

THE LIBERAL MINORITY AND THE PROSPECT OF AN EARLY DISSOLUTION OF PARLIAMENT

Brian M. Doody

Of the six minority Parliaments since 1957, three have been dissolved in the first session of the House after the election. In every case, in 1958, 1963 and 1979, the governor general heeded the advice of the prime minister to issue the writs for an election. But what if the GG, following the King-Byng precedent in 1926, declined the PM's advice and invited the leader of the Opposition to form a government and ascertain whether he could win the confidence of a majority in the House, at least until the end of the first session of the 38th Parliament? Brian Doody examines the history of minority parliaments and the prospects of the Liberal minority government for survival. He concludes, intriguingly, that while the Liberals may be propped up by the NDP and the Bloc on a case-by-case basis — even through a budget next February — the very success of a minority parliament might tempt their fair-weather allies to desert them. A motion of censure on an issue such as the sponsorship scandal, which might be interpreted as a vote of confidence in the present rather than the previous government, might prove particularly dangerous to the health of the Martin minority.

Trois des six gouvernements minoritaires qu'a connus le Canada depuis 1957 ont été défaits au cours de la première session parlementaire qui a suivi l'élection. Dans chaque cas — soit en 1958, 1963 et 1979 —, le gouverneur général a acquiescé à la suggestion du premier ministre d'émettre un bref ordonnant la tenue d'une élection. Mais se passerait-il si le gouverneur général, imitant le précédent établi par Byng et King en 1926, refusait d'accepter l'avis du premier ministre et invitait le chef de l'opposition à former le gouvernement et à déterminer s'il pourrait obtenir l'appui de la majorité des députés, tout au moins jusqu'à la fin de la première session du 38^e Parlement ? Brian Doody passe en revue l'histoire des minorités parlementaires et examine les chances de survie du gouvernement actuel. Il est bien possible que les Libéraux jouissent de l'appui du NPD et du Bloc québécois dans divers dossiers, et même lors de l'exposé budgétaire en février prochain, écrit-il, mais les succès remportés par le gouvernement pourrait bien tenter ses alliés de l'abandonner. Une motion de blâme sur une question comme le scandale des commandites, qui pourrait être vue comme un vote de non-confiance envers le gouvernement actuel plutôt qu'envers celui qui l'a précédé, pourrait avoir des effets néfastes sur la minorité de Paul Martin.

It may seem odd to begin an article on the prospects of the 38th Parliament by discussing possible scenarios for its dissolution. But in the first session of Parliament after a general election in which the governing Liberals won less than half the total seats, the choice of the date of the next election is no longer the sole prerogative of the prime minister, Paul Martin.

While a lost vote in the House on a matter of confidence will automatically entail the fall of the government,

there are situations in which the Governor General, following a vote of no confidence or otherwise, may refuse the prime minister's advice to dissolve Parliament and call an election. The purpose of this article is to outline the circumstances in which the Governor General, seized with the advice of a prime minister of a minority government to dissolve Parliament and call an election, will either heed that advice or ask another party leader to form a government.

Constitutional convention on the dissolution of Parliament is likely to promote stability on policy matters in the first session and, in general, conciliation among the parties in the House.

However, partisan self-interest combined with the systemic barriers to

and return power to the Liberals — without an election. The ensuing debate in the House gave Diefenbaker the pretext to argue that the Liberals were obstructing the government's ability to implement its legislative program. Diefenbaker's minority govern-

ment had removed before the 1925 election. With the vote set for June 28 and his advice to dissolve Parliament refused, King resigned; Meighen became prime minister but, after losing a vote of no confidence, advised the Governor General, who dissolved Parliament on July 2.

If, in the first session after a general election in which a sitting prime minister meets the House, a minority government loses a vote of no confidence on a matter that does not involve a clear question of public policy, a Governor General seized with the prime minister's advice to dissolve Parliament has a constitutional duty, before acceding to the request, to ask the leader of the Opposition whether he or she can carry on with the business of the House until at least the end of the session.

While Forsey and others disagree on many aspects of the events of 1926, there seems to be a consensus on the following rule: If, in the first session after a general election in which a sitting prime minister meets the House, a minority government loses a vote of no confidence on

conciliation set out in party statutes and the *Canada Elections Act* could lead to a change in government in mid-session on a matter that has nothing to do with policy. While minority governments encourage conciliation between parties and, in the long term, may facilitate the development of national parties with support in every region, the party and electoral system needs to be changed to better reflect and promote the values of genuine conciliation.

ment of 1962-63, by contrast, was defeated in its first session on a motion of no confidence on a clear question of defence policy. In its first session in 1979, first-time Prime Minister Joe Clark's minority government lost a vote of confidence for a budget that would have introduced an excise tax on gasoline.

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As constitutional scholar Eugene Forsey wrote in 1943: "Peel, Russell and Gladstone declared in the clearest terms that a cabinet defeated in the House is not entitled to dissolution unless there is some great question of public policy at issue." Presumably that question becomes clearer the further away one gets from the previous election, but time is not the only factor at play. Since the Second World War, three of the six Canadian parliaments in which no party held a majority were dissolved in the first session. In each case, however, the prime minister of the day was able to argue in favour of dissolution on a sound public-policy basis.

The events of 1925-26 surrounding the two minority governments of the 15th Parliament are quite unlike anything in Canadian history. In the election of October 1925, the Liberals under William Lyon Mackenzie King saw their minority in the House reduced; Arthur Meighen's Conservatives became the largest party in the House but were still several seats shy of a majority. King exercised his prime-ministerial prerogative to meet the House and attempt to rally a majority. This he did, as the Liberals, in close co-operation with the Progressive, Labour and Independent MPs, won sixteen votes in six months, including the passage of a budget in May 1926. Things started to go badly in June, however, with the release of a report on corruption in the Department of Customs and Excise. The vote to adopt the report came to be seen as a motion of censure despite the fact that most of the events occurred under a minister whom King

So what are the prospects of the Liberals' losing a vote of no confidence, in the first session, on a matter that has nothing to do with public policy? Clearly, a motion of censure that comes to be seen as a vote of no confidence in the government is the Achilles heel of the Martin administration. Whether it is or not will depend on the facts of the situation. If the censure concerns ministers' actions that occurred before the last election or before Martin took office in December 2003, it will be possible to argue that the appropriate action has already been taken and that the matter is not a question of confidence. If the censure includes or is somehow linked to the actions of ministers in the Martin government, it will be more difficult to argue that the matter is not a question of confidence.

In 1958, newly-elected Prime Minister John Diefenbaker's request was granted just days after the Opposition moved an unusual motion of no confidence asking the Conservatives to resign immediately

In the partisan atmosphere of the House of Commons, however, the question of whether the wording of the motion is equivalent to a motion of no



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William Lyon Mackenzie King speaks to the crowd from the back of an open car in the 1926 campaign. Following the King-Byng constitutional dustup over dissolution, the short-lived Meighen government fell and King was returned to office with a majority in the subsequent election.

confidence will likely be a matter of political — rather than legal — interpretation. The facts giving rise to a motion of censure could come from information made public at the judicial inquiry into the sponsorship scandal, or from another matter of administrative impropriety. They could also arise from a failure to negotiate a federal-provincial health care accord, on the grounds that the policy was already the main issue in the last election and that it is not the Opposition parties in Parliament who are obstructing the government's ability to implement the policy.

There can be no doubt that the Martin government has prepared contingency plans to deal with the likelihood of a motion of censure introduced in the first session of Parliament. Motions to adjourn and

other procedures would give the Liberals the time they might need to make conciliatory gestures to their allies in the House (offers to change or introduce legislation) or announce other changes (administrative reforms, a unilateral health initiative) that might allow the minority government to win or avoid a vote of censure. Another strategy might include reaching an agreement with the New Democratic Party in exchange for its support through the end of the parliamentary session, including support on any motions to censure the government. As the two parties' combined strength would still be one vote short of a majority, the agreement could include choosing the next Speaker from among the ranks of the Conservative and Bloc Québécois MPs,

and arranging for Liberal and NDP MPs to support that candidate in the vote scheduled for October 4.

Clark used this approach in 1979 when he appointed Liberal MP James Jerome to serve as his Speaker. While this strategy would require compromise on the Liberals' part on policies such as democratic reform and missile defence (at least in the short term), it would give the Liberals and their allies a narrow majority (154 to 153) and likely guarantee the government's survival in the crucial first session. Perhaps more significantly, it would thwart the possibility of Stephen Harper forming a government after a lost vote of censure and give Martin more leeway in choosing the date of the next election. Of course, there are many offices the attainment of which might induce an opposition

MP to defect, but few are as noble — and as free from charges of political patronage — as that of the Speaker.

The strategy of working with all of the Opposition parties in order to pass bills on an issue-by-issue basis — rather than working out a common legislative program with one party — may appear attractive in the short term to some Liberals who do not want to make too many concessions to the NDP (the Conservatives and BQ being excluded on policy grounds). In the long term, however, as bills are introduced and make their way through the Commons' committee system, the nature and quality of those incentives that the government can offer to its allies in a vote of censure becomes more limited. Paradoxically, the greater the success of the *à la carte* approach to law-making — the pinnacle of the session being the passage of a budget — the more vulnerable the minority government will become to desertion by its fair-weather allies on a motion of censure. With a budget passed and progressive legislation at the committee and report stages, the NDP and BQ may feel a lot less threatened by the idea of Harper carrying on the session as prime minister, especially if they can find a way to make it work to their advantage.

The NDP could try to get from the Conservatives what it could not get from the Liberals — a commitment to hold a referendum on proportional representation within a year — in return for NDP support in the House to carry on with the session. For its part, the BQ might agree to support the Conservatives in return for the passage of comprehensive ethics legislation. Perhaps more importantly, each of the smaller parties would then gain a degree of control over the timing of the next election. This is because the defeat of a Conservative government on a vote of confidence would virtually guarantee the dissolution of Parliament. The Governor General would not likely ask Martin to form another government and Harper, not

having advised the previous dissolution, could hardly be refused one. Thus the strongest argument in favour of the Liberals' agreeing to a common legislative program with the NDP is that it would prevent the NDP from reaching its own mid-session agreement with the Conservatives.

It should be recognized that the electoral and party system places limits on the extent to which even the most well-intentioned MPs can promote conciliation in Parliament. The *Canada Elections Act* makes no provision for the running of joint candidates, and the new party-financing rules penalize any party that does not maximize its voter support by running as many candidates as possible. Furthermore, most party constitutions contain some type of "308 Rule" which obliges the party to run candidates in each riding, without regard for their chances of winning or of splitting the vote. The mere fact that the Liberals will be their adversaries in the next election is enough for most parties to regard with suspicion even the most sincere efforts by government officials to promote conciliation.

The NDP is in the awkward position of trying to influence the Liberals to adopt its policies in the House without having the Liberals take credit for those same policies in an election campaign. As for the Conservatives, the party's very existence is a testament to the difficulties of inter-party conciliation under the present system. The party's failure, in the last election, to better the combined support of its two predecessor parties suggests that it may be willing to support measures that would promote more inter-party conciliation without recourse to the blunt instrument of merger. Conciliation with the BQ is a necessity, both in the short and long term, for any party that seeks to build support in every region, although some hard-line partisans in the BQ would prefer not to explore extra-parliamentary conciliation with another federal party.

Does all this manoeuvring with an eye to dissolving Parliament imply that minority governments are less stable than majority ones? Perhaps the answer lies in our understanding of the role of parties in creating stable majorities. Canadians expect conciliation to occur within parties yet express dismay when the process is played out openly on the floor of the House.

In the election that followed the collapse of the Meighen government in 1926, King won what most consider a majority government. Yet the election returns for 1926 show that the Liberals won only 116 seats — a minority — one seat less than they won in 1921. From 1921 to 1925, the Liberals governed for nearly four years with the support of Progressive, Labour and Independent MPs, yet it was a minority government. From 1926 to 1930, they had the support of 10 MPs who had been nominated jointly by both the Liberal and Progressive parties, plus the nominal support of at least five others who had been elected without a Liberal opponent.

The point here is that while King's efforts to conciliate his non-Liberal allies took many years, conciliation between government and opposition MPs provided Canada with stable government. Minority governments can be made to work if there is a genuine willingness of the parties to compromise, and a party and electoral system that encourages them to co-operate, in the House and during elections, in their own self-interest. As the session begins, MPs might want to think about the ways in which Canada's electoral and party system can be changed to better reflect what makes minority governments work, so that, long after the Governor General dissolves this Parliament, the spirit of co-operation that animates the parties on the floor of the House can be carried to the country at large.

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