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Changes in a Parliamentarian's Party Affiliation

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CHANGES IN A PARLIAMENTARIAN'S PARTY AFFILIATION*

1 OVERVIEW

Most Canadian parliamentarians are affiliated with a political party. In Parliament, those affiliated with the same political party are referred to as a “caucus.”¹

From time to time, however, parliamentarians change their party affiliation. They might choose to join another party or to sit as independent members. Alternatively, their party might expel them or cease to exist.

Although changing party affiliation can have political consequences for the parliamentarians and parties involved, the only federal legislation that specifically addresses changes in caucus membership is the *Parliament of Canada Act*.² It provides that caucuses may opt to require that the expulsion or readmission of caucus members be put to a vote.

From time to time, bills have been introduced in Parliament that would require MPs who change party affiliation to seek re-election, but none of these has been adopted.

Two Canadian provinces have legislation that address changes in party affiliation, and some 40 nations have constitutional provisions regarding the practice. In addition, many countries have legal or constitutional protection for individual parliamentarians' freedom of action. In a similar vein, the *Canada Elections Act* prohibits candidates from signing pledges that would prevent them from exercising freedom of action in Parliament.³

This paper discusses the issues related to changing party affiliation in Canada and takes a brief look at approaches to this practice in other parliamentary democracies.

2 PARTY AFFILIATION

Although Canada's Constitution makes no reference to political parties, the *Canada Elections Act* defines both “political party” and “political affiliation” and provides a process for parties to register and to endorse candidates.⁴ The *Parliament of Canada Act* and the *Standing Orders of the House of Commons* also refer to parties.

In Parliament, recognized parties are granted financial support and enjoy certain procedural considerations, such as a higher ranking in the order of recognition of speakers during debate and Question Period.⁵ In the Senate, a recognized party is defined 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.”⁶ In the House of Commons, the *Parliament of Canada Act* provides that to be recognized a political party must have at least 12 members.⁷

3 CHANGES IN PARTY AFFILIATION

Changing party affiliation is often referred to as “crossing the floor.” This is because of the layout of Westminster-style legislative chambers, where the government and the opposition parties sit on opposite sides of a central aisle.

There are no legal impediments to changing party affiliation. As pointed out by former ethics commissioner Bernard J. Shapiro,⁸ “there is no existing convention, legislation or parliamentary rule that deals with the question of crossing the floor.”⁹

As explained in *Senate Procedure in Practice*, “a senator who was a member of one party at the time of appointment may change affiliation or decide to sit as an independent.”¹⁰ Similarly, *House of Commons Procedure and Practice* notes that “entitlement to sit as a Member is not contingent upon political affiliation.”¹¹

Changes in party affiliation can happen in a number of ways. Parliamentarians may leave their party voluntarily or may be expelled by their caucus. Alternatively, the creation, merger or disbandment of political parties can lead to changes in party affiliation – sometimes *en masse*.¹² For example, during Canada's first Parliament (1867–1872), the collapse of the anti-Confederation movement led 16 MPs to join other parties or to sit without affiliation.¹³

Historically, it has been quite common for members who switch parties to do so more than once, typically in quick succession. A study of MPs who switched parties between 1921 and 2005 found that “[m]ost MPs who leave their party become Independents for a few days or months until they find their way to another political party and sometimes even to their former home.”¹⁴

4 CONSEQUENCES FOR THE PARLIAMENTARIAN

The immediate consequence of changing party affiliation is that the parliamentarian moves to a different seat in the chamber. In the Senate, the party whips determine the allocation of seats, and the government and opposition whips consult each other regarding the seats of independent senators.¹⁵ In the House, “Members are allocated seats and desks in the House under the authority of the Speaker but on the advice of the Whips of the recognized parties.”¹⁶

Changing party affiliation can also affect a parliamentarian's committee responsibilities and his or her ability to participate in debate. To give examples, independent members of the House of Commons rarely sit on committees,¹⁷ are not recognized during Question Period as frequently as members of recognized parties,¹⁸ and are recognized in debates only after members of recognized parties “have participated in debate in proportion to their membership in the House.”¹⁹

Senators or members who hold a position such as party whip or parliamentary secretary and who change political affiliation will lose the position, along with the additional allowances that go with it. In addition, parliamentarians who leave their party to sit as independents lose their access to caucus research and support services.

On two occasions, in 2005 and 2006, the former ethics commissioner, Mr. Shapiro, was asked to inquire whether certain events related to changing party affiliation contravened the *Conflict of Interest Code for Members of the House of Commons*.²⁰ In the report on the first inquiry, he said that “there is no existing convention, legislation or parliamentary rule that deals with the question of crossing the floor, nor does this report wish to establish one.”²¹ In the report on the second inquiry, he said that the most appropriate place to settle ethical questions related to crossing the floor “is not in the Office of the Ethics Commissioner but in Parliament itself.”²²

It does not appear that any successful legal action has been brought against a parliamentarian who changed party affiliation.

5 PARLIAMENTARY CONSEQUENCES

Changes in party affiliation can also have wider parliamentary consequences. For example, during the 14th Parliament (1922–1925) changes in affiliation played a role in causing the government of William Lyon Mackenzie King to shift between minority and majority status.²³

Changes in party affiliation affect the party standings and thus can have an impact on practices based on the standings. For example, in the House of Commons recognized opposition parties have opportunities “to respond to Ministers’ statements, to propose motions on allotted or opposition days, and to chair certain standing committees.”²⁴ These privileges would be lost if floor crossing resulted in a party losing its standing as a recognized opposition party.

Similarly, a change in party status could nullify certain financial supports. Under the *Parliament of Canada Act*, additional allowances are provided to party leaders, whips, deputy whips, House leaders, deputy House leaders, and caucus chairs of recognized parties. In addition, the Board of Internal Economy of the House of Commons allocates funding to recognized parties for their caucus research units.²⁵

6 FEDERAL LEGISLATION

Federal legislation addresses caucus membership, but does not constrain changes in political affiliation as such. Adopted in 2015, the *Reform Act, 2014*²⁶ amended the *Parliament of Canada Act* by adding provisions related to the expulsion and readmission of members of caucuses in the House of Commons. The provisions apply only to party caucuses that choose to be bound by them.²⁷ If a caucus agrees to the provisions, a member of caucus may be expelled only if at least 20% of the caucus members sign a request to review the member’s membership and the majority of caucus members approve the expulsion by secret ballot.²⁸ To be readmitted, the member must be re-elected as a candidate for the party or be approved by a majority of caucus members by secret ballot.²⁹

Over the years, a number of private members' bills have been introduced in the House of Commons to address the practice of changing party affiliation. Although most did not proceed past first reading, in 2005, one was debated at second reading. This bill, Bill C-251, An Act to amend the Parliament of Canada Act (members who cross the floor), would have required that a by-election be called if a member changed parties, except if the member chose to sit as an independent.³⁰ When the bill came to a vote, it was defeated.³¹ Similar bills have been introduced in every parliamentary session since then, but none has progressed past first reading.³²

On a historical note, until 1931, members of the House of Commons who joined Cabinet were required to resign their seats and be re-elected in a by-election.³³

With regard to parliamentarians' freedom more generally, Section 550 of the *Canada Elections Act* prohibits candidates from signing any document that "requires the candidate to follow a course of action that will prevent him or her from exercising freedom of action in Parliament, if elected, or to resign as a member if called on to do so by any person or association of persons."³⁴

7 PROVINCIAL LEGISLATION

Manitoba and New Brunswick have legislation that addresses changes in party affiliation. Manitoba's legislation was adopted in 2006, and New Brunswick's in 2014.

The provisions in both provinces are quite similar and provide that if a member of the legislative assembly ceases to belong to the caucus of the political party under whose banner he or she was elected, he or she must sit as an independent for the remainder of the term. New Brunswick's legislation also provides that, instead of sitting as an independent, a member can resign.

Section 52.3.1 of Manitoba's *Legislative Assembly Act* provides:

A member who

(a) is elected with the endorsement of a political party; and

(b) ceases to belong to the caucus of that party during the term for which he or she was elected;

must sit in the Assembly as an independent and is to be treated as such for the purposes of this Act and all proceedings in the Assembly during the remainder of the member's term.³⁵

Section 26 of New Brunswick's *Legislative Assembly Act* provides:

(1) A member of the Legislative Assembly who is a representative of a registered political party and who ceases to belong to the caucus of that registered political party during the term for which he or she was elected shall either sit as an independent member of the Legislative Assembly or resign his or her seat ...

(2) The member referred to in subsection (1) who does not resign his or her seat shall be treated during the remainder of the member's term as an independent member of the Legislative Assembly with respect to the proceedings in the Legislative Assembly and for all other purposes.³⁶

8 INTERNATIONAL PERSPECTIVES

Some countries have adopted measures to discourage parliamentarians from changing party affiliation, while others have prohibited the imposition of any limits on parliamentarians' freedom of action.

Some 40 nations have constitutional or legal provisions that penalize parliamentarians who change party affiliation. In most of these, those who defect from their party are required to give up their seats.³⁷

In India in the 1960s and 1970s, for example, hundreds upon hundreds of legislators defected from their parties, causing numerous state governments to fall.³⁸ In 1985, a constitutional amendment was adopted that disqualified members from serving in a state or federal legislature if they defected from their party or voted against their party without permission.³⁹

In New Zealand, to give another example, legislation to discourage floor crossing was enacted in 2001.⁴⁰ However, when the legislation expired in 2005, a parliamentary committee rejected its re-enactment on the grounds that it did not improve public confidence in the institution of Parliament.⁴¹

Conversely, a number of countries, such as France, Germany, Greece and Italy, have legal provisions that prohibit restrictions on parliamentarians' freedom of action.⁴²

NOTES

- * A previous version of this document was prepared by Charles Feldman, formerly of the Library of Parliament.
- 1. House of Commons, "[Political Parties in Canada](#)," *Compendium of Procedure*, October 2015.
- 2. [Parliament of Canada Act](#), R.S.C. 1985, c. P-1.
- 3. [Canada Elections Act](#), S.C. 2000, c. 9, s. 550.
- 4. *Canada Elections Act*.
- 5. Audrey O'Brien and Marc Bosc, eds., *House of Commons Procedure and Practice*, 2nd ed., House of Commons, 2009, "[Canadian Parliamentary Institutions: Responsible Government and Ministerial Responsibility – Political Parties](#)."
- 6. Senate of Canada, "[Appendix I: Terminology](#)," *Rules of the Senate*.
- 7. *Parliament of Canada Act*.
- 8. The Office of the Ethics Commissioner preceded the Office of the Conflict of Interest and Ethics Commissioner.

9. Office of the Ethics Commissioner, [*The Grewal-Dosanji Inquiry pursuant to the Conflict of Interest Code for Members of the House of Commons*](#), January 2006, p. 4.
10. Senate of Canada, [*Senate Procedure in Practice*](#), June 2015, p. 29.
11. O'Brien and Bosc (2009), "[Assignment of Seats in the House: Crossing the Floor](#)."
12. "[Unite the right: Timeline](#)," *CBC News Online*, 2 February 2006.
13. Library of Parliament, PARLINFO, "[Members of the House of Commons who Crossed the Floor of the House of Commons or who Changed Political Affiliation](#)," *House of Commons*. This list covers all parliamentary sessions from Confederation to the present.
14. Desmond Morton, "[A Note on Party Switchers](#)," *Canadian Parliamentary Review*, Vol. 29, No. 2, Summer 2006, p. 8.
15. Senate of Canada (2015), p. 84.
16. O'Brien and Bosc (2009), "[Assignment of Seats in the House](#)."
17. Ibid., "[Committee Membership, Leadership and Staff](#)."
18. Ibid., "[Oral Questions: Conduct of Question Period](#)."
19. Ibid., "[Recognition to Speak: Usual Order of Speaking](#)."
20. Office of the Conflict of Interest and Ethics Commissioner, [*Conflict of Interest Code for Members of the House of Commons*](#).
21. Office of the Ethics Commissioner (2006), *The Grewal-Dosanji Inquiry*, p. 4.
22. Office of the Ethics Commissioner, [*The Harper-Emerson Inquiry pursuant to the Conflict of Interest Code for Members of the House of Commons*](#), March 2006, p. 14.
23. Library of Parliament, PARLINFO, "[Duration of Minority Governments: 1867 to Date](#)," *Parliaments*.
24. House of Commons (2006), "[Role of Opposition Parties in Canada](#)."
25. O'Brien and Bosc (2009), "[Canadian Parliamentary Institutions: Responsible Government and Ministerial Responsibility – Political Parties](#)."
26. [*Reform Act 2014*](#), S.C. 2015, c. 37.
27. For more detail, see Andre Barnes, [*Legislative Summary of Bill C-586: An Act to amend the Canada Elections Act and the Parliament of Canada Act \(candidacy and caucus reforms\)*](#), Publication no. 41-2-C586-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 14 January 2015.
28. *Parliament of Canada Act*, s. 49.2.
29. Ibid., s. 49.3.
30. [*Bill C-251, An Act to amend the Parliament of Canada Act \(members who cross the floor\)*](#), 1st Session, 38th Parliament.
31. House of Commons, [*Journals*](#), 1st Session, 38th Parliament, 23 November 2005, pp. 1322–1333.
32. Detailed discussion of this proposal and its various incarnations can be found in Cameron Siles, "Modest Steps Toward Reform: A Review of Post-Emerson Initiatives to Curtail Floor Crossing," *National Journal of Constitutional Law*, Vol. 30, No. 2, 2012, pp. 171–187.
33. See David Gussow, "[Crossing the Floor, Conflict of Interest and the Parliament of Canada Act](#)," *Canadian Parliamentary Review*, Vol. 29, No. 2, 2006, pp. 9–11.
34. *Canada Elections Act*, s. 550.

35. [*The Legislative Assembly Act*](#), C.C.S.M., c. L110, s. 52.3.1.
36. [*Legislative Assembly Act*](#), R.S.N.B. 2014, c. 116, s. 26.
37. Csaba Nikolenyi, "The Adoption of Anti-Defection Laws in Parliamentary Democracies," *Election Law Journal*, Vol. 15, No. 1, 2016, p. 5.
38. Csaba Nikolenyi and Shaul R. Shenhav, "The Constitutionalisation of Party Unity: The Origins of Anti-defection Laws in India and Israel," *The Journal of Legislative Studies*, Vol. 21, No. 3, 2015, pp. 1–18.
39. See Tenth Schedule to [*The Constitution of India*](#).
40. New Zealand, [*Electoral \(Integrity\) Amendment Act 2001*](#), Public Act 2001 No. 105.
41. New Zealand Parliament, [*Electoral \(Integrity\) Amendment Bill \(3-1\) \(19 May 2006\)*](#). (The report of the Justice and Electoral Committee may be downloaded from this location.)
42. Anthony W. Bradley and Cesare Pinelli, "Parliamentarism," in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó, Oxford University Press, Oxford, 2012, p. 662.