

Government Formation in a Constitutional Monarchy

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Responsible Government

- Responsible Government is a trinity (three in one):
 - Responsibility to the Crown
 - Individual ministerial responsibility
 - Collective ministerial responsibility & solidarity
- Responsible Government means that “Ministers of the Crown take responsibility of all acts of the Crown” and that the Governor General acts on and in accordance with ministerial advice, save for exceptional circumstances.
- Responsible Government squares royal infallibility with popular rule. The Queen can still do no wrong because ministers take responsibility for all acts of the Crown.
- Even in the exceptional case where advice is refused, a Governor who rejects a First Minister’s advice would have to dismiss him or her and appoint a new First Minister who would take responsibility for that dismissal.

The Confidence Convention I

- The ministry must command the confidence of the Commons.
 - Once confidence is demonstrated to be held, it continues to be held until the moment that the Commons withdraws it in a vote in the chamber.
- If it loses the confidence of the Commons, either there will be a new ministry (inter-parliamentary appointment) or a new parliament (after dissolution and a general election).
- But the ministry must also command the confidence of the governor, because he gives the first minister a commission of authority to govern in the name of the Queen.
- That's why a governor who refuses to carry out a first minister's constitutional advice is dismissing him from the premiership.

The Confidence Convention II

- First, the Crown expresses that confidence in the prime minister through an official commission allowing him to form a ministry. Second, the Commons either confirms that it also holds confidence in the Ministry, or it expresses non-confidence in the Ministry.
- If the Commons withdraws its confidence from the Ministry, this does not automatically mean that the Crown also withdraws its confidence from the Ministry, which is why the incumbent prime minister can advise, and apart from exceptional circumstances, receive an early dissolution from the Crown.
- The Crown withdraws its confidence from the prime minister and ministry by refusing to implement his constitutional advice, such as to dissolve parliament. At that stage, the Crown would have to appoint a new prime minister and ministry who could take responsibility for this act of the Crown, because a Ministry can only take responsibility for advice that it has offered, not for the contrary advice that it did not offer.

Constitutional Roles of the Governor & First Minister

- Prorogation and dissolution are constitutionally entrenched executive authorities.
- Parliament therefore cannot limit the First Minister's discretion to advise and take responsibility for prorogation or dissolution without also necessarily limiting how the Governor promulgates that advice; the Governor and First Minister form a chain of authority and ultimately both derive their commissions from the Queen.
- They preserve the Governors' authority to prorogue & dissolve the legislature earlier than the date of the next scheduled election cycle and thereby also preserve the First Minister's authority to advise that early dissolution.
- The law cannot drive a wedge between the Governor and First Minister. The law cannot limit the authority of the First Minister without also necessarily limiting the authority of the Governor, because the First Minister derives his authority as First Minister, i.e., role of the Crown's primary constitutional adviser, by virtue of the Governor's commission of appointment and confidence in him.

The Governor's First Duty & The Tenure of a Ministry

- The first duty of the Governor is to ensure that there is always a duly-appointed ministry in office.
- This is because the Queen's business must always go on. There must always be a government.
- There is never an "interregnum" in the office of first minister.
- The tenure of the first minister determines the tenure of the ministry as a whole. The resignation of the first minister means the resignation of the ministry as whole.

Transition of Power Between Ministries

In Canada, transitions normally last 2 to 3 weeks.

1. Incumbent first minister informs the governor of his intention to resign and becomes the “outgoing” first minister
2. The party leader poised to become the next first minister then becomes the “incoming” first minister
3. A few days later, the governor summons the incoming first minister, who then becomes the first minister-designate
4. The outgoing first minister and first minister-designate agree to the exact timeline for the transition.
5. 2 to 3 weeks later, the governor formally appoints the first minister-designate to office as first minister and swears in the rest of the cabinet

Intra-Party Transition Mid-Parliament



OFFICE OF THE LIEUTENANT GOVERNOR OF ONTARIO

Constitutional Procedure regarding a change of Premier

BACKGROUND

In response to many public and media inquiries, the following outline is provided to describe the flow of official events that take place regarding the election of a new leader for the governing party.

1. On October 15 2012, the Premier advised the Lieutenant Governor of his intention to resign as First Minister following the election of a new leader by his party.
2. After the election of a new leader for the party which forms the government, the Premier must advise the Lieutenant Governor in due course, of the result of the leadership election.
3. The Lieutenant Governor will then commission the new leader to form a government. This individual then becomes the Premier-designate. The Premier-designate will also confirm the date on which a new government can be formed as agreed with the outgoing Premier.
4. In the meantime, Mr. McGuinty will continue as Premier, along with Ministers of the Crown in the 24th Ontario Ministry since Confederation, until his formal resignation is accepted by the Lieutenant Governor.
5. On the date agreed to, the outgoing Premier would normally visit the Lieutenant Governor to formally submit his resignation as First Minister, which carries with it the resignation of Ministers.
6. Immediately following this, the Premier-designate will present a recommendation to the Lieutenant Governor on the composition of the Executive Council of Ontario in the new government, and will then be sworn-in, along with new Ministers of the Crown who will form the 25th Ministry.

These events may transpire over a few days or weeks, depending on the length of transition agreed to by the outgoing Premier and Premier-designate.

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For further information about the Lieutenant Governor's role, visit the website www.lt.gov.on.ca

Office of the Lieutenant Governor of Ontario / 416 325-7780 / www.lt.gov.on.ca

1. 12 October 2012: Premier McGuinty announces his intention to resign. Liberal leadership election ensues
2. 26 January 2013: Liberal Party elects Kathleen Wynne as leader
3. 31 January 2013: LG Onley recognizes Wynne as Premier-designate. McGuinty & Wynne coordinate transition
4. 11 February 2013: McGuinty resigns and Onley appoints Wynne as Premier

Inter-Party Transition After Election

1. 19 October 2015: Canadians elect members for the 42nd Parliament. Liberals win a parliamentary majority. Harper becomes the outgoing prime minister & Trudeau becomes the incoming prime minister.
2. 22 October 2015: The official program of the memorial to the Ottawa Shooting refers to Harper as “Prime Minister” and Trudeau as “Prime Minister-designate,” which means that the Governor General had met with Trudeau. (Rideau Hall didn’t release an official memo).
3. 4 November 2015: Harper resigns, and GG Johnston appoints Trudeau as Prime Minister and swears in the Cabinet for the 29th Ministry.

Caretaker Convention I

- The Government of Canada’s official position is set out in the *Guidelines on the Conduct of Ministers, Ministers of State, Exempt Staff and Public Servants During an Election.*
- The *Manual of Official Procedure of the Government of Canada* refers to this concept as “the principle of restraint.”
- “[D]uring an election, a government should restrict itself – in matters of policy, expenditure and appointments – to activity that is: a) routine, or b) non-controversial, or c) urgent and in the public interest, or d) reversible by a new government without undue cost or disruption, or e) agreed to by the Opposition (in those cases where consultation is appropriate).”

Caretaker Convention II

- 1. [...] The extent of these restraints varies according to the situation and to the disposition of the Government to recognize them.
- 2. The possibility of restraint only arises if the continuation of confidence in the Government is called into question. A defeat in the House preceding dissolution or a defeat at the polls would be the usual causes of restraint.
- 3. The restraint has been recognized as applying to important policy decisions and appointments of permanence and importance. Urgent and routine matters necessary for the conduct of government are not affected.
- It has been applied inconsistently in the 20th century and has evolved substantially since the late 19th century.
 - PM Mackenzie in 1873 and 1878
 - Clark in 1979
 - Campbell in 1993

Prorogation-Coalition Controversy of 2008

- A first minister's advice to prorogue the assembly has never been refused since Responsible Government emerged in the 1840s.
- Even *if* a governor tried to make a stand and break centuries of precedent, he would, in refusing a first minister's advice to prorogue, force his resignation and then have to appoint a new first minister who could take responsibility for the advice not to prorogue.
- If GG Jean had refused Harper's advice on 4 December 2008, she would have had to appoint Dion as PM.

Conclusion

- The Crown, personified by the Queen of Canada and represented by the Governors, plays a necessary and important role in forming governments in Canada.
- The Governors' discretionary authority is most apparent in the appointment and dismissal of first ministers.