
Minority Government and Constitutional Convention

by Peter Russell

Four years of minority government have introduced serious strains on Canada's parliamentary institutions. This article suggests what needs to be done to strengthen parliamentary institutions whether the electorate returns a minority or a majority parliament.

In January 2010 the United Kingdom's Institute for Government issued a report entitled, *Making Minority Government Work*. The report aims at preparing the United Kingdom for a minority government that may well result from an election due later this year. The research team who wrote the report visited Westminster parliamentary jurisdictions that have had experience with minority government in recent years: namely Canada, New Zealand and Scotland. Its chapter on Canada is headed "Canada's Dysfunctional Minority Parliament." Its message to British parliamentarians is that if you want to learn how *not* to operate a minority parliament take a good look at Canada.¹

The UK report analyzes the problem as being essentially behavioral. It concludes its chapter on Canada with this statement: "For minority government to work in Canada there needs to be a dramatic shift in political culture which emphasizes cooperation and accommodation rather than conflict and partisanship."

Anyone watching the performance of Canada's federal Parliament over the last few years would come to the same conclusion: Canada's parliamentary democracy is in very bad health. With three elections in five years and a fourth looming, Canada is becoming the world's only parliamentary democracy operating on a two-year election cycle. With the government

party and the official opposition pre-occupied with preparing the ground for the next election, the cross-party co-operation required to make a minority parliament functional has been totally lacking.

As a result, in my view, the Canadian Parliament has not been fulfilling its function of leading public debate on the great issues of the day such as our military effort in Afghanistan, climate change and carbon emissions or the fiscal melt down and its economic and social consequences. Nor has it been able to consider and pass legislation dealing with any of these matters.

My first suggestion about what needs to be done makes me feel a little bit like an old school master going out into the school yard and yelling "tone it down" at the boys leading the two biggest gangs scuffling in the school yard. But I do say to the Prime Minister and to the Leader of the Opposition, the two boys who lead the biggest gangs in our parliamentary school yard here on the hill – both of whom I have known in their younger days, and both of whose character and intellect I respect and admire – please do cool it a bit.

Suggesting a dramatic change in political culture may be asking for too much. But I pray that they will begin to apply their leadership skills somewhat less to attacking each other and considerably more to establishing some common ground on which their parties can work together in finding solutions to Canada's pressing problems.

This was done, to some extent, during consideration of the Budget in January 2009. It was attempted, at least for a while last summer in trying to work together on reforming employment insurance. I fervently

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hope that in the new session of parliament, instead of playing that irritating schoolyard game of political chicken, daring one another to force an election, they will both show a willingness to play the friendlier, more co-operative game required to make minority parliaments functional. I am sure that many Canadians share my wish.

Good behavior in the parliamentary schoolyard today does not require a change in political culture so much as accepting the political realities of the day. It will come as news to no one that no political party is very popular with Canadians these days. In Canadian federal politics a party that can win more than a third of the electorate's support has reached dizzying heights. I doubt that all of the spin doctors wizardry and feisty attack-ads can change that in the foreseeable future.

Once parliamentarians accept the reality that it is their fate to work in a parliament of minorities, it surely should dawn on them that, unless they just love electioneering, some modification of behavior, some slight reduction of all-out partisanship, is required for a functional parliamentary democracy.

The Need for Consensus on Basic Conventions

If my wish comes true, and the new session of parliament does not result in an immediate election or descend to another season of schoolboy scuffling, then there is one other item, aside from behavioral modification, that is urgently needed for a functional, co-operating parliament to work. There appears to be a lack of consensus on fundamental conventions or rules of our parliamentary system of government. On two matters fundamental to our system – the dissolution of parliament and prorogation of parliament – the only written, legal rule we have is that the Governor General, representing the Crown in our parliamentary system dissolves and prorogues parliament. But in the democratic era we expect the Crown in exercising those great powers of dissolution and prorogation to be directed by elected political leaders, responsible to parliament. And we rely on a consensus among those political leaders on when it is proper to ask the Governor General to dissolve and prorogue parliament.

The parliamentary crisis that occurred in the winter of 2008-2009 indicated that there may not be agreement among the relevant actors on conventions governing the proper use of the Crown's reserve power's in choosing a Prime Minister.

The debate over prorogation in 2010 demonstrated a lack of political consensus in this area as well. This absence of agreed upon constitutional conventions on the proper use of the powers of dissolution and

prorogation put the representative of the Crown in our country in a very difficult position. In effect, she is expected to referee a game in which the players do not agree on the rules.

I think a priority project for a functional parliament is to launch an inquiry into this situation, including consideration of what other parliamentary democracies operating the Westminster system have done or are doing to clarify and establish consensus on fundamental rules and principles of parliamentary government, and to see if they can agree on a way of making progress on this matter in Canada.

Among other approaches we should look at the experience of New Zealand in developing a Cabinet Manual which has codified some of the important constitutional conventions in that country.²

New Zealand's Cabinet Manual began in the 1970s. It is compiled by the Cabinet Office and is continually updated. The Preface to the 2008 edition states that "the Cabinet Manual is an item on the agenda of the first Cabinet meeting of a new government..." The Preface goes on to say "It is like a dictionary: it is authoritative, but essentially recording the current state of the constitutional and administrative language. Thus the content of the Cabinet Manual represents an orderly and continuous development of the conventions and procedures of executive government."

Although the Cabinet Manual predates the era of minority parliaments in New Zealand ushered in by the adoption of Mixed Member Proportional electoral system, it has proved to be valuable in this new era.

In a Foreword to the 2008 edition the former Prime Minister comments that "it reflects ...the continued development of the conventions flowing from the establishment of the MMP electoral system."

New Zealand's Cabinet Manual is now nearly 150 pages in length and covers a great many items. These include the operation of cabinet government, the offices of Prime Minister and Deputy Prime Minister, the conduct of ministers, the role of the Attorney General as the chief law officer of the Crown, commissions of inquiry and other subjects such as ethics and conflict of interest, access to information and privacy which in Canada are dealt with in legislation. They also have sections relating to responsible government, the role of the Governor General, the calling of elections and "caretaker governments", all of which are pertinent to Canada.

Without going into details about its various provisions the New Zealand's Cabinet Manual

recognizes that it is stating the requirements of constitutional conventions, not enforceable rules of law. The Manual deals mostly with principles relating to the roles and responsibilities of key actors in parliamentary responsible government. It does not attempt to spell out in detail what should be done in every conceivable circumstance. Its provisions are clearly stated and provide key actors in parliamentary responsible government with authoritative, publicly known guidelines on what is expected of them in difficult political situations.

Early in 2010, the Cabinet Office in the United Kingdom began working hard at producing a UK version of the New Zealand Cabinet Manual. This action was taken in response to the Institute of Government's report on *Making Minority Government*

Work and the possibility that the election due later in the year would result in a hung parliament.

My own view is that it would be useful for Canada to have something like New Zealand's Cabinet Manual. There may be other ways to move beyond our present disagreements over constitutional conventions but the very willingness of today's parliamentarians to take this problem on would be an indication that our sick parliamentary system may be on its way to healthier days.

Notes

1. Robert Hazell and Akash Paun (ed.), *Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall*, London, Institute for Governance, 2010.
2. See www.cabinetmanual.cabinetoffice.govt.nz/files/manual.pdf