

BACKGROUND

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Making the Minority Parliament Work

On January 23, 2006, for the second time in less than two years, the Canadian public elected a minority Parliament. Only twice before have two minority Parliaments been elected in succession – in 1965 and in 1925 when the minority governments headed by Lester Pearson and Mackenzie King were elected for a second term.

In contrast with the two previous occasions, this time a different party has been called to govern. However, the electorate appears to have repeated the same message it sent to the Liberals in 2004 – we are putting you on a short leash because you have not yet gained our full confidence. We want you to demonstrate that yours is a government that we can trust and that you can make Parliament work.

This is a message the Conservative Government would be ill-advised to ignore because the party representation in the new House of Commons is even more constraining than prevailed in the 38th Parliament. Once again the votes of opposition Members will be required to pass any legislation – and indeed to sustain the government.

Admittedly, in addressing this situation the Conservative Government has three important advantages. First, the electorate appears to want the 39th Parliament to be more cooperative and productive than its predecessor. Woe betide the party that forces an election until the public is ready for it. Secondly, the difficulties

faced by the last Liberal government have demonstrated the importance in a minority Parliament of keeping open channels of communication with the opposition parties. Thirdly, until the Liberal Party has elected a new leader and made progress in developing a fresh profile, it would be prudent for that party to moderate its opposition, as the Conservatives did in the 38th Parliament until they reached agreement on a party platform at their national convention in March, 2005.

The Importance of Parliamentary Leadership

Having closely observed and even contributed to the difficulties the Liberal Government faced in the 38th Parliament, the Harper Government is well aware of the challenges they may face. It will have to proceed carefully, listening attentively to Members of all four parties, assessing whether adjustments in components of the party platform may be necessary to attract essential opposition support.

Prime Minister Harper appears to have recognized the need for caution. Undoubtedly prompted by the difficulties that the Martin Government experienced when suddenly faced with the possibility that the Address in Reply to the Speech from the Throne would be defeated, the Prime Minister has consulted the opposition in advance in order to craft a Speech from the Throne that would not be challenged.

While all parties in the minority Parliament – government and opposition alike – would have to exercise restraint and



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courtesy if the House of Commons is to function more harmoniously than it did in the 38th Parliament, leadership must come from the government side. Given the ingrained inter-party tension, aggravated by hostility generated during the past two years, and the aggressive and quarrelsome behaviour characteristic of all parties during the past decade, it would take genuine and open outreach by Ministers to convince Members of opposition parties that some of their concerns would be taken seriously. In such situations a positive outcome could only be achieved if opposition Members for their part did not advance frivolous concerns and responded cooperatively to efforts to find accommodation.

Successful minority governments require a special kind of parliamentary leadership, one that displays flexibility and a capacity to craft compromises that accommodate opposition concerns. During the last Parliament a number of government bills were prudently referred to committee after First Reading. Under this procedure a committee has wider scope for amending a bill, thereby opening the possibility of working out an accommodation with an opposition party that might otherwise have voted to reject it. However, the confrontational atmosphere in the House during the 38th Parliament meant that the approach bore little fruit.

Should the Conservative Government demonstrate a serious interest in working with opposition Members in an effort to find common ground on some matters, committees could become critical institutions for drafting the amendments to bills so that they might later gain support in the House. Of course, this would only be feasible if opposition Members of committees were prepared to refrain from frivolously trying to embarrass the Government. In the past it has been possible for Members of a committee from different parties to study issues together, discover where they shared common concerns, and in the process develop mutual respect, all important elements if government and some opposition Members are to reach accommodations on bills that they can report to the House. Achieving such results could be enhanced by chairs with the skills to build an adequate level of consensus. Subsequently the caucuses of the government and the opposition party involved would have to discuss whether the compromises worked out in committee could be accepted when the bill reached the House.

CHALLENGES TO BE FACED

Committee Chairs

At the outset of the 39th Parliament, the first task of the House Leaders was to reach agreement on which committees will be chaired by government Members and which by opposition Members. Once it had been decided that four standing committees and one joint committee would be chaired by the Official Opposition, committees can be formed and proceed to elect their chairs. Under a Standing Order passed in the 37th Parliament, committee chairs are now elected by secret ballot. While it can be assumed that each caucus will discuss and reach a conclusion as to which of their Members should be elected to positions allotted to their party, it should be recalled that no party has a majority. In the last Parliament on at least one occasion the preferred candidate of the government party failed to gain the post because a Liberal colleague had lobbied the opposition members of the committee and was elected instead. The same possibility applies to vice-chairs.

The Estimates

The January election presents a problem relating to the Estimates for which there is only one significant precedent – the election of a Liberal government following the defeat of the Clark government in December, 1979. On that occasion, however, the election returned a majority government with full control of the House. For this reason, although the two events have similarities, the situations are quite different.

The problem is this. Normally a government presents its budget in February. At the end of the month its expenditure projections for the forthcoming fiscal year are tabled and referred to the appropriate committees for examination. Under a rule adopted by the House in 1968, the Estimates must be tabled before March 1. If committees have not reported them by the end of May, they are nevertheless deemed to have been reported back to the House, so that the vote on the Supply bill related thereto can take place before the June summer recess.

In mid-January 2006, only days before the election was held, the Liberal Cabinet met and gave final approval to the fiscal and economic framework for its intended budget and the Estimates based on it. This was necessary to leave time for printing the large Blue books for distribution to committees in late February. However, since the Liberal Government was defeated, the Blue books were never tabled. Although many basic and non-controversial programs will be maintained by the new Government, during the campaign a number of major program

changes with significant financial implications in areas such as child care were announced. Even if there is time to formulate and cost these programs before the budget is presented in April, there is unlikely to be time to print and table revised Blue books to reflect these changes.

The Liberal Government faced a similar problem when it took over from the Clark Government in the winter of 1980. The Standing Orders are silent on what happens if the Estimates cannot be tabled before March 1. In the circumstances the government had two options: either to negotiate with the opposition a special order or to bring in a motion that would be debatable and amendable. Even though they had a majority, the Government decided since many issues had to be resolved – e.g. for what period of time would they secure interim supply – it was in their interest to reach agreement on a special order that would be adopted by unanimous consent. In exchange for voting interim supply until November 30, the Government agreed to extend the period for review of Estimates in committee into June and to add several opposition days to the calendar.

The situation in the minority 39th Parliament is more complicated. However, the Government has profited from the Liberal Party's desire to avoid being faced with a decision on whether to defeat the government before its leadership convention in December. As a result they were ready to agree to grant interim supply until December.

Given the government's emphasis on accountability, committees will be expected to review the expenditures proposed for most government programs. To do this there may be no alternative to tabling the Blue books prepared by the former Government, while setting out in writing when the budget is tabled which programs will be substantially modified. Since most of the departmental programs will be continued unchanged, reviewing many of the votes would not present problems. However, if unrevised Blue books are actually tabled, the opposition parties in some committees may find themselves in a position where they could debate programs that the Government planned to modify and possibly even report to the House the votes set out in the Estimates prepared by the former Government. If this happens and they are included in the Supply bill, the Government could respond simply by not spending the funds that had been authorized.

In the autumn the government could bring forward Supplementary Estimates to cover the modified programs.

Unlike in 1980 when the new government had a majority, so that passage of the related Supply bill was not in question, in 2006 the Conservative government lacks the votes that would make it possible for them at this stage to ignore the opposition. They may decide to make some adjustments in controversial programs in order to gain opposition votes. Or they may count on securing enough opposition votes from a party that does not want to face an election. Or, if the Government believes that the electorate would return them with a majority, it might make no accommodation and challenge the opposition to defeat them. In any event this will be a challenging period.

The Senate

The Government faces a Senate where Liberals outnumber Conservatives more than two to one. The Liberal leadership in the Senate has already undertaken publicly to approve legislation that formed part of the Conservative platform during the election, as they had done in 1988 following the conservative victory in the election fought on free trade with the United States. In spite of this undertaking the Senate may make minor amendments once bills have been drafted and passed by the House of Commons. In the 33rd Parliament before the free trade debate had erupted, the first Mulroney government, in spite of its large majority in the House of Commons, had occasionally accepted some limited amendments adopted by the Senate. While accommodations undoubtedly can be worked out on non-controversial legislation, it must be acknowledged that the government's minority status may stimulate Liberal Senators to press for amendments that could be represented as improvements.

Measures to Facilitate the Work of Committees

As noted earlier, committees could contribute significantly to the effective performance of this minority Parliament by working out accommodations between parties. But it will be necessary to innovate. There are no precedents to be examined for lessons because during the Pearson and Trudeau minority Governments committees had not yet become the bodies that review virtually all bills. Nor had they proven to be effective during the Martin Government.

The suggestions that follow for strengthening the work of committees in the 39th Parliament can be broken down into two lists – innovations not requiring changes to the Standing Orders and one that would require the amendment of Standing Orders.

Innovations that do not require changes to the Standing Orders

1. Committees will function better if Members are appointed for a minimum of two years – in all likelihood for the life of this Parliament. (Since Standing Orders call for appointments to committees to be made each year, it would suffice to re-appoint Members to committees the following year.) This would enable them to become familiar with their committee's areas of responsibility, plan their work schedule over a longer period and develop cross-party understanding. Committees should as a result be able to accomplish more and their reports should gain in quality and credibility.

Committees could contribute significantly to the effective performance of this minority Parliament by working out accommodations between parties.

2. Committees will be more effective if they elect chairs with the skills to build a consensus in favour of the judicious amendment of bills. Effectiveness of chairs would also contribute to the chances of those bills securing majority support when they reach the House. This role is so important that special training for chairs might be considered.
3. When legislation is referred to committee after first reading, it is important that the responsible Minister engage all Members of the committee rather than only Members of the government caucus. It should also be borne in mind that it will take time and sensitivity on his or her part to overcome the suspicions of opposition Members.
4. Parliamentary secretaries could serve as an important channel of communication for committees with their departments, securing important information and other forms of assistance that could support the generation of a collaborative environment. Although parliamentary secretaries have in the past been criticized for exercising a controlling role in committees, they could make a significant contribution in the 39th Parliament by promoting improved communications with their departments. Although Conservative parliamentary

secretaries lack experience in the post, they may for this reason more readily adopt a constructive approach.

5. In addition to referring bills to committees after first reading, it would be helpful if the Government returned to a practice common in the 1970's of preparing Green papers (a paper reviewing a problem that outlines but does not choose among alternative approaches to addressing it) and referring them to the relevant committees. The Government has stated that it intends to conduct reviews of three bills, the Canadian Environmental Protection Act, the Anti-Terrorism Act and the Bank Act. Green papers on these subjects would be an effective way to raise issues for discussion in committee, make it possible for the Government to perceive how the different parties reacted to the issues described in the paper and ultimately to determine what kind of amended bill would be acceptable to the House. If the Government had not taken a position on what policies to adopt on these three subjects, government Members would find it easier to think independently and opposition Members would not have a Government position to attack.
6. Committee reports would give a clearer indication of the judgment of Members if they indicated with adequate detail where they, as individuals rather than as parties, were in agreement and where they differed and the reasons for these differences. If adopted, this procedure could also reduce the incentive to issue minority reports, described in parliamentary jargon as 'dissenting opinions', a practice that makes it much more difficult to reach an agreement on consensus reports, reports that carry more weight.
7. Government and opposition Members of Canadian parliamentary committees normally sit on opposite sides of a hollow square, replicating the confrontational environment in the House. In some Westminster parliaments committee members sit at random, which promotes a more collegial environment. If the Government were on occasion to look to committees to find common ground, sitting at random could improve relations between Members of different political parties and increase the prospect of reaching consensus.
8. If committees produced annual reports as British committees do, they would have to review and assess their performance. This could generate an interesting debate among Members. Adoption of this practice should also help with planning for the future. Furthermore individual committees could learn from the experience of others.

An innovation that would require a new Standing Order

The lack of media attention can be a disincentive for committees to work on the Estimates. Committees could gain greater attention from departmental officials as well as from the media if they were offered the right to ask for an hour's debate in the House on Wednesday at 1 pm. (This time slot was allocated a generation ago to the Joint Committee on Statutory Instruments to be used if it was concerned that a regulation was inconsistent with enabling legislation and that officials were resisting modifying the regulations. Since this entitlement has led Ministers and officials to respond positively to Joint Committee reports, an hour's debate has only occurred a few times in two decades.) Not only would this practice lead officials and Ministers to pay more attention to committees, it could also lead the media to follow and report on their work. To encourage inter-party cooperation, priority might be accorded to a committee that had adopted a report by consensus.

A provisional Standing Order now permits up to three hours of debate on a committee report and possibly more on another day. It remains to be seen whether this Standing Order will be extended. On one side it has been recognized that this provisional procedure had been used to filibuster. On the other side it is unpopular because it uses up scarce House time whereas the Statutory Instruments procedure, if requested, adds an hour to the House day.

An Enhanced Liaison Committee

Given the greater responsibilities that could be assumed by committees in an effective minority Parliament, they are certain to face numerous challenges. It would be helpful to address these challenges through discussion of them among committee chairs in the Liaison Committee, a body well placed to make proposals for overcoming difficulties and improving performance.

The Liaison Committee of the House of Commons was formed in 1985. Composed of the chairpersons of all of the standing committees, its chair is elected from among its members. Although it was anticipated that the new committee would become a source of proposals for strengthening the work of committees, in practice its main activity has been allocating among standing committees the block of funds provided annually by the Board of Internal Economy for work and travel. However, during the 34th and 35th Parliaments the Liaison Committee set up a sub-committee that drafted

proposals for strengthening the work of committees, some of which are now common practice.

It is noteworthy that during the past decade and a half the responsibilities of the British House of Commons Liaison Committee have been substantially increased, in response to a widely held desire to improve the work and contribution of parliamentary committees. The British Liaison Committee is composed of the chair of the committee and the chairs of 34 British 'select' committees (equivalent to standing committees in Canada), approximately one-third of which are chaired by opposition members. It is now the principal instrument for analysing the evolving needs of committees and for recommending ways to improve their performance. To this end it has

- laid down the principal responsibilities of committees,
- called upon committees to make annual reports,
- commented on the adequacy of government responses to committee reports and on the quality of cooperation received by committees from government departments,
- proposed more productive working practices designed to enable heavily burdened committees to accomplish more,
- called for increased resources for committees, and
- suggested ways in which committee work could be made more accessible, including the use of web casting.

Now that vice-chairs serve as associate members of the Canadian Liaison Committee and that members of unrepresented parties may be present, the Committee could be in a position to make constructive proposals for strengthening the work of standing committees.

The Liaison Committee would benefit in the longer term from having a full time chair. If the Canadian Liaison Committee were to receive a larger mandate, it would be desirable that its chair not also be responsible for chairing a standing committee. The workload of standing committees are already onerous and may become more so in a minority Parliament. To be effective the chair of the Liaison Committee should have had substantial previous experience as a committee chair. Moreover, he or she should be recognized as a senior and well-respected parliamentarian. As well, could the chair eventually be elected, like the Speaker, by secret ballot of the whole House?

At a time when committees could have an expanded role shaping and influencing legislation, enlarging the mission of the Liaison Committee could be a striking and imaginative way

of providing advice and support to committees. The Liaison Committee's influence could be strengthened if arrangements were made for an external agency to monitor and report to it on the performance of standing committees.

CONCLUSION

The challenges faced by the 39th minority Parliament are enormous. With another election lying somewhere over the horizon, the three opposition parties are naturally motivated to advance their own agendas, while also exploiting any

opportunities to discredit the Government. For its part the Government will look for ways to improve its public image. In this environment constructive inter-party dialogue will not be easy. Yet the Canadian public has determined that the 39th Parliament should not be dominated by the Government. In this complex situation, private Members could make a contribution if they are able to find ways to collaborate in committees with colleagues from other parties. By working together in committees can they reach accommodations that could make this Parliament more effective than its predecessor?