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## BACKGROUND PAPER



# Transition to the 42<sup>nd</sup> Parliament: Questions and Answers

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*Transition to the 42<sup>nd</sup> Parliament: Questions and Answers*  
(Background Paper)

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# TRANSITION TO THE 42<sup>ND</sup> PARLIAMENT: QUESTIONS AND ANSWERS\*

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## 1 INTRODUCTION

This document consists of a series of questions and answers about issues concerning the transition from one Parliament to the next and, in particular, the transition from the 41<sup>st</sup> to the 42<sup>nd</sup> Parliament. It explains how parliamentary and government activities are affected during an election period and describes the situation of various key political players – the Governor General, the prime minister, ministers and members of Parliament (MPs) – between the dissolution of one Parliament and the beginning of the next.

A general election determines the composition of the House of Commons and results in one of a number of possible government configurations – usually, a majority or a minority government. This document considers the constitutional, conventional, and practical implications of these possibilities.

## 2 ELECTION RESULTS

### 2.1 WHEN WILL THE RESULTS OF THE NEXT ELECTION BE KNOWN?

- *Unofficial results:* Results are usually available on election day. Votes are counted immediately after the polls close, and the deputy returning officer for each poll reports the unofficial results to the returning officer for the riding, who then makes them public.
- *Official results:* The process of making the election of a candidate official has several steps. The returning officer for each riding validates the results for that riding within 7 days of election day (subject to adjournments if not all of the ballot boxes have been received); the winner is declared on the 7<sup>th</sup> day after the validation when the returning officer fills in the information on the back of the writ. This is called “completing the return of the writ.” All of the materials are then sent to the Chief Electoral Officer (CEO).

The election of an MP becomes official once the CEO publishes a notice to that effect in the *Canada Gazette* and sends a letter of confirmation to the Clerk of the House of Commons.

If there is a tie, or if the leaders are separated by less than one one-thousandth (0.1%) of the total votes cast, a judicial recount is mandatory. In addition, any voter may ask a judge to conduct a judicial recount. The voter must post a deposit of \$250 and swear an affidavit that there were improprieties in some aspect of the procedures.

If there is a tie vote after a judicial recount, a by-election is required.

## **2.2 WHAT IS THE RELEVANCE OF THE DATE SET FOR THE RETURN OF THE WRITS?**

The date of the return of the writs is the date on which all materials from all returning officers must be received by the CEO. In practice, the date of receipt varies, and so early returns are deemed to be received on the date set. (If a judicial recount has been delayed, a substitute return can be made after that date if the recount changes the result.)

Except in the case of a real or apprehended war, invasion or insurrection, the House of Commons may not sit beyond five years after the return of the writs of a general election (see the *Constitution Act, 1982*). Moreover, the fixed-date provision of the *Canada Election Act* requires that an election be held on the third Monday of October in the fourth calendar year after polling day for the last general election. The power of the Governor General to dissolve Parliament (thereby triggering an election) is unaffected by this provision. (See also section 4.1.2, below.)

## **3 KEY PEOPLE**

### **3.1 THE GOVERNOR GENERAL**

#### **3.1.1 WHAT ARE THE POWERS AND FUNCTIONS OF THE GOVERNOR GENERAL?**

The Governor General represents the Queen, who is Canada's head of state (the prime minister is the head of government). The Governor General is appointed by the Queen on the personal recommendation of the Canadian prime minister. Since the early 1950s, only Canadians have been appointed to the office. The manner of appointment of the Governor General is not mentioned in the Constitution, and is made through a commission granted under the Great Seal of Canada. The 1947 letters patent of King George VI allow the Governor General to exercise most of the royal prerogatives in right of Canada.<sup>1</sup>

Under the Canadian Constitution, the Governor General possesses extensive powers, ranging from summoning the House of Commons to assenting to bills, but by convention these are exercised only on the advice of the prime minister and Cabinet. Except in rare cases – usually associated with election results, the dissolution of Parliament and the formation of a government – the Governor General has no independent discretion and must follow the advice tendered.

In the event of an emergency or catastrophe in which the prime minister, together with significant numbers of his or her Cabinet and Parliament, is incapacitated, the Governor General would be significantly freed of the constraints on the exercise of his or her discretion and could probably appoint an emergency interim government.



**3.1.2 WHO IS THE CURRENT GOVERNOR GENERAL AND WHEN WAS HE APPOINTED? WHEN DOES HIS TERM END? CAN HE BE REAPPOINTED? CAN HE STAY IN OFFICE?**

The current Governor General is the Right Honourable David Johnston. His appointment was approved by Queen Elizabeth II on 8 July 2010, and Mr. Johnston was installed on 1 October 2010. The usual term of a Governor General is five years.

On 17 March 2015, the Prime Minister announced that Mr. Johnston's appointment had been extended until September 2017. However, the appointment is "at pleasure," meaning that Mr. Johnston remains Governor General until the government takes action to replace him.

**3.1.3 WHAT IS THE POWER OF THE GOVERNOR GENERAL REGARDING A DISSOLUTION OF PARLIAMENT AND CALLING AN ELECTION?**

If a prime minister who enjoys the confidence of the House of Commons asks the Governor General for a dissolution of Parliament and a proclamation initiating an election, that request will almost always be granted.

If a prime minister who has lost a confidence vote asks for a dissolution, the Governor General probably has the discretion to decide whether anyone else is capable of forming a government. (See also section 3.1.9, below.)

**3.1.4 WHEN MUST AN ELECTION BE HELD?**

Amendments were made to the *Canada Elections Act* during the 39<sup>th</sup> Parliament to provide for fixed-term general elections to be held every four years. The first election under the amended Act was to have been held on 19 October 2009. However, the amendments did not affect the power of the Governor General to dissolve Parliament and call for a general election, nor did they affect the prerogative of the prime minister to tender advice to the Governor General on these matters.

**3.1.5 WHAT POWER DOES THE GOVERNOR GENERAL POSSESS TO ASK A PARTY LEADER TO FORM A GOVERNMENT?**

Unless the government already in office continues in office, the Governor General asks the person most likely to enjoy the confidence of the House to form a government. Traditionally, the leader of the party with the most seats in the House is most likely to enjoy the confidence of the House, but this need not always be true.

All constitutional authorities are agreed that a government has the right to remain in office to meet the legislature when an election results in no majority position for any party.<sup>2</sup>

**3.1.6 WHAT ARE THE RIGHTS OR POWERS OF THE GOVERNOR GENERAL TO DISMISS A PRIME MINISTER/GOVERNMENT OR TO REPLACE A PRIME MINISTER/GOVERNMENT?**

Just as a Governor General has the legal power to appoint a government, he or she also has the power to dismiss it. However, this power is constrained by certain constitutional conventions.

Constitutional authorities generally agree that a Governor General may dismiss a government if it has been defeated on a clear vote of confidence and refuses to resign and call an election, or if another party has won a majority in an election and the existing government refuses to resign.

**3.1.7 HOW MUCH DISCRETION DOES THE GOVERNOR GENERAL HAVE TO ASK A LEADER TO FORM A GOVERNMENT AND TO INTERPRET ELECTION RESULTS?**

The Governor General clearly cannot appoint a new government until the existing government has resigned or been dismissed (subject to the answer to the preceding question).

If the result of a general election is a plurality (i.e., not a majority for any party), the existing prime minister would probably visit the Governor General to indicate whether he or she intends to try to win a vote of confidence when Parliament returns, or to resign.

It is not clear how long the prime minister could wait before being required to notify the Governor General of his or her intentions. Neither is it clear at what point the Governor General could require the prime minister to make a decision. According to the written Constitution, a sitting of Parliament is required at least once a year.

If the proper role for the Governor General were unclear, he or she would likely consult with his or her own advisers and with other constitutional experts. It is the responsibility of the Governor General, on behalf of the Crown:

to ensure that there is a new first minister and a government in office. The choice is often obvious, but not always. It falls to the Crown's representative to make sure that the interests of the people and the democratic system of government are respected and protected at all times.<sup>3</sup>

**3.1.8 MUST THE GOVERNOR GENERAL ACCEPT THE ADVICE TENDERED BY THE DULY APPOINTED PRIME MINISTER (REGARDING DISSOLUTION, FORMING A GOVERNMENT, ETC.)?**

From the time the Governor General appoints a prime minister until that prime minister loses the confidence of the House or is defeated in an election, the Governor General must generally follow the prime minister's advice. It has also been argued that the Governor General has the right and duty to use his or her reserve powers to protect fundamental principles of the Constitution, but this is much more contentious.<sup>4</sup>

### 3.1.9 WHAT OPTIONS ARE AVAILABLE TO THE GOVERNOR GENERAL IN THE EVENT THAT A SECOND DISSOLUTION IS REQUESTED BEFORE THE HOUSE OF COMMONS MEETS?

There have been occasional suggestions in Canada that after an inconclusive election the Prime Minister would be justified in requesting a dissolution and therefore a second election without even waiting for the Parliament to meet. This view is almost certainly wrong. The House of Commons has been elected, and it should surely be allowed to meet and see if it can transact public business. If it turned out that the House could not even elect a speaker, or if it turned out that neither the Prime Minister nor the leader of any other party could command the support of a majority of members, then there would be no alternative to dissolution; but to dissolve the House before it had even met would be an abuse of the electoral system, and one which the Governor General would surely be entitled to refuse.<sup>5</sup>

However, the situation might be different if the leaders of parties holding a majority of seats in the House of Commons unanimously asked the Governor General to call a new election before the new House returned, stating that none of them was in a position to achieve the confidence of the House on a Throne Speech.

Andrew Heard gives two examples of new elections being called before provincial assemblies formally met after an election: Prince Edward Island in 1859 and Newfoundland in 1909. In each case, the legislature was unable even to choose a speaker.<sup>6</sup>

### 3.1.10 WHAT WAS THE KING–BYNG AFFAIR? IS IT RELEVANT TODAY?

After the October 1925 general election, the incumbent Liberals (led by Mackenzie King) had 101 members of Parliament, while the Conservatives (led by Arthur Meighen) had 116 members. However, the Liberals had the support of the 24 Progressive Party members and the 4 Labour and Independent members, and Prime Minister King governed successfully for almost a year.

In June 1926, Prime Minister King lost the support of some members of the smaller parties. Facing the almost certain loss of a motion of censure, since the government had already been defeated on motions to amend and adjourn, he asked the Governor General, Lord Byng, for a dissolution and a new election.

Lord Byng refused the dissolution on a number of grounds: there appeared to be an alternative government capable of governing Canada, as he was assured by the Progressives that they would support a Meighen government through the next confidence matter; it was less than a year since the previous election; and there was a pending vote of censure, which the government was almost certain to lose. In the face of Lord Byng's refusal, King's government resigned and the Governor General asked Meighen to form a government.

At the time, it was mandatory that newly appointed ministers vacate their seats and run in a by-election (the requirement was repealed in 1931). Since Prime Minister Meighen could not afford even the temporary loss of so many members, he employed technicalities, such as a "temporary ministry" and "acting ministers,"

to avoid the required by-elections. A motion was brought in the House condemning such devices, and the government lost by one vote. Lord Byng then granted a dissolution to Prime Minister Meighen.

King made the issue a significant factor in the ensuing elections, claiming that it interfered with Canadian independence from the British Empire, and won a majority of the seats.

The matter is still relevant because, even now, senior constitutional experts cannot agree on whether Lord Byng acted properly or prudently. His best-known defender was the late Eugene Forsey. Peter Hogg considers the refusal to dissolve Parliament “at least unwise,” given the requirement that ministers vacate their seats.<sup>7</sup>

### 3.1.11 WHAT RELEVANCE DOES THE ONTARIO PROVINCIAL ELECTION IN 1985 HAVE TO THE POWERS OF THE GOVERNOR GENERAL? WHAT DID THE LIEUTENANT GOVERNOR DO IN THAT CASE?

In the Ontario election of May 1985, the incumbent Progressive Conservatives (led by Frank Miller) won 52 seats, the Liberals (David Peterson) won 48 seats, and the NDP (Bob Rae) 25 seats. The Progressive Conservative leader selected a Cabinet, which was sworn in. The other two parties then entered into a written agreement that, should the Liberals form a government, the NDP would not try to defeat them for two years, and the Liberals would not call an election for the same period.

The Miller government was defeated on 18 June 1985 after the debate on the Throne Speech. Although Mr. Miller threatened to ask for a dissolution, his letter of resignation suggested that Mr. Peterson would be able to gain the confidence of the House and that he should be asked to form a government. The Lieutenant Governor followed this advice, and the Peterson government took over on 26 June 1985. However, the Lieutenant Governor made clear in his official statement that the written agreement had no legal force or effect and did not affect the powers of the Lieutenant Governor or of the members of the Legislative Assembly.

## 3.2 THE PRIME MINISTER

### 3.2.1 WHEN DOES A PRIME MINISTER CEASE TO HOLD OFFICE?

A prime minister ceases to hold office when the Governor General accepts his or her resignation or when the prime minister is dismissed by the Governor General. After an electoral defeat, a prime minister resigns when his or her successor is ready to form a government.<sup>8</sup>

### 3.2.2 MUST A PRIME MINISTER RESIGN? CAN HE OR SHE BE REPLACED (I.E., DISMISSED) WITHOUT HAVING SUBMITTED A RESIGNATION?

Although no prime minister since Confederation has been dismissed, this is not to say that it could not happen.<sup>9</sup> It would presumably be required if a prime minister became incapacitated and could not tender a resignation.

### 3.2.3 WHAT HAPPENS IF A PRIME MINISTER DIES OR IS INCAPACITATED WHILE IN OFFICE?

There are few procedural implications if the prime minister dies in office. If it happens while the House of Commons is sitting, the House may adjourn for an extended period. Only two prime ministers have died in office: Sir John A. Macdonald on 6 June 1891 (during a session) and Sir John Sparrow David Thompson on 12 December 1894 (while Parliament was prorogued). Macdonald was succeeded by John Abbott, a senator, and Thompson was replaced by Mackenzie Bowell.

The incapacity of a prime minister would be more problematic; no precedents exist for this situation.

When a new ministry is being formed after the death, resignation, or dismissal of a prime minister, it is appropriate for the House to adjourn from day to day and to transact only routine business on the days when it meets.<sup>10</sup>

### 3.2.4 MUST THE GOVERNOR GENERAL ACCEPT A RESIGNATION FROM A PRIME MINISTER?

The Governor General must generally follow the advice of the prime minister.

### 3.2.5 WHO WERE CANADA'S SHORTEST-SERVING PRIME MINISTERS?

**Table 1 – The Shortest Terms Served by Prime Ministers Since Confederation**

Prime Minister	Party	Days	Duration
Arthur Meighen 29 June 1926 to 27 September 1926 and 10 July 1920 to 28 December 1921	National Liberal and Conservative Party, Conservative	623	1 year, 8 months and 14 days
John Joseph Caldwell Abbott 16 June 1891 to 24 November 1892	Liberal-Conservative	527	1 year, 5 months and 9 days
Mackenzie Bowell 12 December 1894 to 27 April 1896	Conservative	493	1 year, 4 months and 6 days
Charles Joseph (Joe) Clark 4 June 1979 to 2 March 1980	Progressive Conservative	272	8 months and 28 days
A. Kim Campbell 25 June 1993 to 3 November 1993	Progressive Conservative	131	4 months and 9 days
John Napier Turner 30 June 1984 to 16 September 1984	Liberal	78	2 months and 17 days
Charles Tupper 1 May 1896 to 8 July 1896	Conservative	68	2 months and 7 days

### 3.3 MINISTERS

#### 3.3.1 WHEN DO EXISTING MINISTERS CEASE TO HOLD OFFICE? WHEN DO NEW MINISTERS ASSUME OFFICE?

Ministers are chosen by the prime minister and can be removed by the prime minister, although they are formally sworn in by the Governor General.

In the event that a government is defeated in a general election, the government may still remain in office to face the new House. Only when the prime minister – and not any individual or group of ministers – submits his resignation to the Governor General does the government cease to exist. At that point, the existing ministers cease to hold office.

New ministers assume office after they are sworn in as Privy Councillors by the Clerk of the Privy Council at a ceremony presided over by the Governor General. In this ceremony, ministers swear the oath of allegiance, the Privy Councillor's oath, and the oath of office for their respective portfolio.

#### 3.3.2 WHAT HAPPENS IF AN EXISTING MINISTER IS DEFEATED?

The practice is to replace defeated ministers when new ministers are sworn in, which happens soon after the election.

#### 3.3.3 DO MINISTERS NEED TO BE MEMBERS OF THE HOUSE OF COMMONS OR THE SENATE?

No. The prime minister can choose individuals from outside Parliament to become ministers, but it is customary for those individuals to seek election to the House or be appointed to the Senate as soon as possible afterwards.

#### 3.3.4 CAN SENATORS BE APPOINTED TO SIT IN CABINET?

Yes. This has been the case since Confederation; the first Cabinet under Sir John A. Macdonald had 13 ministers, 5 of whom were senators. During the 39<sup>th</sup> Parliament, for example, two members of the Cabinet were senators.

#### 3.3.5 MUST THE LEADER OF THE GOVERNMENT IN THE SENATE BE A MINISTER?

Although the Leader of the Government in the Senate has generally been a minister, there is no constitutional or legal requirement that the two offices be combined. The most recent Leader of the Government in the Senate to be a minister was Marjory LeBreton, who served in this role from 2008 to 2013 and held the title of Minister of State (Seniors) from 2008 to 2010.

### 3.3.6 WHAT HAPPENS IF A GOVERNMENT HAS FEW OR NO MPs FROM A PARTICULAR REGION OR PROVINCE?

In the past, prime ministers have turned to the Senate to make up for a lack of regional or provincial representation in their caucuses. This was done, for example, in 2006 and 2008 by Prime Minister Stephen Harper and in 1979 by former prime minister Joe Clark to make up for a lack of Quebec representation on the Conservative benches in the House of Commons, and by the Liberal government in 1980–1984 to compensate for a lack of seats in the West. In 1997, former prime minister Jean Chrétien appointed Alasdair Graham as Government Leader in the Senate to make up for a lack of Liberal representation in Nova Scotia.

## 3.4 MEMBERS OF PARLIAMENT

### 3.4.1 WHEN DO MEMBERS OF PARLIAMENT CEASE BEING MEMBERS?

Legally speaking, there are no members of Parliament once dissolution occurs. (See section 5.1.1, below.)

### 3.4.2 WHEN DOES AN ELECTED CANDIDATE OFFICIALLY BECOME A MEMBER OF PARLIAMENT?

It is not entirely clear at what precise moment a successful candidate in a general election becomes a member of Parliament. One possible date is the date on which a returning officer declares elected the candidate who obtained the largest number of votes in his or her constituency. Another possibility is the date on which the Chief Electoral Officer sends to the Clerk of the House of Commons the certified list of members elected to serve in the House of Commons.

In any case, section 128 of the *Constitution Act, 1867* requires MPs to swear or affirm allegiance to the Queen before taking their seats in the House of Commons. The swearing-in is normally done by the Clerk of the House of Commons before the opening of Parliament. It occurs on an individual basis at the convenience of the MP.

All MPs (not just the newly elected) must be sworn in.

### 3.4.3 WHEN DO THEY BEGIN RECEIVING ALLOWANCES AND SERVICES?

Newly elected members receive a sessional allowance – or salary – starting on the date of their election as certified in the appropriate writ issued by the Chief Electoral Officer. In the case of members who are re-elected, most of their personal entitlements and privileges are unaffected and most services are reinstated.

All MPs receive a prorated member's office budget that is based on the number of days from the date of the election to the end of the fiscal year (31 March).

## 4 GOVERNMENT

### 4.1 PUBLIC FINANCES

#### 4.1.1 HOW DOES THE FEDERAL GOVERNMENT FINANCE ITSELF DURING AND AFTER AN ELECTION PERIOD?

Sufficient funding can be allocated in several ways to enable the federal government to function during an election period. The means used may depend upon when the election takes place.

If an election occurs after the main estimates and subsequent appropriations bills have been adopted, then funding has already been approved by Parliament and is available for use.

If, on the other hand, an election has been called before adoption of the main estimates and appropriations bills, two avenues are open to ensure that funding is available when needed. The first involves the use of interim supply, a mechanism commonly used to provide continued funding while the House considers the main estimates, which are not adopted until several months after the beginning of a new fiscal year. Interim supply has been described as follows:

Since the fiscal year begins on April 1 and the normal Supply cycle only provides for the House to decide on main estimates in June, the government would appear to be without funds for the interim three months. For this reason, the House authorizes an advance on the funds requested in the main estimates to cover the needs of the public service from the start of the new fiscal year to the date on which the appropriation act based on the main estimates of that year is passed. This is known as “interim supply,” a spending authority made available to the government pending approval of the main estimates.

The government must give 48 hours’ notice of a motion setting out in detail the sums of money it will require, expressed in twelfths of the amounts to be voted in the main estimates. Most are three-twelfths of the total amount, corresponding to the three-month hiatus between the beginning of the new fiscal year and the final passage of the main estimates, but the government may request more. The motion for interim supply is considered on the last allotted day of the period ending March 26. Concurrence in the motion is followed by the consideration and passage at all stages of an appropriation bill based on interim supply and authorizing the prescribed withdrawals from the Consolidated Revenue Fund. The granting of interim supply does not necessarily constitute immediate House approval for the programs to which it applies in the main estimates. However, during the examination of the main estimates, neither the House nor its committees can reduce a vote to an amount less than the amount already granted in interim supply.<sup>11</sup>

The use of Governor General’s special warrants offers another alternative. (See the next question.)



#### 4.1.2 WHAT ARE GOVERNOR GENERAL'S SPECIAL WARRANTS? ARE THERE ANY RESTRICTIONS OR LIMITATIONS ON THEIR USE?

O'Brien and Bosc describe these special warrants as follows:

In special circumstances, the *Financial Administration Act* allows the Governor in Council to ask the Governor General to issue a Special Warrant permitting the government to make charges on the Consolidated Revenue Fund, not otherwise authorized by Parliament, provided that the following conditions are met:

- Parliament is dissolved;
- a Minister has reported that an expenditure is urgently required for the public good; and
- the President of the Treasury Board has reported that there is no appropriation for the payment.<sup>12</sup>

Special warrants may be used only from the date of dissolution until 60 days after the date fixed for the return of the writs after the election. They may not be used during that period if Parliament is brought back and then prorogued. O'Brien and Bosc add that:

The *Financial Administration Act* requires that every Special Warrant be published in the *Canada Gazette* within 30 days of its issue. A list of the amount authorized under such a warrant must also be tabled in the House within 15 days of the opening of the next session of Parliament. Because a Special Warrant is deemed to be an appropriation for the fiscal year in which it is issued, authorization must be included retroactively in the first appropriation act passed in that session.<sup>13</sup>

#### 4.1.3 WHAT HAPPENS IF PARLIAMENT IS DISSOLVED WHEN SUPPLEMENTARY ESTIMATES ARE BEFORE THE HOUSE AND HAVE NOT BEEN ADOPTED?

Under such circumstances, departments and agencies are first expected to reallocate resources from within their own budgets to cover their needs. If they require additional funds, they may then draw upon the Treasury Board Secretariat's Contingencies Vote 5. Once these appropriations have been exhausted, Governor General's special warrants can be used to pay for the balance of requirements.

This last situation occurred when Parliament was dissolved on 26 March 2011 for a general election without adopting the *Supplementary Estimates (C), 2010–11* or interim supply for the 2012 fiscal year. In this case, the government used Governor General's special warrants to authorize its expenditures during the election period.

Special warrants authorize government spending during an election without the normal procedures of parliamentary scrutiny. Shortly after Parliament's return in 2011, the government tabled a statement regarding the use of special warrants that was referred to a committee for scrutiny.<sup>14</sup>

## 4.2 FORMING A GOVERNMENT

### 4.2.1 IF A GOVERNMENT IN OFFICE IS RE-ELECTED BY OBTAINING A MAJORITY OF SEATS IN THE ELECTION, DOES IT REMAIN IN OFFICE, OR DOES THE LEADER HAVE TO BE INVITED TO FORM A GOVERNMENT?

The government stays in office until the prime minister resigns or is dismissed by the Governor General.

### 4.2.2 IF THERE IS NO CLEAR MAJORITY, WHICH PARTY IS ENTITLED TO BE ASKED TO FORM A GOVERNMENT FIRST – THE PARTY WITH THE MOST SEATS IN THE HOUSE OF COMMONS, OR THE INCUMBENT PARTY?

If there is no clear majority, the incumbent prime minister is given the choice of resigning or meeting the House to see if his or her party has the confidence of the House.<sup>15</sup>

### 4.2.3 IF THERE IS NO CLEAR MAJORITY AND THE GOVERNMENT RESIGNS, HOW IS THE PRIME MINISTER DETERMINED?

Should the incumbent prime minister and Cabinet resign in the event there is no clear majority, the Governor General would probably ask the leader of the opposition party most likely to enjoy the confidence of the House to form a government. The confidence of the House might be evidenced through an informal agreement or a coalition between parties.

In almost every case, the Governor General has chosen as the prime minister the leader of the party that has received the largest number of seats in the House of Commons, even if it is not the majority.<sup>16</sup>

### 4.2.4 WHAT HAPPENS IF TWO PARTIES HAVE AN EQUAL NUMBER OF SEATS IN THE COMMONS AND EACH WANTS TO FORM A GOVERNMENT?

If two parties were tied after an election, the prime minister would have to make a decision. The prime minister could try to gain the support of other parties – either formally or informally (a coalition government, or an entente; see the next question). If this proved impossible, the prime minister could still try to form a government and seek the support of the House. An incumbent prime minister appears to be entitled to try to form a government first. If it were clear that no other parties were willing to support the prime minister, a difficult constitutional question could arise for the Governor General, although he or she would probably let the prime minister attempt to form a government.

If the prime minister did try to form a government, he or she would need to have new ministers sworn in. The prime minister would then advise the Governor General to recall Parliament and would deliver a Speech from the Throne. Inevitably, a vote of confidence would arise.

If the prime minister were defeated in that vote, he or she would have to tender his or her resignation to the Governor General. The prime minister could advise dissolution and a general election, or suggest that the leader of the other party be asked to try to form a government. (The former advice would raise many of the same issues as the King–Byng Affair; see section 3.1.9, above.) Many factors would be relevant to the decision of the Governor General: the numbers of seats of the two parties (and other parties); whether there were formal or informal offers of support to the other party; etc. Likely, if such a situation occurred shortly after an election, and there was a reasonable chance that the other party could form a government and obtain the confidence of the House, the Governor General would invite the leader of that party to form the government.

#### 4.2.5 IN A CASE WHERE NO PARTY HAS A MAJORITY, WHAT OPTIONS ARE THERE FOR PARTIES TO GOVERN?

Two (or more) parties can form a coalition. In a *coalition government*, members of different political parties are brought into Cabinet and together contribute to policies that become part of the government's legislative program. There has been only one coalition government at the federal level in Canada's history, and it was not as a result of a minority situation. In 1917, as a way of broadening support for conscription during World War I, Conservative prime minister Sir Robert Borden invited individual Liberals and independents to join a coalition known as the Union Government; it lasted until Borden's retirement in 1920. Coalition governments are more common in countries with proportional representation electoral systems. According to C. E. S. Franks, "a minority government is more likely to make concessions over policy and legislation with a third party than to enter into a coalition."<sup>17</sup> Franks' observation is borne out by the events of the 38<sup>th</sup> Parliament when the Liberal government reached an accommodation with the opposition New Democratic Party (NDP); changes were made to the 2005 Budget in exchange for NDP support.

Two (or more) parties may choose to have a *formal pact* whereby a smaller party does not have membership in Cabinet, but has publicly agreed in writing to support another party in government for a limited period in exchange for specific policy concessions from the government. The 1985–1987 minority government in Ontario was an example of this type of arrangement.<sup>18</sup>

Another option is to form an *informal alliance* or an *agreement* with another party, without any written commitment. This is not as formal as a coalition and does not result in members of another party joining Cabinet. According to Peter Dobell, the 1972 informal alliance between the federal Liberals and the NDP meant that "every policy proposal, all legislation, was discussed between representatives of the two parties ... [O]nly when agreement had been reached did the government proceed to introduce a bill."<sup>19</sup>

Minority governments can also deal with the situation by governing on a case-by-case basis, "where the government makes a separate accommodation with the opposition parties on each bill."<sup>20</sup>

#### 4.2.6 DOES A GOVERNMENT (CABINET) HAVE FULL AND COMPLETE AUTHORITY DURING AN ELECTION, BEFORE A NEW GOVERNMENT IS SWORN IN?

If a government held a majority and went to an election at a time of its own choosing (subject to constitutional requirements that a general election be held, at a minimum, every five years), then it and its ministers continue to hold full and complete authority until a new government is sworn in.

However, such a government might wish to exercise caution during an electoral campaign and the period leading up to the swearing-in of a new government. Guidelines have been published in this regard.<sup>21</sup> Unless prompted by urgency, controversial decisions, appointments to important positions, or policy decisions that might unreasonably bind future governments should be postponed until a new government is sworn in. If a government were to disregard these restrictions, there is no penalty in law that could be exercised against it. However, the possibility of political sanction in the form of a defeat at the polls would have to be taken into account.

Were a government to be defeated in a clear vote of confidence in the House of Commons, then restrictions on its ability to act before the swearing-in of a new government would be more intense, even though no legal proscription would apply. Similarly, if a government had lost the confidence of the House yet acted in the areas mentioned above during an election campaign (and thus when the House is not sitting), the chances of it being punished at the polls would be heightened.

The case of a government that has been defeated at the polls and is waiting for a new government to be sworn in is much clearer. As the late political scientist Dr. J. R. Mallory has written, there is “a sound body of constitutional precedent that a government which has been defeated at the polls should refrain from consequential policy decisions and major appointments.”<sup>22</sup> Mallory has summarized the variety of circumstances above in the following way:

When a government has been defeated at the polls or in the House of Commons, it becomes an obligation of all party leaders to assist in the formation of a new government. Until a new government can be formed, it is the duty of the old one to remain in office. While in office it still has the duty and the authority to govern, though a government that has lost the confidence of the people or of the House can only make routine decisions until a government which has the support of the House can be formed.<sup>23</sup>

#### 4.2.7 HOW SOON AFTER AN ELECTION DOES A NEW GOVERNMENT TAKE OFFICE?

Since 1957, in the case of elections that result in a new government, that government has been sworn in between 10 and 15 days after the election. Since 1920, it has been the tradition that the new ministry is sworn in when it is ready to form a government.<sup>24</sup>

The following table shows the elections since 1957 in which the governing party lost the election, the date the new government was sworn in, and the number of days that elapsed before it was sworn in.

**Table 2 – Elapsed Time Between the Election and Swearing-In of Governments in Canada, 1957–2006**

Election Date	Government Sworn In	Delay
23 January 2006	6 February 2006	14 days
25 October 1993	4 November 1993	10 days
4 September 1984	17 September 1984	13 days
18 February 1980	3 March 1980	14 days
22 May 1979	4 June 1979	13 days
8 April 1963	22 April 1963	14 days
10 June 1957	21 June 1957	11 days

It should be recalled that the swearing-in of a government occurs only when the party forming the government changes as a result of the election. When the party that formed the government before an election remains in power, the ministry continues, and new Cabinet appointments or a Cabinet shuffle may occur at any time. This is the case even if the party's leader (the prime minister) changed between the last election and the current election, or if he or she did not personally return to the House.

### **4.3 MAJORITY GOVERNMENT**

#### **4.3.1 WHAT CONSTITUTES A MAJORITY GOVERNMENT?**

The general election of 19 October 2015 will result in a House of Commons with 338 members (an increase from 308 in 2011). To form a majority government, a party must have 50% of the seats – i.e., 169 – plus one. In other words, a party would need to have at least 170 seats in order to form a majority government (but see the next question).

#### **4.3.2 IF THE SPEAKER IS FROM THE GOVERNMENT SIDE, IS HE OR SHE INCLUDED IN THE MAJORITY? CAN HE OR SHE VOTE?**

The Speaker is included; however, the Speaker does not vote except to break a tie. This is called a “casting vote” and is not partisan. That is, the Speaker traditionally votes so as to maintain the status quo or to allow further debate on a matter such that a majority decision might be reached. Therefore, if a government had a bare majority – 170 seats – it could be in difficulty if the Speaker were elected from its ranks. Of note, the election of the Speaker is the first order of business for the House once it reconvenes (see section 5.4.1, below).

### **4.4 MINORITY GOVERNMENT**

#### **4.4.1 WHAT IS A MINORITY GOVERNMENT?**

A minority government is simply one that does not have a majority of MPs.

As explained in the answer to the previous question, a bare majority of 170 would not be effective if the Speaker were elected from the government side because the Speaker does not vote except to break a tie. The Speaker could, however, be chosen from among the MPs of the opposition parties. For example, Peter Milliken, a member of the Liberal caucus who was Speaker during the 37<sup>th</sup> and 38<sup>th</sup> Parliaments – both under Liberal governments – was again chosen for this position at the beginning of the 39<sup>th</sup> and 40<sup>th</sup> Parliaments, when the Government was formed by the Conservative Party.

#### 4.4.2 WHAT TYPES OF ARRANGEMENTS ARE POSSIBLE FOR POLITICAL PARTIES TO WORK TOGETHER? WHAT ARE THE DIFFERENCES BETWEEN THEM? WHAT PRECEDENTS EXIST?

Political scientist Linda Geller-Schwartz has identified five modes of cooperation for minority governments. They range from a coalition through a formal pact, an informal understanding, ad hoc majorities on each issue, and opposition party restraint while the government acts as though it had a majority.<sup>25</sup>

At the federal level in Canada, there have been no coalition governments as a result of a minority situation. Neither have there been formal agreements on cooperation between parties.

There was, however, an informal understanding between the Liberal Party and the NDP between 1972 and 1974.

The looser form of cooperation that Geller-Schwartz refers to as “*ad hoc* majorities” was evident during the minority governments of Mackenzie King during the 1920s, as well as during parts of the Pearson minority governments of the 1960s.

The mode in which parties cooperate the least sees opposition parties acting with restraint for fear of precipitating an election in which they expect to lose seats, and the government acting as though it had a majority. This mode was evident during the Diefenbaker governments of the 1950s and 1960s, during the early days of the Pearson governments, and during the Clark government of 1979.

(See also section 4.2.5, above.)

## 4.4.3 WHAT IS CANADA'S EXPERIENCE WITH MINORITY GOVERNMENTS?

**Table 3 – Federal Minority Governments in Canada, 1921–2008**

Ministry	General Election	Term of Parliament	House of Commons Sitting Days	Minority <sup>a</sup>
William Lyon Mackenzie King	12 June 1921	8 March 1922 to 27 June 1925	366	Government – 116 Opposition – 119 Minority – 3
William Lyon Mackenzie King (to 28 June 1926) Arthur Meighen (29 June 1926 to 24 September 1926)	29 October 1925	7 January 1926 to 2 July 1926	111 (Meighen met the House for 3 of those days)	Government – 99 Opposition – 146 Minority – 47
John George Diefenbaker	10 June 1957	14 October 1957 to 1 February 1958	78	Government – 112 Opposition – 153 Minority – 41
John George Diefenbaker	18 June 1962	27 September 1962 to 6 February 1963	72	Government – 116 Opposition – 149 Minority – 33
Lester Bowles Pearson	8 April 1963	16 May 1963 to 8 September 1965	418	Government – 129 Opposition – 136 Minority – 7
Lester Bowles Pearson	8 November 1965	18 January 1966 to 23 April 1968	405	Government – 131 Opposition – 134 Minority – 3
Pierre Elliott Trudeau	30 October 1972	4 January 1973 to 9 May 1974	256	Government – 109 Opposition – 155 Minority – 46
Charles Joseph (Joe) Clark	22 May 1979	9 October 1979 to 14 December 1979	49	Government – 136 Opposition – 146 Minority – 10
Paul Martin	28 June 2004	4 October 2004 to 29 November 2005	160	Government – 135 Opposition – 173 Minority – 38
Stephen Harper	23 January 2006	3 April 2006 to 7 September 2008	292	Government – 124 Opposition – 184 Minority – 60
Stephen Harper	14 October 2008	29 October 2008 to 26 March 2011	262	Government – 143 Opposition – 165 Minority – 22

Note: a. At the general election.

Source: Table prepared using data from [Sitting Days of the House of Commons by Calendar Year: 1968 to Date](#), Parliament of Canada.

#### 4.4.4 HOW LONG CAN A MINORITY GOVERNMENT STAY IN OFFICE?

A minority government can stay in office for the same length of time as a majority government – which is to say, five years – as long as it is not defeated in the House on a matter of confidence. Such a long tenure, however, would be highly unusual. Minority governments do not generally last very long, either because they are defeated on a major policy issue, or because the governing or opposition parties believe that they have a good chance of winning an election and therefore precipitate one.

Although the fixed-date election provision of the *Canada Elections Act* foresees an election on the third Monday of October in the fourth calendar year after the election day for the last general election, the power of the Governor General to dissolve Parliament (and thereby trigger an election) is unaffected.

#### 4.4.5 WHEN CAN A MINORITY GOVERNMENT REQUEST A DISSOLUTION OF PARLIAMENT TO SEEK A NEW MANDATE?

The prime minister of a minority government can request a dissolution at any time. (See also section 3.1.9, above.)

#### 4.4.6 IS IT NECESSARY FOR A MINORITY GOVERNMENT TO HAVE THE FORMAL SUPPORT OF SMALLER PARTIES IN ORDER TO GOVERN?

No. A minority government can survive without the explicit support of smaller parties. To do so, it hopes that individual members or the smaller parties will support it, or at least avoid defeating the government because they fear the consequences of an election.

#### 4.4.7 ARE THERE ANY SPECIAL RULES REGARDING A MINORITY GOVERNMENT?

No.

### 4.5 THE CONFIDENCE CONVENTION

#### 4.5.1 WHAT IS THE “CONFIDENCE CONVENTION”?

The confidence convention is a matter of parliamentary practice and tradition that is not written into any statute or Standing Order of the House. The convention provides that if the government is defeated in the House on a question of confidence, then the government is expected to resign or seek the dissolution of Parliament in order that a general election may be held.



#### 4.5.2 WHAT IS A VOTE OF CONFIDENCE?

According to O'Brien and Bosc:

What constitutes a question of confidence in the government varies with the circumstances. Confidence is not a matter of parliamentary procedure, nor is it something on which the Speaker can be asked to rule. It is generally acknowledged, however, that confidence motions may be:

- explicitly worded motions which state, in express terms, that the House has, or has not, confidence in the government;
- motions expressly declared by the government to be questions of confidence; [and]
- implicit motions of confidence, that is, motions traditionally deemed to be questions of confidence, such as motions for the granting of Supply (although not necessarily an individual item of Supply), motions concerning the budgetary policy of the government and motions respecting the Address in Reply to the Speech from the Throne.<sup>26</sup>

#### 4.5.3 WHO DECIDES WHETHER A PARTICULAR VOTE IS ONE OF CONFIDENCE?

The government decides. It could announce, before a vote, that it does not consider that the vote involves confidence, or it could call for a specific vote of confidence after the loss of a vote on an issue traditionally deemed to be a question of confidence.

#### 4.5.4 CAN A GOVERNMENT BE DEFEATED IN THE HOUSE OF COMMONS WITHOUT LOSING THE CONFIDENCE OF THE HOUSE?

Yes (see above). During the minority Trudeau Liberal government in 1972–1974, the government lost 8 of 81 recorded votes and asked for a dissolution only when it had been defeated on an important issue relating to the budget. Prime Minister Pearson's minority Liberal government lost 3 votes without resigning or asking for an election. One of these losses involved a budget matter, but the government then asked for – and won – an explicit vote of confidence.

#### 4.5.5 WHAT IS THE STATUS OF THE GOVERNMENT AFTER THE LOSS OF A VOTE IN THE SENATE?

The measure is defeated but the status of the government is not affected; the Senate is not a confidence chamber. The government is responsible only to the elected chamber.

#### 4.5.6 WHEN CAN CANADIANS EXPECT TO SEE THE FIRST CONFIDENCE VOTE IN A NEW PARLIAMENT?

The first confidence vote is likely to occur during the debate on the Address in Reply to the Speech from the Throne, which occurs when the new Parliament is convened.

## 5 PARLIAMENT

### 5.1 DISSOLUTION

#### 5.1.1 WHAT IS THE STATUS OF MEMBERS OF THE HOUSE OF COMMONS AFTER DISSOLUTION?

After dissolution, and the issue of writs for a general election, there are legally no members of the House of Commons.

There is no clear authority for the preceding statement; however, section 69 of the *Parliament of Canada Act* makes the following provision:

For the purposes of the allowances payable under sections 55 and 63, a person who, immediately before a dissolution of the House of Commons, was a member thereof shall be deemed to continue to be a member of the House until the date of the next following general election.

The above “deeming provision” in the *Parliament of Canada Act* is solely for the purposes of salaries, some additional allowances and benefits, and certain other services.<sup>27</sup> It does not imply that a former member retains that status until the date of the next general election.

The conclusion that dissolution terminates the office of member of the House of Commons is supported by J. P. Joseph Maingot. He describes the circumstances in which a person ceases to be a member of the House of Commons and states that these include a warrant for the issue of a writ for the election of a new member.<sup>28</sup>

The implications of a person’s legally ceasing to be a member of the House of Commons can be seen outside of Parliament. One significant implication involves the *Privacy Act*, section 8(2) of which provides the following exemption from the provisions of the Act:

8(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

...

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

In other words, personal information may be disclosed to a member of Parliament. This exemption makes sense in terms of the constituency work that is an inherent part of a member’s job. The Treasury Board Secretariat has addressed the question of what happens after dissolution. Its information notice, entitled “Scope of Paragraph 8(2)(g) of the *Privacy Act* upon Dissolution of Parliament,” states:

Upon dissolution of Parliament, members of the House of Commons lose their status and title. Consequently, personal information under the control of a government institution can no longer be provided to them pursuant to paragraph 8(2)(g) of the Act. Furthermore, this paragraph cannot be invoked following the election until the new members of the House of Commons have been sworn in.

Former Members of Parliament may obtain information about an individual who has requested their assistance with the consent of the individual. In special circumstances, institutions may consider disclosing personal information to former Members pursuant to sub-paragraph 8(2)(m)(ii) of the *Privacy Act* which permits disclosure “where in the opinion of the head of the institution ... disclosure would clearly benefit the individual to whom the information relates.” Note that subsection 8(5) requires that institutions notify the Privacy Commissioner of the disclosures made under paragraph 8(2)(m).<sup>29</sup>

The information notice goes on to state that “Senators continue to hold office after the dissolution of Parliament. Therefore, paragraph 8(2)(g) may still be applied following dissolution to provide personal information to a Senator.”

#### 5.1.2 WHAT SALARIES, ALLOWANCES AND SERVICES ARE MEMBERS OF PARLIAMENT ENTITLED TO DURING A DISSOLUTION?<sup>30</sup>

- *Salaries and allowances:* During a dissolution of Parliament, members of the House of Commons continue to receive their sessional allowances (salary) and to make pension contributions and are entitled to certain other benefits. Members who receive additional salaries for the positions of Speaker, Deputy Speaker, leaders of opposition parties, house leaders of the opposition parties, and chief whips of all parties continue to be eligible for these allowances.
- *Insurance benefits:* Health and dental care coverage for members continue during dissolution.
- *Budgets:* Members may continue to use their member’s office budget and petty cash account during dissolution, subject to some limitations. Resources provided to members to support their parliamentary functions may not be used for election purposes.

To ensure continuity in the administration of the House of Commons during dissolution, the budget of the Speaker and the Deputy Speaker continue until a new Speaker and Deputy Speaker are elected.

The budgets of party research offices, offices of the leaders of opposition parties, house leaders of opposition parties and chief whips of all parties may be used during dissolution, but these offices and house officers should not spend more than 1/12<sup>th</sup> of their annual budgets for each full month between the date of dissolution and election day. The budgets of national caucus chairs and of the deputy chair and assistant deputy chair of the Committees of the Whole are suspended upon dissolution.

If any of the resources provided to members or House officers to support their parliamentary functions are used for election purposes, the House of Commons must be reimbursed the equivalent dollar value.

- *Travel:* As of the date of dissolution, members may no longer claim expenses for travel within their constituencies or the province or territory in which their constituency is located. However, during dissolution members are entitled to the equivalent of one return trip per week between Ottawa and their constituency.

- *Mailing privileges:* Members are provided with limited free mailing privileges and a special bulk mailing rate during the life of a Parliament. These privileges end 10 calendar days after Parliament is dissolved.
- *Library of Parliament:* Members, including those who have decided not to run again, continue to have access to the services of the Library of Parliament and may request information and documentation. During dissolution, however, research and analysis services for members of the House of Commons are limited to completing research requested before the election call; assisting members with technical questions for the benefit of constituents; providing copies of previously prepared research papers; and providing copies of Library publications. The Library's research and analysis services for senators on non-partisan matters related to parliamentary duties continue.
- *Members' offices:* Members' Ottawa offices remain open to provide services to constituents, and constituency offices may do so as well. It should be noted that employees of members of the House of Commons are hired to support their parliamentary functions; therefore, during dissolution, any election-related work performed by these employees must be undertaken outside of normal working hours and not in the Ottawa or constituency offices.

## 5.2 BRINGING PARLIAMENT BACK

### 5.2.1 WHO DECIDES WHEN A NEW PARLIAMENT BEGINS?

The Governor General, on the advice of the prime minister, sets the date on which a new Parliament begins.<sup>31</sup>

### 5.2.2 WHEN IS PARLIAMENT DUE TO COME BACK AFTER THE OCTOBER 2015 ELECTION?

A proclamation issued on 4 August 2015, at the same time as the proclamation dissolving Parliament, summoned Parliament to meet on 16 November 2015.

### 5.2.3 COULD A GOVERNMENT (ESPECIALLY A MINORITY GOVERNMENT) DELAY BRINGING PARLIAMENT BACK AND MEETING THE HOUSE OF COMMONS?

Yes. The proclamation setting the date for which Parliament is summoned can subsequently be changed.

### 5.2.4 WHAT CONSTITUTIONAL LIMITS ARE THERE ON WHEN PARLIAMENT MUST MEET?

Section 5 of the *Canadian Charter of Rights and Freedoms* (replacing a provision in the *Constitution Act, 1867*) specifies that Parliament must sit at least once every 12 months.

**5.2.5 WHAT PRACTICAL LIMITS ARE THERE ON WHEN PARLIAMENT MUST MEET?**

Parliament must vote to provide money for the operation of the government.  
(See section 4.1, above.)

**5.2.6 WOULD A DELAY IN THE RETURN OF THE HOUSE OF COMMONS  
AFFECT MEMBERS' SALARIES, ALLOWANCES OR BENEFITS?**

No.

**5.3 THE NEW HOUSE OF COMMONS**

**5.3.1 WHAT PARLIAMENT AND SESSION WILL BE STARTING  
AFTER THE OCTOBER 2015 ELECTION?**

The 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session.

**5.3.2 WHEN AND HOW DO COMMITTEES OF THE  
HOUSE AND THE SENATE GET STARTED?**

At the beginning of the first session of a new Parliament, the House of Commons appoints the membership of its Standing Committee on Procedure and House Affairs (the membership of which continues from session to session within a Parliament). Within 10 sitting days of its appointment, the Procedure and House Affairs Committee must prepare and report to the House the proposed membership of each House of Commons committee. Within 10 days after the adoption of the report on committee memberships, the Clerk of the House convenes meetings of all the standing committees for the purpose of electing a chair of each committee. After a chair and two vice-chairs have been elected, each committee will adopt routine motions to organize its work, such as the creation of a "Steering Committee."

In the Senate, at the beginning of each session, a Committee of Selection, consisting of nine senators, is appointed. The Committee nominates a senator to preside as Speaker *pro tempore*, and senators to serve on most select committees.<sup>32</sup> Once the membership of committees has been established, each committee holds a meeting at which it elects the chair and deputy chair and adopts certain procedural motions that allow it to function.

**5.3.3 HOW IS THE OFFICIAL OPPOSITION CHOSEN? WHAT HAPPENS IF TWO  
OPPOSITION PARTIES END UP WITH THE SAME NUMBER OF SEATS?**

By convention, the party that holds the second-highest number of seats in the House is designated the Official Opposition, although this practice is not set out in any Canadian rule or statute. The only exception to this convention occurred in 1922, when the Progressive Party declined to assume the role of the Official Opposition because it was supporting the government.

Should two opposition parties end up with the same number of seats, the Speaker may be called upon to decide which party should be designated the Official

Opposition. During the course of the 35<sup>th</sup> Parliament, changes in party strengths after a by-election and resignation resulted in the incumbent Official Opposition, the Bloc Québécois, and the Reform Party having the same number of seats. In his ruling of 27 February 1996, Speaker Gilbert Parent found that “in the case of a tie during the course of a Parliament incumbency should be the determining factor” for which party forms the Official Opposition. As such, the status quo was maintained and the Bloc Québécois remained the Official Opposition.

Although no federal precedent exists with regard to determining the Official Opposition in the event of a tie after an election, provincial precedent does exist. When two opposition parties each had an equal number of seats after the 1996 Yukon election, the Speaker determined that the principle of incumbency dictated “selecting an opposition party caucus which formed the government prior to an election to be the Official Opposition over an opposition party caucus that was a third party in the House prior to the election.”<sup>33</sup>

Where no incumbency exists, other factors could be taken into consideration by the Speaker in determining the Official Opposition. After a general election in 1983 in Alberta, the opposition was composed of two New Democrats and two independent members. The Speaker of the Legislature based his decision to grant Official Opposition status to the New Democratic Party, in part on the basis of the popular vote received by the party.

## 5.4 THE SPEAKER OF THE HOUSE OF COMMONS

### 5.4.1 WHEN IS THE SPEAKER OF THE HOUSE OF COMMONS ELECTED?

The *Constitution Act, 1867* (s. 44) requires that the election of the Speaker shall be the first order of business at the opening of the House after an election.

### 5.4.2 MUST THE SPEAKER COME FROM THE GOVERNMENT SIDE?

No. For example, Speaker Lucien Lamoureux was a Liberal Member when he became Speaker in 1966, but in the 1968 and 1972 elections he ran as an independent. He won both times and became Speaker again after each of these elections. His (Liberal) successor, James Jerome, remained Speaker through the Progressive Conservative government led by Joe Clark (1979–1980).<sup>34</sup> More recently, Peter Milliken, a Liberal Member who served as Speaker after the 2000 and 2004 elections, became Speaker again after the 2006 and 2008 elections that led to the Conservative governments of Stephen Harper.

### 5.4.3 WHAT HAPPENS IF THE SPEAKER IS NOT RE-ELECTED TO THE HOUSE OF COMMONS?

There is an election for Speaker of the House of Commons whether or not the former Speaker is re-elected to the House. The election of the Speaker at the opening of a Parliament is presided over by the member who has the longest period of unbroken service and who is not a member of the Cabinet and holds no office within the House.<sup>35</sup>

## 5.5 THE SENATE

### 5.5.1 HOW DOES A MINORITY GOVERNMENT AFFECT THE OPERATION OF THE SENATE?

A minority government does not affect the operation of the Senate, although one might reasonably expect increased political manoeuvring.

### 5.5.2 HOW ARE THE LEADER OF THE GOVERNMENT AND LEADER OF THE OPPOSITION SELECTED IN THE SENATE?

*Senate Procedure in Practice* explains that the “method of selection of the leaders is a matter for the relevant political group.”<sup>36</sup> The 1968 *Manual of Official Procedure of the Government of Canada* explains that “The Prime Minister selects the Leader of the Government in the Senate. ... No formalities whatever are required to effect or make known the Prime Minister’s selection of a Leader of the Government in the Senate.”<sup>37</sup>

### 5.5.3 MUST THE POLITICAL COMPOSITION OF THE SENATE NECESSARILY REFLECT THAT IN THE HOUSE OF COMMONS?

No. As the Speaker of the Senate ruled on 21 February 2001:

[P]recedents prove that there need not be a corresponding relationship in the political composition of the House of Commons and the Senate. Our parliamentary system continued to function even though the Senate had an Opposition that did not match the Official Opposition in the House of Commons when it was the Bloc or the Reform Party. Parliament is flexible enough to accommodate this possibility. This is because, in large measure, the Senate and the House of Commons are, and remain, independent, autonomous bodies performing roles that are complementary to each other.<sup>38</sup>

### 5.5.4 WHAT IS THE ROLE OF THE LEADER OF THE GOVERNMENT IN THE SENATE?

The *Parliament of Canada Act* provides that the Leader of the Government in the Senate has a role in determining the membership of the Standing Senate Committee on Internal Economy, Budgets and Administration (s. 19.1(3)).

The *Rules of the Senate of Canada* also provide that the Leader of the Government in the Senate is an ex officio member of all committees except the Standing Committee on Ethics and Conflict of Interest for Senators and the standing joint committees (Rule 12-3(3)). In addition, the *Rules* provide that, during Question Period, senators may ask questions of the Leader of the Government in the Senate on matters relating to public affairs (Rule 4-8(1)). As well, when the Senate orders that Government accounts and papers be tabled, the Leader of the Government in the Senate “shall cause these papers to be tabled” (Rule 14-1(2)). The *Rules* also provide that Government business (A bill, motion, report or inquiry initiated by the Government) “shall be called in such sequence as the Leader or the Deputy Leader of the Government shall determine” (Rule 4-13(3)).

**5.5.5 MUST THE LEADER OF THE GOVERNMENT IN THE SENATE BE A CABINET MINISTER?**

No. As noted in *Senate Procedure in Practice*, “The Leader of the Government has often been a cabinet minister, sometimes without portfolio.”<sup>39</sup> There have been at least five instances since Confederation when the Leader of the Government in the Senate was not a member of Cabinet: William Benjamin Ross, 1926; Wellington Bartley Willoughby, 1930–1932; Walter Morley Aseltine, 1958–1962; Alfred Johnson Brooks, 1962–1963; and Claude Carignan, 2013–present.<sup>40</sup>

**5.5.6 MUST THE OPPOSITION IN THE SENATE BE THE SAME AS THE OFFICIAL OPPOSITION IN THE HOUSE OF COMMONS?**

No. The Opposition in the Senate is the non-government party with the greatest number of senators. The House and Senate may be composed of different parties, and their relative strength in each chamber may be different.

If the Opposition in the Senate has more seats than the government party in the Senate, it may be considerably more difficult to pass government legislation through the Senate.

**5.5.7 MUST A POLITICAL PARTY HAVE A MINIMUM NUMBER OF SENATORS TO BE A RECOGNIZED PARTY IN THE SENATE?**

Yes. A recognized party is defined in Appendix I of the *Rules of the Senate of Canada* as:

A caucus consisting of at least five Senators who are members of the same political party. The party must have initially been registered under the *Canada Elections Act* to qualify for this status and have never fallen subsequently below five Senators. Each recognized party has a leader in the Senate.

**5.5.8 HOW MANY SENATORS ARE NEEDED TO ENSURE GOVERNMENT REPRESENTATION IN THE SENATE?**

A single senator from the government party may advance government business through the Senate regardless of the size of the government caucus. The government party would need at least five senators to be a recognized party; however, a senator is not required to belong to a recognized party to sponsor legislation.

**5.5.9 HAS THERE EVER BEEN A TIME WHEN THE GOVERNING PARTY IN THE HOUSE OF COMMONS HAS HAD NO REPRESENTATION IN THE SENATE?**

No.



## 5.6 THE SPEAKER OF THE SENATE

### 5.6.1 WHEN IS THE SPEAKER OF THE SENATE APPOINTED?

There is no specific rule or law governing the timing of appointments. The prime minister has traditionally appointed a new Speaker before a new Parliament is scheduled to meet. In recent years, however, speakers of the Senate have routinely served two Parliaments.

### 5.6.2 MUST THE SPEAKER COME FROM THE GOVERNMENT SIDE?

There is no law requiring that the Speaker come from the government side, but traditionally the prime minister appoints Senate speakers from the government party. In the past, such appointments have been an asset to the party in power, particularly where the government has had a minority in the Senate.

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## NOTES

\* This document draws upon, and updates, similar publications produced for the transition from the 37<sup>th</sup> to the 38<sup>th</sup> parliaments, from the 38<sup>th</sup> to the 39<sup>th</sup> parliaments, and from the 39<sup>th</sup> to the 40<sup>th</sup> parliaments. James Robertson, Michael Dewing, Mollie Dunsmuir, Megan Furi, Peter Niemczak, Michael Rowland, Tim Schobert and Margaret Young contributed to these earlier versions.

1. Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics*, Oxford University Press, Toronto, 1991, p. 16.
2. Ibid., p. 23.
3. Department of Canadian Heritage, *A Crown of Maples*, Ottawa, 2012, p. 29.
4. Heard (1991), p. 47.
5. Peter Hogg, *Constitutional Law of Canada*, 4<sup>th</sup> ed., Carswell, Toronto, 2007, 9.7(d), referencing Eugene Forsey, *Freedom and Order*, McClelland & Stewart, Toronto, 1974, p. 40.
6. Heard (1991), p. 23.
7. Hogg (2007), 9.7(d); Cheffins (2000).
8. Privy Council Office, [Guide to Canadian Ministries since Confederation](#).
9. Audrey O'Brien and Marc Bosc, eds., *House of Commons Procedure and Practice*, 2<sup>nd</sup> ed., House of Commons, Ottawa, 2009, p. 56.
10. Ibid., pp. 56–57.
11. O'Brien and Bosc (2009), p. 865 (footnotes omitted).
12. Ibid., p. 886 (footnotes omitted).
13. Ibid., pp. 886–887 (footnotes omitted).
14. See *House of Commons Journals*, 7 July 2011.
15. Eugene A. Forsey, [How Canadians Govern Themselves](#), 7<sup>th</sup> ed., Library of Parliament, 2010.
16. Robert Jackson and Doreen Jackson, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*, 6<sup>th</sup> ed., Pearson Prentice-Hall, Toronto, 2006, p. 258.

17. C. E. S. Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, p. 49; see also Peter Dobell, "What Could Canadians Expect from a Minority Government?," *Policy Matters*, Vol. 1, No. 6, 2000, p. 9.
18. Stewart Hyson, "[Nova Scotia and the 'Problem' of Minority Government](#)," *Canadian Parliamentary Review*, Vol. 21, No. 4, Winter 1998–1999.
19. Dobell (2000), p. 5.
20. Hyson (1998–1999), p. 13.
21. [Guidelines on the Conduct of Ministers, Ministers of State, Exempt Staff and Public Servants During an Election](#) (August 2015).
22. J. R. Mallory, Letter to the editor of the *Ottawa Journal*, 3 July 1953, cited in Senate Committee on Pearson Airport Agreements, *Proceedings*, 1<sup>st</sup> Session, 35<sup>th</sup> Parliament, Issue No. 24, p. 6.
23. J. R. Mallory, *The Structure of Canadian Government*, rev. ed., Gage Publishing, Toronto, 1984, p. 82.
24. Privy Council Office, [Guide to Canadian Ministries since Confederation](#).
25. Linda Geller-Schwartz, "Minority Government Reconsidered," *Journal of Canadian Studies*, Vol. 14, No. 2, Summer 1979, p. 68.
26. O'Brien and Bosc (2009), pp. 43–44 (footnotes omitted).
27. The salaries of members used to be paid on a sessional basis (hence, they are still known as "sessional allowances"). In practice, these allowances are now paid annually, and to prevent the immediate halt of such payments on dissolution, section 69 was required.
28. Joseph P. Maingot, *Parliamentary Privilege in Canada*, 2<sup>nd</sup> ed., McGill-Queen's University Press, Montréal, 1997, pp. 22–23.
29. Treasury Board Secretariat, "Scope of Paragraph 8(2)(g) of the Privacy Act upon Dissolution of Parliament," 25 May 2004.
30. For complete details, see, on the Parliamentary intranet site, Administration and Services, For the House of Commons, *Members Allowances and Services*, "Dissolution of Parliament."
31. The [Constitution Act, 1867](#), s. 38, states that "The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons."
32. There is a separate procedure for the Committee on Conflict of Interest for Senators (see *Rules of the Senate of Canada*, Rule 85(2.1)).
33. Robert Bruce, "[Speaker's Ruling](#)," *Canadian Parliamentary Review*, Vol. 20, No. 1, Spring 2007.
34. John Fraser, *The House of Commons at Work*, Éditions de la Chenelière, Montréal, 1993.
35. House of Commons, *Compendium*, Procedure Online, "[Election of the Speaker of the House](#)."
36. Senate of Canada, [Senate Procedure in Practice](#), Ottawa, 2015, p. 27.
37. Privy Council Office, *Manual of Official Procedure of the Government of Canada*, 1968.
38. Senate of Canada, [Journals](#), 21 February 2001, p. 82.
39. Senate of Canada, "[Appendix I: Terminology](#)," *Rules of the Senate*.
40. See Library of Parliament, "[Officers and Officials of Parliament: Political Officers – Senate – Leaders of the Government, 1867 to Date](#)."