  
 of Commons <sup>is</sup>  
 rejected <sup>by the Senate</sup> for any one  
 session, or if any other  
 bill passed by the  
 House of Commons  
 is rejected by the  
 Senate, and if in  
 such case or cases  
 the Governor shall  
 ascertain that such  
 bill or bills has or  
 have been carried  
 by the majority of  
 voices from two  
 out of the three  
 Provinces, then and  
 in such case it shall  
 be lawful for Her  
 Majesty to ~~add~~  
 create additional

on three consecutive  
 occasions

29  
Members of the Senate  
preserving the rule  
of equality between  
the three sections of  
~~Canada~~ Upper Canada  
Lower Canada,  
and the Maritime  
Provinces.

15 In case of such  
increase beyond  
the normal number  
of seventy-two on  
such vote, no  
additions shall  
be made until  
each ~~Province~~ section  
shall be represented  
by twenty-four  
members and  
no more

16. Whenever after the  
first appointment  
a vacancy in the  
Senate shall occur  
take place, it shall be  
lawful for the Queen  
by an Instrument  
under the Sign Manual  
to authorize the Governor  
General in the Queen's  
name by an  
Instrument under  
the Great Seal of  
Canada to summon  
to the said Senate  
a person duly  
qualified according  
to the provisions of  
this Act to fill such  
vacancy.

17 Every Senator shall hold his seat in the Senate for the term of his life subject to the provisions of this Act.

18. If any Senator shall in two successive Sessions of Parliament, fail to give his attendances in the Senate, or if he shall take any oath or make any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Prince or Power or shall do Consent in or adopt any act

whereby he may  
become a subject  
or a citizen of any  
foreign state or  
power or whereby  
he may become  
entitled to the rights  
privileges or  
Immunities of a  
subject or citizen of  
any Foreign State  
or Power, or shall  
cease to have any  
of the qualifications  
required by this Act  
or shall become  
Bankrupt or take  
the benefit of any  
Act relating to  
Insolvent Debtors,  
or become a  
Defaulter, or be  
attainted of Treason  
or be convicted of  
felony or any infamous

whereby he may  
become a subject  
or a citizen of any  
foreign state or  
power or whereby  
he may become  
entitled to the rights  
privileges or  
Immunities of a  
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required by this Act  
or shall become  
Bankrupt or take  
the benefit of any  
Act relating to  
Insolvent Debtors,  
or become a  
Defaulter, or be  
attainted of Treason  
or be convicted of  
felony or any infamous

Crooks, his seat in  
the Senate shall be  
thereby become  
vacant.

Barnett

19. Every senator shall  
before taking his  
seat take the oath  
or make ~~the~~ a  
declaration in  
Schedule ~~A~~ A  
mentioned.

20. Any <sup>of the present</sup> senator member  
of the Legislative  
Councils of Canada  
Nova Scotia or New  
Brunswick who  
may accept the  
office of Senator shall  
by his acceptance  
~~of the office~~ be held  
to have vacated his  
seat in the Legislative  
Councils of ~~their~~ his  
respective Provinces.

21. Any Senator may, by writing under his hand addressed to the Governor General resign his seat in the Senate and thereupon such seat shall become vacant.

22. Any question respecting a vacancy in the Senate shall arise ~~the qualification of a Senator, the same shall be determined by the Senate.~~ <sup>heard and</sup> shall be determined by the Senate.

23. The Governor General shall have power by an instrument under the Great Seal of the Kingdom to appoint one member of the Senate to be Speaker thereof and to remove him and appoint another in his stead.

24. Subject to the  
~~provision of~~  
alteration by the  
Parliament of  
Canada, the Presence  
of at least Fifteen  
Members of the  
Senate including  
the Speaker, shall  
be necessary to  
constitute a meeting  
for the exercise of  
its Powers.

25. The Speaker shall  
vote ~~as~~ other  
Members and in  
case of a tie,  
presumptive pro  
negante.