

Towards a Progressive Coalition Government in Canada

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After our costly and frustrating October 2008 trip to the polls, Canadians are once again being held hostage to the notion that a government can never be defeated in the House of Commons without triggering an election. If Eugene Forsey were still alive, we would know that the weapon being held to our heads is only a toy gun.

The late Senator Forsey was widely recognized and respected as an expert on Canada's constitution. Whenever political dilemmas loomed or processes needed clarifying, politicians, media and citizens alike sought his lively and learned counsel. Today, with our country again facing the uncertainties of a minority government, a multi-party opposition and difficult times ahead, his input is urgently needed.

The first thing he would point out in our current situation is that our Parliamentary system provides safeguards against a series of unnecessary elections. One of those safeguards is the customary co-operation and negotiation among parties in the House of Commons which enables minority governments to work, often very well. The other is the constitutional right of the Governor-General, in certain circumstances, to refuse a government's advice to dissolve Parliament and instead to call on another party in the existing House of Commons to try governing.

If the Canadian public, the politicians and the media had understood these vital aspects of responsible cabinet government and invoked it early in the last Parliament, events would have unfolded very differently from what they did. The government, instead of declaring every bill a matter of confidence on which it would stand or fall, could have chosen to work with one or more opposition parties, as minority governments usually do, to amend or even withdraw legislation that a majority of MPs did not support. Failing that, opposition parties could have voted together against the government and defeated it.

This would not have had to mean an election. The Governor-General, rather than automatically granting a dissolution of Parliament, could have called on the Leader of the Opposition to form a cabinet and try to get the support of the House to govern. If the new government had then developed its legislative and budgetary measures in ways that would gain majority approval by our elected representatives, the 39th Parliament could have got on with its work, and quite possibly worked very well.

But nobody, from the Governor-General to the opposition politicians to the media to the general public, seemed to realize that this was an option! Now, after all the hassle and expense of the recent election, were back in essentially the same place. And the minute the

PM decides that this new Parliament also isn't working as he wants it to, it could happen again – unless we start understanding and implementing the options our Constitution provides.

Backgrounder

If [a government] loses its majority support in the House of Commons, it must either make way for a government of the opposite party or call a fresh election, states Eugene Forsey in *How Canadians Govern Themselves*, his now-classic popular reference book published by the Library of Parliament. In Canada, the government and the House of Commons cannot be at odds for more than a few weeks at a time. If they differ on any matter of importance, then, promptly, there is either a new government or a new House of Commons.

Contrast this clear either-or alternative with the false assumption that if the Commons doesn't agree to the government's program, there has to be a fresh election. The Canadian Constitution very sensibly allows governments to appeal from Parliament to the people when the public interest so requires, the late Senator and constitutional expert explained. But it does not follow that it provides no means of protecting fundamental democratic rights against abuse of these powers. It does; and the means is the reserve power of the Crown as guardian of the Constitution.

Forsey defended those reserve powers as a pillar of our democracy. His PhD thesis on the royal power of dissolution of Parliament documented the constitutional precedents and the logic behind them, and demolished the popular but mistaken theory that the Crown is just a rubber stamp for Cabinet, or that if it isn't, it ought to be. In particular cases, he argued, the power of the Crown to refuse a dissolution may be all that stands in the way of a government spanking the electorate into submission by repeatedly forcing them back to the polls.

Unquestionably, the [reserve] power exists, he wrote, citing the instances of its use and the wide range of constitutional authorities and politicians who upheld its propriety. Unquestionably also, it is a power to be exercised only in very special circumstances: ordinarily the Crown must follow the advice of the cabinet. But many people feel that there must be no exceptions whatsoever. Is this in fact a safe doctrine?

One of the scenarios he used to make his case against the rubber stamp theory starts with a familiar situation. Suppose the government gets a dissolution, and no one gets a clear majority, he wrote. The government retains office and meets the new Parliament – as it has a perfect right to do – hoping to pick up enough votes to keep it in power. But the new Parliament defeats it. It declines to resign; governments don't automatically resign on defeat. Instead, it asks for a second dissolution, and upon a further defeat in the ensuing Parliament, a third, and so on, until the electors give in or revolt. Is the Governor-General bound to acquiesce in this game of constitutional ping-pong from electorate to Parliament, from Parliament to electorate again, back and forth interminably?

In 1926, Mackenzie King accused Parliament of having ceased to be in a position to make a satisfactory decision about who should govern. In 2008, Stephen Harper blamed a dysfunctional Parliament that wasn't working. Both meant the same thing: a Parliament which failed to do what they wanted it to do. And for both men, the prescription was also the same: get a willing Governor-General to dissolve the unsatisfactory Parliament and bring on

another election.

Forsey called this a heads I win, tails you lose theory of the Constitution. It bears not the faintest resemblance to parliamentary government, he said. Yet on the rubber stamp theory of the Crown's powers there is no escape from it, no protection against the Cabinet dictatorship it would rivet upon the country.

It is the rubber stamp theory which is undemocratic, he concluded. It makes existing governments irremovable except by their own consent. Such a doctrine is a travesty of democracy. It delivers every Opposition gagged and bound into the hands of any jack-in-office. The jack-in-office may loosen the gag and the ropes - [perhaps] so much that we don't realize they're there. But he can tighten them again whenever he pleases, and as tight as he pleases. This is not democracy. It is despotism; more or less benevolent, perhaps, for the moment, but despotism none the less.

The antidote is an understanding of the reserve power of the Crown to refuse a dissolution, and the political will to demand that it be used when necessary.

All this is not to say that it would be simple for the Crown to refuse her cabinet's advice. As Eugene Forsey noted, a Governor-General would rightly be reluctant to do so without excellent reasons, and without a new cabinet willing to accept the responsibility. The reserve power on dissolution comes into play only in exceptional circumstances when the latest election is still relatively recent, no great new issue of public policy has arisen in the interim, and the makeup of the new Parliament provides the practical possibility of an alternative government.

But the fact that the reserve power exists is key to counteracting the paralyzing sense of helplessness that has turned so many Canadians off politics. It means we can choose to move from frustration and wishful thinking to the practical possibility of another government being formed from the opposition a majority in this new Parliament as in the last. The various parties would have to set partisan selfishness aside, but there would be no need for a formal coalition, just enough cooperation for each bill to pass. That, after all, is how responsible minority government works.

Democratic alternatives become real options when we understand and insist on the constitutional principles surrounding dissolution. Whether or not we like a particular government, having those options is essential to maintaining our democracy. We need not be hamstrung by the constant fear of another election. We must shake off our ignorance of the constitution and use the tools it offers to make our parliamentary system work for us.

Writer Helen Forsey is a daughter of the late Senator Eugene Forsey. She is currently working on a book about his legacy to Canadians.

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