



Canadian Study
of Parliament Group

The Confidence Convention under the Canadian Parliamentary System

Dr. Donald Desserud
Department of History and Politics
University of New Brunswick

PARLIAMENTARY PERSPECTIVES

**Canadian
Study of Parliament
Group**

The Canadian Study of Parliament Group (CSPG) was created with the object of bringing together all those with an interest in parliamentary institutions and the legislative process, to promote understanding and to contribute to their reform and improvement.

The constitution of the Canadian Study of Parliament Group makes provision for various activities, including the organization of conferences and seminars in Ottawa and elsewhere in Canada, the preparation of articles and various publications, the establishment of workshops, the promotion and organization of public discussions on parliamentary affairs, participation in public affairs programs on radio and television, and the sponsorship of other educational activities.

Membership is open to all those interested in Canadian legislative institutions.

Applications for membership and additional information concerning the Group should be addressed to the Secretariat, Canadian Study of Parliament Group, Box 660, West Block, Ottawa, Ontario, K1A 0A6. Tel.: 613.995.2937, Fax: 613.995.5357.

**Members of the
Board of Directors
2006**

President

Jeff Heynen

Vice-President

Jonathan Malloy

Treasurer

Lyne Jutras

Secretary

Till Heyde

Past President

Dianne Brydon

Directors

Chedly Belkhdja

Peggy Morgan

Jack Stilborn

Graham White

Susan Harada

Patricia Chaychuk

David Docherty

F. Leslie Seidle

Jennifer Smith

Lisa Young

INTRODUCTION

This is the seventh paper in *Parliamentary Perspectives*, a publication of the Canadian Study of Parliament Group (CSPG). First launched in 1998, the perspective series is intended as a vehicle for distributing both studies launched by academics and the reflections of others who have a particular interest in parliamentary themes. The papers are offered as a benefit to members of the CSPG. The papers are offered as a benefit to members of the CSPG and also available publicly on our Web site.

The CSPG is especially excited to bring you this paper, since it is not merely the seventh in a published series, but the product of the first winner of the Mallory Prize. Herewith, a little background.

In 2004, the CSPG established the James R. Mallory Research Grant for the Study of Parliament. It is named in honour of James R. Mallory, a distinguished member of the Department of Political Science at McGill University as well as a founder, former president and long-time member of the CSPG. The late Professor Mallory was a leading scholar of parliamentary government and his text, *The Structure of Canadian Government*, is still consulted by students of Canadian government.

Professor Desserud entered the winning application, and began his research in the spring of 2005 on that well known anchor of responsible government, the confidence convention. His paper, "The Confidence Convention under the Canadian parliamentary System," is the result.

Fascinated by the travails of the minority government of Prime Minister Paul Martin, Professor Desserud opted to study the confidence convention in the context of the 38th Parliament. As he relates, there were three votes of want of confidence in this period. The government ignored two of them, but not the third. These episodes, interesting in their own right, raise central questions about the conduct of the parliamentary system today. What types of votes are considered confidence votes? Who decides? Under what circumstances are confidence votes expected to bring down a government? Who decides that? We hope you enjoy Professor Desserud's exploration of these questions.

Donald A. Desserud is professor of history and politics at the University of New Brunswick, Saint John campus (UNBSJ). A political theorist by training, and an expert on Montesquieu, he is also a student of comparative parliamentary systems and a keen observer of political life in Canada, at the national level and in the province of New Brunswick. He has published widely on these subjects, but he also finds time to contribute to public education in his informed media commentary and public lectures.

The author would like to express his deep appreciation to the Canadian Study of Parliament Group and the Mallory family for awarding him the inaugural James Mallory research grant. This paper is what he hopes will be the first of several results emerging from the opportunities provided by that grant. He would also like to thank Dr. Jennifer Smith, Dalhousie University, and Ms. Robin Sutherland, University of New Brunswick, for their valuable comments and criticisms on earlier drafts, and Ms. Susan Embury for her research assistance.

[The Constitution of the United Kingdom] works by a body of understandings which no writer can formulate.

James Bryce¹

The metaphysics of limited monarchy do not easily lend themselves to critical discussion. On no element of the Constitution is our knowledge so inexact.

Harold Laski²

One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom.

Preamble, *Canadian Constitution Act 1867*

Can we make sense of the confidence convention as it applies to the Canadian parliamentary system? Students of Parliament have agreed, more or less, as to what the confidence convention refers to: it is the principle that ‘the government cannot continue in office without the support of the elected members of the assembly’ (O’Brien 1984, 11), and is therefore the basis for ‘responsible government.’³ But it is not entirely clear what ‘support’ means in this context. Surely losing a vote of confidence would indicate a loss of support. But who decides what votes constitute confidence votes? Does losing a vote of confidence always bring down a government, or only sometimes? And what about defeats of that nebulous legislative creature known as the ‘money bill’?

Even if we can agree on the meaning of ‘a loss of support,’ the question of what governments must then do remains perplexing. Does the government resign, or does it instead seek dissolution of the legislature? If the first, then the application of the confidence convention is a rare event indeed, as no federal government in Canadian history has resigned following a

¹ Bryce 1910, 297.

² Laski 1938, 388.

³ For responsible government in Canada, see Mallory 1971, 183 ff, Norton 1978, Dawson 1987, 9-19, 1989, 6, Ajzenstat 1988, 52 ff, Forsey and Eglington 1985, Seidle and Massicotte 1998, Smith J. 1999, and Aucoin et al 2004. For constitutional conventions under the Westminster model, including Canada and other Commonwealth nations, see Forsey 1984, Marshall 1984, O’Brien 1984, Heard 1991, 2005a, CPR 1993 and Ghany 1999.

loss of confidence, however defined.⁴ If the second, then this formulation of the convention is misleading. A government granted a dissolution nevertheless remains in office,⁵ at least until the results of the election are known, and then it only leaves office if it has been clearly defeated.⁶ Does the confidence convention encompass the general election and its results as well? Surely not, for the results of a general election must be more binding than (mere) convention.

Canada's 38th Parliament⁷ might provide some insight into how the confidence convention works, or perhaps does not work. During this Parliament, the Liberal minority government under Prime Minister Paul Martin was defeated many times on motions that might well have been considered confidence votes,⁸ and three times on motions that appeared to be unequivocal votes of non-confidence (albeit one more explicitly worded than the others). Significantly, these three non-confidence motions were moved by the opposition.⁹

Martin's government more or less ignored the first two votes. However, it acted on the third. Strangely enough, given the importance of the confidence principle for responsible government, the third vote (taken on 28 November 2005) marked the first time that a Canadian federal government was defeated on an explicitly-worded non-confidence motion moved by the opposition.¹⁰ Certainly other votes have prompted governments to request a dissolution, but these have always been votes declared or interpreted by the government-of-the-day to be votes of confidence (such as an amendment to a budget).¹¹ In any event, and unlike those votes taken on 10 May and 21 November, the 28 November 2005 vote did indeed convince Prime Minister Martin to seek immediate remedy. He did not resign, but he did request and was granted a dissolution with an election scheduled for 23 January 2006. While no party emerged from this election with anything close to majority numbers, the Liberal party suffered the greatest loss,

⁴ Some, most notably perhaps the Liberal government under William Lyon MacKenzie King, resigned preceding such a vote that they knew they would lose. See below.

⁵ Until the mid 19th century, the practice in the United Kingdom was that 'elections tended to follow changes in government, rather than preceding them' (Bogdanor 1995, 21). See also Forsey 1984, 15.

⁶ 'Clearly defeated' is not without its own vagaries. Here I mean that another party has won a majority. Anything less could result in the governing party meeting the House to see whether it could nevertheless corral majority support, although, as the results of the 2006 Canadian General election reveal once again, this option is rarely contemplated. See Appendix B below for the 2006 results. For discussion of the constitutional convention allowing a defeated government to nevertheless meet the House, see Marshal 1984, 32.

⁷ The First session of the 38th Parliament began 4 October 2004, recessed 20 July 2005, and reconvened 26 September 2005. That session ended with the dissolution of Parliament on 29 November 2005 and a general election held 23 January 2006.

⁸ A complete list can be found online at: www.parl.gc.ca/information/about/process/info/gov-defeats.asp.

⁹ The Official Opposition in the 38th Parliament was led by Steven Harper, leader of the Conservative party (CPC).

¹⁰ This also marked only the fifth time that a government was defeated on what Marleau and Montpetit refer to as 'a clear, uncontested question of confidence.' The previous four votes took place in 1926, 1963, 1974 and 1979 (44; see also Hogg 2001, 261, nt 35). Yet even these votes, uncontested as they may have been, were nevertheless embedded motions or were amendments to important legislation, rather than stand-alone non-confidence votes.

¹¹ I am not speaking, of course, of explicit votes of non-confidence that were subsequently defeated. For discussion, see Wilson 1988.

and as soon as the results were known (but only then), Martin resigned both as prime minister and Liberal party leader.

This paper examines the role of confidence in the Canadian parliamentary system, focussing primarily on three opposition-sponsored, non-confidence votes that occurred during the 38th Parliament. Trying to understand why the government ignored two of these votes but not the third should help us better understand the workings of the constitutional convention of confidence, long understood as the cornerstone of responsible government. While confidence is seen as the means by which the legislative branch maintains ultimate control over the executive, in reality it is the government (and so the executive) itself that decides if and when it has lost the confidence of the legislature, and if and when that matters.

Background

Since we generally think of elections as settling the issue of who governs, little thought has been given to the questions of constitutional propriety and procedure which [in times of minority governments] now arise.

James R. Mallory¹²

After winning three majority governments (1993, 1997, and 2000), the Liberal party of Canada (Liberals) found itself in a minority situation following the general election held in June 2004 (Appendix A). Although minority governments have frequently been elected in Canada,¹³ this was the first minority government since the brief tenure of Prime Minister Joe Clark's Progressive Conservatives in 1979. There are many complex reasons why the 2004 election reduced the Liberals to minority status. Chief amongst these are the increasing regionalisation of Canada's federal political parties (Carty et al 2000, Blais et al 2002, Carty 2004), coupled with a general dissatisfaction with the scandal-ridden Liberals (particularly in Quebec), which had been only partially and inconsistently ameliorated by the replacement of Prime Minister Jean Chrétien with his erstwhile finance minister Paul Martin. On the other hand, that the Liberals were not defeated outright in 2004 has much to do with the fact that the alternative – the newly-minted Conservative Party of Canada (CPC)¹⁴ – had yet to attract significant support outside Western Canada. So while Ontario and Atlantic Canada continued to support the Liberals, the West embraced the CPC, and Quebec the separatist Bloc Québécois (BQ).

Few MPs from either the government or opposition parties who gathered on Parliament Hill in October of 2004 had any experience working under a minority government. This included the four party leaders: Martin, Harper, BQ leader Gilles Duceppe, and Jack Layton, the leader of the left-wing New Democratic Party (NDP). None of these four had served as MPs under minority federal governments, nor did they have any experience with minority governments at the provincial level. This might help explain why so much of the parliamentary manoeuvring that

¹² Mallory 1958, 465.

¹³ From 1953 to 1979, Canada had ten general elections, of which six returned minority governments. After the 1962 election, John Meisel wondered whether we would ever have a majority government again (1962). See also Forsey 1964. For a discussion of the fate of minority governments in Canada, see Dobell 2000. For the UK, see Bogdanor 1983.

¹⁴ Formed in 2003 from a merger of the Progressive Conservative party and the Canadian Alliance party, the latter born from the Reform Party of Canada.

took place over the next year became so perplexing.

Predictably enough, the three opposition leaders initially promised to work cooperatively with the government, so long as the government worked cooperatively with them. Equally as predictable, such mutual cooperation failed to occur, and almost immediately the process broke down and became confused. The government's Throne Speech was not to the opposition's liking, and so during the debate on the Address in Reply to the Speech from the Throne, the Leader of the Opposition moved an amendment that the Liberals immediately declared to be a matter of confidence. Now, at no time did the government threaten to resign if the amendment passed. Instead, it was understood that the government was threatening to request a dissolution, and that the Governor General would accept such a request if it were put to her.¹⁵ Forcing another election was clearly not the opposition's intention, and so a compromise was agreed upon. At this stage, then, the opposition parties hoped to convince the governing Liberals to make compromises and adopt some of their own policies, although they supported (or at least tacitly accepted) the Liberals' right to govern. In other words, despite the proposed amendments and other stratagems mounted by the opposition, the minority Liberal government nevertheless did indeed enjoy the confidence of the House.¹⁶

Meanwhile, allegations continued to haunt Martin's government that the previous Liberal administration, under Jean Chrétien, had misdirected government money into the hands of Liberal supporters in the province of Quebec. The money had ostensibly been budgeted to pay for pro-Canadian, national unity advertising campaigns in Quebec, a province that has been toying with the idea of separation for many years.¹⁷ In February 2004,¹⁸ the Liberal government,

¹⁵ The stability of the modern political party system in Canada seems to have clarified one aspect of the confidence convention. For much of our history, the question of confidence concerned the circumstances under which a government had the right to be granted a dissolution rather than resign outright to make way for another government (CPR 1993). Eugene Forsey, writing in the middle of the last century, argued that: 'A cabinet defeated in the House is not entitled to dissolution unless there is some great question of public policy at issue' (Forsey 1943, see also Doody 2004). Today, it is difficult to imagine a scenario in which a Canadian Governor General would refuse any request for dissolution from a prime minister at any time, and particularly not in the wake of a defeat in the House, regardless of the issue (Aucoin et al 2004, 16). Some argue this needs to be changed (ex., Lightbody 1972, and Aucoin and Turnbull 2004). In any case, no Governor General has refused a Canadian prime minister such a request since 1926 and that refusal prompted a constitutional crisis known as the King-Byng affair (see below for discussion). On the other hand, the experience in the United Kingdom might be different, if only hypothetically. It appears that in 1974, British prime minister Harold Wilson was concerned that he would lose a vote on an opposition-sponsored amendment to the Address to the Speech from the Throne. He was advised the Queen might not accept his advice to dissolve Parliament, opting instead to hold a 'round table conference of party leaders' to determine who was capable of governing with a majority (Fenton 2005; see also Alderman and Cross 1974, Bogdanor 1983, 141 ff, Richards 1986, Blackburn 1990, 78 ff, Brazier 1997, 55, and Birch 1998, 43).

¹⁶ For example, rather than vote against it, the CPC decided to abstain on the budget vote. Harper publicly stated that he thought the budget contained many provisions which he supported, and that, besides, it would not be in the national interest to defeat the government and force an election. Note that once again the prospect of forcing the government to resign so that the CPC could attempt to govern does not seem to have been considered.

¹⁷ www.gomery.ca

¹⁸ So during the 3rd session of the 37th Parliament.

now led by Paul Martin, announced that it would strike a commission to investigate these allegations. The commission's official name was the *Commission of Inquiry into the Sponsorship Program and Advertising Activities*, but was more popularly known as the 'Gomery Commission' after its chief commissioner, Mr. Justice John H. Gomery.

The Commission had begun its work before June 2004, and certainly its establishment affected the outcome of the election. However, it was not until the autumn of 2004 that the public began to realize the extent to which some very senior members of the Liberal party, including some cabinet members, were involved in the scandal. These revelations were the backdrop of the first session of the 38th Parliament, particularly during the winter 2005 sitting. As more and more details of the scandal were released, the CPC and the BQ sensed that public support was rapidly moving away from the Liberals, and so they became more vociferous in their attempts to defeat the government. While most of these attempts were clumsy manoeuvres, the opposition's luck seemed to change in May 2005.

The May 2005 Vote

The Government resigns when it loses the confidence of the House of Commons (except when it remains in office).

Geoffrey Marshall¹⁹

On 10 May 2005, the House prepared to vote on a concurrence motion regarding a report tabled the previous October (2004) by the Standing Committee on Public Accounts (SCPA), a committee typically chaired by a member of the opposition. Like the Gomery Commission, the SCPA had also criticised the Liberal government for what it believed to be irresponsible spending and other misdeeds (SCPA 2005). The report stopped short of calling upon the government to resign, but CPC MP Jay Hill proposed an amendment to the concurrence motion to do just that:

That the motion be amended by deleting all the words after the word 'That' and substituting the following: 'The First Report of the Standing Committee on Public Accounts, presented on October 28, 2004, be not now concurred in, but that it be recommitted to the Standing Committee on Public Accounts with instruction that it amend the same so as *to recommend that the government resign because of its failure to address the deficiencies in governance of the public service addressed in the report*' (*House of Commons Debates*, 9 May 2005; emphasis added).

Both the motion to amend and the amended motion passed: 153 to 150. The Liberals and the NDP voted against the motion as did two former Liberals then sitting as independents. However, the CPC and the BQ voted in favour of the motion. Stephen Harper then argued that the government had now to do one of three things:

Mr. Speaker, we have just voted on a motion that was agreed to on a clear majority, a motion which calls upon the government to resign. By all of the

¹⁹ Marshall 1984, 54.

established conventions of our democratic system, when the government faces a clear vote on such a question, it is required to do at least one of three things: it is required to fulfill the terms of the motion and resign; to seek a dissolution; or at the earliest moment, to ensure that it indeed has the confidence of this chamber, which is the only democratic mandate this government has to spend our public money. (*House of Commons Debates*, 10 May 2005)

The government disagreed, arguing that the 10 May 2005 motion was not a vote of non-confidence at all. Rather, it was nothing but a procedural motion. While the government conceded that the motion was a hostile one, in actual fact the motion only directed a committee to return with a recommendation that the government resign. Until (and if) that committee followed the House's instructions, there was nothing for the government to do. This was the argument made repeatedly by Tony Valeri, then Liberal Leader of the Government in the House of Commons:

I will reiterate that the motion last night was not a matter of confidence. In your ruling, Mr. Speaker, as a result of the vote, you indicated that the motion would now proceed to committee. [Therefore] it is a procedural motion, not a confidence motion. (*House of Commons Debates*, 11 May 2005)

And later in the same debate:

Mr. Speaker, again [the opposition] link their argument to the vote last evening, which was a procedural matter. It was not in fact a confidence matter; it is a report that is going back to committee.

After some grumbling, the House returned to work, passed bills and, eventually, accepted the government's budget and the various supply, and ways and means motions required by it. Some odd events occurred during this time, including the spectacular crossing of the floor of Ms. Belinda Stronach, a CPC member and former leadership aspirant, followed by her immediate elevation into the Liberal cabinet, as well as the Speaker of the House being called upon the break a tie vote on a finance bill.²⁰ Nevertheless, in the end, the government

²⁰ On 19 May 2005, the House voted on the second reading stage of Bill C-48, an act to authorize the Minister of Finance to make certain payments. The result was a tie: 152 to 152, with two members paired. Speaker Peter Milliken explained his decision to vote in favour of the motion: 'The House tonight has been unable to reach a decision by majority vote. Parliamentary precedents are clear: the Speaker should vote, whenever possible, for continuation of debate on a question that cannot be decided by the House.'

On May 4, 2005 I voted in favour of second reading and reference to committee of a private member's bill sponsored by an opposition member. At that time, I was guided by precisely the same procedural principles as I am following tonight, though my decision has arguably more momentous consequences.

Therefore, at this stage in the debate on this bill, since the House cannot make a decision, I cast my vote for second reading of Bill C-48 and its reference to the finance committee to allow the House time for further debate so that it can make its own decision at some future time.

I declare the motion carried. Consequently, this bill is referred to the Standing Committee on Finance.'

was clearly in control of the House, and showed conclusively that it could govern. Indeed, on 14 June 2005 the Government successfully passed 16 different motions and amendments, all of which they declared (gleefully, no doubt) to be confidence votes. The government's support might have been thin, but it was resilient and obvious, at least to itself.

The November 2005 Votes

... when you come to inquire what are the signs by which you are to know that the House has withdrawn its confidence from a Ministry, whether, for example, the defeat of an important Ministerial measure or the smallness of a Ministerial majority is a certain proof that a Ministry ought to retire, you ask a question which admits of no absolute reply.

A.V. Dicey²¹

The circumstances surrounding the two confidence votes that took place in November 2005 were quite different than the votes held the previous spring. Until then, Martin's Liberal minority government had, for the most part, governed with the support of the NDP.²² The NDP's strategy consisted of threatening to withdraw support unless the Liberals amended their policies in line with the NDP agenda. The Liberals countered this strategy by daring the NDP to vote against the government, and thereby be forced to accept the blame for an election that 'no one wanted.' Invariably, both sides would find a face-saving compromise, and NDP support would once again materialize in the House.

However, it became increasingly obvious that the Liberals were benefiting the most from these deals, while the NDP was making most of the compromises. Meanwhile, the Gomery Commission released its first report (1 November 2005) in which key members of the Liberal party, including a former minister, were formally blamed for the sponsorship scandal.²³ NDP leader Layton now found himself accused, not only of being bested by the more skillful Liberal negotiators, but of propping up a corrupt government. So he publicly promised to 'defeat the Liberals at the earliest opportunity.' But with Christmas fast approaching, the Liberals upped the ante, daring the NDP not only to force an election no one wanted, but 'a campaign no one would want stretching over the holiday season.' Trying to avoid being blamed for the timing of an unpopular election, but nevertheless realizing things had to change,²⁴ the NDP moved a wondrously convoluted motion:

That, in the opinion of this House, during the week of January 2, 2006,

House of Commons Debates, 19 May 2005.

²¹ Dicey 1965, 457.

²² Together, the NDP's 18 seats and the Liberals' 133 seats added up to 151, still short of the 155 needed for a majority (if all seats are accounted for). So Martin still needed support from the several independents, two of whom were disaffected Liberals.

²³ In the end, Martin was exonerated and Chrétien mostly so, but other senior Liberals were not, and criminal trials have since ensued. See Gomery 2005.

²⁴ It is also possible that the NDP hoped to tempt the Liberals into calling an election, without having to take the blame themselves for having forced one.

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 this resolution to Her Excellency the Governor General.²⁵

This motion was put to a vote on 21 November 2006, and passed 167 to 129.

Once again, the government found itself faced with a hostile vote passed by a clear majority, indeed a substantially bigger majority than counted in the 10 May vote. However, this time the resolution did not call on the Liberals to resign. Instead, the demand was that they call an election. Not right away, but soon. The government's response was to argue that the resolution was unconstitutional.²⁶ Liberal MP Roger Galloway pointed out in debate that the resolution called upon the House of Commons to usurp the constitutional position of the prime minister vis-a-vis the Governor General. On matters of confidence and dissolution, Galloway argued, the Governor General only accepts advice from the prime minister.²⁷ On a point of order, the Liberals asked Speaker Milliken to rule on whether the House had the right to instruct the Speaker to communicate such a resolution directly to the Governor General – which they argued would be tantamount to the Speaker advising the Governor General to dissolve Parliament – and whether, beyond a formal Address, there even existed a means by which this could be carried out.

Cognizant of the tradition that the Speaker not comment on whether a government has lost confidence or whether it should resign, Milliken avoided answering the implied question (whether the House was attempting to dissolve itself)²⁸ and ruled instead on the specifics of the point of order. The Speaker, he said, did indeed have the right to communicate directly with the Governor General, and he did so on many different occasions and through many different means, sometimes even by email. However, Milliken pointed out that this was *merely* a matter of communication (that is, it was not advice), and noted that the Liberals had not asked him to rule on the appropriateness of the first part of the opposition motion, that is, that the prime minister be so directed to request dissolution.²⁹ One can speculate, then, that had the House

²⁵ www.parl.gc.ca/38/1/parlbus/chambus/house/debates/152_2005-11-17/HAN152-E.htm#Int-1475602 (accessed 18 November 2005, 9:41 am)

²⁶ 'In short, they simply can't do it.' Quoted in debate by Liberal House leader Tony Valeri, www.parl.gc.ca/38/1/parlbus/chambus/house/debates/152_2005-11-17/HAN152-E.htm#Int-1475602 (accessed 18 November 2005, 10:02 am).

²⁷ This is not, of course, strictly true. See Forsey 1963a.

²⁸ It is a principle of the Westminster model that Parliament cannot dissolve itself (Blackburn 1990, 43 ff); however, it is not uncommon for opposition parties to move resolutions that the government seek dissolution; a subtly different affair. For that matter, as Forsey (1963a) explains, the House of Commons can, and does, frequently pass resolutions concerning matters outside their jurisdiction: 'Parliament can entertain, and has even passed motions on all sorts of questions on which it cannot legislate, and can tender advice on such questions' (205). Note that such motions would be neither binding nor enforceable. See also Forsey 1943, 258 ff, Norton 1985 and Ghany 1999. The latter article discusses other Commonwealth adaptations of this convention.

²⁹ In other words, the Speaker rightly understood that he was being asked to communicate to the

voted that the Speaker advise the Governor General to dissolve Parliament on a particular date, the Speaker would have ruled differently.³⁰ Regardless, the government declared that it did not believe itself bound by this resolution and made no attempt to comply with it.

Nor did the Speaker ever transmit the resolution to the Governor General, as subsequent events precluded any such action. A few days later, on 24 November 2005, the House of Commons heard the Leader of the Opposition Steven Harper move a motion seconded by NDP Leader Jack Layton. This vote was simple. It did not request a committee to recommend resignation, neither did it ask the government to finish its agenda before requesting dissolution. Instead, it simply stated: 'That this House has lost confidence in the government.' The vote on the motion took place 28 November 2005, and it went against the government: 171 to 133.³¹ On Prime Minister Paul Martin's advice, the Governor General dissolved Parliament the next day, setting an election for 23 January 2006.

*Responsible Government:
A question of continuing confidence*

When you put before the mass of mankind the question, "Will you be governed by a king, or will you be governed by a constitution?" the inquiry comes out thus — "Will you be governed in a way you understand, or will you be governed in a way you do not understand?"

Walter Bagehot³²

How are we to understand these three votes? Consider again the 10 May 2005 vote, and the government's argument that this was not a vote of confidence but instead an instruction to a committee. This argument might seem to involve splitting hairs. What difference could it make that this was a motion that would send a report back to a committee? The wording was clear, and the House knew what it was voting on: that the House no longer had confidence in the government. Andrew Heard (2005b) expressed his frustration with the government's argument by pointing out that '[i]t should not matter what procedural context a vote of confidence occurs in. The fundamental basis of a confidence vote is that the elected members of the legislature express their collective view of the government.'

Governor General, not that the House should be dissolved, but that the House of Commons had demanded that the prime minister seek a dissolution on the specific date, and so she should expect (and, perhaps, assume) that such a request was forthcoming. In any case, the question may have been moot, for it is unlikely that the Governor General would feel any obligation to act on the request regardless of how it was worded.

³⁰ See www.parl.gc.ca/38/1/parlbus/chambus/house/debates/152_2005-11-17/HAN152-E.htm#Int-1475602 (accessed 18 November 2005, 9:15 am). The corollary to the question of whether the House can force a prime minister to request dissolution on a particular date is whether they can *prevent* a prime minister from requesting a dissolution on a particular date (or requesting the Crown ignore advice to dissolve). Legislatures have tried this manoeuvre, but the answer to that question remains 'no.' See Mallory 1971, 183 and Heard 1991, 74.

³¹ The standings in the House on 28 November 2005 were: Liberals, 133; CPC, 98; BQ, 53; NDP, 18; Independents, 4; Vacant, 2; total 308.

³² Bagehot 1873, 61.

Yet this is not precisely what the government was arguing. Instead, the government's defence was that it should not have to respond to a threat of a future action; it should only respond when that action had occurred. This is very different.

The amended motion called upon the Committee to come back with a recommendation that the government resign. In order for the will of the House to be carried out, the Committee would have to meet and presumably vote on whether it intended to carry out the House's orders. Now, according to Beauchesne the House has every right to amend a concurrence motion, and to direct the Committee to make a specific recommendation:

- (1) When the motion to concur is moved, the House may refer the report back to the committee for further consideration or with instructions *to amend it in any respect* [italics added].
- (2) The procedure for referring a report back to a committee has been to do so by proposing an amendment to the motion for concurrence. (Beauchesne 1989, 896)

Thus the House had every right to send the report back to the SCPA and to do so under this procedure. Further, the Speaker did rule that the use of a concurrence motion amendment to express non-confidence in the government had precedence, and was therefore in order (but of course would not comment on whether non-confidence was the necessary conclusion to draw from the results of the vote). Nor was it lost on the House that the precedent referred to precipitated the King-Byng affair, and that the Liberal government of that day had indeed considered such an amendment to be a question of confidence.³³ The present Liberal government, however, was not so moved.

The government argued that until the report actually went back to the SCPA, and until the committee dealt with the House's instructions,³⁴ nothing really had happened. While an instruction had been given, an action had yet to be taken. Perhaps the government had a point. Upon receiving the order, the committee would still have at least two choices: to fulfill the directions, or resign in protest. If it resigned in protest, the House would then have to appoint new members who would then have to meet, and so on. On the other hand, if the committee agreed to carry out the order and returned with a recommendation that the government resign, it

³³ Speaker Milliken, referring back to the King-Byng affair, ruled: 'in reviewing the precedent from June 22, 1926 ... an amendment containing assertions clearly damaging to the government of the day was successfully moved to a motion for concurrence in the report of a special committee. I find this example to be not markedly different from the one the House is faced with now.' In the King-Byng affair, Prime Minister MacKenzie King anticipated that the opposition would win its vote (also an amendment to a concurrence motion) calling upon his government to resign. He asked Governor General Byng for a dissolution, but when Byng refused MacKenzie King and his government resigned. The constitutionality of Byng's refusal to dissolve Parliament is still debated. See Forsey 1943, Esbrey 1973, Forsey and Eglington 1985, 261-3, Cheffins and Tucker 1976, 84, and Marshall 1984, 27 ff.

³⁴ By the time Parliament was dissolved 29 November 2005, the SCPA had still yet to deal with their instructions from the 10 May 2005 vote.

would still have to decide when it was going to do so. Maybe not for many months. Certainly, both scenarios were unlikely, given that the opposition parties were in a majority on the committee. Nevertheless, until the House had before it the committee's recommendation that the government resign, and until the House voted to accept that recommendation, the intention of the motion would not have been fulfilled, and so the collective will of the House would not yet have been (fully) expressed. Hence, until then, the government had nothing to which to respond.³⁵

Still, this argument only has merit if we reconsider what non-confidence votes signify. It is true, as Peter Hogg writes, that a 'no confidence motion is the clearest possible evidence that government has lost the confidence of the House of Commons' (Hogg 2001, 267), but this is not the same as saying that the vote ends the matter once and for all. If confidence votes were like, say, a Supreme Court judgement or even a ruling from the Speaker, we would expect that once the results of the vote were declared, the question would be resolved. As Heard points out, the context of the motion would not matter. The same would be true if confidence votes were like elections of MPs. Once validated by the Chief Electoral Officer (and barring charges of fraud or other illegal activity), the final vote determines without further challenge who is to serve as the elected representative from a specific constituency. Citizens might later complain that a particular MP has lost the confidence of her constituents. However, unless some mechanism for recall becomes a part of our electoral system, the beleaguered MP will remain in office until the next election (and the defeated candidate will stay home).

The confidence of the House is different. It is not a matter of a specific vote that the government wins or loses, nor can confidence be reduced to a simple formula. As Dicey (1965, 437) writes, '... the question whether the House of Commons has or has not indirectly intimated its will that a Cabinet should give up office is not a matter as to which any definite principle can be laid down.' Instead, confidence is best seen as something that must be considered over (some) time, a 'euphemism,' in Brazier's words, 'for saying that a government can win votes [note plural] of confidence in it' (1982, 399, nt. 16). The government does not even have to win them all. Indeed, the argument that governments must win every vote and even every confidence vote is relatively new to parliamentary history. In the United Kingdom in the eighteenth and nineteenth centuries, governments were content to lose votes repeatedly before resigning or seeking dissolution. Quite often, they simply ignored the votes all together (O'Brien 1984). In Canada, similarly, it has only recently been the case that a defeat of the government, including votes declared as matters of confidence, has been assumed to result in the certain dissolution of Parliament (Forsey 1963b; O'Brien 1984; Norton 1985).³⁶

³⁵ Frankly, I am not even convinced that the government could be forced to resign even if the Committee did come back to the House with the recommendation it was instructed to make. Parliamentary committees cannot 'direct the government to introduce, or Parliament to enact, legislation' (Beauchesne 1989, 872). Furthermore, while *Standing Order 109* does require that the government respond to a report within 150 days, there are no sanctions attached, and so there is nothing the House can do, save calling for a vote of non-confidence, if the government does not so respond (Beauchesne 1989, 880, 884, 885). Since a committee cannot make a mandatory recommendation, a recommendation that the government resign cannot be binding in itself. The government's failure to respond to such a recommendation could well precipitate another non-confidence motion, but that is all it could produce. Until such a motion was made, the government would not be required to do anything.

³⁶ For UK, see Bogdanor 1995, 78-80.

Furthermore, it is important to remember that parliamentary votes of non-confidence fall under a peculiar category of legislative business. Despite their reputation as constitutional conventions capable of toppling governments and forcing the dissolution of Parliament, *within the context of House procedure* they are nevertheless non-binding motions. The Speaker will rule whether a motion calling on the government to resign is in order, and whether the vote has passed or not. The Speaker will not and cannot rule on whether the government has in fact lost the confidence of the House, regardless of the character, explicitness or circumstances of the vote. As Beauchesne explains: 'the determination of the issue of confidence in the government is not a question of procedure or order, and does not involve the interpretive responsibilities of the Speaker . . . matters of confidence should at all times be clearly subject to political determination' (Beauchesne 1989, 168(6)).³⁷ The House of Commons, then, is not the final arbiter in deciding when a government has lost the confidence of the House, nor can the House force its own dissolution (Blackburn 1990, 43 ff). So the House can pass all the votes of non-confidence it wants, and opposition MPs can claim, as did BQ leader Gilles Duceppe, that their motion was: '... clearly a non-confidence motion, and [that] the three opposition parties recognize it as such.' In the end, and despite Bagehot's apparent confidence to the contrary (*House of Commons Debates*, 10 May 2005), the House still lacks the constitutional authority to legally force dissolution or resignation. Just as the opposition can persuade, but not force, a minister to respond to opposition questions during Question Period,³⁸ the House does indeed possess considerable political power by which it can persuade the government to act in certain ways, and eventually frustrate a ministry's ambition to govern. Yet this power is *entirely* political,³⁹ and not enforceable by any legal means.

Besides, responsible government must mean more than having government-sponsored legislation passed by a majority of the members of the legislative assembly. If this were the case, then any functioning legislative system could claim to be practicing 'responsible government.' Rather, the support of the legislature for the executive must refer to an on-going process through which the elected representatives play a role in determining whether the government-of-the-day can continue. Their explicit motions against the government can well be devastating, but their tacit, daily expression of their acceptance of the government's ability to govern is their true expression of confidence.

This, then, is how we can begin to understand the 10 May 2005 vote. The government's defence that the vote was merely procedural only makes sense if we consider non-confidence votes as indications that something is not right, but not in themselves the final determination that

³⁷ See Marshall and Moodie 1967, Marshall 1984, and 1985 and Norton 1985. For Canadian context, see Heard 1991, 2005a; MacKinnon 1976 and Noonan 1998. Finally, see Marleau and Monpetit 2000, 37: 'Confidence is not a matter of parliamentary procedure, nor is it something on which the Speaker can be asked to rule.'

³⁸ The right of MPs to ask questions should not be confused with the obligation of ministers to answer them. See Beauchesne 1989, 416. The Canadian version of Question Period is somewhat different than its UK equivalent. See Birch 1998, 168-170. Savoie 2003, 53. On the relationship between Question Period and responsible government, see Sutherland 1991 and Aucoin et al 2004, 54.

³⁹ And, I should add, nonetheless significant and formidable. On the other hand, governments have long exploited the confidence convention as a means of maintaining party discipline and triggering elections at opportune times (O'Brien 1984, Forsey and Eglington 1985, CPR 1993, Huber 1996).

the government can no longer govern. In the wake of the 10 May vote, the Liberal government eventually moved several motions on budgetary matters, declaring each to be confidence motions and winning them all. Therefore, the government claimed, with justification, that it had not lost the on-going confidence of the House. It had merely lost a specific vote.

We can now apply this understanding of the 10 May vote to the November votes. Compare the first November vote with the second. In the first vote, the prime minister was directed by the House to seek a dissolution, but not one which would take place immediately, rather two months later. In other words, the House was saying that they *did* indeed have confidence in the government and were prepared to support it, but only for the short term. Political scientist David Docherty explained the situation this way: “[The opposition is] saying, “We like the things you've done but unless you let the opposition decide when there's an election, we will pull the plug and not only not get things done that we think are important, but quite frankly, not get things done our supporters think are important.” The government, then, had every right to believe that it would continue to see some of its motions passed, and, therefore, that the House had not completely withdrawn its support. It may well have worried that this support would not last, but, on a day-by-day basis, that support still existed. Hence, the government once again had every reason to continue governing.

The government could not say the same thing about the second, and final, November vote. Its unequivocal language and the context in which it was moved made it clear: the House of Commons would not allow Prime Minister Martin and his government to govern, at least not in that chamber. Therefore, Martin had only two choices: to resign, forcing the Governor General to ask the official opposition to form a government, or to seek a dissolution and hold an election. Since the first option seems no longer to be contemplated in Canada, Martin chose the latter. His choice, however, was dictated not by the triggering of a constitutional provision nor because he came to understand that he *should* not govern, but because he *could* not govern.

The Role of the Divided Executive

When parties are in the present state of equality, the Sovereign is no longer a mere pageant.

Benjamin Disraeli⁴⁰

Probably in most cases the greatest wisdom of a constitutional king would show itself in well considered inaction.

Walter Bagehot⁴¹

⁴⁰ *Sybil*, bk IV, ch. 1 (quoted in Bogdanor 1995, 112).

⁴¹ Bagehot 1873, 83.

So far, I have argued that confidence is a political rather than legal event, a practical recognition of the ability, or lack thereof, of a government to have its legislation passed in the House of Commons. It cannot be reduced to a specific vote, but must be seen instead as an on-going process of discovery, a discovery furthermore that the executive has the sole prerogative to make. The executive decides when confidence has been lost and the extent to which this matters. However, this raises another important question. Does the government and so the prime minister then have complete discretion to decide whether it has kept the confidence of the House? While it does not, the only constitutional check on the government's discretion in this regard is inadequate under the current system.

It has long been constitutionally recognized (although perhaps sometimes forgotten) that while the prime minister and cabinet may well be 'buckled' to the House of Commons, they are nevertheless not merely a committee of that chamber, or, to use the language of the *Blaikie* decision, the government is not 'a body of the Legislature' (Heard 1991, 51).⁴² Indeed, although it may well be composed entirely of sitting members, in its capacity as the Crown's executive council the government is not a part of the legislative branch at all. As Birch writes, 'ministers are servants of the Crown, not of Parliament' (1998, 25).

Furthermore, under the Westminster parliamentary system the executive branch of government is divided into two offices: the Head of State and the Head of Government, what Dawson refers to as the nominal and the active executive (Dawson 1989, 43) or what Bagehot calls the dignified and the efficient (Bagehot 1873, 48). Within the context of the Canadian Constitution, this refers to the Governor General and her Privy Council.⁴³ As we have seen, from a strict constitutional standpoint only the Governor General can dissolve the Canadian Parliament or dismiss a government, and only the Governor General has the power to decide whether such actions are necessary. Thus only the Governor General has the constitutional power to decide whether confidence has been lost. The Speaker cannot make such rulings (Beauchesne 1989, 168 (5) (6), Marleau and Monpetit 2000, 37), and the Supreme Court has no jurisdiction over the matter (Forsey 1984, 42; Marshall 1984, 16, McLachlin 2004). Now, under the terms of responsible government, the Crown will only govern through a ministry that enjoys the support of a majority of the members of the House of Commons (Mallory 1971, 183, Dawson, 1989, 6-8, Aucoin et al 2004, 11).

Non-confidence motions (and, for that matter, defeats on budgets) are certainly clear signs that a particular government no longer enjoys that support. However, the Governor General does not assess these signs by herself. Under the conventions of responsible government the decision as to when confidence has been lost is made on the advice of the prime minister, and, save for the most bizarre of circumstances, only on that advice (Heard

⁴² *A. G. Quebec v. Blaikie* (No. 2), [1981] 1 SCR 312, cited by Heard 1991, 51.

⁴³ Constitution Act 1867, sec. 11: 'There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General.' See also sec 13: 'The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.'

1991, 41).⁴⁴ Despite the coincidental (but not essential) membership of the cabinet and the prime minister in the House of Commons, when the prime minister so advises the Governor General, the legislative branch is not advising the executive; rather, one office of the executive is advising another. This, then, is how we can understand what happens when a decision is made that confidence has been lost and whether Parliament must be dissolved. Such decisions are a product of negotiation between the two executive offices, the Governor General and the Prime Minister (Mallory 1960b).

All this would make perfect sense if this negotiation involved a real discussion, with the Head of State making a real (and final) decision. However, it is a constitutional fiction to pretend that such discretion is ever exercised in any meaningful sense.⁴⁵ On questions of dissolution and confidence, then, we have this odd paradox. The Crown will not dissolve Parliament save on the advice of the very person whose legitimacy has been called into question.⁴⁶ Even if a brave Governor General did decide to exercise her prerogative powers independent of, or against, the advice of her prime minister, the chances of her decision being accepted by the public (one that expects such decisions to be made by politically legitimate officers) are slim.

This is a problem, for it is likely that governors general,⁴⁷ in Canada anyway, will someday be called upon to make such decisions and to do so in a meaningful way. Canada's recent back-to-back minority federal governments, not to mention those at the provincial level,⁴⁸ are probably not an aberration. Electoral and parliamentary reform movements are occurring across the country, including provincial (and now federal) proposals to 'fix' election dates, calls for recall and referenda, and attempts to introduce various forms of proportional representation (LCC 2002, Seidle 2002, Milner 2004a, 2004b, Carty 2004, Desserud 2005). Any of these reforms should undermine the stability of the present party system. While this in itself may not be such a bad thing, the consequences for parliament and the provincial legislatures will surely

⁴⁴ The power does exist for the Governor General to act alone, as the gloss to Constitution Act 1867, sec 12, reads: 'All Powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone.' However, it is accepted that this would occur only under the rarest of circumstances (Marshall 1984, 45 ff). For discussion of the Crown's prerogative in this regard, see Bagehot 1873, 52, Dicey 1965, 432-3, Mallory 1971, 183, Forsey 1983, Marshall 1984, 29 ff, Norton 1985, and Aucoin et al 2004.

⁴⁵ We now know that the 10 May 2005 vote, and perhaps several others, did indeed prompt then Governor General Adrienne Clarkson to exercise 'all three' of her reserve powers, that is, her right 'to encourage, advise and warn,' meaning (one assumes) that her counsel was sought by Prime Minister Martin. Furthermore, she seems to have fulfilled Bagehot's advice that under such circumstances, the best course of action was 'well considered inaction' (Bagehot 1873, 83). See Clarkson 2005 and McWhinney 2005, 161-164.

⁴⁶ See 'Resolution to amend the Constitution,' [1981] 1 S.C.R. 753 note 10 at 82-83 and Hogg 1997, note 2 at 239. The conundrum identified here has perplexed students of parliament for some time. George Lawson's *Politica Sacra et Civilis* (1659-1669), referencing Sir Roger Owen (1573-1617), argued that while Parliament could not take away the Sovereign's right to dissolve it, neither could the Sovereign dissolve Parliament arbitrarily, for the Sovereign was a part of Parliament and so could not be above itself (Lawson 2004, 107).

⁴⁷ And even more likely, provincial lieutenant governors.

⁴⁸ At present, the New Brunswick legislature is in a virtual tie, with the Speaker having the deciding vote, while Nova Scotia has elected minority governments in three of its last four elections. Ontario, Manitoba, Saskatchewan and British Columbia have all experienced minority governments in recent years, and in the case of Saskatchewan, one coalition government.

mean more minority governments and the undermining of traditional notions of party discipline. This will, in turn, increase the likelihood that governments will lose more votes in their assemblies, including non-confidence votes.

With such instability, it is only a matter of time before a Governor General or a lieutenant governor is called upon to resolve a crisis, perhaps involving a government that refuses to accept a series of non-confidence votes, or requests too many dissolutions as it tries to win an elusive majority. My fear is that they will be ill-prepared to do so. What will be needed is a politically legitimate but partisan neutral (or at least partisan separate) executive officer or agency who can rule authoritatively on such matters.⁴⁹ No such person or agency presently exists.

To make matters worse, even if such a position or agency could be created, the consequences will be far-reaching and not necessarily palatable. Endowing any other office or body with such authority will certainly further diminish the power of the elected House of Commons. The Governor General is probably the most logical officer to do the job. If not the Governor General, then perhaps the Supreme Court could be given this responsibility (a proposal which has been considered in Australia). Either reform would have far reaching consequences. A court given the responsibility to intervene on matters of whether a government has lost the confidence of the House may well decide that playing an (even more) activist role in other aspects of Canadian society was also legitimate (Heard 1993; Forsey 1984; Knopff 2000; Kelly and Murphy 2001). On the other hand, using the Governor General in this capacity would mean radically altering the means (not to mention the basis) by which governors general are now appointed in Canada (Mallory 1960a, Smith D. 1995, McWhinney 2005), perhaps by being elected nationally, or chosen by an electoral college (see Bogdanor 1995, 284). A now popularly-elected Governor General would have little disincentive to use her powers beyond simple declarations of confidence. It is worth remembering that the Framers of the American Constitution thought they had ensured their chief executive would remain primarily a symbolic figurehead.

Yet, if the current situation continues political power might well evolve in a different direction. It is also possible that powerful prime ministers will simply begin ignoring confidence votes and their like. Donald Savoie is one of many political scientists who have argued that the prime minister's power has become increasingly unchecked and uncheckable (Savoie 1999).⁵⁰ If prime ministers should cease to consider the House of Commons as a chamber whose support he or she requires, then this concentration of power will increase, and the elected legislature will become less and less important. The 'buckle' will have come undone and responsible government in Canada, already in some peril, will cease to be anything but a

⁴⁹ A useful place to start would be to examine how other Commonwealth parliamentary systems have dealt with similar problems. See Aucoin and Turnbull 2004.

⁵⁰ For similar arguments and discussion concerning the changing role of the prime minister in the United Kingdom, see Burch and Holliday 1996, 2004, Foley 2000, Flinders 2002 and Hennessy 2005.

symbolic gesture. Therefore, serious consideration of just how responsible government and the confidence convention are to operate under the Canadian parliamentary system is surely needed.

APPENDIX A

2004 Canadian General Election

	All seats	Lib	Con	Bloc	NDP	Ind
Canada	308	135	99	54	19	1
Newfoundland and Labrador	7	5	2	0	0	0
Prince Edward Island	4	4	0	0	0	0
Nova Scotia	11	6	3	0	2	0
New Brunswick	10	7	2	0	1	0
Atlantic Canada	32	22	7	0	3	0
Quebec	75	21	0	54	0	0
Ontario	106	75	24	0	7	0
Manitoba	14	3	7	0	4	0
Saskatchewan	14	1	13	0	0	0
Alberta	28	2	26	0	0	0
Prairie Provinces	56	6	46	0	4	0
British Columbia	36	8	22	0	5	1
All Western Canada	92	14	68	0	9	1
Yukon	1	1	0	0	0	0
Northwest Territories	1	1	0	0	0	0
Nunavut	1	1	0	0	0	0

APPENDIX B

2006 Canadian General Election

	All seats	Lib	Con	BQ	NDP	Ind
Canada	308	103	124*	51	19	1
Newfoundland and Labrador	7	4	3	0	0	0
Prince Edward Island	4	4	0	0	0	0
Nova Scotia	11	6	3	0	2	0
New Brunswick	10	6	3	0	1	0
Atlantic Canada	32	20	9	0	3	0
Quebec	75	13	10	51	0	1
Ontario	106	54	40	0	12	0
Manitoba	14	3	8	0	3	0
Saskatchewan	14	2	12	0	0	0
Alberta	28	0	28	0	0	0
Prairie Provinces	56	5	48	0	3	0
British Columbia	36	9	17	0	10	0
All Western Canada	92	14	65	0	16	0
Yukon	1	1	0	0	0	0
Northwest Territories	1	0	0	0	1	0
Nunavut	1	1	0	0	0	0

* David Emerson, elected as a Liberal, crossed the floor a week later to accept a cabinet post under the CPC, thereby giving the CPC 125 seats and leaving the Liberals with 102.

BIBLIOGRAPHY

Ajzenstat 1988. Janet Ajzenstat, *The Political Thought of Lord Durham*, Kingston, Ont.: McGill-Queen's University Press.

Alderman and Cross 1974. R. K. Alderman and J. A. Cross, 'The Prime Minister and the Decision to Dissolve,' *Parliamentary Affairs*, 28, 4, 386-404.

Aucoin et al 2004. Peter Aucoin, Jennifer Smith and Geoff Dinsdale, *Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change*, Ottawa: Canadian Centre for Management Development.

Aucoin and Turnbull 2004. Peter Aucoin and Lori Turnbull, 'Removing the Virtual Right of First Ministers to Demand Dissolution,' *Canadian Parliamentary Review*, 27, 2, 16-19.

Bagehot 1873. Walter Bagehot, *The English Constitution*, 2nd ed., Boston: Little, Brown and Company.

Beauchesne 1989. Canada. Parliament. House of Commons, *Beauchesne's Rules & Forms of the House of Commons of Canada*, 6th ed. Toronto: Carswell.

Birch 1998. Anthony H. Birch, *The British System of Government*, 10th ed., New York: Routledge.

Blais et al. 2002. André Blais, Elisabeth Gidengil, Richard Nadeau and Neil Nevitte, *Anatomy of A Liberal Victory: Making Sense of the 2000 Canadian Election*, Peterborough: Broadview Press.

Blackburn 1990. Robert Blackburn, *The Meeting of Parliament: a Study of the Law and Practice Relating to the Frequency and Duration of the United Kingdom Parliament*, Brookfield, Vt.: Gower Pub. Co.

Bogdanor 1983. Vernon Bogdanor, *Multi-Party politics and the Constitution*, New York: Cambridge University Press, 1983.

Bogdanor 1995. Vernon Bogdanor, *The Monarchy and the Constitution*, Oxford: Clarendon Press.

Brazier 1982. Rodney Brazier, 'Choosing a Prime Minister,' *Public Law*, Autumn, 395-417.

Brazier 1997. Rodney Brazier, *Ministers of the Crown*, Oxford: Oxford University Press.

Burch and Holliday 1996. M. Burch and I. Holliday, *The British Cabinet System*, London, Prentice Hall / Harvester Wheatsheaf.

Burch and Holliday 2004. M. Burch and I. Holliday, 'Blair Government and the Core Executive,' *Government and Opposition*, 1, 1-21.

Bryce, 1910. James Bryce (Viscount), *The American Commonwealth*, New York: The Macmillan Company, 297.

Carty et al 2000. R. Kenneth Carty, William Cross, and Lisa Young, *Rebuilding Canadian Party Politics*, Vancouver: UBC Press.

Carty 2004. R. Kenneth Carty, *Doing Democracy Differently: Has Electoral Reform Finally Arrived in Canada?* Saskatoon, SK: University of Saskatchewan.

Carty 2005. R. Kenneth Carty, 'Canadian Politics and the General Election of 2004,' *European Journal of Political Research* 44: 968–974.

Cheffins and Tucker 1976. R. I. Cheffins and R. N. Tucker, *The Constitutional Process in Canada*, 2nd ed., Toronto: McGraw-Hill Ryerson.

CPR 1993. 'Party Discipline and the Confidence Convention: An Historical Perspective,' *Canadian Parliamentary Review*, 16, 2, 13-20.

Dawson 1987. Robert MacGregor Dawson, *Dawson's The Government of Canada*, rev. by Norman Ward, 6th ed., Toronto: University of Toronto Press.

Dawson 1989. Robert MacGregor Dawson and W.F. Dawson; revised by Norman Ward, *Democratic Government in Canada*, 5th ed., Toronto: University of Toronto Press.

Desserud 2005. Don Desserud, 'Would Fixed-Date Elections be an Improvement or Create New Problems?' *Electoral Insight*, 7, 1, 48-53.

Dicey 1965. Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 10th ed., New York: St. Martin's Press.

Dobell 2000. Peter C. Dobell, *What Could Canadians Expect from a Minority Government?*, Montreal: Institute for Research on Public Policy.

Doody 2004. Brian M. Doody, 'The Liberal Minority and the Prospect of an Early Dissolution of Parliament,' *Policy Options*, September, 34-37.

Esberey 1973. J. E. Esberey, 'Personality and Politics: A New Look at the King-Byng Dispute,' *Canadian Journal of Political Science*, 6, 1, 37-55.

Fenton 2005. Ben Fenton, 'Papers reveal Premier's dilemma in March 1974,' *Daily Telegraph*, 29/10/2005.

Flinders 2002. Matthew Flinders, 'Shifting the Balance? Parliament, the Executive and the British Constitution,' *Political Studies*, 50, 1, 23-42.

Foley 2000. Michael Foley, *The British Presidency: Tony Blair and the Politics of Public Leadership*, Manchester, Manchester University Press.

Forsey 1943. Eugene Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth*, Toronto: Oxford University Press.

Forsey 1963a. Eugene Forsey, 'Parliament's Power to Advise,' *Canadian Journal of Economics and Political Science*, 29, 2, 203-210.

Forsey 1963b. Eugene Forsey, 'Government Defeats in the Canadian House of Commons, 1867-63,' *Canadian Journal of Economics and Political Science*, 29, 3, 364-367.

Forsey 1964. Eugene Forsey, 'The Problem of "Minority" Government in Canada,' *Canadian Journal of Economics and Political Science*, 30, 1, 1-11.

Forsey 1983. Eugene Forsey, 'The Role and Position of the Monarch in Canada,' *The Parliamentarian*, 64, 6-11.

Forsey 1984. Eugene Forsey, 'The Courts and the Conventions of the Constitution,' *University of New Brunswick Law Journal*, 33, 11-42.

Forsey and Eglington 1985. Eugene A. Forsey and G.C. Eglington, 'The Question of Confidence in Responsible Government,' *Study Prepared for the Special Committee on the Reform of the House of Commons*, Ottawa: Unpublished paper.

Ghany 1999. Hamid A Ghany, 'The Evolution of the Power of Dissolution: The Ambiguity of Codifying Westminster Conventions in the Commonwealth Caribbean,' *The Journal of Legislative Studies*, 5, 54-76.

Gomery 2005. Commission, *Who is Responsible?* Ottawa: Commission of Inquiry into the Sponsorship Program and Advertising Activities.

Graham 1976. Roger Graham, *The King-Byng Affair, 1926: a Question of Responsible Government*, ed. Roger Graham, Toronto: Copp Clark Pub. Co.

Heard 1991. Andrew Heard, *Canadian Constitutional Conventions: the Marriage of Law and Politics*, Toronto: Oxford University Press Canada.

Heard 1993. Andrew Heard, 'The Supreme Court Entrenches Parliamentary Privilege Out of the Charter's Reach: Donahoe v. CBC,' *Constitutional Forum*, 4,4, 102.

Heard 2005a. Andrew Heard, 'Constitutional Conventions and Parliament,' *Canadian Parliamentary Review*, 28, 2, 19-22.

Heard 2005b. Andrew Heard, 'The Confidence Convention and the May 2005 Vote on the Public Accounts Committee Report,' www.sfu.ca/~aheard/conventions.html (Accessed 15 September 2005: 11:55 am)

Hennessy 2005. Peter Hennessy, 'Rulers and Servants of the State: The Blair Style of Government 1997-2004,' *Parliamentary Affairs*, 58, 1, 6-16.

- Hogg 2001. Peter W. Hogg, *Constitutional Law of Canada* (Student Edition), Toronto: Carswell.
- Huber 1996. John D. Huber, 'The Vote of Confidence in Parliamentary Democracies,' *American Political Science Review*, 90, 2, 269-282.
- Kelly and Murphy 2001. James B. Kelly and Michael Murphy, 'Confronting Judicial Supremacy: A Defence of Judicial Activism and the Supreme Court of Canada's Legal Rights Jurisprudence,' *Canadian Journal of Law and Society*, 16, 1, 3-27.
- Knopff 2000. *The Charter Revolution and the Court Party*, eds Rainer and F.L. Morton, Peterborough, Ont.: Broadview Press.
- Laski 1938. Harold Laski, *Parliamentary Government in England: A Commentary*, New York: Viking Press.
- Lawson 2004. George Lawson, *Politica Sacra et Civilis*, ed Conal Condren, New York: Cambridge University Press.
- LCC 2002. Law Commission of Canada. *Renewing Democracy: Debating Electoral Reform in Canada: Discussion Paper*, Ottawa: The Commission.
- Lightbody 1972. James Lightbody, 'Swords and Ploughshares: The Election Prerogative in Canada,' *Canadian Journal of Political Science*, 5, 2, 287-291.
- Macmillan 1973. Harold Macmillan, *At the End of the Day, 1961-1963*, New York: Harper & Row.
- Mallory 1958. James R. Mallory, 'The Election and the Constitution,' *Queen's Quarterly*, 54, 4, 465.
- Mallory 1960a. J. R. Mallory, 'The Appointment of the Governor General: Responsible Government, Autonomy, and the Royal Prerogative,' *Canadian Journal of Economics and Political Science*, 26, 1, 96-107.
- Mallory 1960b. J. R. Mallory, 'The Royal Prerogative in Canada: The Selection of Successors to Mr. Duplessis and Mr. Sauve,' *Canadian Journal of Economics and Political Science*, 26, 2, 314-319.
- Mallory 1971, J. R. Mallory, *The Structure of Canadian Government*, Toronto: Gage.
- Marleau and Montpetit 2000. *House of Commons Procedure and Practice*, ed Robert Marleau and Camille Montpetit, Ottawa: House of Commons.
- Marshall and Moodie 1967. Geoffrey Marshall and Graeme C. Moodie, *Some Problems of the Constitution*, London: Hutchinson.
- Marshall 1984. Geoffrey Marshall, *Constitutional Conventions: the Rule and Forms of Political*

Accountability, Toronto: Oxford University Press.

McWhinney 2005. Edward McWhinney, *The Governor General and the Prime Ministers: the Making and Unmaking of Governments*, Vancouver: Ronsdale Press.

Meisel 1962. John Meisel, 'The June 1962 Election: Break-up of our Party System?,' *Queen's Quarterly*, 69, Autumn, 329-46.

Milner 2004a. Henry Milner, *First Past the Post?: Progress Report on Electoral Reform Initiatives in Canadian Provinces*, Montreal, Québec: Institute for Research on Public Policy.

Milner 2004b. *Steps Toward Making Every Vote Count: Electoral System Reform in Canada and its Provinces*, Henry Milner, ed., Peterborough: Broadview.

Noonan 1998. Peter W. Noonan, *The Crown and Constitutional Law in Canada*, Calgary: Sripnoon Publications.

Norton 1985. Philip Norton, 'Government Defeats in the House of Commons: The British Experience,' *Canadian Parliamentary Review*, 8, 4, 6-9.

O'Brien 1984. Gary O'Brien, 'Origins of the Confidence Convention,' *Canadian Parliamentary Review*, 7, 3, 11-14.

O'Connell 1979. D.P. O'Connell, 'Canada, Australia, Constitutional Reform and the Crown,' *The Parliamentarian*, 60, 1, 5-13.

Richards 1986. Peter G. Richards, 'The Choice of Government in a Three Party System,' *The Political Quarterly*, 57, 4, 406-413.

Savoie 1999. Donald J. Savoie, *Governing from the Centre: the Concentration of Power in Canadian Politics*, Toronto: University of Toronto Press.

Savoie 2003. Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament*, Toronto: University of Toronto Press.

SCPA 2005. Report of the Standing Committee on Public Accounts presented to the House during the Third Session of the 37th Parliament, presented to the House on March 23, 2005. Available at www.parl.gc.ca/committee.

Seidle and Massicotte 1998. Leslie Seidle and Louis Massicotte, eds., *Taking Stock of 150 Years of Responsible Government in Canada*, Canadian Study of Parliament Group: Ottawa.

Seidle 2002. Leslie Seidle, *Electoral System Reform in Canada: Objectives, Advocacy and Implications for Governance*, Ottawa: Canadian Policy Research Networks Inc.

Smith D. 1995. David E. Smith, *The Invisible Crown: the First Principle of Canadian Government*, Toronto: University of Toronto Press, 1995.

Smith J. 1999, Jennifer Smith, 'Democracy and the Canadian House of Commons at the Millennium, *Canadian Public Administration*, 42, 4, 398-421.

Sutherland 1991, S. L. Sutherland, 'Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem,' *Canadian Journal of Political Science* 24, 1, 91-120.

Wilson 1988. John Wilson, 'In Defence of Parliamentary Opposition,' *Canadian Parliamentary Review*, 11, 2.

Speeches

Clarkson 2005. Her Excellency the Right Honourable Adrienne Clarkson Address to the Empire Club of Canada and the Canadian Club of Toronto, Toronto, Wednesday, September 14, 2005: www.gg.ca/media (Accessed 19 Sept 2005, 11:14 am)