David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

Adjusting to a New Era of Parliamentary Government

Report of a Workshop on Constitutional Conventions
David Asper Centre for Constitutional Rights
Faculty of Law, University of Toronto
February 3-4, 2011

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Introduction and Acknowledgments

The David Asper Centre for Constitutional Rights is a centre within the University of Toronto, Faculty of Law devoted to advocacy, research and education in the area of constitutional rights in Canada. We first became involved in the issues addressed in this report when we hosted a panel discussion of leading scholars on the day following the prorogation of Parliament in 2008 – an event that drew a standing room only crowd at the Faculty of Law. We have stayed involved through additional workshops to educate law students and the public about the constitutional conventions that govern our parliamentary democracy and through the support of the workshop which produced this report. While the constitutional conventions discussed in this report may seem somewhat removed from the concept of rights, they are essential to the realization of democratic rights in Canada. Without transparent and accountable systems of government, citizens' democratic rights to participate in those systems are undermined and may be rendered meaningless. This report is a solid step along the path to a greater understanding of our uniquely Canadian version of Westminster democracy.

Professor Peter Russell has been the driving force behind the organization of this workshop and the synthesis of the various voices around the table into this excellent report of the discussions that took place. Thanks are also due to the students who acted as rapporteurs for the workshop without whom we would have simply had an interesting discussion with nothing to show for it: Nicolas Businger (Law), Tom Leary (Law), Andrew McDougall (Political Science), Kathryn McGoldrick (Law), Vuk Radmilovic (Political Science) and Julia Rendell (Law). Some participants of the workshop contributed by providing background papers to facilitate the discussion. We thank Peter Hogg, Peter Russell, Hugo Cyr, Mel Cappe, Errol Mendes, Jennifer Smith, Peter Aucoin and our UK guest Robert Hazell. Their papers can be found on the Asper Centre website (www.aspercentre.ca). We also thank all of the participants in the workshops who took the time to come to Toronto for the day at their own or their own institutions' expense. We are grateful for their tremendous contributions.

Cheryl Milne
Executive Director
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1. Context

1.1 Over the last several decades a political mutation has taken place throughout the parliamentary world. Fifty years ago politics in most parliamentary democracies (including those based on the Westminster model and those in Europe) were dominated by two parties - one on the left and one on the right. Since then the share of the vote won by the two largest parties has fallen from 85% or more to 65% or less.[1] The result is that elections frequently produce parliaments in which no single party has a majority. In countries with proportional systems of representation single party majority governments are extremely rare. Even in Canada, with its first-past-the-post system, the last three federal elections have produced "hung parliaments." Such outcomes are increasingly frequent at the provincial level. Today, all four of the "Westminster" parliamentary democracies, Australia, Canada, New Zealand and the United Kingdom, have coalition or minority governments.

1.2 While other parliamentary countries have been adjusting to this new political era, Canada, at the federal level, has not. In 2009 the London-based Institute for Government examined how Westminster parliamentary countries were responding to the new era. Its report contains a chapter on Canada which is entitled "Canada's Dysfunctional Minority Parliament."[2] The report documents how Canada has been lagging behind in adjusting to the new era.

1.3 One of the areas where adjustment is needed is the lack of clarity and agreement around important unwritten conventions of our parliamentary system of government. Constitutional conventions are at the heart of our system of responsible government. To be effective they need to be agreed upon by the political leaders of the day. Political debate about these unwritten principles and practices of our constitution has the potential to plunge the country into a serious constitutional crisis.

1.4 It was to address this problem that the Asper Centre for Constitutional Rights at the University of Toronto's Faculty of Law organized a workshop on February 3-4, 2011. Although the workshop focused on the lack of consensus among political leaders on constitutional conventions of fundamental importance to the operation of parliamentary government, many of its participants were also concerned about parliamentary practices and behaviour beyond the constitutional realm that need to be adjusted to an era in which minority parliaments are likely to be not the exception but the norm.

1.5 The workshop brought together constitutional scholars, experienced officials in government and parliament, and individuals well connected to the leaders of all of the

parliamentary parties at the federal level. A list of participants is given at the end of this report. To ensure maximum candour, workshop sessions were not open to the media or the public. This report captures the main points discussed and conclusions reached. It is intended to be a resource for public discussion of the urgent issues now facing parliamentary government in Canada.

2. Lessons from Other Westminster Systems

2.1 The workshop gave careful consideration to steps taken in Canada's sister Westminster democracies, Australia, New Zealand and the United Kingdom, to secure clear and consensual statements of principles and practices of their systems of parliamentary government.

a) New Zealand

2.2 New Zealand has led the way in this regard with its Cabinet Manual. New Zealand's Cabinet Manual is an authoritative guide to all those working in government on accepted practices of government.[3] A paper prepared for the workshop by Professor Peter Hogg explains that the Manual does not have statutory effect. It covers a wide range of subjects, including the powers of the Governor-General, the formation of governments after elections and caretaker governments. Rather than providing a detailed rule-book, the Manual indicates the constitutional principle or convention that is relevant to different situations.[4]

2.3 New Zealand's Cabinet Manual has evolved over many years. It was written by Cabinet Office officials and is approved by prime ministers and Cabinet when they take office. Although it began well before the introduction of proportional representation in 1996, it has been found to be a useful resource in providing a framework of principles to guide political leaders and government officials in responding to the "minority parliament" situations that have resulted from every New Zealand election since 1996. Here, for instance, is part of what it has to say on the roles of the Governor General and parliamentary leaders in the formation of government:

> By convention, the role of the Governor-General in the government formation process is to ascertain where the confidence of the House lies, based on the parties public statements, so that government can be appointed. It is not the Governor-General's role to form the government or participate in any negotiations (although the Governor-General might wish to talk to party leaders if the talks have no clear outcome.)[5]

2.4 While this, and sections on other conventions, leave plenty of scope for judgment and discretion by all of the relevant actors, the Manual provides them with an authoritative and publicly accessible description of the principles that are expected to guide their actions.

b) United Kingdom

2.5 In the latter part of 2009, as it became clear that an impending General Election might produce a "hung parliament," two NGOs, the Constitution Unit at the University College London and the Institute for Government together began work on a proposal to make the country better prepared for this election outcome. The NGOs' comparative study of Westminster parliamentary countries showed that, while all had government documents providing guidelines for handling most of the routine aspects of government administration, only New Zealand's Cabinet Manual covered the formation of government after elections in which the outcome is unclear. A paper prepared for the workshop by Professor Robert Hazell, Director of the Constitution Unit, University College London, gives an account of how the proposal to develop a UK Cabinet Manual, modelled on New Zealand's, moved forward in the early months of 2010.[6]

2.6 In New Zealand the Cabinet Manual's political legitimacy had developed over time as succeeding governments, of different political stripes, approved it and added to it. In the UK, legitimacy for such a document would have to be gained much more quickly. Accordingly, the two NGOs prepared a submission to the House of Commons Justice Committee at the same time as they broached their proposal to the Cabinet Office. In late January, 2010, Sir Gus O'Donnell, the Cabinet Secretary (the equivalent of Clerk of the Privy Council in Canada), with the approval of Prime Minister Brown, initiated the Cabinet Manual project as part of preparations for the possibility of a hung parliament resulting from the May election.

2.7 Given how little time there was before the election, it was decided to draft the Elections chapter first. The UK Cabinet Office published the first draft Elections chapter on February 23 after showing it to several constitutional experts.[7] It was considered by the House Justice Committee which issued a report on March 29 proposing some improvements in the document.[8] By now the Brown Government was beginning to focus on the election campaign scheduled to begin a week later. As a result the Justice Committee's suggestions were not incorporated in the draft chapter.

2.8 Even though the Elections chapter was still a draft, it proved to be a useful guide to the politicians, government officials, the media and the public when the May election failed to give any party a majority in the House of Commons. As Robert Hazell writes, "In the months leading up to the election there had been stories in the press of the chaos that would ensue if there were a hung Parliament, and speculation about the role of the Queen. The draft Elections chapter helped explain what would happen, and put paid to most of the wild speculation."[9] The draft chapter helped take the pressure off Prime Minister Brown to immediately resign. It provided an acceptable framework in which political leaders could take a few days to explore various possibilities. The draft chapter "made it clear that it was up to the political parties to work out who could command confidence in the new Parliament, and then to communicate that information to the Queen." After five days, Prime Minister Brown submitted his resignation, and Mr.

Cameron, the Conservative Leader, was sworn in as Prime Minister and head of a coalition government that included Liberal Democrats.

2.9 The drafting of the full Cabinet Manual was completed after the election. The Cabinet Office published the draft Manual on December 14.[10] A 12 week period of public consultation is now taking place. The Commons Political and Constitutional Reform Committee is also conducting an inquiry into the constitutional implications of the Cabinet Manual. It is expected that a revised and final version of the Manual will be available in the spring of 2011.

c) **Australia**

2.10 After Governor-General Kerr used the reserve powers of the Crown to dismiss Labor Prime Minister Gough Whitlam in 1975, there was a great deal of interest in clarifying constitutional conventions. Instead of following the New Zealand Cabinet Manual approach, Australians added the codification of constitutional conventions to the agenda of an ongoing series of constitutional meetings called the Constitutional Convention. Meetings of the Convention were attended by Commonwealth and State political leaders, and constitutional scholars. A paper prepared for the workshop by Professor Peter Russell describes the work of the Convention on constitutional conventions.[11]

2.11 At the Convention's final meeting in 1985, the delegates, by an informal show of hands, approved 18 "practices," a number of which concerned the exercise of the Governor-General's reserve powers. But none of these "practices" related to the circumstances relating to the controversial dismissal of the Governor-General. Although the original intention was to incorporate agreed upon conventions in Australia's Constitution, no action was taken to do this.

2.12 The work of Australia's Constitutional Convention on conventions stands as an important reference document but not as an authoritative guide for the matters it deals with. When the August 2010 Commonwealth election resulted in a virtual tie between the Labor and the Liberal/National Coalition, the work of the Constitutional Convention was not invoked in the nearly 15 days of negotiations that it took to determine that a majority of the six MPs who were independents or Greens would support the Gillard Labor Government.

2.13 Hung parliaments have resulted from elections much more frequently in Australian states – most recently in the 2010 Tasmanian election.[12] These situations have frequently involved State Governors (the equivalent of Lieutenant Governors in Canada) becoming involved in negotiations with political leaders in the formation of government after the election. These interventions of the Crown's representative are apt to become controversial. However, no effort has been made to develop authoritative guides such as the New Zealand or UK Cabinet Manuals.

d) Appraisal

2.14 The workshop participants discussed at length the pro's and con's of producing some kind of authoritative statement of important constitutional conventions. They considered carefully the experience of other Westminster parliamentary democracies reported above. Concerns were expressed about the danger of making inflexible those elements of the constitutional system that should be left free to develop through political evolution. There was discussion of the process of producing a Cabinet Manual and how it might involve parliament and experts outside of government. It was clear from what was learned about the New Zealand and UK Cabinet Manuals that such manuals could not serve as detailed rule books with answers to every situation that might arise. But they can serve as helpful guides to politicians and officials involved in the challenging situations that arise when an election produces a hung parliament and may help to educate the media and the public as to what to expect in these situations.

2.15 A consensus developed in the workshop that Canada would benefit from having something like the Cabinet Manuals developed in New Zealand and the UK, providing it is done with the right aims and in the right manner. Such a manual should be fundamentally descriptive rather than prescriptive. It should provide authoritative statements about important principles and practices of parliamentary government in Canada. In doing so, it should recognize that there is a hierarchy of conventions whereby some conventions take precedence over others in cases of ambiguity or some conventions presume stricter compliance over others that have a more flexible application. A Canadian manual should focus on the more fundamental and general principles and not attempt a detailed code. Indeed, the phrase "codifying conventions" is not an appropriate way of referring to this exercise. The manual would not have the status of a law. It should be an authoritative and evolving set of principles and guidelines for those involved in the operation of parliamentary government.

2.16 As for process, it was agreed that the approach taken in the UK in developing a manual is much more relevant to Canada's situation than is the approach followed in New Zealand. While the process of producing a manual might be initiated and carried forward by the Cabinet Office, it would be wrong for it to be entirely an in-house product of the Executive. It is very important that parliament be involved as well as constitutional scholars outside of government.

2.17 During the workshop, participants were made aware of the *Manual of Official Procedure of the Government of Canada* that has existed in Canada's Cabinet Office since 1968.[13] This document provides guidelines and protocols for dealing with many functions of government and special occasions. It was not designed to set out constitutional conventions or deal with government formation following an election with an unclear result. Further, it is unclear whether it is widely known or followed. Nevertheless, the workshop participants thought it might be useful in completing a more contemporary Canadian manual such as the UK's or New Zealand's.

3. The Dissolution of Parliament and the Formation of Government

a) Dissolution

3.1 The Governor General, as the Crown's representative, has the legal power to dissolve parliament. By constitutional convention this power is normally exercised by the Governor General on the advice of the prime minister. But questions have arisen in all of the Westminster parliamentary systems as to whether there are any situations in which it would be correct for the Crown to reject such advice from a prime minister. This question may arise if a prime minister whose government has lost a confidence vote, or faces the prospect of such a vote, advises dissolution in the early months of a newly elected parliament. Such a situation arose in the famous King/Byng affair of 1926. It rose again soon after the October 2008 federal election, when the Harper Government, was threatened by a non-confidence vote scheduled for December 1, 2008.

3.2 A paper prepared by Professor Hugo Cyr for the workshop sets out the opposing views aired at the time the parliamentary dispute was playing out in December, 2008 and January, 2009.[14] The "traditional view" is that in the early months of a newly elected parliament, if the incumbent prime minister is defeated on a vote of confidence or is threatened to be defeated, the Governor General is obliged to ascertain if the leader of another party can form a government with a reasonable chance of commanding the confidence of the House. The "reformist view" is that in a democracy the electorate should decide who should govern. The electorate indicates its choice by giving one party more seats than the others. Only the leader of the party with the most seats is entitled to form a government. If that government is defeated on a vote of confidence, there must be another election.

3.3 The workshop discussion of these two views indicated opposition to polarizing the options around classical versus reformist approaches. There was broad support for the confidence convention: that the right to govern depends on maintaining the confidence of the House of Commons. There was no support for constraining the House's choice by a rule that would permit only the leader of the party with the most votes to form a government. Participants recognized that there is a large number of factors that the Governor General must take into account in responding to a request for dissolution in the early months of a new parliament.

3.4 The issue of whether coalition governments in order to be legitimate must be approved by the electorate was discussed. It was pointed out that the Conservative/Liberal Democratic Coalition formed after the May election in the UK was not put before the electorate as a possibility. It was also observed that the campaigns of large parties focus on getting a majority, while smaller parties prefer to keep their options open and not declare which party they may align with in a hung parliament. This is a matter that will likely be determined by evolving political practice rather than a settled constitutional convention.

b) The Formation of Government

3.5 The workshop considered some of the issues that arise in the formation of government after an election in which no party has won a majority of seats. On these issues the draft UK Manual's Elections chapter was a useful guide. It states that "an incumbent government is entitled to wait until the new parliament has met to see if it can command the confidence of the House of Commons, but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative."[15] The first part of that statement would appear to be supported by workshop participants. The second part raises a number of questions about how it might be determined before the new parliament meets that the incumbent government is unlikely to command the confidence of the House and that there is a clear alternative.

3.6 The workshop considered that it was important for the Governor General to be kept well informed of progress being made in discussions among party leaders, and the best ways of facilitating this. There was also discussion of the most appropriate way of communicating the results of these political discussions to the Governor General. Another issue on which the UK Manual breaks new ground, and was considered by the workshop, was the briefing that opposition members may need from the civil service in considering policy issues relevant to forming coalitions or alliances with the government or other parties. There was also consideration of instituting an "investiture process" that some parliamentary systems use to ascertain the government that a majority in the elected chamber will support at the beginning of a new parliament.

3.7 The workshop's only conclusion on these issues was, again, that in an era when hung parliaments may frequently be the outcome of elections, Canada would benefit by having clear and agreed upon guidelines on these matters, such as those now set out in the draft UK Manual.

4. Caretaker Governments

4.1 There are a number of situations in which, because it is not clear that the government commands the confidence of parliament, it would not be constitutionally correct for it to exercise the full powers of government. An election that results in a hung parliament is clearly one of those situations. In these situations governments are referred to as being in the position of caretaker governments. An equally important period in which a government has caretaker status is the election period itself. A paper prepared by Mr. Mel Cappe, a former Cabinet Secretary and Clerk of the Privy Council, set out Canadian practice in this area.[16]

4.2 Mr. Cappe informed the workshop that in Canada the Privy Council Office has guidelines on caretaker governments but he was not at liberty to make them public. All members of the workshop agreed that these guidelines should be made public, and that the prime minister should announce when they are in force. The prime minister might

also announce when compliance with the caretaker convention means that he is not making a decision on any particular matter.

4.3 The first aspect of the caretaker government convention concerns the situations to which it applies. There was agreement in the workshop that the convention should apply during election campaigns and immediately after elections if the result is not clear. There was no agreement that it should apply while parliament is prorogued.

4.4 The workshop agreed that when government is operating under the caretaker convention it should only carry on the routine business of government and not launch new initiatives. A good criterion of what is not appropriate is irrevocability. There should be an exception for emergencies and urgent situations that arise. These cases should be handled by temporary arrangements or consultation with opposition leaders. The guidelines should identify the appointment that should not be made by a caretaker government and the range of government agencies to which they apply.

4.5 How should caretaker convention guidelines be enforced? There was agreement that once the prime minister announces that government is operating under the caretaker convention, the Privy Council Office should formally advise the civil service and agencies to which the convention applies that caretaker convention guidelines are to be observed. Consideration was given to the possibility that departmental accounting officers might require written directions for ministerial directions that appear to violate the guidelines.

4.6 While there was agreement that caretaker government guidelines should be made public soon, it was also agreed that these guidelines will need to evolve and be periodically updated. Several participants informed the workshop of how some provinces have developed guidelines constraining government action in connection with their fixed date election laws.

5. Confidence Votes

5.1 The convention that a government which loses the confidence of the House of Commons must either resign or advise dissolution is well established. But the rules and principles governing exactly what constitutes a clear indication that the government has lost the confidence of the House and when votes of non-confidence can take place are not as clearly established as they should be. During the tenure of both the Martin minority government and the Harper minority governments there were serious controversies over these matters.

5. 2 Professors Peter Aucoin and Jennifer Smith in the paper they prepared for the workshop discuss how one is to know that the government has lost the confidence of the House.[17] Some situations they say are clear: "Everyone agrees that the government has done so when it loses a motion expressly worded to test confidence in it and when it loses a vote of censure on a substantive or procedural matter." Workshop members did not

challenge that statement. They also accepted that a defeat on the Budget and a defeat on the Throne Speech are clear indications that the government has lost the confidence of the House, and that an opposition amendment to any of these that is accepted by the government does not constitute a defeat.

5.3 There also appeared to be support for the view that votes on government bills or proposals (other than the budget, tax measures and the Throne Speech) are not confidence matters unless the government declares them to be confidence matters or the opposition decides to make them the subject of a non-confidence vote. Some participants were concerned that conceding to the government the right to determine conclusively whether a vote on a particular bill or proposal is a vote of confidence is inconsistent with the convention of responsible government. At the very least, it was suggested, the House of Commons should be asked to vote on whether it agrees with the prime minister's interpretation of what constitutes the confidence of the House. The workshop did not support the view that every initiative announced in the Throne Speech automatically becomes a confidence matter when it is later introduced in parliament.

5.4 Workshop participants thought that there needs to be constraint on the frequency of confidence votes. If virtually every vote becomes a test of confidence, parliamentary proceedings degenerate into an unseemly game of political chicken. Considerable concern was expressed over the extent to which the existing rules of procedure give the government control over when the opposition can move a non-confidence motion. Such control is difficult to reconcile with the government's accountability to parliament. But there was also support for the view that given the serious consequences of a non-confidence motion – it can bring the government down and force an election - there should be some minimal waiting period before the opposition can move non-confidence. The workshop supported the view that working out a resolution of this conundrum was the business of parliament itself and should be treated as a priority by the appropriate committee of the House. The workshop participants took note of how Quebec's National Assembly has set down rules identifying the circumstances in which the Assembly's confidence in the government may be tested.

5.5 One idea that found considerable support among workshop participants and has been adopted in many parliamentary systems is a rule that non-confidence votes must be "constructive." When non-confidence votes are "constructive" they indicate not only that those who support them oppose the government of the day but also they indicate the alternative government they will support. Such a reform of parliamentary procedure would impose a discipline on votes of non-confidence that could have a stabilizing influence on hung parliaments and strengthen the possibility of complying with the fixed-date election law. But other participants were vigorously opposed to any rule that would have the effect of excluding a vote of non-confidence that leads to an election.

6. Prorogation

6.1 A prorogation of parliament brings a session of parliament to an end. The legal power to prorogue parliament rests with the Governor General. By convention the Governor General prorogues parliament only when advised by the prime minister to do so. Prorogation is normally advised when most of the business of a session has been completed and it is time for members of parliament to take a seasonal break. Bills that have not passed through all the stages of legislation die with prorogation. Prorogation gives the government an opportunity to open a new session of parliament with a Speech from the Throne setting forth a new agenda.

6.2 The paper on prorogation prepared for the workshop by Professor Errol Mendes reports that only three of the 105 prorogations of the federal parliament since Confederation have been controversial.[18] The first controversial prorogation was advised by Sir John A. Macdonald in 1873. It appeared to be aimed at terminating the work of a parliamentary committee investigating the Pacific Railway scandal. The Governor General, Lord Dufferin, acceded to Macdonald's request. The other two were very recent. In December 2008 Prime Minister Harper advised prorogation in the very early days of a new parliament in order, it appeared, to avoid an impending non-confidence vote. In December 2009, much later in the same session of parliament, Prime Minister Harper again advised prorogation. The Prime Minister's reasons for requesting this prorogation were to give the government time to recalibrate its economic program and to give Canadians an opportunity to enjoy the winter Olympics when parliament wasn't sitting. The opposition parties and many Canadians claimed that the main reason for the request was to suspend the work of a House committee investigating Canadian Forces treatment of prisoners in Afghanistan. On both occasions Governor General Jean acted on the Prime Minister's advice.

6.3 None of the workshop participants questioned whether the Governor General retained the reserve power to decline a prime minister's advice to prorogue parliament. At the same time, workshop members were of the view that it would be best for our system of parliamentary government if the Governor General were not dragged into controversial situations that arise when a prime minister's request for prorogation is highly controversial.

6.4 The workshop considered the possibility of incorporating in the House of Commons Standing Orders a rule concerning the House's role in requests for prorogation. In March 2010, Mr. Layton, the NDP Leader, moved that advice to prorogue for more than a week should be supported by a majority in the House. The Layton motion carried with the support of all the opposition members. However, it was opposed by government members. This means it does not have the consensus required for a constitutional convention. The workshop discussed the Layton motion but did not come to a conclusion as to whether such a rule, perhaps with some adjustment of the time period, might be the best way to establish a convention regulating prime ministerial requests for prorogation.

6.5 Some workshop members put forward the view that adverse public reaction to recent prorogations indicate that a heavy political price will be paid by prime ministers whose prorogation requests are controversial and that very fact has created a constraint on prime ministers in advising prorogation. There also seemed to be broad support in the workshop for the view that if the House of Commons could establish rules that give the House more independence of government in scheduling non-confidence votes, concern about prorogation would be considerably diminished.

7. The Workshop's Conclusions and Recommendations

7.1 There would be much less risk of a parliamentary crisis following an election in which the result is not clear if there were an authoritative set of guidelines such as New Zealand and the United Kingdom now have in their Cabinet Manuals.

7.2 Existing guidelines on caretaker governments should be made public immediately.

7.3 The House of Commons should review its Standing Orders with respect to votes of non-confidence with a view to giving the House more independence of government in deciding when such votes may take place and to limiting their frequency.

7.4 Besides the constitutional matters on which the workshop focussed its discussions, there is much that needs to be done less formally in adjusting the practices and norms of parliamentary life to make parliament more co-operative and functional in an era in which hung parliaments frequently occur.

7.4 The workshop concluded that we need more public consultation and engagement with community and public policy oriented organizations to begin to move forward in a substantive way on this initiative. Broad dissemination of information through websites and public events will assist in informing politicians, academics and voters about the role of such conventions in our parliamentary democracy.

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[1] A public lecture at the Faculty of Law, University of Toronto by Robert Hazell, Professor of Government and the Constitution & Director of the Constitution Unit, University College London preceding the Feb 3-4 workshop gives details of this trend among European parliamentary system.

[2] Robert Hazell and Akash Paun (eds.), *Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall*, Institute for Government, London, 2009.

[3] www.cabinetmanual.cabinetoffice.govt.nz

[4] Peter W. Hogg, "Constitutional Conventions: The New Zealand Cabinet Manual", http://www.aspercentre.ca/resources/publications/conference-papers.htm

[5] Cabinet Manual, section 6.39.

[6] Robert Hazell, "Genesis of the Cabinet Manual," paper prepared for Asper Centre Workshop on Constitutional Conventions, 4 February, 2011, http://www.aspercentre.ca/resources/publications/conference-papers.htm

[7] The draft chapter is appended to the paper Robert Hazell prepared for the workshop.

[8] Justice Committee, *Constitutional Processes Following a General Election* (HC 396, 2010) at: http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/396/396.pdf

[9] Hazell, "Genesis of the Cabinet Manual," p. 3.

[10] The draft Cabinet Manual can be accessed at: http://www.cabinetoffice.gov.uk/sites/default/files/resources/cabinet-draft-manual.pdf

[11] Peter H. Russell, "Constitutional Conventions in Australia: Crises and Codification," http://www.aspercentre.ca/resources/publications/conference-papers.htm

[12] See Anne Twomey, "The Governor General's Role in the Formation of Government in a Hung Parliament," *Legal Studies Research Paper No. 10/85,* Sydney Law School, University of Sydney, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1666697

[13] The workshop is indebted to James Bowden, a political science student at the University of Ottawa, for bringing this Handbook to the workshop's attention.

[14] Hugo Cyr, "The Dissolution of Parliament," http://www.aspercentre.ca/resources/publications/conference-papers.htm

[15] *The Cabinet Manual – Draft*, chapter 2, paragraph 48

[16] Mel Cappe, "The Caretaker Convention in Canada," www.aspercentre.ca

[17] Jennifer Smith and Peter Aucoin, "Votes of Non-Confidence," http://www.aspercentre.ca/resources/publications/conference-papers.htm

[18] Errol Mendes, "Prorogation," http://www.aspercentre.ca/resources/publications/conference-papers.htm

Appendix A
Workshop Participants

1. Peter Aucoin — Dalhousie University (paper contribution)
2. Michael Bliss — University of Toronto
3. Barbara Cameron — York University
4. David Cameron — University of Toronto
5. Mel Cappe — Institute for Research on Public Policy
6. Lois Claxton — Office of the Governor General
7. Hugo Cyr — Université du Québec à Montréal
8. Adam Dodek — University of Ottawa
9. Tom Flanagan — University of Calgary
10. C. E. S. Franks — Queen's University
11. Bill Graham — University of Toronto
12. Robert Hazell — University College London
13. Andrew Heard — Simon Fraser University
14. Peter Hogg — Osgoode Hall Law School
15. Errol Mendes — University of Ottawa
16. Cheryl Milne — University of Toronto
17. Patrick Monahan — York University
18. Peter Russell — University of Toronto
19. David Schneiderman — University of Toronto
20. Brian Slattery — Osgoode Hall Law School
21. Jennifer Smith — Dalhousie University (paper contribution)
22. Paul Thomas — University of Manitoba
23. Brian Topp — ACTRA
24. Daniel Turp — Université de Montréal
25. Robert Walsh — Law Clerk and Parliamentary Counsel, House of Commons
26. Lorraine Weinrib — University of Toronto