
The Royal Prerogative and the Office of Lieutenant Governor: A Comment

by James Ross Hurley

The Spring issue of the Canadian Parliamentary Review featured an article on the role of Lieutenant Governor by Professor Ronald Cheffins including a discussion of the conditions when a Governor General or Lieutenant Governor may refuse a request for dissolution by a Prime Minister. This comment suggests that there are actually fewer circumstances when dissolution may be refused than those cited by Professor Cheffins.

Professor Cheffins' paper is an important reference document on the powers of the Crown at both the federal and provincial levels. The last two paragraphs are particularly trenchant in setting out fundamental principles.

There is, however, one point Professor Cheffins makes with which I take issue. He raises the question of the power of dissolution of Parliament and faithfully provides the position established by Eugene Forsey in his 1943 publication, *The Royal Power of Dissolution of Parliament in the British Commonwealth*, for justifying the circumstances when a Governor General could refuse the advice of a Prime Minister to dissolve Parliament.

Dr. Forsey addressed the Byng-King crisis of 1926 in which Prime Minister King, during an adjournment of the debate in the House of Commons on what was deemed to be a want of confidence motion, asked the Governor General, Lord Byng, for a dissolution so that would not have to face (and lose) a vote of censure.

Dr. Forsey considered Lord Byng's refusal of a dissolution to Prime Minister King was justified because a general election had been held about nine months earlier and that there was the possibility of an alternative government capable of carrying on the governance of Canada.

I am not certain these two reasons, cited in 1943, have stood the test of time. The first justification was seriously undermined when General Vanier granted a dissolution to Prime Minister Diefenbaker on February 1, 1958, about eight months after the previous general election. Indeed, Mr. Diefenbaker was again granted a dissolution about eight months after the 1962 general election, following the defeat of his Government on a no confidence vote on February 5, 1963.

The second reason cited by Dr. Forsey is also problematic. Following the defeats of minority governments on motions of no confidence in 1963, 1974 and 1979, the Governor General granted dissolution without, it would appear, any attempt to verify whether an alternative government capable of carrying on the governance of Canada could be formed. Indeed, in minority situations it is likely that all political actors would favour an immediate election to clear the air after the defeat of the Government.

Ironically enough, it was Arthur Meighen who provided a reason, rooted in the basic principles of responsible government, that would justify a refusal by the Governor General to grant dissolution in the circumstances of today.

"A dissolution very manifestly should not be granted when its effect is to avoid a vote of censure....To demand such a right is not to plead for responsible government; it is to plead for irresponsible government; to demand such

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a right is not to uphold our parliamentary institutions; it is really to stifle those institutions; to demand such a right is not to plead the cause of parliament; it is in effect to choke and strangle and prevent parliament from expressing its will...." (Cited in Eugene Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth*, Toronto: Oxford University Press, 1943, pp. 162-3).

If a Prime Minister were to seek to prevent a House of Commons from exercising its fundamental and defining power – to grant or to deny confidence to the Government of Canada – there would be a strong case for the Governor General to use his or her discretionary powers to protect parliamentary democracy.

While a motion of no confidence is under debate and has not been voted upon, *especially if the Government's ca-*

capacity to win that vote is uncertain, the Governor General would be justified in refusing a Prime Minister's advice to dissolve Parliament. The purpose of such a refusal would not be to force the resignation of the Government and to appoint an alternative one, but to allow the Commons to express its will.

Once the vote had been held, it would be very difficult (on the basis of the precedents of 1963, 1974 and 1979) for the Governor General to refuse the advice of the Prime Minister to dissolve Parliament, even if the Government had been defeated.

It follows that I do not share Professor Cheffins' view that "It is quite clear that without an alternative government capable of carrying on, a refusal of dissolution would be unthinkable."