

**GOVERNMENT AND CANADA'S 38TH PARLIAMENT:
QUESTIONS AND ANSWERS**

**Michael Dewing
Brian O'Neal
Political and Social Affairs Division**

**Mollie Dunsmuir
Megan Furi
James Robertson
Margaret Young
Law and Government Division**

5 July 2004

The Parliamentary Information and Research Service of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Analysts in the Service are also available for personal consultation in their respective fields of expertise.

**CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
KEY PEOPLE.....	1
A. The Governor General	1
1. Who is the Governor General, and what are the powers and functions of the office?	1
2. When does the present Governor General's term end? Can she be reappointed? Can she stay in office?.....	2
3. What is the power of the Governor General regarding a dissolution of Parliament and calling an election?.....	2
4. What power does the Governor General possess to ask a party leader to form a government?.....	3
5. What are the rights or powers of the Governor General to dismiss a Prime Minister/government or to replace a Prime Minister/government?.....	3
6. How much discretion does the Governor General have to ask a leader to form a government and to interpret election results?.....	3
7. Must the Governor General accept the advice tendered by the duly appointed Prime Minister (regarding dissolution, forming a government, etc.)?.....	4
8. What options are available to the Governor General in the event that a second dissolution is requested before the House of Commons meets?.....	4
9. What was the King-Byng Affair? Is it relevant today?.....	5
10. What happened in the Ontario provincial election in 1985? What did the Lieutenant Governor do in that case?.....	6
B. The Prime Minister	6
1. When does a Prime Minister cease to hold office?.....	6
2. Must a Prime Minister resign? Can he or she be replaced without submitting a resignation (i.e., dismissed)?	7
3. What happens if a Prime Minister dies or is incapacitated while in office?.....	7
4. Must the Governor General accept a resignation from a Prime Minister?	7
5. Does a defeated government have full and complete authority following an election, before a new government is sworn in?	7
6. How soon after an election does a new government take office?.....	8
7. Who were Canada's shortest-serving Prime Ministers?	8

	Page
C. Ministers	9
1. When do existing Ministers cease to hold office? When do new Ministers assume office?	9
2. What happens if an existing Minister is defeated?	9
3. Do Ministers need to be members of the House of Commons or Senate?	9
4. Can Senators be appointed to sit in Cabinet?.....	9
5. What happens if a government has few or no MPs from a particular region or province?	9
D. Members of Parliament.....	10
1. When do MPs assume office?.....	10
2. When do they begin receiving allowances and services?	10
 GOVERNMENT.....	 11
 A. Public Finances	 11
1. How does the federal government finance itself during and after an election period?.....	11
2. What are Governor General's Special Warrants? Are there any restrictions or limitations on their use?	12
 B. Forming a Government	 12
1. If a government in office is re-elected – obtains a majority of seats in the election – does it remain in office, or does the leader have to be invited to form a government?	12
2. If there is no clear majority, which is entitled to be asked to form a government first – the party with the most seats in the House of Commons, or the incumbent party?.....	12
3. If there is no clear majority and the government resigns, how is the Prime Minister determined?	13
4. What happens if two parties have an equal number of seats in the Commons?	13
5. In a case where no party has a majority, what options are there for parties to govern?.....	14
 C. Minority Governments.....	 15
1. What is a minority government?.....	15
2. What types of arrangements are possible for more than one political party to combine together? What are the differences between them? What precedents exist?	15
3. What is Canada's experience with minority governments?.....	17
4. How long can a minority government stay in office?.....	18
5. When can a minority government request a dissolution of Parliament to seek a new mandate?.....	18
6. Is it necessary for a minority government to have the formal support of smaller parties in order to govern?.....	18
7. Are there any special rules regarding a minority government?	18

	Page
D. The Confidence Convention	18
1. What is the “confidence convention”?.....	18
2. What is a vote of confidence?.....	19
3. Who decides whether a particular vote is one of confidence?.....	19
4. Can a government be defeated in the House of Commons without losing the confidence of the House?	19
5. What is the status of the government following the loss of a vote in the Senate?	19
6. When can Canadians expect to see the first confidence vote in a new Parliament?	20
PARLIAMENT.....	20
A. Bringing Parliament Back.....	20
1. Who decides when a new Parliament begins?	20
2. When is Parliament due to come back, following the June 2004 election?.....	20
3. Could a government (especially a minority) delay bringing Parliament back, and meeting the House of Commons?	20
4. What constitutional limits are there on when Parliament must meet?.....	21
5. What practical limits are there on when Parliament must meet?.....	21
6. Would a delay in the return of the House of Commons affect Members’ salaries, allowances or benefits?.....	21
B. The New House of Commons.....	21
1. What Parliament and session will be starting after the June 2004 election?	21
2. When do committees of the House and the Senate get started? How?.....	21
3. How is the Official Opposition chosen? What happens if the two opposition parties end up with the same number of seats, as happened in 1996?	22
C. The Speaker	23
1. When is the Speaker of the House of Commons elected?	23
2. Must the Speaker come from the government side?.....	23
3. What happens if the Speaker is not re-elected to the House of Commons?	23
D. The Senate.....	23
1. How does a minority government affect the operation of the Senate?.....	23
2. Must the Official Opposition in the Senate be the same as the Official Opposition in the House of Commons?	23
3. How is the Leader of the Opposition in the Senate selected?.....	24

	Page
ELECTORAL REFORM.....	24
1. What is proportional representation?.....	24
2. How would the results of the June 2004 election differ if Canada had proportional representation?	25
3. What current initiatives are there on the issue of electoral reform at the federal level and in the provinces?	25
4. Are fixed election dates being implemented?.....	27



CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

GOVERNMENT AND CANADA'S 38TH PARLIAMENT: QUESTIONS AND ANSWERS

INTRODUCTION

This document was originally prepared before the General Election of 28 June 2004, in anticipation of a minority government, the first since 1979. It has since been updated, but retains its original format of questions and answers about key issues.⁽¹⁾

In the days before and after the election, various Members of Parliament and others raised numerous questions about the constitutional, conventional, and practical implications of a minority government. Those questions are presented here, along with answers prepared by specialists in this field.

The document also addresses some of the broader issues following elections, such as when MPs take office and when Parliament comes back. Finally, a section on electoral reform includes information on proportional representation and current reform initiatives.

KEY PEOPLE

A. The Governor General

1. Who is the Governor General, and what are the powers and functions of the office?

The Governor General represents the Queen, who is Canada's head of state. (The Prime Minister is the head of government.) The Governor General is appointed by the Queen, on the advice of the Canadian Prime Minister. Since the 1950s, only Canadians have been appointed to the office. The current Governor General is the Right Honourable Adrienne Clarkson.

(1) There is also a list of Questions and Answers on the Elections Canada Web site:
<http://www.elections.ca/content.asp?section=faq&document=faqfull&lang=e&textonly=false>.

The appointment of the Governor General is not mentioned in the Constitution of Canada, and is made through a commission granted under the Great Seal of Canada. The appointment of the present Governor General was approved by Queen Elizabeth II on 8 September 1999, and M^{me} Clarkson was installed on 7 October 1999. The Governor General serves at Royal Pleasure, and is also the Commander in Chief of Canada.⁽²⁾

Under the Canadian Constitution, the Governor General possesses enormous powers; but, by convention, these are exercised only on the advice of the Prime Minister and Cabinet. In a constitutional monarchy, except in rare cases – usually associated with election results, the dissolution of Parliament and the formation of a government – the Governor General has no independent discretion, but must follow the advice tendered.

In the event of an emergency or catastrophe where the Prime Minister is incapacitated, together with significant numbers of his or her Cabinet and the Legislature, the Governor General would be significantly freed of the constraints on his or her discretion and could probably appoint an emergency interim government.

**2. When does the present Governor General's term end?
Can she be reappointed? Can she stay in office?**

The usual term is five years, and the fifth anniversary of M^{me} Clarkson's installation falls on 7 October 2004. However, the appointment is "at pleasure," meaning that M^{me} Clarkson remains Governor General until the government takes action to replace her.

**3. What is the power of the Governor General regarding
a dissolution of Parliament and calling an election?**

If a Prime Minister who enjoys the confidence of the House of Commons asks the Governor General for a dissolution, and a proclamation initiating an election, it will almost always be granted.

If a Prime Minister who has lost a confidence vote asks for a dissolution, the Governor General probably has the discretion to decide whether anyone else is capable of forming a government. (See also question 9 in this section.)

(2) Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics*, Oxford University Press, Toronto, 1991, p. 16.

4. What power does the Governor General possess to ask a party leader to form a government?

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

All constitutional authorities are agreed that a government has the right to remain in office to meet the legislature when an election results in no majority position for any party.⁽³⁾

5. What are the rights or powers of the Governor General to dismiss a Prime Minister/government or to replace a Prime Minister/government?

Just as a Governor General has the legal power to appoint a government, he or she also has the power to dismiss it. However, this power is stringently limited by conventional rules.

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

6. How much discretion does the Governor General have to ask a leader to form a government and to interpret election results?

The Governor General clearly cannot appoint a new government until the existing government has resigned or been dismissed.

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

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

(3) *Ibid.*, p. 23.

If the proper role for the Governor General were unclear, he or she would probably consult with his or her own advisers and with other constitutional experts.

The traditional view is that the monarch or the monarch's representative can consult as widely as he or she wishes, both inside and outside parliament as to whom should be appointed as the new First Minister.⁽⁴⁾

Her job is always to protect Parliamentary democracy and the Parliament that the people have elected [has to have] a chance to see if it can support a government.⁽⁵⁾

7. Must the Governor General accept the advice tendered by the duly appointed Prime Minister (regarding dissolution, forming a government, etc.)?

From the time the Governor General appoints a Prime Minister until that Prime Minister loses the confidence of the House or is defeated in an election, the Governor General must generally follow the advice of the Prime Minister. It has also been argued the Governor General has the right and duty to use his or her reserve powers to protect fundamental principles of the Constitution, but this is much more contentious.⁽⁶⁾

8. What options are available to the Governor General in the event that a second dissolution is requested before the House of Commons meets?

There have been occasional suggestions in Canada that after an inconclusive election the Prime Minister would be justified in requesting a dissolution and therefore a second election without even waiting for the Parliament to meet. This is almost certainly wrong. The House of Commons has been elected, and it should surely be allowed to meet and see if it can transact public business. If it turned out that the House could not even elect a speaker, or if it turned out that neither the Prime Minister nor the leader of any other party could command the support of a majority of members, then there would be no alternative to dissolution; but to dissolve the House before it has met would be an abuse of the electoral system, and one which the Governor General would surely be entitled to refuse.⁽⁷⁾

(4) Ronald I. Cheffins, "The Royal Prerogative and the Office of Lieutenant Governor," *Canadian Parliamentary Review*, Vol. 23, No. 1, Spring 2000, pp. 14-19 (p. 18).

(5) Peter Russell, radio interview on CFRA AM, Ottawa, 2 June 2004; see pp. 5-6 of printed transcript.

(6) Heard (1991), p. 47.

(7) Peter Hogg, *Constitutional Law of Canada*, Third Edition (Loose-leaf Edition), Carswell, Toronto, 1992, 9.6(d).

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

Andrew Heard gives two examples of new elections being called before provincial assemblies formally met after an election: Prince Edward Island in 1859 and Newfoundland in 1909. In each case, the legislature was unable even to choose a speaker.⁽⁸⁾

9. What was the King-Byng Affair? Is it relevant today?

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

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

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

At the time, it was mandatory that newly appointed Ministers vacate their seats and run in a by-election (the requirement was repealed in 1931). Since Prime Minister Meighen could not afford even the temporary loss of so many Members, he employed technicalities, such as a "temporary ministry" and "acting Ministers," to avoid the required by-elections. A motion was brought in the House condemning such devices, and the government lost by one vote. Lord Byng then granted a dissolution to Prime Minister Meighen.

(8) Heard (1991), p. 23.

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

The matter is still relevant because, even now, senior constitutional experts cannot agree on whether Lord Byng acted properly or prudently. His best-known defender is the late Eugene Forsey. Peter Hogg considers the refusal to dissolve Parliament “at least unwise,” given the requirement that Ministers vacate their seats.⁽⁹⁾

10. What happened in the Ontario provincial election in 1985? What did the Lieutenant Governor do in that case?

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

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

B. The Prime Minister

1. When does a Prime Minister cease to hold office?

A Prime Minister ceases to hold office when the Governor General accepts his or her resignation or when a Prime Minister is dismissed by the Governor General. Following an electoral defeat, a Prime Minister resigns when his or her successor is ready to form a government.⁽¹⁰⁾

(9) Hogg (1992), 9.6(d); Cheffins (2000).

(10) Privy Council Office, *Guide to Canadian Ministries Since Confederation*, available on-line at: http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=min/intro_e.htm.

**2. Must a Prime Minister resign?
Can he or she be replaced without submitting a resignation (i.e., dismissed)?**

Although no Prime Minister since Confederation has been dismissed, this is not to say that it could not happen.⁽¹¹⁾ It would presumably be required if a Prime Minister became incapacitated and could not tender a resignation.

3. What happens if a Prime Minister dies or is incapacitated while in office?

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

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

When a new ministry is being formed following the death, resignation, or dismissal of a Prime Minister, it is appropriate for the House to adjourn from day to day and transact only routine business on the days when it meets.⁽¹²⁾

4. Must the Governor General accept a resignation from a Prime Minister?

The Governor General must generally follow the advice of the Prime Minister.

5. Does a defeated government have full and complete authority following an election, before a new government is sworn in?

A defeated government stays in power until a new ministry is sworn in, but the “caretaker convention”⁽¹³⁾ somewhat limits the actions the government may take.

(11) Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, House of Commons, Ottawa, 2000.

(12) *Ibid.*

(13) John Wilson describes this convention as follows: “It is a well-established principle of parliamentary government that once parliament has been dissolved and an election campaign is under way the government’s freedom of decision-making is firmly restricted and should be confined to dealing with only routine matters of administration – apart, of course, from any emergency situation that might arise.” See “The Status of the Caretaker Convention in Canada,” *Canadian Parliamentary Review*, Vol. 18 (1995-96), pp. 12-19.

6. How soon after an election does a new government take office?

Since 1957, in the case of elections that result in a new government, that government has been sworn in between 10 and 14 days following the election. Since 1920, it has been the tradition that the new ministry is sworn in when it is ready to form a government.⁽¹⁴⁾

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

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

7. Who were Canada's shortest-serving Prime Ministers?

Prime Minister	Party	Days	Duration
MEIGHEN, Arthur	National Liberal and Conservative Party, Conservative	623	1 year, 8 months and 14 days
ABBOTT, John Joseph Caldwell	Liberal-Conservative	527	1 year, 5 months and 9 days
BOWELL, Mackenzie	Conservative	493	1 year, 4 months and 6 days
CLARK, Charles Joseph (Joe)	Progressive Conservative	272	8 months and 28 days
CAMPBELL, A. Kim	Progressive Conservative	131	4 months and 9 days
TURNER, John Napier	Liberal	78	2 months and 17 days
TUPPER, Charles	Conservative	68	2 months and 7 days

(14) Privy Council Office, *Guide to Canadian Ministries Since Confederation*.

C. Ministers

1. When do existing Ministers cease to hold office? When do new Ministers assume office?

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

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

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

2. What happens if an existing Minister is defeated?

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

3. Do Ministers need to be members of the House of Commons or Senate?

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

4. Can Senators be appointed to sit in Cabinet?

Yes. This has been the case since Confederation; the first Cabinet under Sir John A. Macdonald had 13 Ministers, 5 of whom were Senators. In recent years, the practice has generally been to have only one Senator in the Cabinet.

5. What happens if a government has few or no MPs from a particular region or province?

In the past, Prime Ministers have turned to the Senate to make up for lack of regional/provincial representation in their caucuses. This was done, for example, in 1979 by

former Prime Minister Joe Clark to make up for lack of Quebec representation on the Conservative benches in the House of Commons, and by the Liberal government in 1980-1984 to compensate for lack of seats in the West. In 1997, former Prime Minister Jean Chrétien appointed Senator Alasdair Graham Government Leader in the Senate to make up for lack of Liberal representation in Nova Scotia. Since 1969, the Government Leader in the Senate has held the status of a Minister, although there is no constitutional or legal requirement that the two offices be combined.

D. Members of Parliament

1. When do MPs assume office?

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

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

2. When do they begin receiving allowances and services?

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

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

GOVERNMENT

A. Public Finances

1. How does the federal government finance itself during and after an election period?

There are several ways in which sufficient funding can be allocated so that the federal government can continue to function during an election period. The means used to do this may depend upon when the election takes place.

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

If, on the other hand, an election has been called prior to adoption of the Main Estimates and Appropriations bills, there are two avenues open to ensure that funding is available when needed. The first involves the use of Interim Supply, a mechanism that is commonly used to provide continued funding while the House considers the Main Estimates, which are not adopted until several months after the beginning of a new fiscal year. Marleau and Montpetit describe Interim Supply as follows:

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

The government gives notice of a motion setting out in detail the sums of money it will require, expressed in twelfths of the amounts to be voted in the Main Estimates. Most are three-twelfths of the total amount, corresponding to the three-month hiatus between the beginning of the new fiscal year and the final passage of the Main Estimates, but the government may request more. The motion for Interim Supply is considered on the last allotted day of the period ending March 26. Concurrence in the motion is followed by the consideration and passage at all stages of an appropriation bill based on Interim Supply and authorizing the prescribed withdrawals from the Consolidated Revenue Fund. The granting of Interim Supply does not necessarily constitute immediate House approval for the programs to which it applies in the Main Estimates.⁽¹⁵⁾

(15) Marleau and Montpetit (2000), pp. 731-732 (footnotes omitted).

Prior to the June 2004 election, Parliament passed *Appropriation Act No. 1 2004-2005* (Bill C-27) on 30 March 2004, which provided Interim Supply. It is important to note that the bill provided Interim Supply for 9 months to 11 months, depending on the object of the funding.

The use of Governor General's Special Warrants offers another alternative. (See the next question.)

**2. What are Governor General's Special Warrants?
Are there any restrictions or limitations on their use?**

Marleau and Montpetit describe these Special Warrants as follows:

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

- Parliament is dissolved;
- A Minister has reported that an expenditure is *urgently required for the public good*; and
- The President of the Treasury Board has reported that there is no appropriation for the payment.⁽¹⁶⁾

Special Warrants may be used only from the date of dissolution until 60 days following the date fixed for the return of the writs after the election. They may not be used during that period if Parliament is brought back and then prorogued.

B. Forming a Government

1. If a government in office is re-elected – obtains a majority of seats in the election – does it remain in office, or does the leader have to be invited to form a government?

The government stays in office until the Prime Minister resigns or is dismissed by the Governor General.

2. If there is no clear majority, which is entitled to be asked to form a government first – the party with the most seats in the House of Commons, or the incumbent party?

If there is no clear majority, the incumbent Prime Minister is given the choice of resigning or meeting the House to see if his or her party has the confidence of the House.⁽¹⁷⁾

(16) *Ibid.*, p. 747 (footnote omitted).

(17) Eugene Forsey, *How Canadians Govern Themselves*, 5th edition, 2003, available on-line at: http://www.parl.gc.ca/information/library/idb/forsey/How_Canadians_Govern_Themselves-5th_Ed.pdf.

3. If there is no clear majority and the government resigns, how is the Prime Minister determined?

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

In almost every case, the Governor General has chosen as the Prime Minister the leader of the party that has received the largest number of seats in the House of Commons, even if it is not the majority.⁽¹⁸⁾

4. What happens if two parties have an equal number of seats in the Commons?

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

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

If the Prime Minister were defeated in that vote, he or she would have to tender his (her) resignation to the Governor General. The Prime Minister could advise dissolution and a general election, or suggest that the leader of the other party be asked to try to form a government. (The former advice would raise many of the same issues as the King-Byng Affair; see question 9 under “The Governor General.”) Many factors would be relevant to the decision of the Governor General: the numbers of seats of the two parties (and other parties); whether there were formal or informal offers of support to the other party; etc. Likely, if such a situation occurred shortly after an election, and there was a reasonable chance that the other party could form a government and obtain the confidence of the House, the Governor General would invite the leader of that party to form the government.

(18) Robert Jackson and Doreen Jackson, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*, 5th Edition, Prentice-Hall, Toronto, 2001, p. 258.

**5. In a case where no party has a majority,
what options are there for parties to govern?**

Two (or more) parties can form a coalition. In a *coalition government*, members of different political parties are brought into Cabinet and together contribute to policies that become part of the government's legislative program. There has been only one coalition government at the federal level in Canada's history, and it was not as a result of a minority situation. In 1917, as a way of broadening support for conscription during World War I, Conservative Prime Minister Sir Robert Borden invited individual Liberals and independents to join a coalition known as the Union Government; it lasted until Borden's retirement in 1920. Coalition governments are more common in countries with proportional representation electoral systems. According to C. E. S. Franks, a minority government is more likely to make concessions over policy and legislation with a third party than to enter into a coalition.⁽¹⁹⁾

Two (or more) parties may choose to have a *formal pact* whereby a smaller party does not have membership in Cabinet, but has publicly agreed in writing to support another party in government for a limited period in exchange for specific policy concessions from the government. The 1985-1987 minority government in Ontario was an example of this type of arrangement.⁽²⁰⁾

Another option is to form an *informal alliance* or an *agreement* with another party, without any written commitment. This is not as formal as a coalition and does not result in members of another party joining Cabinet. According to Peter Dobell, the 1972 informal alliance between the federal Liberals and the NDP meant that "every policy proposal, all legislation, was discussed between representatives of the two parties ... only when agreement had been reached did the government proceed to introduce a bill."⁽²¹⁾

Minority governments can also deal with the situation by governing on a case-by-case basis, "where the government makes a separate accommodation with the opposition parties on each bill."⁽²²⁾

(19) Peter Dobell, "What Could Canadians Expect from a Minority Government?" *Policy Matters*, Vol. 1, No. 6, 2000, available on-line at: <http://www.irpp.org/pm/archive/pmvollno6.pdf>; and C. E. S. Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, p. 49.

(20) Stewart Hyson, "Nova Scotia and the 'Problem' of Minority Government," *Canadian Parliamentary Review*, Vol. 21, No. 4, Winter 1998-1999, p. 13.

(21) Dobell (2000), p. 5.

(22) Hyson (1998-1999), p. 13.

C. Minority Governments

1. What is a minority government?

“A minority government is one that does not have a majority of the MPs attending its caucus.”⁽²³⁾ In the 38th Parliament, a minority government is one that has fewer than 155 seats in the House of Commons.

If the Speaker is elected from the government side, however, a bare majority of 155 would no longer suffice because the Speaker does not vote except to break a tie. This is called a “casting vote” and is not partisan. The Speaker traditionally votes so as to permit matters to be brought back later, to defer them so that a majority vote would be possible, or to preserve the *status quo*.

2. What types of arrangements are possible for more than one political party to combine together? What are the differences between them? What precedents exist?

Political scientist Linda Geller-Schwartz has identified five modes of cooperation for minority governments. They range from a coalition through a formal pact, an informal understanding, *ad hoc* majorities on each issue, and opposition party restraint while the government acts as though it had a majority.⁽²⁴⁾

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

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

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

(23) D. Kwavnick, “Minority Government,” *Canadian Encyclopedia*.

(24) Linda Geller-Schwartz, “Minority Government Reconsidered,” *Journal of Canadian Studies*, Vol. 14, No. 2, Summer 1979, p. 68.

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

(See also question 5 under “Forming a Government,” above.)

3. What is Canada's experience with minority governments?

Minority Parliaments: Ministries, Dates of General Election, Term of Parliament, Number of House of Commons Sitting Days, Size of Minority

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

* At the general election.

Source: Library of Parliament, PARLINFO.

4. How long can a minority government stay in office?

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

5. When can a minority government request a dissolution of Parliament to seek a new mandate?

The Prime Minister of a minority government can request a dissolution at any time. (See also question 9 in the section on the Governor General, above.)

6. Is it necessary for a minority government to have the formal support of smaller parties in order to govern?

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

7. Are there any special rules regarding a minority government?

No.

D. The Confidence Convention

1. What is the “confidence convention”?

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

2. What is a vote of confidence?

According to Marleau and Montpetit:

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

- explicitly worded motions which state, in express terms, that the House has, or has not, confidence in the government;
- motions expressly declared by the government to be questions of confidence; [and]
- implicit motions of confidence, that is, motions traditionally deemed to be questions of confidence, such as motions for the granting of Supply (although not necessarily an individual item of Supply), motions concerning the budgetary policy of the government and motions respecting the Address in Reply to the Speech from the Throne.⁽²⁵⁾

3. Who decides whether a particular vote is one of confidence?

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

4. Can a government be defeated in the House of Commons without losing the confidence of the House?

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

5. What is the status of the government following the loss of a vote in the Senate?

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

(25) Marleau and Montpetit (2000), p. 37 (footnotes omitted).

6. When can Canadians expect to see the first confidence vote in a new Parliament?

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

PARLIAMENT

A. Bringing Parliament Back

1. Who decides when a new Parliament begins?

The *Constitution Act, 1867* provides that “The Governor General shall from Time to Time, in the Queen’s Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.” The “Instrument” is two proclamations issued on the advice of the Prime Minister. The first sets the date for which Parliament is summoned. The second, issued after the election, confirms or sets back that date and sets a time of meeting.⁽²⁶⁾

2. When is Parliament due to come back, following the June 2004 election?

A proclamation issued on 23 May 2004, at same time as the proclamation dissolving Parliament, summoned Parliament to meet on 19 July. This date was later changed to 4 October 2004.

According to the calendar established under Standing Orders 24, 27 and 28, the House of Commons was due to come back on Monday, 20 September 2004. This calendar, however, applies only if the House is in session.

3. Could a government (especially a minority) delay bringing Parliament back, and meeting the House of Commons?

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

(26) House of Commons, *Précis of Procedure*, November 2003, available on-line at: <http://www.parl.gc.ca/information/about/process/house/precis/titpg-e.htm>.

4. What constitutional limits are there on when Parliament must meet?

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

5. What practical limits are there on when Parliament must meet?

Parliament must vote money for the government. See the section on “Public Finances,” above.

6. Would a delay in the return of the House of Commons affect Members’ salaries, allowances or benefits?

No.

B. The New House of Commons

1. What Parliament and session will be starting after the June 2004 election?

The 38th Parliament, 1st Session.

2. When do committees of the House and the Senate get started? How?

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

In the Senate, at the beginning of each session, a Committee of Selection, consisting of nine Senators, is appointed. The Committee nominates a Senator to preside as Speaker, and Senators to serve on select committees. Once the membership of committees has been established, each committee holds an organization meeting at which it elects the chair and deputy chair and adopts certain procedural motions that allow it to function.

3. How is the Official Opposition chosen? What happens if the two opposition parties end up with the same number of seats, as happened in 1996?

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

Should two opposition parties end up with the same number of seats, the Speaker may be called upon to decide which party should be designated as the Official Opposition. This occurred in 1996, when circumstances resulted in the equality of seats between the two largest opposition parties – the Reform Party and the Bloc. After examining the precedents from other Canadian jurisdictions, the Speaker concluded that, in the case of a tie, parliamentary incumbency (resulting in maintaining the *status quo*) should be the determining factor.

In his ruling, Speaker Parent cited two examples in other Canadian jurisdictions where, for one reason or another, the choice for Official Opposition was not obvious. The first example occurred in 1983 in the Alberta Legislature. Following a general election, the opposition was composed of 2 New Democrats and two independent Members. The Speaker of the Legislature based his decision to grant the Official Opposition status to the New Democratic Party, in part, on the popular vote received by the party.

The second example occurred in 1994, when the Speaker of the New Brunswick Legislature was faced with a situation where two opposition parties had the same number of seats. Speaker Parent concurred with the Speaker of the New Brunswick Legislature, who had applied the principle of incumbency, the *status quo*, and who had cautioned that “basing a decision on factors outside Parliament opens the door or invites future decisions with no basis in parliamentary precedents or practice.”

In Great Britain in 1918, in very complicated circumstances, the leaders of the Liberal Party and the Labour Party agreed to divide the leadership of the Official Opposition between the two of them on alternate weeks.⁽²⁷⁾

(27) Marleau and Montpetit (2000), p. 33; House of Commons, *Debates*, 27 February 1996.

C. The Speaker

1. When is the Speaker of the House of Commons elected?

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

2. Must the Speaker come from the government side?

No. For example, Speaker Lucien Lamoureux was a Liberal Member when he became Speaker in 1966, but in the 1968 and 1972 elections he ran as an independent. He won both times and became Speaker again after each of these elections. His (Liberal) successor, James Jerome, remained Speaker through the Progressive Conservative government led by Joe Clark (1979-1980).⁽²⁸⁾

3. What happens if the Speaker is not re-elected to the House of Commons?

There is an election for Speaker of the House of Commons whether or not the former Speaker is re-elected to the House. The election of the Speaker at the opening of a Parliament is presided over by the Member who has the longest period of unbroken service and who is not a member of the Cabinet, nor holds any office within the House.⁽²⁹⁾

D. The Senate

1. How does a minority government affect the operation of the Senate?

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

2. Must the Official Opposition in the Senate be the same as the Official Opposition in the House of Commons?

No. The Official Opposition in the Senate is the opposition party with the greatest number of Senators. If the Official Opposition in the Senate has more seats than the government party in the Senate, it may be considerably more difficult to pass government legislation.

(28) John Fraser, *The House of Commons at Work*, Éditions de la Chenelière, Montréal, 1993.

(29) House of Commons (2003).

Until recently, only two official parties were represented in the Senate, and these were usually the same two parties that formed the government and the Official Opposition in the House of Commons. This meant that, in practice, the opposition in the Senate was the same party as the opposition in the House of Commons. This led to some confusion as to whether the Official Opposition had to be the same party in both Houses; but this is clearly not the case.

3. How is the Leader of the Opposition in the Senate selected?

The Leader of the Opposition in the Senate is chosen by the party itself, although the mechanism is not clear. It appears that until at least the 1960s, party leaders in the Senate were elected by the caucuses of the Senators belonging to the party.

From anecdotal evidence, it appears that, starting in the 1970s, party leaders assumed a greater role in determining the leadership of the opposition party in the Senate. This development may have been due to the personality or popularity of the leader, or a consolidation of control by the party leadership, or it may have been part of the general trend toward leader-oriented party politics.

It is also possible to argue that the appointment of Senate leaders by party leaders is made with the concurrence of the party's Senate caucus, and that the Senators have in no way abdicated their right to make such appointments in the future.

ELECTORAL REFORM

1. What is proportional representation?

The British Columbia Citizens' Assembly on Electoral Reform defines this electoral system as follows:

Proportional representation refers to a family of electoral systems which stress the importance of ensuring that the proportion of seats won by a party in a representative assembly reflects as closely as possible the proportion of votes won by the party. These systems often use more complicated procedures than other electoral systems for counting votes and allocating seats, but the basic principle on which they are based is straightforward – a representative assembly should reflect the distribution of opinion in the political community as closely as possible. There are two broad ways in which proportional representation can be achieved: the list system and the single

transferable vote (STV) system. Proportional outcomes can also be achieved by mixing proportional representation with a non-proportional system [, yielding] mixed member proportional (MMP) systems.⁽³⁰⁾

2. How would the results of the June 2004 election differ if Canada had proportional representation?

Results of the 2004 election under a system of proportional representation would be approximately: Liberals, 113; Conservatives, 91; Bloc Québécois, 38; NDP, 48; Green, 13; Other, 5.

For an example of how the 2000 election results differ between Canada's current first-past-the-post system and proportional representation, see the Law Commission of Canada's Web site.⁽³¹⁾

3. What current initiatives are there on the issue of electoral reform at the federal level and in the provinces?

Several provinces are currently studying the issue of electoral reform, including reform of the voting system and fixed election dates. The governments of Prince Edward Island and New Brunswick have appointed independent commissions to look at these issues. Ontario and Quebec have delegated the responsibility for examining electoral reform to a secretariat and a department, respectively. British Columbia has created a Citizens' Assembly on Electoral Reform. The province asked 160 eligible voters (80 women and 80 men, chosen from each of British Columbia's 79 electoral districts, and two Aboriginal representatives) to make recommendations on the reform of the provincial electoral system. If a change from the first-past-the-post system is recommended, the proposal will be put to the voters of British Columbia as a referendum question at the next provincial election, to be held on 17 May 2005. In order for the referendum to pass, it must be approved by 60% of all voters, and by a simple majority of voters in 60% of the 79 electoral districts.

(30) British Columbia Citizens' Assembly on Electoral Reform, *Glossary*, available on-line at: http://www.citizensassembly.bc.ca/public/learning_resources/glossary/2003/csharman-10_0312241118-561.

(31) Law Commission of Canada, Presentation on electoral reform in Canada, http://www.lcc.gc.ca/en/themes/gr/er/er_report/final_report_presentation_files/frame.htm (slides 16 and 17).

Electoral reform is also being explored at the federal level. On 31 March 2004, Justice Minister Irwin Cotler tabled a report of the Law Commission of Canada, *Voting Counts: Electoral Reform for Canada*, that recommends the adoption of a mixed member proportional system. The report also makes recommendations on how to increase diversity in the House of Commons by ensuring better representation of women, minorities and Aboriginal peoples.

On 10 February 2004, at the beginning of the 3rd Session of the 37th Parliament, the Leader of the Government in the House of Commons and the Minister Responsible for Democratic Reform, the Hon. Jacques Saada, wrote to the House of Commons Procedure and House Affairs Committee asking it to study the impact of the judgment of the Supreme Court of Canada in *Figueroa v. Canada*⁽³²⁾ and make recommendations on aspects of the electoral process that warrant attention. The Minister requested that the Committee bring forward recommendations for reform, in the form of draft legislation, within one year. Parliament was dissolved before the study could take place.

One significant reform that has already taken place at the federal level involves the registration of political parties. In response to the *Figueroa* judgment, the government introduced Bill C-3 (formerly Bill C-51 in the 2nd Session of the 37th Parliament). Among other major reforms, this bill included, for the first time, a definition of a political party (an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election) and lowered the candidate threshold from 50 to 1. The bill received Royal Assent on 14 May 2004 (S.C. 2004, c. 24) and came into force on 15 May, when the Chief Electoral Officer published a notice in the *Canada Gazette* indicating that the necessary preparations to bring the law into operation had been completed. This development is significant because it opens up the electoral system to small parties that had previously been excluded from the benefits of registration.

With regard to the issue of fixed election dates, see question 4, below.

(32) [2003] 1 S.C.R. 912. The Supreme Court ruled in June 2003 that the 50-candidate threshold for party registration violated section 3 of the *Canadian Charter of Rights and Freedoms*.

4. Are fixed election dates being implemented?

Currently, only British Columbia has legislated fixed election dates. The next provincial election will be held on 17 May 2005. Elections will then be held on the second Tuesday of May every four years. It should be noted that the Lieutenant Governor still has the power to dissolve the Legislative Assembly before that date, should the need arise.

On 1 June 2004, the Government of Ontario introduced in the Legislative Assembly a bill that, if passed, will bring in fixed election dates in the province.

A number of other provinces, including Quebec and New Brunswick, are considering the idea of fixed election dates.

On 1 April 2004, during the 3rd Session of the 37th Parliament, Conservative Party leader Stephen Harper introduced a private Member's bill (C-512) that would have provided for fixed election dates for the House of Commons. On 27 April 2004, the House debated a supply day motion on fixed dates for general elections. Further consideration of Bill C-512 was cut short by the dissolution of Parliament on 23 May 2004.