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Minority Government in Canada and Quebec: Contrasting Experiences

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Abstract. This paper compares the working of minority governments in Ottawa and Quebec. In 2008, for the first time in Canadian history, both governments were in a minority position. Following general considerations on minority government in Canada, we summarize the basic principles of parliamentary government, we contrast how both settings adjusted to minority government over recent years, and we try to offer some clues as to why Quebec adjusted more successfully than Ottawa to this situation.

In 2004, Canadians elected a minority Parliament for the first time in 25 years. It is now obvious that this opened a new era, as the two subsequent elections, held in 2006 and 2008, also produced minority governments. Meanwhile the Quebec 2007 election also returned a legislature with no majority. After explaining the notion of minority government and reviewing some basic principles of parliamentary government, we compare these two experiences, and we offer a few explanations for the contrast we found.

Minority Government: An Introduction

Responsible government means that the executive must enjoy the support of the elected House of the legislature. In Westminster-type parliaments, the most frequent outcome is that one party emerges with more than half of the seats. Such “majority governments”, provided they are able to maintain reasonably high cohesion within their own ranks, can have their way for the full parliamentary term.

Elections that did not result into a single-party majority are not the most frequent scenario. In Canada, there was none in the 1930s and 1940s, and thereafter in the 1980s and 1990s. Yet, they are quite common. Since 1921, ten of the 27 elections held resulted into a legislature with no single-party majority, including three in a row in the early 1960s, and the three most recent ones. So the ratio between majority and minority Parliaments in Ottawa has been about 3:2. In the provinces, about one election out of 12

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since the end of World War I also resulted into a minority legislature. Nova Scotia and Quebec now have minority governments.

Under the rule of responsible government, whenever no party has a majority, two solutions are possible. Continental Europeans usually solve the problem by sharing the spoils of office.² A formal coalition of parties is built so as to get a majority, often on the basis of a carefully negotiated pact, and the coalition will last, hopefully, until the next election. Such practices are not unknown in Canadian history. British Columbia was run by a coalition of Liberals and Conservatives from 1941 to 1951. Saskatchewan had a coalition of the NDP and the Liberals following the 1999 election, and earlier in 1929-1934. Manitoba had years of coalition government under John Bracken and Stuart Garson. Even Ontario was run by a coalition of Progressives, Labour and Liberals in 1919-1923. Interestingly, such coalitions, unlike minority governments, tended to last the full length of the parliamentary term.

We deliberately leave aside the so-called Unionist government of 1917-1920, whose formation had little to do with parliamentary arithmetic (Borden's Conservatives had a majority in the House when the Unionist government was formed), and much more to do with the will, especially palpable among Canadians of British origin, to join hands in order to fight the war. But it is interesting to note that at least two Canadian Prime Ministers considered coalitions. In 1921, Mackenzie King, who was a handful of seats short of a majority, offered cabinet seats to the Progressives, who refused. In 1980, Trudeau made a similar offer to Ed Broadbent. Though Trudeau had a majority in the House anyway, such an alliance would have comforted the legitimacy of his administration in the West, which is probably why Broadbent refused.

Notwithstanding Disraeli's famous dictum that "England does not love coalitions", Britain was actually run by coalitions during both world wars and during the Depression of the 1930s. In Australia, the Right has been divided into an urban-based and a rural-based party since the end of World War I, and the alternative to Labour rule is a stable coalition of Liberals and Nationals like the one that John Howard successfully ran until 2007. Such an arrangement is facilitated by the existence of the majority preferential (alternative) electoral system that encourages like-minded parties to conclude alliances. In New Zealand, since the introduction of the MMP electoral system, coalitions have become standard.

The idea that coalitions are antithetical to the British parliamentary system and that minority government is the only suitable way of dealing with the absence of a single-party majority is not supported by the historical record. Yet in recent decades, whenever faced with such situations, very few Canadian federal politicians have seen any other alternative but a minority single-party government.

Quite naturally, politicians of all stripes want power, all of it. For them, the best scenario by far is getting a majority. Whenever a majority is denied to them by the verdict of the

² In Scandinavian countries, minority governments are often resorted to.

electorate, they do their best to maintain what they assume to be the natural order of things, namely single-party government. While they must compromise in order to stay in office, they keep a monopoly not only within the cabinet, but also over patronage. The vast majority of appointments are made by Orders-in-Council and are normally not discussed in Parliament. Under a coalition, these would need to be shared as well. Further, under minority government, the ruling party can reasonably expect to conquer a majority in the future because under a plurality electoral system, a 5%-swing may be all that is needed to do so. This is why minority Parliaments usually do not last very long. Their average length has been hovering around 20 months in Ottawa, and the 39th Parliament, with 33 months, has been the longest-lasting one.³

Supporters of minority government argue that the latter are more sensitive to public needs, less arrogant towards the opposition, and that they are forced to adopt a more cooperative attitude. In practice, the record of minority governments has been uneven. Those who like them love to quote Trudeau's in the early seventies, those who do not rather cite Clark's in 1979, and are probably seeing their case buttressed by both Martin's and Harper's minority governments. For a long time, polling evidence suggested that Canadians had a preference for majority governments. However, in recent years, maybe as a reaction to perceived abuses, this has been reversed and a slight preference for minority over majority governments has emerged.

Some Principles of Parliamentary Government

An evaluation of minority government in Canada and Quebec requires an understanding of Westminster style responsible government since the parliamentary institutions in both are based on its principles.⁴ We can then draw conclusions about the workability of minority government and contemplate whether reforms are required.

No single document sets forth a blueprint for parliamentary government. It has evolved over centuries and its rules and customs are found in various statutes, standing orders, decisions by speakers and texts by parliamentary authorities such as Bagehot, Erskine May, Bourinot, Beaudesne, Côté, Marleau and Montpetit.⁵

³ The Parliament elected in 1921 lasted longer, but Mackenzie King's government had a majority at times through defections and by-elections. See Eugene Forsey, *Freedom and Order. Collected Essays*, Toronto, McClelland & Stewart, 1974, p. 112.

⁴ See Louis Massicotte, "Quebec: The Successful Combination of French Culture and British Institutions" in Gary Levy and Graham White, *Provincial and Territories Legislatures in Canada*, University of Toronto Press, Toronto, 1989, pp. 68-89

⁵ See Walter Bagehot, *The English Constitution*, Cornell University Press, Ithaca NY, 1966. Erskine May, *Treatise on the Law, Privilege, Proceedings and Usage of Parliament*, Rothman, South Hackensack, 1971. For the House of Commons see, J.G. Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada*, Canada Law Book Company, Toronto, 1903, Arthur Beaudesne, *Rules and Forms of the House of Commons of Canada*, 6th edition edited by A. Fraser, W.F. Dawson and J.A. Holtby, Carswell, Toronto, 1989. Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, McGraw-Hill, Toronto, 2000, For Québec see François Côté *La Procédure parlementaire du Québec*, Assemblée nationale, Québec, 2003.

What are the principles and how have they fared in the most recent minority governments in Ottawa and Quebec?

The Confidence Convention

Simply stated, the unwritten confidence convention provides that if defeated in the House on a confidence question, the government is expected to resign and ask the Governor General for dissolution of Parliament and a general election. Of course a Governor General does not accede to every request for dissolution.

In her memoirs a recent Governor General wrote,

“The question arose during Paul Martin’s minority government of where or not I as Governor General would grant dissolution and allow an election to be called if the prime minister requested it. After considering the opinions of the constitutional experts whom I consulted regularly, I decided that, if the government lasted six months I would allow dissolution. To put the Canadian people through an election before six months would have been irresponsible, and in that case I would have decided in favour of the good of the Canadian people and denied dissolution.⁶

There is nothing magical about the first 180 days. Dissolution is at the discretion of the Governor General before or after a six month period. Similarly there is no hard and fast rule about what is a question of confidence. It is widely accepted that certain traditional motions namely the motion to adopt the Throne Speech, the motion to adopt the budget and the Appropriation Bill (Government estimates) are automatic votes of confidence.

There is less agreement on other areas related to confidence. What would happen if a government refused to resign when it had lost confidence? Does defeat of an important government bill constitute a vote of confidence? Can procedural motions be considered matters of confidence? Can a government claim to have lost confidence without being defeated in the House?⁷ Minority government brings these and other questions to the fore and the way they have been handled, in Ottawa at least, raises serious questions about the future of the convention.

Grievance before Supply

The ancient principle of “Grievance before Supply” reflected the right of Parliament to demand an accounting from the King before it voted money for his wars. In Canada from the time of Confederation until 1968 the House of Commons had the power to delay Supply, which in an extreme case could mean the government had no money to pay its debts or its employees.

⁶ See Adrienne Clarkson, *Heart Matters*, Viking Canada , Toronto, 2006, p. 192.

⁷ For a discussion of the confidence see Graham Eglinton and Eugene Forsey, *The Question of Confidence in Responsible Government*, Report prepared for the Special Committee on Reform of the House of Commons, 1985

The Supply process was completely reformed in 1968. Parliament gave up its right to withhold supply. Instead all estimates are referred to standing committees but by May 31 in each year the estimates are deemed adopted by the relevant committee and reported to the House even if they have never been considered. In return for giving up this opportunity to express grievance, the Opposition was allotted a number of supply days spread throughout the year.

On these 22 days the Opposition parties can present motions on any matter within the jurisdiction of Parliament. Originally only two of these motions could result in a vote but now most are votable. The government controls the timing of these days normally in consultation with the opposition parties. In Ottawa minority government has resulted in some new twists to the old principle of grievance before supply.

Government Control of Expenditures

In a parliamentary system, unlike a congressional one, only a Cabinet Member can introduce legislation requiring the expenditure of public funds.⁸ Opposition members and private members on the government side may introduce legislation but if it imposes any cost to the public purse it will be ruled out of order by the Speaker. It may be unclear if a specific measure will impose a cost so the practice has developed of allowing discussion of such bills until the Speaker rules.

The government's exclusive monopoly over financial matters includes the ability to introduce ways and means motions (for the raising of taxes) and the Royal Recommendation (for expenditures). But in a minority parliament the principle of financial control by the executive can come squarely into conflict with the inability of the government to outvote the opposition on any particular issue, financial or otherwise. This had led to some unusual situations in the federal parliament.

Independence of the Houses

This principle applies only to Ottawa since Quebec is no longer a bicameral parliament. The two chambers are not exactly equal in power. The constitution imposes certain limitations on the Senate insofar as the introduction of money bills and the consideration of constitutional amendments is concerned. But each House is jealous of its autonomy. They have separate rules, officers, practices and most importantly they must co-operate in order to enact legislation. There is a long tradition of recognizing the independence of each chamber, a recent example being the appointment of separate Ethics Commissioners under the Accountability Act despite the government's initial insistence there be one officer for both Chambers. Minority government, combined with divided government (Liberal control of the Senate; Conservative control of the House) put serious strains on the principle of independence of the Upper House.

⁸ For a discussion of the differences between parliamentary and congressional government see Louis Massicotte, "So Close, and Yet so Far, Congressional Influences on Canadian Legislatures" in Timothy J. Power and Nicol C. Rae (eds.), *Exporting Congress? The Influence of the U.S. Congress on World Legislatures*, Pittsburgh University Press, Pittsburgh, 2006.

The Speaker as Servant of the House

Neither the House of Commons nor the Quebec National Assembly could function without an impartial presiding officer. The symbolism surrounding the election of a Speaker requires the new Speaker to reiterate the essence of Speaker Lenthall's famous response to Charles I when he entered the Chamber in 1642.

May it please your majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here; and I humbly beg Your Majesty's pardon that I cannot give any other answer than this to what You Majesty is please to demand of me.⁹

In both Ottawa and Quebec the Speaker is elected by secret ballot and both legislatures were fortunate to have very experienced presiding officers in the chair¹⁰. Minority situations can be very challenging for presiding officers but as Speaker Milliken has noted. "neither the political realities of the moment nor the sheer force of numbers should force us to set aside the values inherent in the parliamentary conventions and procedures by which we govern our deliberations"¹¹

One such value is the Speaker's discretionary authority to act in the best interest of the institution. Bourinot called this the first principle of parliamentary government -- to protect the minority and restrain the improvidence and tyranny of the majority, to secure the transaction of public business in a decent and orderly manner.

But in a minority situation, particularly in a crisis when a decision is critical to one side or another, a different sentiment sometimes prevails. It was articulated in a crucial debate in November 2005 by Opposition House Leader Jay Hill. He said "I would remind you, Mr. Speaker, and I know you do not need to be reminded, that you are a servant of the House and it is my understanding that the House could collectively come to a decision and ask you to do something."¹² This kind of pressure to misinterpret what it means to be "servant of the House" is particularly strong during a minority parliament.

Less dangerous from an institutional perspective but very difficult for a presiding officer in a minority is criticism from the media and from members for failing to maintain decorum in Question Period and during debate.¹³ The Speaker of the House is also under constant pressure to put the authority of the Chair on the line to intervene in disputes in

⁹ Quoted in Philip Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, London, Quiller Press, 1984, p. 34.

¹⁰ In Ottawa Peter Milliken has been elected Speaker three times and served longer in that office than any of his predecessors. In Quebec Michel Bissonnet was a member of the House for 27 years and Speaker for six years before resigning the position in July 2008 to seek the mayoralty of St. Leonard.

¹¹ Speaker Peter Milliken in Canada, House of Commons, *Debates*, March 27, 2007.

¹² Canada, House of Commons, *Debates*, November 17, 2005

¹³ See for example the highly critical articles by Lawrence Martin, *Globe and Mail*, January 31, 2008 and February 4, 2008.

committees, something that Speaker Milliken has been loath to do despite characterizing what went on in several committees as being “on the verge of anarchy”¹⁴

Committees as Masters of their own Destiny

Committees are mere appendages of parliament. They barely existed for five hundred years and only in the late 20th century did they begin to take on some importance as utilitarian bodies to cope with the expanded role of government. Their less formal atmosphere and flexible rules made them ideal bodies for discussing public policy and working out compromise and consensus. For many years they were the brightest stars in the parliamentary universe. But in a minority situation, at least in Ottawa, many committees suffered from “a dysfunctional virus that, if allowed to propagate unchecked, risks preventing members from fulfilling the mandate given to them by their constituents.”¹⁵

Incidents in committees ranged from the unprecedented to the unbelievable. Committee chairs were deposed and new Chairs elected against their will. Several committees faced repeated walkouts, boycotts or filibusters. Procedurally sound decisions by chairs were overturned. Investigations have been conducted without care for reputations leaving a trail of court cases and public revulsion in their wake.

Part of the problem derives from a misunderstanding of a principle. The idea that committees are master of their own destiny means simply that committees operate under slightly different rules and conventions than the House and that one committee is not constrained by precedents set in another committee. Instead this phrase was re-interpreted by some committee members to mean that a committee can do whatever a majority wants to do. This is a complete contravention of the spirit if not the letter of parliamentary law.

The Spirit of the Rules

For purposes of this paper the final, but by no means least important, principle of parliamentary government relates to a set of unwritten attitudes that perhaps reflect the origins of the institution. Parliament was very much a “Gentleman’s Club” with certain understandings shared by members without being codified.

Over the years some of these understandings were written into the rules. For example civility in debate is sought by requiring speakers to refer to each other through the chair and only by their constituency rather than their family names. Vulgarity is forbidden as are many unparliamentary terms. Members may not accuse each other of lying nor may they impute motives. Members who violate any of these conventions may be named by the Speaker and expelled for a day or longer.

¹⁴ Canada, House of Commons, *Debates*, March 14, 2008.

¹⁵ *Ibid.*

Even beyond these rules is recognition of the need for voluntary self restraint in a system with few checks and balances on Prime Ministerial power. One would think that minority government could act as an additional restraint but in Ottawa, at least, this has not been the case. Instead two consecutive minority governments fostered an “end justifies the means” philosophy of government inimical to the very idea of self restraint.

There are several reasons for the ferocious fighting that came to characterize the two minorities but perhaps the most important factor is that politicians realized that under the present electoral system a little swing in their direction at the next election is enough to give them a majority. Hence, there is no incentive to build a permanent coalitions. Just wait a few months and call an election at the right time and be rewarded with a majority.

The Dark Side of Minority Government: The Case of Ottawa?

We have outlined some arguments often used to defend minority government. Many of these are theoretical and reflect criticisms, often justified, of majority government. This section looks at actual experience with minority government since 2004. It argues that these two minority parliaments, one Liberal and one Conservative, have failed to meet expectations and some actions have actually weakened federal parliamentary institutions. Can anything be done to improve the operation of future minority governments? We will examine and make suggestions in four areas: party switching, fixed dates, bicameralism and committees.

New Dimensions in Party Switching

Party discipline is the unifying principle that makes possible Westminster style responsible government. Some argue that Canadian politics suffers because party discipline is too rigid. This debate will continue whether future parliaments are majority or minority. However two recent instances of party switching relate directly to minority government and illustrate the need to re-examine certain rules and conventions.

Floor crossing is hardly a recent phenomenon. A study for the Office of the House of Commons Ethics Commissioner identified 229 party switches since 1921. The majority were related to changes in the party system which occurred in the 1920s (Progressives) the 1960s (Social Credit/Creditistes) and the 1990s (Reform/Canadian Alliance/Conservative).¹⁶

In the spring of 2005 the Martin government was facing defeat on its budget. A deal with the NDP over some additional measures to be included in a second budget implementation bill gave them a combined total of 150 possible votes. The opposition Conservatives and the Bloc had 152 possible votes. With some of the four independents members leaning towards defeating the government it appeared an election was imminent.

In this context Brenda Stronach, a front bench Conservative and former candidate for the Leadership of that party announced on May 16 that she was leaving the Conservatives to sit as a Liberal. The following day she was appointed to the cabinet as Minister of Human Resources and Minister Responsible for Democratic Renewal. The May 19 vote on the budget turned out to be a tie with 152 votes for and against. The Speaker cast the deciding vote which in accordance with tradition was to uphold the status quo (i.e. no election). Without the Stronach switch the government would have fallen.

Her move to the Liberal Party and immediate promotion to a senior cabinet position prompted calls from both parliamentarians and the general public for legislation to prevent such "party-hopping." Peter Stoffer of the NDP introduced a private members bill

¹⁶ Desmond Morton, A Note on Party Switchers, *Canadian Parliamentary Review*, Vol. 29, Summer 2006.

that would require a by-election to be held within thirty-five days of such an event. The MP would have to sit as an independent until the by-election. Some Conservatives supported the bill but it was defeated by a vote of 189 to 60.

The NDP also requested an investigation of Stronach, suggesting that she had been promised a cabinet post in return for her defection. However, the Ethics Commissioner refused to investigate citing the unfettered right of a Prime Minister to appoint Cabinet ministers.

The second controversial floor crossing involved David Emerson, a former business man and civil servant who entered politics as a Liberal in the 2004 election. Minister of Industry in the cabinet of Paul Martin, he ran and was re-elected in 2006 as a Liberal in Vancouver Kingsway. The Conservatives subsequently formed the government and less than a month after the election Mr. Harper appointed David Emerson as Minister of International Trade and Minister responsible for Vancouver since the party had not elected any members in Canada's third largest city. There were few in any precedents for either the action or the negative outcry that resulted.¹⁷

This time the Ethics Commissioner announced he was launching a preliminary inquiry into conflict-of-interest allegations against Mr. Emerson and Prime Minister Harper. He subsequently stated he was "satisfied that no special inducement was offered by Mr. Harper to convince Mr. Emerson to join his cabinet and his party". He found no wrongdoing on Emerson's part but recommended a parliamentary debate on the issue of floor crossing

The furor should have reinvigorated support for legislation relating to floor crossings. But of course the Liberals were silent because of their previous deal with Stronach. The NDP tried unsuccessfully to get another private members bill passed. They also tried to have a measure dealing with party switchers included in the *Accountability Act* but it was rule out of order for being beyond the scope of the Bill.

The re-election of Brenda Stronach as a Liberal in 2005 and the competent work of Minister Emerson until his retirement in 2008 has dulled public outrage, except perhaps in Vancouver Kingsway. But we should not underestimate the damage these two floor crossing have done to the institution or the extent to which they violate principles central to liberal democratic institutions. This kind of "end justifies the means" philosophy is usually associated with non democratic or authoritarian states. But with so much at stake is it not naïve to blame Stronach, Martin, Emerson or Harper for what they did in the circumstances?

Ironically Canada used to have a law requiring every elected member who accepted a cabinet position to resign and run for re-election. That law outlived its usefulness and was repealed in 1931. Without suggesting a return to such a cumbersome process why not

¹⁷ According to a *Globe and Mail* poll, 77% of respondents thought Emerson should step down and run in a by-election. An Ipsos Reid poll of British Columbians found that even in staunchly Conservative areas of the province, respondents were 75% in favour of a by-election being called.

adapt that principle to the modern era to restrain members tempted to put self interest ahead of national interest? At least one province (Manitoba) and one Territory (Yukon) have introduced legislation to curb this kind of floor crossing.¹⁸

Federally this could be done by an amendment to the Parliament of Canada act to declare vacant the seat of any person named to cabinet who was elected with a political affiliation different from the Prime Minister. The prerogative of the PM to name whoever he wants to cabinet would be unaffected. The law could also make an exception for the special case, very rare in Canada, of coalition governments.¹⁹

With both major parties having used party switchers to prop up their governments, the prospect is for more rather than fewer cases if we have another minority government. How many floor crossings like this would it take to convince an already disaffected public to simply stop believing in the legitimacy of parliament or elections or both.

Playing Fast and Loose With Confidence

When Paul Martin took over as Leader of the Liberal Party in November 2003 he inherited not only a majority parliament (won by Mr. Chrétien in 2001) but also a report by the Auditor General on financial mismanagement which came to be known as the sponsorship scandal. All the problems took place under the Chrétien government but Prime Minister Martin decided to launch a public enquiry headed by Justice John Gomery to get to the bottom of this. He also called a snap election for June 2004 well before the Gomery Commission could report.

The sponsorship scandal dominated not only the election campaign but the entire Martin minority parliament which began in the fall of 2004. The opposition used bodies like the public accounts committee to make the point, over and over that the Liberals lacked the political, ethical or moral basis to continue to govern the country

In February 2005 Mr. Martin presented his first budget which appeared ready to go down to defeat, thereby triggering an election. The Martin strategy was to avoid an election until the Final Report of the Gomery Commission (scheduled for February 2006). He expected that would exonerate him personally from any responsibility for the scandal.

Thus in April 2005 he addressed the nation and took the extremely unusual step of promising to call an election within 30 days of the Final Report of the Gomery Commission. The opposition parties were aghast at this idea and decide to use one of their upcoming supply days to introduce a non confidence motion in the government. On April 18 the Official Opposition gave notice of a motion that, if adopted, would have designated dates for the remaining six Opposition days, the timing of which is exclusively within the purview of the government. Mr. Martin responded by postponing

¹⁸ See Greg Tardi, "Change of Political Allegiance in Parliamentary Life, *Perspectives in Political Law*, Distributed online and available from tardig@parl.gc.ca

¹⁹ See David Gussow, Crossing the Floor, Conflict of Interest and the Parliament of Canada Act, *Canadian Parliamentary Review*, Vol 29 Summer 2006

every Opposition Day and the Government House Leader went as far as to undesignate an Opposition day which had already been set but on which debate had not yet started.

This series of events, -- the budget, address to the nation, the postponement of supply days, set off what has been called “The Curious Case of May 10, 2005” which involved a dispute over the essential issue of parliamentary government – what is a confidence Vote?

The events that unfolded over the next ten days are rather complex but have been fully discussed elsewhere.²⁰ The Opposition House Leader moved that a Finance Committee report dealing with pre-budget consultations, be concurred in and the Leader of the Opposition moved an amendment that would send it back to committee and ask the committee to bring it forward with a recommendation that the government resign

This led to a procedural debate and eventually a ruling by the Speaker that the motion was in order²¹. However the motion never came to a vote because the Conservatives used a similar approach on a report of the Public Accounts Committee, again asking the government to resign. This motion did come to a vote on May 10, 2004 and passed by a margin of 153 in favour and 150 opposed.

The opposition felt they had clearly expressed their non-confidence in the government with this result. The government felt otherwise. It stated that the adoption of a such “procedural motions” do not qualify as matters of confidence in the government.

In the following days other procedural motions to adjourn the House were proposed by the opposition and adopted. This was another clear indication that the government had lost the confidence of the House and the moral authority to govern and that it should resign. After examining the precedents and arguments on both sides most experts concluded that this was a valid non confidence vote.

All three opposition parties had stated well in advance that they believed this vote to be a test of confidence. A clear majority of members believed that the motion was a confidence vote, and a majority voted in favour of it. The vote was not simply a technical motion of parliamentary procedure. While the wording was convoluted, especially to non-parliamentary ears, the content still clearly inferred that supporters of the motion were in favour of the Government’s resignation.²²

The Government did agree to hold a second and “definitive” confidence vote on May 19. It survived but only after inducing Belinda Stronach to defect (see above). Thus the

²⁰ Andrew Heard, “Just What is a Vote of Confidence? The Curious Case of May 10, 2005”, *Canadian Journal of Political Science*, vol 40 (June 2007)

²¹ Canada, House of Commons, *Debates*, May 5, 2005.

²² Heard, *op. cit* p. 412. Defenders of the government could argue that it's not a confidence motion because it doesn't say 'confidence,' but according to Ned Franks “it's a pretty serious loss of face” CP, May 5, 2005.

political and tactical fight for survival trumped constitutional convention. The government had clearly lost the confidence of the House and had failed to resign.

The summer adjournment provided a respite but when the House resumed in September the confidence issue was again on everyone's mind. The government began the fall session by claiming the need to make progress on its legislative agenda and therefore once again postponed opposition days until mid-November. Timing was critical. If the Opposition parties defeated them in November the election would take place over the Christmas holidays and according to Liberal strategists the public would blame those who brought down the government for such an unseemly event.

The opposition realized that if they did not bring down the government before the Christmas adjournment the Gomery Report would be tabled before an election could be called. A spring election would also give the Liberals several additional months to use the apparatus of government to their advantage.

The first opposition day in the fall went to the NDP. It introduced the following very unusual motion on November 17, 2005.

That, in the opinion of this House, during the week of January 2, 2006, the Prime Minister should ask her Excellency the Governor General of Canada to dissolve the 38th Parliament and to set the date for the 39th general election for Monday, February 13, 2006; and that the Speaker transmit the resolution to her Excellency the Governor General.

Not surprisingly this set off a procedural debate but ultimately the Speaker ruled the motion in order noting that he routinely transmitted communications to the Governor General. A number of law professors said there was nothing wrong with a majority in parliament voting to tell the Prime Minister when to call an election. Other experts including Ned Franks disagreed. He said "it is the Prime Minister's right and prerogative to go to the Governor General and ask for a dissolution of the House. It is not Parliament's. That is very clear."²³

On November 21, 2005 the NDP motion was carried by a vote of 167 (representing all three opposition parties) to 129. The government took no action on the motion arguing that it is logically impossible to declare non confidence and at the same time ask the government to continue in office until a specific future date.

While the NDP motion was bizarre from a traditional perspective it does raise the question of whether Canada has taken too parochial an understanding of confidence. The Westminster model is not the only approach to making and unmaking governments. Some countries have provisions for caretaker governments after a vote of non confidence. Others require a constructive vote of confidence meaning that you cannot simply defeat a government and force an election but must also propose an alternative government. If we are going to have more minority governments it is incumbent on our

²³ *Hill Times*, November 21, 2005

leaders to at least consider alternative ways to deal with implications arising from the parliamentary combinations that the people have elected.

That appears to be the view of constitutional expert David Smith whose recent study of the House of Commons called for an independent body or Royal Commission “to study the law, conventions, usages, and customary understandings that guide parliamentary government in Canada”²⁴

The end for the Martin government came three days later on another supply day. The Leader of the Opposition, Stephen Harper, seconded by the Leader of the NDP moved a simple motion -- that the House has lost confidence in the government. When the vote was taken on November 28 the government was defeated and the election set for January 16, 2006, a bit longer than usual to allow everyone to take a week off from campaigning between Christmas and New Years. After months of fiddling with our constitutional conventions the Martin government finally did the right thing. Nothing became it as much as the way it left office.

Unintended Consequences of Fixed Date Election Legislation

The Harper government had a plan to end the constitutional improvisation of its predecessor. Following the lead of certain provinces²⁵ it enacted legislation fixing the date of the next federal election for October 2009 and every four years thereafter. Of course in a parliamentary system the date of an election is not absolutely fixed as it is in the United States. Elections are still required if the government loses confidence and, legally, the Prime Minister could still ask for dissolution at any time.²⁶

The decision to fix election dates was welcomed enthusiastically by those who believe the Canadian Prime Minister has too much power and that parliamentary democracy is well served by checking this power²⁷. During testimony on the Bill in the House most experts felt it did not change the status quo²⁸ and noted how rare it is for a government to propose an institutional measure that does not benefit itself in one way or another.

Traditionalist who appeared before a Senate Committee on the bill were much more critical. Professor David Smith argued that fixed election dates fit neither the theory or practice of parliamentary government. “Fixed election dates do not give the public

²⁴ See David Smith, *The People's House of Commons: Theories of Democracy in Contention*, University of Toronto Press, Toronto, 2007, p. 140.

²⁵ Three provinces (British Columbia, Ontario and Newfoundland) have held elections in accordance with fixed dates. All of them have single chambers and all had majority governments. The situation in Ottawa is much more complicated and neither the proponents or opponents of fix election legislation could have imagined the unintended consequences of this change.

²⁶ Edward McWhinney, Fixed Election Dates and the Governor General's Power to Grant Dissolution, *Canadian Parliamentary Review*, vol. 31, no. 1, spring 2008.

²⁷ Peter Russell, *Two Cheers for Minority Government*, Emond Montgomery Publications Limited, Toronto, 2008, pp. 134-142.

²⁸ Canada, House of Commons, Standing Committee on Procedure and Organization, October 5, 2007. Testimony of Henri Milner, Andrew Heard and Louis Massicotte.

greater voice in politics. In fact, the partisan motivation and potential for engineering defeats within the House shifts the focus of attention even more than at present from constituents to the party leaders in the House.”²⁹

The fixed date election was supposed to remove uncertainty. Instead it led to constant speculation about an impending election. At least twice urgent calls went out to party workers to nominate candidates and get the machinery ready.

The fixed election date did not create an equal playing field. Instead it transferred responsibility from the Prime Minister to the Leader of the Opposition for setting the election date. On several occasions the Government, with an eye on the polls, challenged the Official Opposition to bring them down. Instead the Official Opposition repeatedly spoke against government bills and then abstained from voting to avoid an election.

The genius of parliamentary government is that it fixes responsibility in very clear and obvious ways. A Prime Minister must bear ultimate responsibility for a functional or dysfunction parliament. Fixed election dates eviscerate this responsibility. Who is to blame for what is going on in Ottawa? It is everyone and it is no one. It is the antithesis of what a parliamentary system is supposed to accomplish!.

No federal party indicated any willingness to rethink this issue although some observers began to argue that it had been a mistake.³⁰ Prime Minister Harper himself came to this conclusion in August 2008 when he met with his caucus to consider the upcoming fall session. He decided to ignore his own fixed date election and declare that parliament had become unworkable. To bolster his argument he met separately and briefly with the leaders of the other three parties and asked them for assurances they would co-operate in making parliament work during the fall session. When he failed to receive such assurances he declared that Parliament had lost confidence in his government and asked the Governor General to dissolve parliament and set the election date for October 14, 2008, one year earlier than required under his own fixed election statute.

The initial days of the campaign were characterized by much criticism of the PM for violating the spirit if not the letter of his fixed date election law. But this criticism must be tempered by the fact that the three opposition parties (all of whom supported the legislation) did not even consider proposing to the Governor General an alternative government to serve out the year remaining year of the mandate. They all wanted an election and no small matter like a statute of Canada was going to stand in the way. The political actors seem to have concluded that the rules of the political game exist more for the convenience of the players rather than for any national interest or purpose.

Tampering with Bicameralism

²⁹ Canada, Senate, Standing Committee on Legal and Constitutional Affairs, February 14, 2007.

³⁰ One Chief of Staff to a former Conservative Prime Minister has argued that fixed election legislation was one of the greatest mistakes of the Harper government. See Norman Spector’s column in *Globe and Mail* January 4, 2008

The issue of Senate reform has been debated for over a hundred years and has little to do with minority government. Whenever different parties hold majorities in the two Houses this Canadian version of “divided government” puts strain on a system that has no good method for resolving disputes between the Houses.

Nevertheless a couple of developments under the Harper minority raise serious concerns about bicameralism beyond what is expected from a divided government perspective.³¹

When the Conservatives came to power they soon began complaining about the time the Liberal dominated Senate was taking to adopt bills that already had been slow to make their way through the House of Commons. This frustration boiled over when the Minister of Justice appeared on February 6, 2008 before the Senate Legal and Constitutional Affairs Committee studying Bill C-2, an omnibus amendment to the criminal code. He gave them an ultimatum. Pass the Bill by February 28 or else. “I do not believe I would have any choice except to advise the Prime Minister that I believe that this is a confidence measure and I will put the matter in his hands.”

Of course the Senate is not a confidence chamber. The defeat of a bill by the Senate does not bring down the government although in the past the government can and has used defeat or delay by the Senate as a reason for calling an election.³² But the following motion in the House on February 11 combined with the announcement in the Senate Committee amounted to one House invoking closure on another.

That, given the Government has declared the passage of Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts, as a matter of confidence, and, that the bill has already been at the Senate longer than all stages took in the House of Commons, and that all aspects of this bill have already been the subject of extensive committee hearings in Parliament, and that in the opinion of this House, the Senate majority is not providing appropriate priority to the passage of Bill C-2, a message be sent to the Senate calling on the Senate to pass Bill C-2, the Tackling Violent Crime Act, by March 1, 2008.

It was, as the Opposition maintained, “subversive of everything we have done under our Constitution involving two Houses in this Parliament ever since day one?”³³ However no one raised a point of order and with the Liberals abstaining the motion was adopted by a large majority.

The Senate did return the Bill before March 1 thereby averting a possible constitutional crisis. This single incident can be put down to political brinksmanship but the precedent,

³¹ This was not an issue for the Martin government as the Liberals held a comfortable majority in the Upper Chamber.

³² The most famous case was the Senate handling of the Canada-US Free Trade Agreement which led to the 1988 election. However the government had given away much of its power to call an elected by implementing the fixed election date

³³ Canada, House of Commons, Debates, February 11, 2008

taken to its logical conclusion, completely undermines the essence of bicameralism and the intentions of the founders to create an independent Chamber of sober second thought.

Another issue relating to bicameralism is the refusal of the Harper government to appoint Senators unless they are elected by the provinces. Legislation to reform the Senate has been delayed in both Houses and the reaction of the government has been to let vacancies accumulate in the Upper House. If this continues the government will soon find itself with about 20/108 members in the Senate, barely enough to man the committees or give scrutiny to legislation.

Legislation was introduced in the Senate to force the Prime Minister to make appointments within six months of a vacancy occurring but it never made its way out of the Upper Chamber. However if the non appointment practice continues in the new parliament one must wonder if the issue will somehow end up in court much to the embarrassment of legislators who will be seen as incapable of running the institutions they inherited.

Who Controls the House and Committees

Government control of the agenda of the House of Commons is a defining characteristic of parliamentary government. In a majority parliament non government bills and motions have little chance of ever becoming law as the government can use its majority to win every vote. This is not true in a minority situation. A recent study showed that the Harper government was on the losing side of nearly 120 votes (nearly one third of all the recorded divisions in the 39th Parliament)³⁴

During the last two minorities a number of opposition sponsored private members bills were adopted and many more received second reading and went to committee where they were often given precedence over government bills. Most of these bills were passed against the will of the government. For example in February 2007 the House passed by a vote of 161 to 113 a private member's bill introduced by Liberal Pablo Rodriguez that requires the government to meet international Kyoto targets and gives the government 60 days to table a detailed plan outlining how Canada will reduce its greenhouse gas emissions. The government opposed the bill and argued it would force them to spend money against their will. The Speaker said the bill contained no specific spending measures. The Minister of the Environment, John Baird, dismissed the Bill saying there were no consequences or penalties if the conditions of the bill were not followed. The Liberals said it was now the law of the land and threatened to go to court if it was not respected.

Another example was Bill C-253 sponsored by Liberal Dan McTeague. It would allow parents to deduct from their income tax up to \$5,000 annually contributed to a Registered Education Savings Plan for each child. The Minister of Finance said the measure could cost up to \$900 million a year and would put the country into deficit which he had

³⁴ See Louis Massicotte, *Le gouvernement Harper contrôle-t-il les Communes?*, *Le Devoir*, August 11, 2008.

promised not to do in his 2008 budget. All Conservatives voted against the Bill but on March 5, 2008 it was adopted by a vote of 156 - 122 and sent to the Senate.

Eight days later the government managed, through a very unusual motion, to retroactively stop the bill after it had already passed the House. They did this by introducing a ways and means motion into a completely different bill (C-50 the Budget implementation bill) which specified that the government would not fund C-253. When the motion came to a vote the Liberals opted to abstain so as not to force an election. Meanwhile the decapitated bill continued to be debated in the Senate until Parliament was dissolved. One can only speculate on the chaos that could follow if this practice is repeated on a regular basis.³⁵

Another change, perhaps more symbolic, relates to the supply process. As shown in the following table more than half of the motions introduced on opposition days have actually been adopted by the House, usually against the wishes of the government.³⁶

It is perhaps satisfying to the sponsors and to the opposition parties to have their bills and supply motions adopted by the House of Commons but the government has no intention of implementing these measures. Do we really want a kind of European Parliament where the members discuss and adopt reams of resolutions which are not necessarily binding on the constituent nation states.

	Opposition Day Motions	Adopted	Defeated	Non Votable	
38 th Parliament, 1 st session, 2004-2005 Martin Government	Conservative	14	6	7	1
	Bloc	7	6	0	1
	NDP	4	2	2	0
	Total	25	14	9	2
39 th Parliament, 1 st session, 2006-2007 Harper Government	Liberal	15	10	5	0
	Bloc	8	5	3	0
	NDP	6	3	3	0
	Total	29	18	11	0
38 th Parliament, 2 nd t session, 2007-2008 Harper Government)	Liberal	10	8	2	0
	Bloc	6	1	5	0
	NDP	3	1	2	0
	Total	19	10	9	0

³⁵ Both these Private Members Bills survived prorogation due to a very odd change to the rules. Traditionally at the end of a session all legislation dies and must re-introduced from the beginning. This clears the slate and can be useful to a government that wants to get rid of certain bills. But in a notable procedural change private member's bills are now deemed to survive the end of a session and automatically come back exactly where they were in the previous session. A government Bill can only be brought back with a majority vote, unlikely in a minority parliament. An important part of the legislative process has been turned upside down

³⁶ In a majority situation it is very rare for any opposition motions to be adopted and the principle of Grievance before Supply does not require these motions to be votable.

Perhaps the arrogance and authoritarianism of too many majority governments made inevitable this desire to let many flowers bloom in parliament. But what conclusion are citizens to draw when they see bills and motions being adopted but nothing happens.³⁷ One possible conclusion is that the House of Commons is irrelevant.

And while these flowers are blooming many fast growing economies have governance structures that allow swift decision making whereas our minority governments seem to be taking Canada in the opposite direction. The ability to act and execute policy can be swamped when the rules prove inadequate. Nowhere was this more apparent than in committee.

The Decline of the Committee System

The present committee system was designed in the 1960s to replace an antiquated system that could not meet the demands of modern governance. With minor changes in the 1980s this system remains intact to this day. But what used to be the most effective part of the parliamentary process for policy discussion degenerated into the tawdry side of politics as various parties used the committees mainly to better position themselves for the next election. When Prime Minister Harper told the Government General that Parliament had become dysfunction he was really referring to a committee system that descended into chaos in the final months of his minority.

The problems were not, strictly speaking, a function of minority government but rather the culmination of some reforms that predated the minority era. The topic of dysfunctional committees deserves a separate study but one example, a change in the way chairs are elected, will suffice to illustrate what happened.

In November 2002 when the Liberals still had a majority under Jean Chrétien two changes were adopted in the standing orders relating to the election of Chairmen. The Standing Committee on Procedure and House Affairs proposed to codify the longstanding practice of choosing the Chair of Public Accounts from the Opposition and to provide for a secret ballot for the election of all Chairs of Standing Committees..

³⁷ Among motions adopted are ones calling on the government to do a variety of things such as ban trans fatty acids, sell back to families land that was expropriated for Mirabel Airport, respect the Kyoto targets, establish an Air India Inquiry, improve benefits to members of the armed forces and veterans, amend the Competition Act relating to gasoline prices. Other Private Member's Bill sponsored by Opposition Members that were adopted by the House include: Bill C-288 (An Act to ensure Canada meets its global climate change obligations under the Kyoto Protocol) read a third time and passed in a recorded division on February 14, 2007 (Yeas: 161; Nays: 113). Bill C-292 (An Act to implement the Kelowna Accord) read the third time and passed in a recorded division (Yeas: 176; Nays: 126) on March 21, 2007. Bill C-293 (An Act respecting the provision of official development assistance abroad (former title: An Act respecting the provision of development assistance abroad)), standing in the name of John McKay (Scarborough-Guildwood) read the third time and passed on March 28, 2007.

The proposal specified that the Chairs, except for Public Accounts and the Joint Chair of Statutory Instruments would have to come from the governing party.³⁸ With the advent of minority government three more committees were added to the list that would have opposition Chairs -- The Standing Committee on Access to Information, Privacy and Ethics, Government Operations and Estimates and Status of Women.

While intended to provide greater independence and balance in the chairmanship of House committees the reform had the opposite effect. It made the chairs more clearly identified with the government or the opposition depending on the committee.

The following were among Committee where the Chairs faced motions of non confidence during the last year before the election.

Official Languages: On May 15, 2007 Yvon Godin of the NDP moved, — “That the Chair of the Standing Committee on Official Languages, Mr. Guy Lauzon, be relieved of his duties as Chair following a decision made on his own accord to cancel the scheduled May 8, 2007 meeting of the Committee which was to study the issue of the Court Challenges Program. The Chair acted against the will of the Committee and overstepped his role as Chair and as a consequence, he has lost the confidence of the Committee.” The motion was carried by a vote of 7-4. The Clerk then attempted to elect a new Chair from the government side as required in the rules. Each of the four Conservatives on the committee was nominated and each declined. Extended negotiations between the parties finally brought the resulting impasse to an end on May 31, 2007, with the election of Steven Blaney as Chair.

Justice: On March 11, 2008 a Liberal member of the Justice Committee, Dominique Leblanc, proposed a motion calling for an investigation of allegations that Chuck Cadman, a former Independent Member (now deceased) had been offered financial inducements by the Conservatives in exchange for support during the Martin confidence vote of May 2006. The Chair of the Justice Committee, Art Hanger, ruled the motion inadmissible as it was beyond the scope of the mandate of the Committee. Réal Ménard vice chair appealed the decision. The Chair refused to take a vote on the appeal and walked out. The Committee voted to adjourn. The Committee met the following day to consider the appointment of the office of public prosecutions. Again the chair refused to take a vote on the appeal and the committee adjourned. On April 1 the committee met again this time to hear witnesses on a study of Bill C-27, An Act to amend the Criminal Code (identity theft and related misconduct). Again the opposition insisted the vote on the appeal take place before any other business could be heard and the chair refused. He invited opposition members to take a vote on his ruling without him but they preferred to adjourn. This exact scenario was repeated five more times until May 14. No further hearings of the Justice Committee took place before Parliament was dissolved.

³⁸ The report was debated but not adopted. The change was actually made as the result of a free vote on an opposition supply motion containing text almost identical to that found in the Committee report. It was debated on October 31, 2002 and subsequently adopted on November 5, 2002.

Procedure and House Affairs: On November 1, 2007 at its first meeting following the election of a Chair for the new session the Liberals moved that the committee “investigate the actions of the Conservative Party of Canada during the 2006 election, in relation to which Elections Canada has refused to reimburse Conservative candidates for illegitimate election campaign expenses.” The Chair, Gary Goodyear, ruled the motion out of order as it went beyond the mandate of the committee. His ruling was appealed and overturned by a 7-4 vote. At its next meeting government members tried to bring forth legislation relating to the visual identification of voters arguing that legislation took priority over investigations. The majority resisted and again overturned the Chair’s ruling.

The impasse continued until March 6, 2008 when a Bloc member moved that the Chair, no longer has the confidence of the Committee and, “as a result, that we proceed immediately to the election of a new Chair”. Following adoption of this motion the Opposition members, with the Conservatives abstaining, voted 7-0 for Conservative Joe Preston to Chair the Committee. After being elected Mr. Preston made the following statement:

This committee had a very impartial and fair chair and he did a great job of taking care of his rulings and getting sound guidance for each of them. I would have acted in exactly the same way as he. The opposition members of this committee do not want a chair; they want a puppet. I will not allow my name to stand. This is indentured servitude. I can't be forced to do something I don't want to do, whether it's in this Parliament or not.

The Committee never met again in the remaining months of the 39th Parliament.

Aside from these forced resignations and boycotts there was an enormous increase in the number of challenges to rulings by the Chairs of Standing Committees. Between September 1997 and September 2008, a period spanning four parliaments there have been 151 appeals. Of these, 120, or 79%, occurred during Harper minority from its beginning in April 2006 up to the dissolution in September 2008. Fifty of these rulings were overturned and in many cases an overturned ruling meant a change of 180 degrees in the direction of the committee.

Even Committees that continued to function became extremely partisan. For example with the Procedure Committee out of commission the movement for an investigation of Conservative electoral practices shifted to the Standing Committee on Access to Information, Privacy and Ethics chaired by a member of the Opposition.

On June 3, 2008 the Ethics Committee considered a motion to “investigate the actions of the Conservative Party of Canada during the 2006 election, in relation to which Elections Canada has refused to reimburse Conservative candidates for certain election campaign expenses in order to determine if these actions meet the ethical standards expected of

public office holders.” The Chair ruled that the motion was within the mandate of the Committee. This ruling was appealed and sustained.³⁹

Over the next three months the committee held ten meetings on the subject of the so called “In and Out Scandal.” Meetings were filled with points of order, charges, countercharges and challenges to the Chair. However the combined opposition united to outvote the Conservatives on all issues.

At one point numerous summons were issued to hear witnesses requested by the opposition including former Conservative candidates and workers. At least some witnesses indicated they had no intention of obeying the summons. Any further steps to enforce the summons would have to be taken by the House and before this could be done the election was called.

Widespread refusal to obey summons might have been the logical conclusion for a dysfunction committee system. In a democracy institutions are based on the consent of the governed and if enough individuals conclude that their institutions no longer require obedience, then the institutions have lost most of their claim to legitimacy.

With the dissolution of parliament the chaos in committees became somewhat academic but the experience should provoke a number of questions about the future of the committee system.

For example why not make elections for Chairmen truly free. In a minority this could result in all committees being chaired by the opposition. But the more likely result would be a division of labour reflecting the relative strength of the parties and without the present hard and fast distinction between committees chaired by the government and those chaired by the opposition.

An even better approach would be to have all Chairmen appointed by the Speaker from a panel of Chairmen submitted by the parties. This is the system currently used for Legislative Committees and these bodies, although rare, worked well in both minority parliaments without many of the problems found in the Standing Committees. Giving the Speaker a role in choosing the Chairs would certainly improve the speakership of Standing Committees.

If these chairs were appointed by the Speaker (and perhaps even if they are not) consideration should be given to making the chairs’ rulings final and beyond appeal. We give this power to the Speaker. Why not to the Chair? Alternatively appeals could be reviewable by the Speaker following the practice in courts where decisions by lower courts are reviewable by higher ones.

³⁹ The issue of committee mandates and appeals was considered by the Speaker, in another context, on March 13, 2008 and while he opted to remain aloof from the internal workings of a committee he did indicate that when a committee report was presented there could be an opportunity for members to raise concerns about the mandate or the process.

The problem with committees establishing their own mandates could be resolved by reverting to the former practice whereby references to committees would have to be adopted by the House. This is still the practice in most Canadian legislatures and the autonomy granted to committees to pursue their own agendas has not worked well. Committees could still discuss almost any matter of public policy using their right to consider the estimates and this might actually encourage more oversight and scrutiny which was really the original role of Parliament.

In a minority parliament the opposition could still combine to give committees mandates to look at all kinds of issues. But the debate on mandates and terms of reference would take place in the House and in full public view instead of in the overheated, unruly and “anything goes” atmosphere of individual committees.

Assessing Five Years of Minority Government in Ottawa

When Canadians elected their first minority government in twenty-four years many observers were optimistic about the potential for a new and collaborative approach to politics. There have been a few noteworthy achievements. Neither the Liberal-NDP budget of 2005 or the Liberal-Conservative compromise on Canadian involvement in Afghanistan would have taken place in a majority Parliament.

However on balance the price of minority government in Ottawa was a steady descent into the tawdry side of governance. One parliamentary observer has argued the verdict on five years of minority government is in. “They tend to corrode the system and the people in it. They sour the public on politics. Minorities reduce governance to political con games.”⁴⁰

Many possible explanations come to mind, some of them quite depressing. Perhaps the nuances and subtleties of parliamentary government are beyond the grasp of the present generation of political leaders and the super partisan young advisors every party seems to have in abundance. Perhaps institutions devised for a quieter, gentler (if less representative) age cannot be expected to cope with the complexity of a post modern world.

A different explanation for the most recent minorities was offered by the former Dean of the House of Commons drawing less on his three decades in the House and more on his background as a United Church minister.

Parliament is not a soap opera. Nor is it a football match and certainly it must not become a kind of ultimate fighting where absolutely anything goes. What is needed and what is missing, I would argue, is a sense of forgiveness. At the moment our Parliament is very much driven by a sense of revenge. “You exaggerated what we did now we are going to exaggerate what you did.” And on

⁴⁰ Lawrence Martin, “We have Voted for a go-slow country” *Globe and Mail*, August 11, 2008.

it goes. Surely, at some point someone has to forgive and we move on. Perhaps this can only occur when there is a majority government to provide a cooling off period. This is not an argument for majority government, just an observation of a member of Parliament who has been watching the House of Commons for nearly thirty years. The cycle of revenge must be broken.⁴¹

Peter Russell presents the most positive interpretation arguing that minority government is not without its problems and it will take time to work and several experiences for Canadians and their representatives to become comfortable with minority government.⁴² He does not, however, give any ideas of a process (short of significant electoral reform) whereby such change may happen.

With Parliament scheduled to resume on November 18, the following the following reforms are suggested for consideration by members of the new minority parliament if they want to avoid the problems of the last two.

- Repeal the statute relating to fixed date elections. It did not accomplish what it was supposed and actually made the problem it was intended to address much worse. A better approach to provide some certainty in the case of minorities is the kind of political accord concluded in Ontario when voters returned a minority in 1985. Two parties signed an agreement that set out the policies on which they would govern and precluded non confidence votes or elections for two years.⁴³
- Adopt legislation to prevent party switching in exchange for cabinet office.
- Establish a blue ribbon panel of experts and former parliamentarians to review and make recommendations about the laws, conventions, usages, necessary for the conduct of parliamentary government in the 21st century. This would include a review of the confidence convention, the reform of the Senate, and parliamentary privilege.
- Establish a reform committee with perhaps several sub-committees under the general direction of the Speaker. They would review and make recommendations on many aspects of parliamentary procedure such as Question Period, the legislative process, financial procedures, the use of time, private members business and the committee system including mandates, substitution, the role of parliamentary secretaries, the problem of minority reports, the use of extraordinary majorities for certain issues such as reform of the rules.

⁴¹ See Bill Blaikie, "Reflections on Reforming Parliament", *Canadian Parliamentary Review*, vol 31, autumn 2008, p. 4.

⁴² See Peter Russell, *Two Cheers for Minority Government*, Emond Montgomery Publications, Toronto, 2008.

⁴³ See Bob Rae, Changing the Confidence Convention in Ontario, *Canadian Parliamentary Review*, vol. 8, winter 1985-86

Minority Government Can Work: The Case of Quebec

Minority government came to modern Quebec following the 26 March 2007 general election, when the Charest Liberal government was returned by the electorate, but in a much weakened position. The final score was 48 Liberals (down from 72 at dissolution), 41 ADQ and 36 PQ, based on respective vote shares of 33,1%, 30,8% and 28,3%. The Greens won 3,8% and Québec Solidaire won 3,6% of the vote, but none of the candidates they put forward (108 and 123 respectively) was elected. Two major points must be made: a minority government was unexpected, and was unprecedented in modern Quebec.

An unexpected outcome

Few people initially expected the outcome of the election to be so close. The Liberals had come to office in 2003 with the highest vote share for a ruling party (46%) since 1989, though the anti-Liberal bias reduced the number of their seats to a relatively modest 76, as much as the PQ had won in 1998 with a smaller vote share than the Liberals'. The new government's honeymoon was short and from December 2003, Liberals trailed behind the PQ in the polls while dissatisfaction on the government's performance became prevalent. Charest aroused the ire of the powerful labour unions early on through his plans for public-private partnerships, and demonstrations against his administration became routine. The government seemingly jumped from one crisis to the next one. The nadir was reached in mid-2005. At that point, only 20% were satisfied with the government's performance, and barely 25% were willing to support its re-election.

This pattern, which led most observers to expect a return to a PQ majority government, persisted until late in 2006, when the Liberals staged a comeback. This recovery owed little to the Liberals. The most that can be said is that they wisely selected their opponent and let him bury his own chances. The Sponsorship scandal, while discrediting Liberals of all stripes, led Parti Québécois militants to believe that the stir recorded in the polls for sovereignty heralded a victory for sovereignty. In June 2005, the PQ's convention made two fateful decisions. First, it decided that the party would fight the next election with a platform calling for a referendum on sovereignty, without any mention of the partnership that had rescued them from total defeat in 1995. Second, incumbent leader Bernard Landry got a 76% confidence vote and chose to resign on a pique. In November, the party chose André Boisclair as leader. Most Quebeckers might have overlooked that Boisclair was openly gay, but his admission of having sniffed cocaine while he was a cabinet minister troubled many more. From 50% at the time of the PQ convention, the party's standing at the polls fell under 40% within six months, leading many party figures to call for another leadership change. By faking death until the end of their term, the Liberals let the referendum and Boisclair to become the issues. It has been suggested that one of the reasons Charest called the election so soon is that this would deprive the PQ of the possibility of dumping its leader before the election was held.

When the election was called, most voters expected a Liberal victory. It soon emerged, however, that things would not be that simple. For floating voters, an unwanted

referendum and Boisclair were two solid reasons not to support the PQ, yet, the uninspiring record of the government hardly deserved a new term. It is plausible to infer that these voters solved their dilemma by supporting Mario Dumont's ADQ. By taking stands on immigration and by surfing on what some perceived as media hysteria over «reasonable accommodation», Mario Dumont was able to come out of nowhere and to emerge as a major contender. Hence the close outcome of the 2007 election. Had the electorate swung uniformly in every riding compared with the previous election, the PQ could reasonably expect to come out first in terms of seats. However, the ADQ exceeded the expectations where it mattered, namely in those suburban ridings around Montréal (the so-called «450 area») and Quebec City, where they already had substantial support. Another factor that hit the PQ was the performance of Québec Solidaire (QS). In no less than five ridings, the combined vote of the PQ and QS exceeded the winner's lead. It is not implausible to argue that without QS, the PQ would have won these seats.

Minimal experience with minority government.

Quebec stood out among Canadian provinces as having minimal experience with minority government. The only precedent for minority government in Quebec went as far back as 1878. Lieutenant-Governor Letellier de Saint-Just, a staunch Liberal, sacked Conservative Premier de Boucherville in March 1878 and appointed Liberal leader Joly de Lotbinière as premier. Predictably, Joly was soon defeated in the Assembly and called an early election, which resulted into an Assembly where both Liberals and Conservatives had 32 seats, with the balance of power held by Arthur Turcotte, an independent member returned from Trois-Rivières. Joly secured his position by proposing Arthur Turcotte for the speakership of the Assembly. Turcotte played the role of kingmaker for himself and afterwards, the government survived a succession of tied divisions thanks to the casting vote of the speaker, before a few by-election wins had the effect of comforting the Liberals' hold on the Assembly. Meanwhile, the Conservatives came back to office in Ottawa and, the next year, used their majority in both Houses of Parliament to remove Letellier from office. Then, the conservative majority in the Legislative Council held supply and asked for the resignation of the Liberal government. The deadlock was broken in the Fall of 1879 when the new conservative leader, Adolphe Chapleau, succeeded in convincing five Liberals to switch sides, thus ensuring the adoption of a no-confidence motion. Joly then asked for the dissolution of the Assembly, which was refused by the lieutenant-governor, and was left with no other option but to resign. Chapleau became premier and held on until the 1881 election.

Later, the election of 1886 was seemingly inconclusive, as the balance of power was held by so-called "national conservatives", i.e. conservatives who had deserted their party following the hanging of Louis Riel. Hoping to bring the prodigal sons back, the Ross-Taillon conservative government clung to office for a few weeks, until it became obvious that the national conservatives would support Honoré Mercier's Liberals, which led to the resignation of the government. Rather than an experience in minority government, this episode looks more like a late registration by the legislature of the will of the voters as expressed at the polls.

At a few Quebec elections held afterwards, a minority legislature figured among the possible outcomes. This was the case in 1944, when the Bloc Populaire scored 14% of the vote, and in 1970, when for a while the emergence of both the Parti Québécois and the Ralliement des créditistes seemingly heralded the end of the two-party system. In each case, however, one of the major parties was able to snatch a majority, and scenarios for a minority government remained in the realm of hypothetical speculation.

The aftermath of the election: Sharing the spoils

When the final result emerged at the end of an exciting election night, each of the three leaders accepted the outcome: Boisclair conceded defeat, Mario Dumont said he was happy to be the leader of the opposition and Charest was relieved to continue as premier of a minority government. To this author's knowledge, no consideration whatsoever was given to the possibility that two parties form a coalition government.

The beginnings of the new legislature were decidedly inauspicious, to the point that many wondered whether it would go down in history as the shortest legislature ever. Infighting started first among the two opposition parties. During the previous legislature, the PQ had insisted adamantly that the ADQ, with four (later, five) members was not entitled to be recognized as a parliamentary group (recognized party), a status that necessitated 12 seats or 20% of the vote (the ADQ then had 18%). Now that it had become the official opposition, the ADQ decided that payback time had come. While the PQ was undoubtedly entitled to the status of a parliamentary group, controversy raged on the party composition of committees. The standing orders, as they had been rewritten in 1998, provided for each committee to have 7 members from the government side, 4 from the official opposition, and only one for the third party. Obviously, no one had anticipated that the "third party" could be more than the rump it was at that time. Had this rule been followed, a government with no majority on the floor of the assembly would have had a majority in every committee, and the PQ would have been entitled to a single seat in committees while the official opposition had four, despite the fact that both were almost evenly matched (41 to 36) in the Assembly. This was both unfair and useless, as the government's majority in committees could be overruled anyway on the floor of the Assembly.

Predictably, following negotiations, a new rule was substituted, whereby 5 committee positions went to the Liberals, 4 to the ADQ and 3 (including one nonvoting position) to the PQ. Committee chairs and vice-chairs were shared. The Liberals got 5 chairs and 6 vice-chairs, the ADQ 3 and 5 respectively, and the PQ 1 and 4. Are these positions entitle their holders to supplementary indemnities. The 15 paid positions of "présidents de séance", a group of Members who may be asked to act as chair whenever the chair and the vice chair happen to be unavailable, were similarly shared 6:5:4. Within the Bureau of the assembly, the Liberals had 6 positions (including Speaker Bissonnet's), the ADQ 3 and the PQ 2.

Filling the seats of the chief officers of the Assembly proved easier, as Speaker Michel Bissonnet was unanimously re-elected, while the deputy speaker positions were shared

among two Liberals (Fatima Houda-Pépin and Jacques Chagnon) and one ADQ (Marc Picard), as the standing orders provided for.

The Liberals were able to preserve their monopoly over the spoils when it came to the cabinet and parliamentary assistants. Both groups were reduced in size, as Charest opted for a smaller cabinet of 20 (with gender parity, a Canadian *première*) and appointed only 15 parliamentary assistants.

When it came to sharing questions among the two opposition parties, Speaker Bissonnet ruled that the official opposition would be entitled to the first two “main questions” and to two supplementaries following the first main question. The third and fourth main questions would come from the second opposition party, as the PQ was henceforth called, the fifth and sixth would be asked by the official opposition. Afterwards, each party would get a question in succession. In practice, 60% of questions have been asked by the official opposition, and 40% by the second opposition party.

The final issue to be settled was sharing the research budgets of the parties. The total was increased from \$1,8 million to \$2,6 million, to be apportioned the following way: \$1,1 million for the ADQ, \$800,000 for the PQ, and \$700,000 for the Liberals.

Brinkmanship over the budget

The new legislature was opened on May 8, and soon became embroiled into a fine example of the politics of brinkmanship that minority government entails at times. In a nutshell, Premier Charest insisted on using the \$750 million he had just received from Ottawa to honour his 2003 tax-reduction pledge. The ADQ felt they had a duty to vote against the budget. The wild card was the Parti Québécois, which had quickly forced the resignation of André Boisclair and had chosen as new leader Pauline Marois, who immediately announced that she would not hold a referendum on secession if she was elected. In a single stroke, the party had eliminated its two handicaps. For a brief moment, polls suggested that voters were reacting euphorically, and the PQ toyed with the idea of voting against the budget, and provoking an early election, before back-peddalling when further polls demonstrated that the PQ had not recovered that quickly. None of the three parties gained much from that episode, and more cooperative attitudes prevailed thereafter.

Adapting to the new context

Keeping in mind these inauspicious beginnings, it is startling that the life of the minority legislature elected in 2007, instead of being brief and eventful, has been eventless and relatively long (21 months, as of November 2008).

The prevailing expectation following the 2007 election was that Charest’s days as premier were numbered. He had not been a success as premier, and his reputation as a formidable campaigner had been shattered, as his lacklustre performance was singled out as one of the factors leading to the 2007 outcome. The historical record set very low

expectations for the survival of the Liberal government. Looking at other Canadian jurisdictions, François Pétry found two possible scenarios for minority governments. Newly-elected minority governments tended to gain a majority at the next election, unless they proved exceptionally incompetent (like Joe Clark's in 1979). On the other hand, majority governments (like Charest's) reduced to minority status went down the drain most of the time at the next election, unless they were led by very able politicians, like Trudeau's and Davis'. Few people at that time felt that Charest would be able to belie the historical trend.

Against this background, Charest's recovery has been truly remarkable. According to the polls, a majority have been satisfied with his government since January 2008, and the Liberals have been leading in the polls since February. In September of 2007, less than 20% thought Charest was the best premier for Quebec. In September 2008, 41% did..

The Liberals' recovery has also been largely the ADQ's demise, as numbers for the Parti Québécois did not move appreciably. In 2002-3, the ADQ had already proven that what goes up very quickly can also go down rapidly. The same scenario has been unfolding in 2007-8. Throughout the second half of 2006, the ADQ lingered at 12-16%. The rise started with 19% in February 2007, 27% in early March, and the party ended with 31% of the vote. Still in September 2007, the ADQ was scoring 34% in the polls. The ADQ's popularity vanished quickly, falling to 24% in January 2008 and to 16% next September. This also reflects the leader's demise in public opinion. In May 2007, 32% felt Mario Dumont would be the best premier, which fell to 25% in October, 20% in March 2008, and 16% in September.

The inner story of Jean Charest's political resurrection still has to be told. There is no doubt that the outcome of the election left him shaken, with his wall on the back. Some were speculating during the summer that he might not survive a confidence vote at the party's next convention. A man with a reputation for surrounding himself poorly, Charest reached out to people like John Parisella, Michel Bissonnette and Dan Gagnier, a move that reminds Pierre Trudeau in 1972, calling back on duty people like Keith Davey and Jim Coutts, whose experience of the Pearson days proved invaluable. Charest understood that Dumont, more than Marois, was the person to beat, and successfully cast his challenger at Question Period as a "girouette". He may have been helped by the fact that for many supporters of sovereignty, an ADQ government was a greater cause of concern than an ageing and seemingly impotent Liberal minority government, and that Dumont-bashing became popular on that side.

Critics suggest that one of the secrets of Charest's survival is that he adopted the view that there is hardly any problem that the absence of a solution will fail to solve. A record number of committees of inquiry or study have been appointed, often with a multi-party composition that kept everybody happy, and came up with bold proposals. Most of the time, such proposals were shot down right away by the government upon their presentation. During his first term, Charest seemingly discovered that Quebeckers are on the whole happy with their lot, or at least that they are unwilling to rock the boat. He quietly adjusted to that.

This means that the government will not force reforms on a reluctant public, but does not mean that the government cannot do anything. Budgets were passed, defeats occurred on innocuous issues. Since the opening of the session, the government has introduced 97 public bills, of which 70 had received Royal assent by July 2008.

The standard view found in the media that the Assembly is working in a fairly cooperative way finds empirical support in the recorded votes. From May 2007 to June 2008, there were 65 recorded divisions (“votes par appel nominal”).⁴⁴ In no less than 36 did all three parties join hands. This is 55% of the total. Whenever the vote was truly a “division”, the ruling party saved the day either by securing support from the ADQ (8 votes) or from the PQ (9 votes). In only 9 instances, all on innocuous issues, the government was defeated by the combined vote of the two opposition parties.⁴⁵ There is an interesting contrast between the votes recorded in 2007 and those held in 2008. During the Spring and Fall sittings, the PQ sided with the Liberals against the ADQ 7 times, but the ADQ never sided with the Liberals against the PQ. The pattern was reversed during the Winter and Spring sittings held in 2008, at a time when Mario Dumont’s prospects became less auspicious: the PQ sided with the Liberals against the ADQ a single time, but the ADQ sided with the Liberals against the PQ no less than 9 times. This suggests that during the months that followed the election, the PQ was more willing to avoid an election, while since the beginning of this year the ADQ has become more wary of elections than before.

A “cohabitation”?

After a few months, Charest and some of his ministers started to describe theirs as a government of “cohabitation”. This is a fine example of a (fortunately innocuous) manipulation of words. The word “cohabitation” entered the political lexicon in France in 1986 when the rightist parties won the legislative elections while President Mitterrand’s term still had two years to run. Instead of forcing the President’s resignation, the Right chose instead to stick to the existing constitution and made sure that the Prime Minister and Cabinet made full use of their wide prerogatives, leaving the President in the position of a (temporary, as it ended) figurehead. This lasted for two years, until Mitterrand’s re-election and the subsequent defeat of the Right at the legislative election held immediately afterwards ended cohabitation. The same scenario was repeated in 1993-5 and 1997-2002. Reducing the President’s term from seven to five years and holding both elections in a row substantially reduced the likelihood of cohabitation in the future.

⁴⁴ The three votes dealing with the budget in 2007 are set aside because complex tactics influenced the votes, with one of the opposition parties either abstaining entirely or abstaining in such numbers that a government defeat was avoided.

⁴⁵ Defeats occurred on the 17, 24 October, 31 October (twice), 21 November of 2007, and on 13 May, 14 May (twice) and 21 May of 2008. To these might be added the election of Speaker Gendron on 21 October 2008.

Nothing of this kind can exist in Quebec. Executive power is not in the hands of a directly elected President and a Premier and Cabinet responsible to the legislature. Quebec's system is strictly parliamentary. In French-style cohabitation, the Prime minister and cabinet have a free hand in determining policy because they can rely on full support within the assembly where they have a majority. Using cohabitation to describe what is commonly known as minority government may sound more familiar to French ears, but well-informed French will immediately spot the weakness of the comparison. For France does know minority government, i.e. single-party cabinets with no majority in the legislature. The cabinets appointed by Mitterrand from 1988 to 1993, headed by Rocard, Cresson and Bérégovoy, fitted the description more closely, as they were composed of Socialist ministers while the Socialist party had no majority in the Assembly. Like our own minority governments, they muddled through for the full parliamentary term, making compromises, buying out discreetly support from some Members, and relying more than usual on the so-called "49-3", a parliamentary procedure that empowers the premier to ensure the adoption of a measure by making it a matter of confidence, thereby ensuring its adoption without a vote if the opposition is unable to retaliate by bringing down the government.

The Speakership Crisis (October 2008)

The apparent conviviality of minority government was, however, shattered by Speaker Bissonnet's resignation during the Summer of 2008, in order to run at the municipal level. As the legislature was in recess, electing his successor did not take place before October, which left ample time for party manoeuvres. It soon emerged that the election would not be a foregone conclusion. While this arguably breached the spirit of the rule that the Speaker would be elected by secret ballot, the Liberal caucus came up openly for Yvon Vallières, who had been sitting almost uninterruptedly since 1973. The ADQ reacted negatively to the Liberal candidate, and selected Marc Picard as their own candidate. The PQ made the issue more complex by selecting in turn Maxime Arseneau. Protracted negotiations followed, without success, until October 20, when it was announced, a few hours before the closing of nominations, that both Picard and Arseneau had withdrawn in favour of veteran PQ MNA François Gendron, and that both parties would support Gendron. Liberals reacted very angrily to what they denounced as a breach of trust and a "subterfuge". Gendron was elected Speaker the next day. Liberals refused to applaud his election or to escort him to the Chair, and Premier Charest made his displeasure explicit, leading to a verbal altercation with the new occupant of the Chair.

Two weeks later Premier Charest met with Lieutenant-Governor to ask him to dissolve the National Assembly for an election to be held on December 8, 2008.

The Quebec election result will be known in due course but regardless of the outcome it seems fair to conclude that Quebec's first experience of minority government in modern times was far more positive than Ottawa's experience over the last two Parliaments. How can we explain such contrasting experiences?

A possible reason is that the provincial Liberal government occupies a centrist position on the political spectrum. True, they are the most federalist among the three parties but one may be closer to the truth in saying that under Charest, they have tried hard to position themselves as nationalists (the least nationalist of all three admittedly, but nationalists nevertheless). They do not need much pressure to support any Ottawa-bashing motion in the Assembly. This tendency was rampant throughout their first term and became obvious at the Leaders' TV debate in 2007. When it comes to social and economic issues, the Quebec Liberals, their image as the party of big business notwithstanding, are almost undoubtedly on the left of the ADQ and on the right of the PQ. In Ottawa, on the other hand, Harper's Conservatives are on every other party's right and may be seen as a more polarizing government than Charest's. An interpretation of this kind is attractive, until one points out that under Martin, Parliament was no less raucous an arena even if the ruling party could be seen as centrist on many issues.

Another view is that the opposition parties in Quebec (unlike those in Ottawa) were not that keen on wresting office from the ruling Liberals. It is a frequent comment that the ADQ is not ready for office. Their candidates in 2007 were on the whole a less impressive bunch than in 2003, when the ADQ was a credible contender. Star candidates like former Mayor Bourque, Marie Grégoire, Diane Bellemare, Guy Laforest were conspicuously absent in 2007, and there is every evidence that the party's initial expectations were modest. By asking members of his caucus to keep quiet in the media, Dumont has reinforced the perception, right or wrong, that he is not surrounded by bright stars. The weakness of his team may be one of the reasons why Mario Dumont did not reach for the jugular of the Charest government, either on election night or afterwards. Since then, his slide in the polls was hardly an inducement to behave aggressively. Only once did he, in December 2007, when he moved censure against the government on the poor turnout recorded at school board elections, hardly an issue to sweep the public.

While the PQ is now led by an experienced woman and includes cabinet material in its caucus, in addition to emerging as the alternative to Charest, one may question that they are hungry for power. The sovereignty movement is in disarray. The numbers are not good for holding a referendum on secession, which few Quebecers seem to want anyway.

The days of a minority government are numbered whenever the two (or three) opposition parties can expect to derive an advantage from an early election. In contrast with Martin, whose support diminished after his re-election, and in contrast with Harper's, whose numbers have on the whole remained stable since his coming to office, Charest has been successful since last Fall at improving his own standing at the expense of the ADQ, while carefully avoiding any polarizing initiative.